

# Victorian International Optimist Dinghy Association Incorporated

## CONSTITUTION

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#### PART 2 – NAME AND PURPOSES

##### 2. Name

- 2.1 The name of the incorporated association is “Victorian International

Optimist Dinghy Association Incorporated”.

- 2.2 The name and registration number of the association must appear in legible characters in all notices, advertisements and other official publications of the association, and in all its business documents.

See section 23 of the Act\*.

### **3. Purposes**

- 3.1 The purposes of the association are:
- (a) to encourage the sport of sailing, including through pursuing each of the following purposes;
  - (b) to promote and develop the International Optimist Dinghy as a sailing class in Victoria and thereby junior sailing in Victoria more broadly;
  - (c) to manage and co-ordinate the affairs and rules of the International Optimist Dinghy sailing class in Victoria and represent members on the Australian International Optimist Dinghy Association;
  - (d) to conduct a Victorian championship of the International Optimist Dinghy sailing class in Victoria annually;
  - (e) to co-ordinate International Optimist Dinghy events throughout Victoria and to conduct for its members coaching and training in the sailing of the International Optimist Dinghy sailing class;
  - (f) to provide assistance and resources to its members and the sailing clubs to which they belong;
  - (g) to establish and maintain a system of annual ranking of members who sail International Optimist Dinghies in Victoria in accordance with the current class rules from time to time of the International Optimist Dinghy Association; and
  - (h) to select, train and develop a Victorian State squad and team respectively in the sailing of the International Optimist Dinghy sailing class.

### **4. Legal Capacity and Powers**

- 4.1 The association has the legal capacity of an incorporated body.  
See section 29(2) of the Act\*.
- 4.2 The association has power to do anything incidental or conducive to the attainment of its purposes.  
See section 30(d) of the Act\*.
- 4.3 The association may only:
- (a) exercise its powers; and
  - (b) use its income and assets (including any surplus);
- for its purposes.

### **5. Not For Profit Organisation**

- 5.1 The association must not distribute any surplus, income or assets directly or indirectly to its members.  
See section 33 of the Act\*.
- 5.2 Clause 5.1 does not prevent the association from paying its members:
- (a) reimbursement for expenses properly incurred by them, and
  - (b) for goods supplied and services provided by them,
- if this is done in good faith on terms no more favourable than if the member were not a member.  
See section 4 of the Act\*.

## **PART 3 – MEMBERSHIP**

### **6. Minimum Number of Members**

The association must have at least 5 members.

See definition of “association” in section 3 and section 127(2)(a) of the Act\*.

### **7. Eligibility**

- 7.1 Any individual, including any member of a family, who supports the purposes of the association is eligible for membership.

## **8. Membership Categories**

- 8.1 The association has the following categories of membership:
- (a) individual membership;
  - (b) family membership; and
  - (c) any other categories of membership determined by the Committee by regulation (which may include non-voting members).

## **9. Applications**

- 9.1 Applications for membership must be:
- (a) in writing\*, stating that the applicant:
    - (i) wishes to become a member of the association;
    - (ii) supports the purposes of the association; and
    - (iii) agrees to comply with the constitution and regulations\* of the association;
  - (b) setting out the full name, date of birth and address of the member;
  - (c) signed by the applicant;
  - (d) accompanied by the relevant subscription for the first year of membership; and
  - (e) given to the Secretary or another Committee member.
- 9.2 A member of a family may apply for family membership of the association on behalf of themselves and any or all members of their family. To do so they must give the association the information and undertakings referred to in clause 9.1 in respect of each member of the family for whom membership is sought together with the relevant subscription for the first year of membership.
- 9.3 A member of a family who applies for family membership under clause 9.2 hereby agrees, and warrants their authority to agree, for and on behalf of each member of the family for whom membership is sought, to all matters required to be agreed by members under this Constitution.
- 9.4 An individual, and each member of a family for whom membership is sought

within a family membership, becomes a member of the association from the time the relevant subscription is paid.

## **10. Approval**

- 10.1 The Committee must by resolution approve or reject an application for membership at the next meeting after a Committee member has received it.
- 10.2 The Committee must without delay notify the applicant in writing\* if the application has been rejected.
- 10.3 No reason need be given for the rejection of an application.
- 10.4 If the Committee approves the application:
- (a) the applicant, and in the case of a family membership, each member of the family for whom membership is sought, becomes a member from the date of the Committee meeting; and
  - (b) the name and address of each new member, and the date of becoming a member must be entered without delay in the register of members.
- 10.5 If the Committee rejects the application, it must return any subscription to the applicant.

## **11. Subscriptions**

- 11.1 The Committee may by regulation\* set a subscription.
- 11.2 The amount of the subscription and the date for payment may vary according to criteria set by the Committee in the regulation\*, including the category of membership, the age of the member and, in the case of family membership, according to the number of individuals within the family membership and their respective ages.
- 11.3 The voting and other rights of members who have not paid the subscription by the date for payment are suspended until the subscription is paid.
- 11.4 Except for the subscription, there are no entrance fees or other amounts to be paid in respect of membership of the association.

