



Drug and Alcohol Nurses of Australasia Incorporated (DANA)

CONSTITUTION

Under the Associations Incorporation Act 2009 (NSW)

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Contents

Part 1 - Preliminary.....	1
1. Name	1
2. Objects.....	1
2.1 <i>General</i>	1
2.2 <i>The mission statement</i>	1
3. Definitions	1
Part 2 – The Association	3
4. The Constitution of the association.....	3
5. Powers of the association and authorised signatories	3
Part 3 – Membership.....	3
6. Membership generally.....	4
7. Types of Membership.....	4
7.1 <i>Full Membership</i>	4
7.2 <i>Student Membership</i>	4
7.3 <i>Associate Membership</i>	4
7.4 <i>Corporate Membership</i>	4
7.5 <i>Life Membership</i>	5
8. Patron	5
9. Number of members	5
10. Application for membership.....	5
11. Cessation of membership and registration of cessation	6
12. Membership entitlements not transferable.....	6
13. Fees and subscriptions	6
14. Members’ liabilities	7
Part 4 - The Management Committee and Executive.....	7
15. Establishment, powers and duties of the Management Committee.....	7
16. Executive and Management Committee	8
17. President.....	10
18. Vice- President.....	10
19. Secretary.....	10
20. Treasurer	11
21. Public Officer	11
22. Spokesperson	12
23. Chairperson	12
Part 5 – Management Committee business	12
24. Deemed application.....	12
25. Election of Management Committee members	13
26. Casual vacancies	13
27. Removal of Management Committee members	14

28.	Management Committee meetings and quorum	14
29.	Management Committee meeting procedures	15
30.	Ordinary members of the Management Committee.....	16
31.	Sub- committees and Advisory committees	17
32.	Voting and decisions.....	17
Part 6 - General meetings.....		18
33.	Annual general meetings - holding of.....	18
34.	Annual general meetings - calling of and business at.....	19
35.	Special general meetings - calling of	19
36.	Notice	20
37.	Quorum for general meetings	20
38.	Adjournment	21
39.	General Meeting procedures.....	21
40.	Making of decisions	21
41.	Resolutions	22
42.	Chairperson and Voting	24
43.	Proxy votes permitted	24
44.	Electronic ballots	25
Part 7 - Administration		25
45.	Registers of members.....	25
46.	Register of Executive Management Committee members.....	26
47.	Employees and Volunteers	27
48.	Insurance	27
49.	Name of association	27
50.	Official Address.....	27
51.	Custody of books etc	28
52.	Inspection of books etc.....	28
53.	Service of notices.....	28
Part 8 – Financial matters.....		29
54.	Funds - source.....	29
55.	Funds – management	29
56.	Financial year.....	30
57.	Financial Records and Reporting	30
58.	Non-profit association	31
Part 9 – Disputes and complaints		33
59.	Resolution of disputes	33
60.	Suspension or expulsion of members.....	33
61.	Complaints about members	33
62.	Procedures in relation to expulsion or suspension.....	34
63.	Right of appeal of disciplined member	34
Part 10 – Offences		35
64.	Incurring Debts	35
65.	Liability of Management Committee members for association offences...	36

Part 11 - Termination or Amalgamation of Association	36
67. Termination	36
68. Amalgamation	37

Part 1 - Preliminary

1. Name

The Name of the association shall be the Drug and Alcohol Nurses of Australasia Inc. ("DANA" or "the Association").

2. Objects

2.1 General

DANA is the peak alcohol and other drug nursing organisation in Australasia providing leadership to nurses and midwives with a professional interest in Alcohol and Other Drug (AOD) issues.

DANA enhances the capacity of nurses and midwives to respond effectively to AOD issues in a culturally sensitive manner.

We provide a mechanism for professional development and support for our members. We aim for excellence and the ongoing improvement of quality care in nursing and midwifery in all practice contexts.

DANA provides a direction to key stakeholders on AOD issues and related policies.