## **12. Rights, Obligations and Liability**

- 12.1 All members of a membership category carrying voting rights who are 18 years old or over, other than those whose rights have been suspended under clause 11.3 or 13.1, are entitled:
- (a) to submit items of business for consideration at general meetings under clause 20.2(c);
  - (b) to receive notice of general meetings under clause 20;
  - (c) to participate in general meetings under clause 25;
  - (d) to elect the Committee under clause 29; and
  - (e) to have access to the records of the association under clause 55.
- See sections 53, 57, 60 and 61 of the Act\*.
- 12.2 The rights of members are not transferable, and end when the member ceases to be a member in accordance with clause 15.
- 12.3 By becoming and remaining members, members agree to support the purposes of the association.
- 12.4 Members agree that all intellectual property created by them at the request, for the benefit and purposes of and in the course of participating in the association, belongs to the association.
- 12.5 Members agree and consent to being photographed by the association while in the course of participating in association events and activities and authorise the association to reasonably use and publish such photographs in newsletters, bulletin boards, websites, emails, social media forums, posters, stickers, newspaper and magazine articles and advertisements and other like media provided:
- (a) this is solely for the purpose of conducting and promoting the association in accordance with its purposes;
  - (b) this is lawful; and
  - (c) the association must if requested in writing by the member take all reasonable measures to remove or cease further using or publishing

any specific photographs where the member reasonably considers such use to be offensive or harmful in any way to themselves or their family.

- 12.6 Members must at all times comply with the constitution and regulations\*.

- 12.7 This constitution is an enforceable contract between the association and each member.

See sections 46 and 67 of the Act\*.

- 12.8 Members (including Committee members) are not liable to contribute to the debts and liabilities of the association only because of their membership.

See section 52(1) of the Act\*.

## **13. Disciplinary Action**

- 13.1 The Committee may by resolution passed by an absolute majority\* reprimand, suspend or expel a member for:

- (a) failing to comply with the constitution or regulations\*; or
- (b) conduct prejudicial to the association.

- 13.2 The Committee must not pass a resolution under clause 13.1 unless the member concerned has been:

- (a) informed of the grounds for the proposed disciplinary action; and
- (b) given a reasonable opportunity to be heard.

See section 54(3)(a) of the Act\*.

- 13.3 The Committee:

- (a) may delegate its powers under this clause to a disciplinary subcommittee appointed by the Committee; and
- (b) must do so if any Committee member is biased against (or in favour of) the member concerned.

See section 54(3)(b) of the Act\*.

- 13.4 The members of the disciplinary subcommittee:

- (a) need not be Committee members or members of the association; but

- (b) must not be biased against (or in favour of) the member concerned.

See section 54(3)(b) of the Act\*.

- 13.5 Clauses 13.1 and 13.2 apply to the disciplinary subcommittee in the same way as the Committee.
- 13.6 The disciplinary procedure under this clause must be completed as soon as is reasonably practicable.  
See section 54(3)(c) of the Act\*.
- 13.7 The Committee must not take disciplinary action under this clause against a member who is a party to the grievance procedure under clause 17 until the grievance procedure has been completed.
- 13.8 The association may not fine members.

#### **14. Resignation**

- 14.1 Members may resign in writing\* given to the Secretary or another Committee member.
- 14.2 If the association has a membership subscription under clause 11, members whose subscriptions are more than 1 year in arrears are taken to have resigned.
- 14.3 If the association does not have a membership subscription:
  - (a) the Committee may in writing\* request members to confirm they wish to remain members; and
  - (b) those members who have not within 3 months indicated in writing\* that they wish to remain members are taken to have resigned.

#### **15. Cessation**

- 15.1 Members cease to be members on resignation, expulsion or ceasing to exist.
- 15.2 If a member ceases to be a member:
  - (a) the date of ceasing to be a member must be entered in the register of members; and
  - (b) the address and date of becoming a member of the former member must be removed from the register of members;

within 14 days.

See sections 56(3) and 56(4) of the Act\*.

#### **16. Register of Members**

- 16.1 The Committee must ensure that a register is kept containing:
  - (a) for current members:
    - (i) the name of the member,
    - (ii) the address for notices last given by the member, and
    - (iii) the date of becoming a member; and
  - (b) for former members:
    - (i) the name of the member, and
    - (ii) the date of ceasing to be a member.

See section 56 of the Act\*.

- 16.2 The register may be in electronic form provided that suitable measures are taken to protect its security and integrity.
- 16.3 Members may inspect and obtain copies of the register in accordance with clause 55.

See section 57 of the Act\*.

#### **17. Grievance Procedure**

- 17.1 The grievance procedure in this clause applies to disputes under this constitution between:
  - (a) a member and another member, and
  - (b) a member and the Committee or the association.
- 17.2 The parties must first attempt to resolve the dispute themselves.
- 17.3 If the parties are unable to resolve the dispute, the Committee must appoint a conciliator and arbitrator (in this clause, "conciliator").
- 17.4 The conciliator:
  - (a) must not have a personal interest in the dispute;
  - (b) must not be biased in favour of or against any party;

See section 55(3)(b) of the Act\*.

- (c) may be a member or former member of the association; and
- (d) if possible, must be appointed with the agreement of all parties.

17.5 The conciliator must conduct a conciliation at which each party is given a reasonable opportunity to be heard.

See section 55(3)(a) of the Act\*.

17.6 The parties must in good faith attempt to resolve the dispute by conciliation.

17.7 The conciliator may during, and must at the end of, the conciliation attempt to resolve the dispute by agreement between the parties.