2.2 The mission statement

DANA aims to:

- a) actively promote a legitimate role for nurses and midwives to respond to AOD-related issues;
- b) provide opportunity for relevant professional development, education, mentoring and support for all members, and others where opportunity arises;
- c) provide consultancy, advice and advocacy to our members, nursing and midwifery organisations and key stakeholders in relation to AOD matters;
- d) promote inclusion of AOD issues in core undergraduate curriculum, staff development programs and continuing education, and within postgraduate clinical and research degrees;
- e) promote evidence-based practice and research in AOD-related interventions, and other key issues;
- f) be aware of, respectful and sensitive to cultural differences, and not accepting of discrimination, nor tolerant of harm.

3. Definitions

(1) In this Constitution:

the Act means the *Associations Incorporation Act 2009*

clause means a provision in this Constitution;

Committee means, unless the context indicates otherwise, the Management Committee, the Executive and all other Committees and Subcommittees established from time to time;

Date of this Constitution means the date on which this Constitution was finalised for lodgement with the application for registration of the association, being the date described on the cover of this Constitution;

Direct Vote means voting by electronic transmission of the member's decision on a resolution to the Association's returning officer (or any person on their behalf) in accordance with clauses **Error! Reference source not found.**, **Error! Reference source not found.**, **Error! Reference source not found.** and any rules made pursuant to clause **Error! Reference source not found.**.

Executive means the office-bearers of the association;

Management Committee means the committee referred to in clause 15;

member means a full member unless the context indicates otherwise;

Objects means the objects and mission statement described in clause 2;

the Regulations means the Regulations from time to time under the Act.

Section means a section in the Act;

Special general meeting means a general meeting of the association other than an annual general meeting;

Tier 2 association means an association which has income below a certain level prescribed by the Regulations (as at the Date of this Constitution, \$250,000) and assets below a certain level prescribed by the Regulations (as at the Date of this Constitution, \$500,000).

(2) In this Constitution:

- (a) a reference to a function includes a reference to a power, authority and duty, (in accordance with the definition of 'function' in section 4 of the Act), and
- (b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty (in accordance with the definition of 'exercise' in section 4 of the Act).

(3) The provisions of the *Interpretation Act 1987* apply to and in respect of this Constitution in the same manner as those provisions would so apply if this Constitution were an instrument made under the Act, provided however that where any provision of this Constitution refers to or incorporates requirements of the Act or the Regulations which are, after the date of this Constitution, relaxed or amended in such a way as to allow the association greater flexibility in the relevant matters, the revised requirements shall be deemed to apply under this Constitution.

(4) Where this Constitution requires a document to be signed, the signature may be affixed electronically by or on behalf of the person signing and need not be a 'wet ink' signature.

Part 2 – The Association

4. *The Constitution of the association*

- (1) This Constitution binds the members of the association as if it were a contract between them (see section 26(1) of the Act).
- (2) To the extent that this Constitution fails to address a matter referred to in Schedule 1 of the Act, the provisions of the Act’s model constitution apply to that matter (see section 25(2) of the Act).
- (3) Any provision of this Constitution which is contrary to the Act or any other law is of no effect to the extent of the inconsistency (see section 25 of the Act).
- (4) The name of the association, its objects, and any other provision of its Constitution may only be amended by a special resolution as defined in the Act¹.
- (5) Application for registration of any such amendment shall be made by the Public Officer or the Secretary in accordance with the Act within 28 days after the passing of the resolution.

5. *Powers of the association and authorised signatories*

- (1) The association has the same legal capacity and powers as an individual person (see section 19(1) of the Act), subject to any restriction in this Constitution.
- (2) However an act of the association is not invalid solely because it is outside the association’s Objects or in breach of any restriction in this Constitution (see section 20 of the Act).
- (3) Any deed to be executed on behalf of the association must be signed by two members who are both authorised signatories of the association, being either the association’s public officer (who is, by virtue of that office, an authorised signatory for the association) and one Executive member, or two Executive members (see section 22 of the Act).
- (4) The association’s Executive may from time to time appoint additional authorised signatories from among such of its members as are ordinarily resident in Australia, and may at any time revoke any such appointment.
- (5) A person (other than the association’s public officer) vacates office as an authorised signatory if:
 - (a) his or her appointment as an authorised signatory is revoked, or
 - (b) he or she ceases to be an Executive member, or
 - (c) he or she ceases to be ordinarily resident in Australia (see section 36 of the Act).

¹ Section 10(2) of the Act requires a special resolution (currently, as defined in section 39 of the Act - see clause **Error! Reference source not found.**). The change does not take effect until registered – see note to section 10 of the Act.

Part 3 – Membership

Note: Schedule 1 clause 1 of the Act provides that an association's constitution is to address membership qualifications (if any).

6. Membership generally

A person is eligible to be a member of the association if the person:

- (a) accepts the rules, aims and objects of the association;
- (b) meets any other membership qualifications determined by the Management Committee from time to time; and
- (c) has been approved for membership of the association in accordance with clause **Error! Reference source not found..**

7. Types of Membership

7.1 Full Membership

Subject to sub-clause 7.6, full membership is open to registered nurses, enrolled nurses, and registered midwives.

7.2 Student Membership

Membership is offered at a reduced fee to nursing students who are:

- (a) enrolled in an undergraduate or postgraduate degree;
- (b) undertaking full time study;
- (c) undertaking part time study and receiving a gross income (excluding any scholarship) of less than an amount fixed by the Executive from time to time.

Student Members are entitled to all benefits of the association with the exception of voting rights and access to scholarships.

7.3 Associate Membership

Associate membership is offered to such individuals or classes of individuals as the Executive may determine from time to time. Associate members are entitled to all benefits of the Association with the exception of voting rights and access to scholarships.

Unincorporated organisations may not be direct members of the Association, but individuals representing unincorporated organisations may apply, in that capacity rather than in their individual capacity, to be Associate members.

7.4 Corporate Membership

Interested professional organisations who employ nurses and midwives (including nursing organisations) may apply for corporate membership with the association. Acceptance is at the discretion of the Executive.

Corporate members shall not (whether directly or through a representative) have voting rights, nor shall their representatives hold Management Committee positions within the Association.

A corporate member may appoint from its members a Nursing representative who may speak at association meetings.

7.5 Life Membership

- (1) On the recommendation of the Executive, any person who has made an outstanding contribution to the association, AOD related nursing or midwifery may be considered eligible for appointment to life membership at the discretion of the Executive. However no person may be appointed a Life Member for so long as the number of existing Life Members exceeds 5% of the total number of members of all classes at that time.
- (2) Life members shall be entitled to all the privileges of membership, including the right to vote, without paying the annual subscription levies or other dues, except that Life members who become office bearers or other Management Committee members must pay annual membership fees.
- (3) Life membership shall be formally awarded at the next appropriate General Meeting following the Executive decision to grant Life membership, from which time the person's status will be amended or included, as the case may be, in the Register of Members.

7.6 Other categories

The Executive may rename any of the above categories of membership or describe any category by more than one name, and notwithstanding the above provisions may determine any additional categories of membership from time to time at its discretion, with such eligibility criteria and such rights as may be determined by the Executive from time to time.

8. Patron

The Executive may from time to time invite any person or corporation interested in the purpose and welfare of the association to become a patron of the association. A patron who is not a member shall not have a vote.

9. Number of members

The association must have the minimum number of members the Act requires.²

10. Application for membership

- (1) Application for membership of the association:
 - (a) must be made by such method and in such form as is approved by the Executive from time to time and permitted by the Act and Regulations, and
 - (b) must be accompanied by the applicable fees.

² At the Date of this Constitution, this is 5 (see section 76 of the Act and clause **Error! Reference source not found.** of this Constitution).

- (2) On receipt of a properly completed application form and payment of the relevant fees, the applicant's name will be entered in the Register of Members³. When the name is entered, the applicant becomes a member of the association, provided however that if it is subsequently found that a person does not meet the relevant membership qualifications at any time, then their name may be removed from the Register of Members and the person notified accordingly. Should the Membership Officer be uncertain as to whether or not to accept any application, they shall refer the question to the Executive, which may in turn (but need not) refer the question to the Management Committee.
- (3) No person is required to give reasons for rejection of an application for membership of the association.
- (4) A list of persons who have joined the association during the period since the previous Management Committee meeting must be tabled by the Membership Officer at each Management Committee meeting.