17.8 If the conciliator is unable to resolve the dispute by agreement between the parties, the conciliator must determine the respective rights and obligations under this constitution of the parties and any other members.

17.9 A determination of a conciliator under clause 17.8 is binding on the parties and all members.

17.10 A party may appoint another person to act on its behalf in the grievance procedure.

See section 55(2) of the Act\*.

17.11 A member who is the subject of a disciplinary procedure under clause 13 must not initiate the grievance procedure under this clause until the disciplinary procedure has been completed.

See section 54(4) of the Act\*.

17.12 The State, Territory and Commonwealth Acts applying to commercial arbitrations do not apply to the grievance procedure in this clause.

## **PART 4 – GENERAL MEETINGS**

### **18. Annual General Meeting**

18.1 The Committee must convene\* an annual general meeting each year.

See section 63(1) of the Act\*.

18.2 The annual general meeting must be held within 5 months after the end of the association's financial year under clause 48.

See section 63(4) of the Act\*.

18.3 At the annual general meeting, the Committee must submit to the members:

- (a) the financial statements for the last financial year prepared in accordance with clause 50.4, and
- (b) if required by clause 52 – the accompanying review or audit report.

See sections 94, 97 and 100 of the Act\*.

18.4 The ordinary business of the annual general meeting is:

- (a) to verify the minutes of:
  - (i) the last annual general meeting, and
  - (ii) any special general meetings since the last annual general meeting;
- (b) to consider the annual report of the Committee on the activities of the association during its last financial year;
- (c) to consider the financial statements and any accompanying review or audit report; and
- (d) to elect the Committee in accordance with clause 29.

18.5 The annual general meeting may only consider other business of which notice has been given in accordance with clause 20.2(c).

18.6 At, or as soon as practicable after, the conclusion of the annual general meeting, a Committee member must certify in the form approved by the Registrar\* that:

- (a) the Committee member attended the annual general meeting; and
- (b) the financial statements were submitted to the members at the annual general meeting.

See sections 94(3), 97(3) and 100(3) of the Act\*.

18.7 The Secretary must lodge with the Registrar\*:

- (a) an annual statement in the form approved by the Registrar\*,
- (b) the financial statements and any accompanying review or audit report, and

- (c) a statement of the terms of any resolution passed at the annual general meeting concerning the financial statements,

within 1 month after the annual general meeting.

See section 102 of the Act\*.

## **19. Special General Meetings**

- 19.1 The Committee may by resolution convene\* a special general meeting whenever it considers appropriate.
- 19.2 The Committee must convene\* a special general meeting if requested in writing\* by at least 25% of members entitled to vote.
- 19.3 The request:
  - (a) must state the business to be considered at the meeting, including any resolution to be proposed;
  - (b) may consist of multiple copies of the same document;
  - (c) must include the names, addresses and signatures of the members making the request; and
  - (d) must be given to the Secretary or another Committee member.
- 19.4 If the Committee does not arrange for the special general meeting to be held within 6 weeks of the request being made, the members making the request (or any of them) may convene\* the special general meeting.
- 19.5 A special general meeting convened by members under clause 19.4:
  - (a) must be held within 3 months of the original request having been made; and
  - (b) may only consider the business stated in the original request.
- 19.6 The association must reimburse all reasonable expenses incurred by the members convening a special general meeting under clause 19.4.
- 19.7 Special general meetings may only consider business of which notice has been given in accordance with clause 20.2(c).

## **20. Notice**

- 20.1 At least 21 days notice in writing\* of general meetings must be given to each member entitled to vote.

See section 60 of the Act\*.
- 20.2 The notice must state:
  - (a) the date, time and place (or places) of the meeting,

See section 60(a) of the Act\*.
  - (b) if the meeting is to be held at more than 1 place – the technology that will be used,
  - (c) the general nature of each item of business to be considered (including any item of business that any member has requested in writing\* be considered provided that the request has been received by the Secretary at least 7 days before the notice is sent), and
  - (d) if a special resolution\* is to be proposed:
    - (i) the proposed resolution in full, and
    - (ii) the intention to propose the resolution as a special resolution\*.

See section 64(3) of the Act\*.
- 20.3 The notice must also include:
  - (a) a statement that:
    - (i) all members may appoint a proxy to attend, speak and vote instead of the member in accordance with clause 21, and
    - (ii) proxies must be members of the association, and
  - (b) a copy of clause 21.
- 20.4 The notice may include forms of appointment for the purposes of clause 21, but members are not required to use those forms provided they comply with clause 21.
- 20.5 Despite clause 20.1, the accidental omission to give notice of the meeting to a member or members, or the non-receipt by a member or members of notice of the meeting does not invalidate the meeting.

## **21. Proxies**

21.1 Members may only appoint other members as proxies.

21.2 Appointments of proxies must be:

- (a) in writing\*, naming the member (or members, in order) appointed;
- (b) signed by the member making the appointment; and
- (c) sent to the association or given to the chair of the meeting before the commencement of the meeting.

## **22. Use of Technology**

General meetings may be held at more than 1 place, provided that the technology used enables each member present at all places the meeting is held to communicate clearly and simultaneously with every other such member.

See section 62 of the Act\*.

## **23. Quorum**

23.1 The quorum for consideration of the ordinary business of the annual general meeting is the presence in person of at least 5 members entitled to vote.

23.2 The quorum for consideration of a proposed resolution (including a special resolution) recommended by the Committee is the presence in person or by proxy of at least 10% of members entitled to vote.

23.3 The quorum for the consideration of all other business at general meetings is the presence in person or by proxy of at least 25% of members entitled to vote.

23.4 If a quorum is not present within 30 minutes from the time of the meeting of which notice has been given, the meeting must not proceed.

## **24. Chairing**

24.1 The President is entitled to chair general meetings.

24.2 If the President is not present, or does not wish to chair the meeting, the Vice-President is entitled to chair.

24.3 If neither the President nor the Vice-President is present, or if neither wishes

to chair the meeting, the meeting must elect another member to chair.

24.4 The chair of the meeting does not have a casting vote.

## **25. Participation**

25.1 All members are entitled to attend general meetings except those whose rights have been suspended under clause 11.3 or 13.1.

25.2 All members of a membership category carrying voting rights who are 18 years old or over and entitled to participate in general meetings under clause 12.1(c) are entitled to vote at general meetings, except those whose rights have been suspended under clause 11.3 or 13.1.

See section 61 of the Act\*.

## **26. Voting**

26.1 Each member who is entitled to vote has 1 vote.

26.2 Members may vote in person or by proxy.

26.3 Unless a poll is demanded:

- (a) voting is by show of hands; and
- (b) votes by proxy are not counted.

Compare section 65(2) of the Act\*.

26.4 If an equal number of votes are cast for and against a motion or amendment, the chair of the meeting must declare the motion or amendment lost.

26.5 The declaration by the chair of the meeting of the result of the vote is conclusive evidence of that result.

Compare section 65(1) of the Act\*.

## **27. Polls**

27.1 In this clause, a "poll" means where votes are cast in writing.

27.2 Any member entitled to vote (including the chair of the meeting) may demand a poll before or immediately after the declaration of the result on a show of hands.

Compare section 65(3) of the Act\*.

27.3 Votes by proxy are counted on a poll.



- 27.4 The poll must be taken as directed by the chair of the meeting.

## **PART 5 – THE COMMITTEE**

### **28. Membership**

The members of the Committee are:

- (a) the President,
- (b) the Vice-President,
- (c) the Treasurer,
- (d) the Secretary,
- (e) the Immediate Past President
- (f) up to 3 ordinary Committee members,
- (g) the Head Sailing Coach appointed by the Committee from time to time (if any),
- (h) up to 3 co-opted members, and
- (i) any other positions established by the Committee by regulation.

### **29. Election**

- 29.1 The annual general meeting must elect the Committee members.
- 29.2 The annual general meeting must by resolution decide how many ordinary Committee members (if any) it wishes to elect.
- 29.3 Only individuals who are members of the association entitled to vote at the annual general meeting are eligible to be elected as Committee members.
- 29.4 Each of the positions in clauses 28(a)–(e) must be elected separately.
- 29.5 If the annual general meeting decides to elect any ordinary Committee members, those positions must be elected together.
- 29.6 The chair of the meeting must call for nominations for each position. Candidates may nominate themselves. Candidates may be nominated by another member, if they consent.
- 29.7 If the number of candidates for a position is fewer than the number to be elected:

- (a) the chair of the meeting must declare elected those candidates who have nominated; and
- (b) the Committee may subsequently fill the remaining vacancies in accordance with clause 31.7.

- 29.8 If the number of candidates for a position is equal to the number to be elected, the chair of the meeting must declare those candidates elected.

- 29.9 If there are more candidates for a position than the number to be elected, a ballot must be held in accordance with clause 30.

### **30. Ballot**

- 30.1 The chair of the meeting must appoint a returning officer to conduct the ballot (who may be the chair of the meeting).
- 30.2 The candidates may each make a short speech in support of their election.
- 30.3 The election must be by secret ballot.
- 30.4 The returning officer must give:
- (a) each member present in person, and
  - (b) each proxy appointed by a member, a blank piece of paper for each ballot.
- 30.5 For each ballot, voters must:
- (a) write down the names of the candidate or candidates they wish to vote for; and
  - (b) not write down the names of more candidates than the number to be elected in that ballot.
- 30.6 Ballot papers that do not comply with clause 30.5(b) are informal.
- 30.7 Each formal ballot paper where the name of a candidate has been written down counts as 1 vote for that candidate.
- 30.8 The returning officer must declare elected the number of candidates to be elected who receive the most votes, subject to clause 30.9.
- 30.9 If 2 or more candidates receive the same number of votes, and 1 or some but not all of those candidates are to be elected, the returning officer must decide by lot which is to be elected.

### **31. Term of Office**

31.1 Committee members hold office from the time of their election until a new Committee is elected, subject to clauses 31.2–31.6.

31.2 Committee members may be re-elected up to a maximum of three consecutive terms after which they may not stand to be re-elected for a period of one term.

31.3 The Immediate Past President shall, subject to clauses 31.2–31.6, hold office until the annual general meeting next after ceasing to hold office as President.

31.4 Committee members may resign in writing\* given to the Secretary or another Committee member.

See section 78(2)(a) of the Act\*.