11. Cessation of membership and registration of cessation

- (1) A person ceases to be a member of the association if the person dies, resigns membership, is expelled from the association, fails to pay the annual membership fee within 3 months after the fee is due, or fails to keep the association provided with the member's most recent contact details (in particular, their email address) so that the association cannot readily communicate with them.
- (2) Should a person re-join the association after their membership has ceased under (1) there will be no continuity of membership from their prior period of membership.
- (3) A member of the association may resign from membership of the association at any time by written or verbal notice to the Management Committee and, on receipt of the notice, the member ceases to be a member.
- (4) Where a member ceases to hold membership, an appropriate entry must be made in the Register of Members recording the date on which the member ceased to be a member.

12. Membership entitlements not transferable

A right, privilege or obligation which a person has by reason of being a member of the association:

- (a) is not capable of being transferred or transmitted to another person, and
- (b) terminates on cessation of the person's membership.

No membership fees will be refunded on cessation of membership.

13. Fees and subscriptions

Note: Schedule 1, clause 3 of the Act provides that an association's constitution is to address the entrance fees, subscriptions and other amounts (if any) to be paid by the association's members.

³ See clause **Error! Reference source not found.** of this Constitution for requirements in relation to keeping the Register of Members.

- (1) A member of the association must, on admission to membership, pay any 'entrance fee' relating to their category of membership determined by the association at its most recent Annual General Meeting, or by any subsequent decision of the Executive.
- (2) In addition to any amount payable by the member under subclause (1), a member must pay to the association an annual membership fee for the relevant membership year (or, in the discretion of the Executive, depending on the date the person becomes a member, a part thereof) of an amount determined by the association at its most recent Annual General Meeting, or by any subsequent decision of the Executive from time to time. The membership year runs from the date of the member's joining.

14. Members' liabilities

Note: Schedule 1, clause 4 of the Act provides that an association's constitution is to address the liability (if any) of the association's members to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of the winding up of the association.

- (1) The liability of a member of the association to contribute towards:
 - (a) the payment of the debts and liabilities of the association, or
 - (b) the costs, charges and expenses of the winding up of the association,
 is limited to the amount, if any, unpaid by the member pursuant to clause **Error! Reference source not found.**
- (2) A member of the association (including a Management Committee member, Executive member and the public officer) is not, merely because of being such a member, liable in relation to the association's liabilities or the costs, charges and expenses of the winding up of the association (see section 26).
- (3) Subject to the Act, membership of the association does not confer on a member any right, title or interest, whether legal or equitable, in the association's assets (see section 26).

Part 4 - The Management Committee and Executive

Note: Schedule 1, clause 7 of the Act provides that an association's constitution is to address the composition and functions of the committee, including:

- (a) *the election or appointment of the committee members, and*
- (b) *the terms of office of the committee members, and*
 - (b1) *the maximum number of consecutive terms of office of any office-bearers on the committee, and*
- (c) *the grounds on which, or reasons for which, the office of a committee member is to become vacant, and*
- (d) *the filling of casual vacancies occurring on the committee, and*
- (e) *the quorum and procedure at meetings of the committee.*

15. Establishment, powers and duties of the Management Committee

- (1) The members must establish a Management Committee to manage the association's affairs (see section 28 of the Act).
- (2) Subject to the Act, the Regulations, this Constitution and to any resolution passed by the association in general meeting, the Management Committee:
 - (a) is to control and manage the affairs of the association, except those required by the Act to be exercised by general meeting, and
 - (b) may exercise all such functions as may be exercised by a natural person, other than those functions that are required by this Constitution to be exercised by a general meeting (see section 28 of the Act), and
 - (c) has power to perform all such acts and do all such things as appear to the Management Committee to be necessary or desirable for the proper management of the affairs of the association, including (without limiting the generality of the foregoing) to hold real or personal property, open and operate bank accounts, invest in trustee securities, and enter into any necessary or desirable contract including a contract of employment.
- (3) The Management Committee shall:
 - (a) arrange a conference for the association at least once in every two years;
 - (b) arrange for meetings, telephone link ups and electronic or direct votes of the Management Committee;
 - (c) develop and enact the strategic directions of the association;
 - (d) at its discretion, award Commendations to any person or body that has helped to advance the purpose and welfare of the association.
- (4) All members of the Management Committee and the Public Officer shall keep confidential and not disclose publicly⁴, unless authorised by the Management Committee to do so, all matters relating to the business of the association. This obligation continues after they have ceased to be association members.
- (5) Each member of the Management Committee and the Public Officer shall carry out his or her functions for the benefit, so far as practicable, of the association and with due care and diligence.⁵

16. Executive and Management Committee

- (1) The Management Committee is to consist of⁶:
 - (a) the Executive; and
 - (b) four ordinary members as described in clause 30;

⁴ See clause **Error! Reference source not found.** as to member entitlements to view association records.