31.5 Committee members cease to be Committee members if they:

- (a) cease to be members of the association;
  - (b) fail to attend 3 consecutive Committee meetings without leave of absence under clause 45;
  - (c) become insolvent under administration;
- See section 38 of the Victorian *Interpretation of Legislation Act 1984*.
- (d) become a represented person under the Victorian *Guardianship and Administration Act 1986*;
  - (e) in the case of the Head Coach, cease to hold that position, or
  - (f) in the case of the Secretary – cease to reside in Australia.

See section 78(2) of the Act\*.

31.6 A general meeting may by resolution passed by a simple majority:

- (a) remove any Committee member; and
- (b) fill the resulting vacancy.

Compare section 78(2)(b) of the Act\*.

31.7 If there is a vacancy in its membership (including a vacancy in accordance with clause 31.6(a) not filled under clause 31.6(b)), the Committee may appoint an individual who would be eligible to be elected under clause 29.3 to fill the

vacancy for the remainder of the term of office.

31.8 The Committee may continue to act despite any vacancy in its membership.

31.9 Even if it is subsequently found that a person who has acted as a Committee member was not properly elected or appointed, the validity of:

- (a) the acts of that person as a Committee member, and
  - (b) decisions of Committee meetings in which that person has participated,
- is not affected.

### **32. Responsibility and Powers**

32.1 The Committee is responsible for the management of the association, subject to clause 32.4.

32.2 The Committee may exercise all powers of the association on its behalf.

32.3 The Committee may by resolution:

- (a) establish subcommittees with such membership and terms of reference as it considers appropriate; and
- (b) delegate its powers as it considers appropriate.

32.4 A general meeting may by resolution direct the Committee on any matter within its powers.

### **33. Regulations**

33.1 The Committee may by resolution passed by an absolute majority\* make regulations to give effect to this constitution.

33.2 Upon making any regulations the Committee must notify these to all Members.

33.3 Members must at all times comply with the regulations as if they formed part of this constitution.

### **34. Public Statements**

34.1 The Committee may by regulation\* or resolution authorise a Committee member (or Committee members) to make public statements on behalf of the association.

- 34.2 No person may make any public statement on behalf of the association unless authorised by the Committee.

### **35. Duties**

- 35.1 Committee members and former Committee members must not make improper use of:
- (a) their position, or
  - (b) information acquired by virtue of holding their position,
- so as:
- (c) to gain an advantage for themselves or any other person; or
  - (d) to cause detriment to the association.

See section 83 of the Act\*.

- 35.2 Committee members must exercise their powers and discharge their duties with reasonable care and diligence.

See section 84 of the Act\*.

- 35.3 Committee members must exercise their powers and discharge their duties:

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

See section 85 of the Act\*.

### **36. Indemnity**

The association indemnifies Committee members against any liability incurred in good faith by them in the course of performing their duties.

See section 87 of the Act\*.

### **37. Secretary**

- 37.1 The Secretary is the secretary of the association for the purposes of the Act\*.
- 37.2 The Secretary must notify the Registrar\* within 14 days of appointment.
- See section 74 of the Act\*.
- 37.3 The Committee must fill any vacancy in the position of Secretary within 14 days.
- See section 73 of the Act\*.
- 37.4 The Secretary whose appointment was last notified to the Registrar\* remains the secretary of the association in some

circumstances under the Act\* until the appointment of a new Secretary is notified.

See section 215 of the Act\*.

## **PART 6 – COMMITTEE MEETINGS**

### **38. Convening**

- 38.1 The Secretary, President or any other 2 Committee members may convene\* a Committee meeting.
- 38.2 Ordinary Committee meetings must be held at least 6 times each year.
- 38.3 At its first meeting after the annual general meeting each year the Committee must by resolution set the dates, times and places of ordinary Committee meetings until the next annual general meeting.
- 38.4 The Committee may by resolution subsequently change the dates, times and places of ordinary meetings.

### **39. Notice**

- 39.1 Each Committee member must be given at least 7 days notice in writing\* of Committee meetings, subject to clause 39.4.
- 39.2 Notice may be given of more than 1 Committee meeting at the same time.
- 39.3 The notice must state the date, time and place (or places) of the meeting, but need not include the business to be considered.
- 39.4 In cases of urgency a meeting may be held without the notice required by clause 39.1, provided that:
- (a) as much notice as practicable is given to each Committee member by the quickest practicable means; and
  - (b) resolutions may only be passed by an absolute majority\*.

### **40. Use of Technology**

- 40.1 Committee meetings may be held at more than 1 place, provided that the technology used enables each Committee member present at all places the meeting is held to communicate

clearly and simultaneously with every other such Committee member.

See section 79 of the Act\*.

- 40.2 Without limiting clauses 39.4(a) and 40.1, Committee meetings may be convened\* and held by telephone.

#### **41. Quorum**

The quorum for Committee meetings is the presence in person of a majority of Committee members at the time.

#### **42. Chairing**

- 42.1 The President is entitled to chair Committee meetings.
- 42.2 If the President is not present, or does not wish to chair the meeting, the Vice-President is entitled to chair.
- 42.3 If neither the President nor the Vice-President is present, or if neither wishes to chair the meeting, the Committee must elect another Committee member to chair.
- 42.4 The chair of the meeting does not have a casting vote.

#### **43. Voting**

- 43.1 Each Committee member has 1 vote.
- 43.2 There is no voting by proxy.
- 43.3 If an equal number of votes are cast for and against a motion or amendment, the chair of the meeting must declare the motion or amendment lost.

#### **44. Conflict of Interest**

- 44.1 Committee members who have a material personal interest in a matter that is being considered at a Committee meeting must:
- (a) disclose the nature and extent of their interest:
    - (i) to the Committee as soon as they become aware of the interest; and
    - (ii) at the next general meeting;
  - (b) not be present while the matter is being considered at the meeting; and
  - (c) not vote on the matter.

See sections 80 and 81 of the Act\*.

- 44.2 Clause 44.1 does not apply to material personal interests that:

- (a) exist only because the Committee member belongs to a class of persons for whose benefit the association is established; or
- (b) the Committee member has in common with all or a substantial proportion of the members of the association.

See sections 80 and 81 of the Act\*.

- 44.3 Clause 44.1(a) does not apply to material personal interests that exist only because the Committee member is an employee of the association.

See section 80 of the Act\*.

#### **45. Leave of Absence**

- 45.1 The Committee may by resolution grant Committee members leave of absence from Committee meetings for up to 3 months.
- 45.2 The Committee may not grant leave of absence retrospectively unless it is satisfied that it was not feasible for the Committee member concerned to seek leave of absence in advance.

#### **46. Resolutions without Meeting**

- 46.1 A resolution agreed to in writing\* by all Committee members has the same effect as a resolution passed at a Committee meeting.
- 46.2 In clause 46.1, "all Committee members" does not include those Committee members who:
- (a) would be prohibited by clause 44.1(c) from voting on the matter at a Committee meeting; or
  - (b) have leave of absence from Committee meetings under clause 45.

### **PART 7 – FINANCIAL AND LEGAL**

#### **47. Sources of Funds**

The funds of the association may be derived from subscriptions (if any), donations, fund-raising activities, grants,

interest and any other sources approved by the Committee.

#### **48. Financial Year**

The financial year of the association is from 1 January to 31 December, unless:

- (a) the application for incorporation of the association nominates a different financial year; or
- (b) the Committee by regulation\* adopts a different financial year.

#### **49. Management of Funds**

49.1 The Committee is responsible for the management of the funds of the association.

49.2 The association must keep financial records that:

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared in accordance with clause 50.4.

See section 89(1) of the Act\*.

49.3 All money received by or on behalf of the association must be deposited without delay into a bank account in the name of the association.

#### **50. Payments**

50.1 All payments by the association must be:

- (a) specifically authorised in writing\*, and
- (b) in the case of cheques – signed, by at least 2 Committee members nominated by the Committee by regulation\* or resolution.

50.2 The Committee may nominate a list of individuals or positions for the purposes of clause 50.1.

50.3 Signatories must not sign cheques until the payee and amount have been written in.

50.4 This clause does not apply to credit card and petty cash payments where the amount is within limits set by the Committee by regulation\* or resolution.

#### **51. Financial Statements**

51.1 In this clause and clause 52 the following words have the following meanings:

- (a) “tier one association” means an incorporated association that has a total revenue of less than \$250,000;
- (b) “tier two association” means an incorporated association that has a total revenue of between \$250,000 and \$1 million;
- (c) “tier three association” means an incorporated association that has a total revenue of more than \$1 million; and
- (d) “total revenue” means the total income of the incorporated association during its last financial year from all the activities of the association before any expenses, including the cost to the association of goods sold by it, are deducted.

See section 90 of the Act\*.

51.2 As soon as practicable after the end of the association’s financial year under clause 48, the Committee must cause financial statements of the association for that year to be prepared in accordance with this clause.

See sections 92(1), 95(1) and 98(1) of the Act\*.

51.3 For tier one associations, the financial statements must give a true and fair view of the financial position and performance of the association during and at the end of its last financial year.

See section 92(2)(a) of the Act\*.

51.4 For tier two associations and tier three associations, the financial statements must be prepared in accordance with the Australian Accounting Standards.

See sections 95(2)(a) and 98(2)(a) of the Act\*.

51.5 The financial statements must contain particulars of:

- (a) the income and expenditure of the association during and at the end of its last financial year,

- (b) the assets and liabilities of the association at the end of its last financial year,
- (c) the mortgages, charges and securities of any description affecting any property of the association at the end of its last financial year,
- (d) the same particulars in respect of each trust of which the association was trustee during any part of its last financial year, and
- (e) any trust, held on behalf of the association by a person or body other than the association, in which funds or assets of the association are placed.

See section 101(1) of the Act\*.

51.6 The financial statements must also deal with any matters prescribed by the regulations under the Act\*.

See sections 92(2)(b), 95(2)(b) and 98(2)(b) of the Act\*.

51.7 The financial statements must have a certificate attached in the form prescribed under the Act\* signed by 2 Committee members in accordance with a resolution of the Committee certifying that the financial statements give a true and fair view of the financial position and performance of the association during and at the end of its last financial year.

Compare sections 94(2)(b), 97(2)(b) and 100(2)(b) of the Act\*.

51.8 The Committee must submit the financial statements (including the attached certificate) to the annual general meeting under clause 18.3(a).

See sections 94, 97 and 100 of the Act\*.

51.9 If different amounts are prescribed under the Act\*, the amounts in clause 51.1 are varied accordingly.

See section 90 of the Act\*.

## **52. Review and Audit of Accounts**

52.1 For tier two associations, the Committee must:

- (a) have the financial statements reviewed in accordance with the Act\*; and

- (b) submit the review report to the annual general meeting under clause 18.3(b).

See sections 96 and 97(2)(c) of the Act\*.

52.2 For tier three associations, the Committee must:

- (a) have the financial statements audited in accordance with the Act\*; and
- (b) submit the audit report to the annual general meeting under clause 18.3(b).

See sections 99 and 100(2)(c) of the Act\*.

52.3 For tier one associations, if a majority of the members present at a general meeting vote to have the financial statements reviewed, the financial statements must be reviewed as if it were a tier two association.

See section 93 of the Act\*.

52.4 An auditor may only be removed by a general meeting in accordance with the procedure set out in the Act\*.

See sections 106 and 107 of the Act\*.

## **53. Minutes**

53.1 The Committee must ensure that minutes are taken and kept of all general meetings, Committee meetings and resolutions without meeting.

Compare item 14 of Schedule 1 of the Act\*.

53.2 The minutes of annual general meetings must include a copy of the financial statements and any accompanying review or audit report submitted at the meeting in accordance with clause 18.3.

See sections 94(4), 97(4) and 100(4) and item 15 of Schedule 1 of the Act\*.

53.3 The minutes of special general meetings must include a copy of any financial statements submitted at the meeting.

See item 15 of Schedule 1 of the Act\*.

53.4 Members may inspect and obtain copies of minutes in accordance with clause 55.

## **54. Retention of Records**

54.1 The Committee must provide for the safe keeping of the records of the association.

54.2 The association must keep its financial records for at least 7 years after the transactions covered by the records are completed.

See section 89(2) of the Act\*.

54.3 The association must keep the financial statements submitted to the annual general meeting for at least 7 years after the annual general meeting.

See section 105(1) of the Act\*.

54.4 The association must keep the certificate referred to in clause 18.6 for at least 7 years after the certificate was signed.

See section 105(2) of the Act\*.

54.5 The association must keep all its other records for at least 7 years after the record was created.

54.6 A person who is no longer entitled to custody of records of the association must return them to the Committee within 28 days.

See section 88 of the Act\*.

## **55. Access to Records**

55.1 Members may on request inspect:

- (a) the register of members,
- (b) the minutes of general meetings,
- (c) a copy of any trust deed referred to in clause 51.5(e), and
- (d) subject to clause 55.2, the other records of the association, including the minutes of Committee meetings,

at any reasonable time.

See sections 53(1), 57 and 101(2) and items 13, 15 and 16 of Schedule 1 of the Act\*.

55.2 Members may not inspect the records of the association that relate to confidential personal, employment, commercial and legal matters, except as permitted by the Committee.

See items 13 and 16 of Schedule 1 of the Act\*.

55.3 The association must on request make copies of the constitution and regulations\* available to members and applicants for membership without charge.

Compare section 53 of the Act\*.

55.4 The association must within 7 days of request make copies of:

- (a) the register of members (subject to clause 55.5), and
- (b) the minutes of general meetings, available to members without charge.

Compare section 53(2) and see items 13 and 15 of Schedule 1 of the Act\*.

55.5 A member may request that access to their personal information in the register of members be restricted in accordance with the Act\*, if there are special circumstances that justify doing so.

See section 59 of the Act\*.

## **56. Use of Register of Members**

56.1 Members may only use or disclose information from the register of members to contact or send material to other members if this is directly related to the management or purposes of the association.

See section 58 of the Act\*.

56.2 Non-members must not use or disclose information from the register of members to contact or send material to members unless this is:

- (a) directly related to the management or purposes of the association; and
- (b) authorised by the Committee.

See section 58 of the Act\*.

## **57. Signing of Documents**

57.1 The association may sign contracts and other documents either:

- (a) by using a common seal – refer clause 58; or
- (b) by having the document signed by 2 Committee members.

See section 38 of the Act\*.

57.2 A document may only be signed by 2 Committee members if authorised by resolution of the Committee.

## **58. Common Seal**

58.1 The association may have a common seal.

See section 29(2)(b) of the Act\*.

- 58.2 Clauses 58.3–58.7 only apply if the association has a common seal.
- 58.3 The name of the association must appear in legible characters on the common seal.  
See section 23(1)(a) of the Act\*.
- 58.4 A document may only be sealed with the common seal if authorised by resolution of the Committee.
- 58.5 The sealing must be witnessed by the signatures of at least 2 Committee members nominated by the Committee by regulation\* or resolution.
- 58.6 The Committee may nominate a list of individuals or positions to be signatories for the purpose of clause 58.5.
- 58.7 The Committee must provide for the safe keeping of the common seal.

## **59. Registered Address**

- 59.1 The association must have a registered address for the service of documents on the association.  
See sections 28 and 217 of the Act\*.
- 59.2 The registered address of the association must be the address of the Secretary, unless the Committee by regulation\* nominates a different address.
- 59.3 The association must notify the Registrar\* within 14 days of any change of registered address.  
See section 28(3) of the Act\*.

## **60. Amendment of Constitution**

- 60.1 This constitution may only be amended by special resolution\*.  
See section 50(1) of the Act\*.
- 60.2 An amendment to this constitution does not take effect until it has been approved by the Registrar\*.  
See section 50(2) of the Act\*.
- 60.3 The Secretary must apply to the Registrar\* for approval of the amendment within 28 days after the special resolution\* was passed.  
See section 50(3) of the Act\*.

## **61. Winding Up**

- 61.1 The association may be wound up voluntarily by special resolution\*.  
See section 125 of the Act\*.
- 61.2 If the association is:
- (a) wound up voluntarily or otherwise; or
  - (b) its incorporation is cancelled;
- the surplus assets of the association must not be distributed to any member.  
See section 132(4) of the Act\*.
- 61.3 The surplus assets must be given to a body that:
- (a) has similar purposes to the association; and
  - (b) also prohibits the distribution of any surplus, income and assets to its members to at least as great an extent as the association;
- subject to clauses 61.5, 62.2(e) and 62.2(f).
- 61.4 If the association is wound up voluntarily, the body to which its surplus assets are to be given must be decided by special resolution\*.
- 61.5 The surplus assets of the association do not include any property supplied by a government department, public authority or municipal council, including the unexpended portion of a grant. On winding up, that property must be returned to the body that supplied it or its nominee.  
See section 132(3) of the Act\*.

## **62. Tax Deductibility**

- 62.1 In this clause:
- (a) “contributions” and “fund-raising event” have the same meaning as in Division 30 of the Tax Act;
  - (b) “DGR” means a deductible gift recipient under Division 30 of the Tax Act;
  - (c) “gift funds” means:
    - (i) gifts and contributions to the association, and



- (ii) money received by the association because of such gifts and contributions; and
- (d) “the Tax Act” means the Commonwealth *Income Tax Assessment Act 1997*.

62.2 If the association has been endorsed as a DGR:

- (a) receipts for gifts to the association must include:
  - (i) the name and ABN of the association, and
  - (ii) the fact that the receipt is for a gift;
- (b) receipts for contributions to the association in relation to a fund-raising event must include:
  - (i) the name and ABN of the association, and
  - (ii) the other information required by section 30-228 of the Tax Act;
- (c) the association must keep records that record and explain all transactions and other acts it engages in relevant to its status as a DGR for at least 5 years;
- (d) the records must show that the association uses gift funds only for the principal purpose of the association;
- (e) on winding up of the association or revocation of its endorsement (whichever occurs earlier), any surplus gift funds must be transferred to another DGR; and
- (f) on winding up or dissolution of the association its surplus assets other than any surplus gift funds must also be given to another DGR.

### 63. Notices

- 63.1 Members must give the association their address for notices, and any change in that address.
- 63.2 The address for notices may include an email address and a fax number.
- 63.3 The association must enter any change in the address of a member in the register of members without delay.

63.4 Notice may be given to a member by sending it to the address last given by the member.

63.5 In this constitution a period of notice of a meeting expressed in days:

- (a) does not include the day on which notice is given; but
- (b) includes the day on which the meeting is held.

63.6 Notices sent by prepaid post are taken to have been given on the second day after posting that is not a Saturday, Sunday or public holiday at that address.

63.7 Notices sent by email or fax are taken to have been given on the first day after sending that is not a Saturday, Sunday or public holiday at that address.

63.8 In this clause, “member” includes a Committee member.

### 64. Interpretation

64.1 In this constitution, unless the contrary intention appears:

- (a) “absolute majority” means a majority of the votes of all Committee members entitled to vote at the time, whether or not those Committee members are present, and whether or not they vote;
- (b) “the Act” means the Victorian *Associations Incorporation Reform Act 2012*;
- (c) “the association” means the association named in clause 2.1;
- (d) “convene” means call and arrange to hold, and includes setting the date, time and place of the meeting;
- (e) “family” has the meaning as defined by the Australian Bureau of Statistics from time to time;
- (f) “intellectual property” means copyright, patents, trade marks, designs and other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967 (whether or not registered);

- (g) “the Registrar” means the Registrar of Incorporated Associations under the Act\*;
- (h) “regulations” means regulations of the association made under clause 33, and “regulation” has a corresponding meaning;
- (i) “special resolution” means a resolution:
  - (i) to amend this constitution;
  - (ii) to change the name of the association;
  - (iii) to amalgamate the association with another association incorporated under the Act\*; or
  - (iv) to wind up the association;
 which may only be passed at a general meeting where:
  - (v) at least 21 days notice of the proposed resolution has been given to each member entitled to vote;
  - (vi) the notice specifies that it is intended that the resolution be proposed as a special resolution; and
  - (vii) at least three-quarters of those members who vote at the meeting (whether in person or by proxy), vote in favour; and
 See section 64 of the Act\*.
- (j) “writing” includes emails and documents sent electronically.

64.2 Where this constitution requires a document to be signed, in the case of an incorporated body the document must either be sealed, or signed on its behalf.

64.3 The headings form part of this constitution.

64.4 The explanatory notes inserted in a smaller font size after provisions of this constitution are for guidance only and do not form part of this constitution.

64.5 This constitution is to be interpreted in accordance with the Victorian *Interpretation of Legislation Act 1984* as if this constitution were an Act of the State of Victoria, unless the contrary intention appears.

64.6 The Committee is responsible for the interpretation of the constitution and regulations\*.

64.7 The provisions of this constitution are the rules of the association for the purposes of the Act\*.

64.8 This constitution is intended to make provision for all matters required by the Act\*, with the intention that none of the model rules prescribed under the Act\* apply to the association.

See section 48(3) and Schedule 1 of the Act\*.

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