⁵ Section 30A of the Act. Note also that if Committee members act in good faith in exercising their functions then they are protected from liability under Section 30B of the Act.

⁶ The Management Committee must consist of at least three financial full members of the association, who must each be over 18 years old and ordinarily resident in Australia (see section 28 of the Act and note that the association's registration may be cancelled if this provision is not complied with).

each of whom is to be elected at the annual general meeting and, should the Immediate past President not take up any other Management Committee role, at the discretion of the current President the immediate past President may hold an honorary advisory role in relation to the Management Committee, offering mentorship, guidance and support to the incoming President. This role will not of itself entitle the Immediate Past President to take an active role in management decisions.

- (2) Where the appointment of a Management Committee member is subsequently found to be defective, this shall not of itself affect the validity of the Management Committee member's actions in that capacity (see section 28 of the Act). The Executive (Office-Bearer) positions comprise:
 - (a) President
 - (b) Vice President
 - (c) Treasurer
 - (d) Secretary,
 - (e) Membership Officer.
- (3) Subject to any reasonable requirements that may be imposed by the Management Committee from time to time, the Executive shall carry out the day to day running of the Association, including arranging for the Annual General Meeting of the Association. The Executive shall hold meetings at such times and places and following such rules as the Executive may from time to time determine and shall report to the Management Committee. A Management Committee member may not be both President and Vice-President but may otherwise hold up to 2 offices.
- (4) Each member of the Management Committee shall, subject to their removal in accordance with this Constitution, hold office until they resign or otherwise cease to be a member, or until the conclusion of the second annual general meeting following their appointment, whichever is earlier⁷. There is no limit to the number of consecutive terms of office of any Management Committee member.⁸
- (5) Members are eligible for re-election at the annual general meeting at which their term concludes.
- (6) Management Committee positions are unpaid. Management Committee members shall not act as paid association employees on a regular or substantial basis. For so long as a Management Committee member, in some other capacity, receives any payment from the association this shall be regarded as a conflict of interest for the purposes of clause **Error! Reference source not found.** and clause **Error! Reference source not found.** (5) shall apply to all meetings which might otherwise be attended by the Management Committee member in respect of work related issues.

⁷ Schedule 1 of the Regulations in clause 14(6) of the Model Constitution provides that the term of a committee member ends immediately before the election of committee members at the annual general meeting but that clause can be overridden by this Constitution.

⁸ See Schedule 1, clause 7(b1) of the Act.

- (7) Within 14 days after vacating office, a former Management Committee member must ensure that all original documents in his or her possession that belong to the association⁹ are delivered to the a member of the Executive for delivery to the Management Committee member's successor (see section 28 (4) of the Act). Where the member retains copies of association documents in any form (including electronic) the member shall keep those documents confidential and not disclose them to other persons, whether members or not. This obligation continues to apply to the person holding those documents after they have ceased to be a member of the association.

17. President

The President is responsible for leading the Executive and the Management Committee and ensuring that they maintain appropriate governance standards. The President will build an effective and collegial Executive team and ensure that they effectively carry out the day to day functions of the association. The President's role includes:

- (a) ensuring that the principles and processes of the Management Committee are maintained, including the provision of accurate, timely and clear information;
- (b) encouraging debate and constructive criticism;
- (c) ensuring strategic focus is regularly reviewed, clearly understood and underpins the work of the Management Committee;
- (d) setting agendas for Executive Management Committee and general meetings in conjunction with the Secretary;
- (e) speaking and acting for association and representing the association to the public (see clause **Error! Reference source not found.**);
- (f) presenting members' views to the Executive and Management Committee.

18. Vice- President

The Vice- President shall assist the President in carrying out that role

19. Secretary

- (1) The Secretary shall keep minutes of:
 - (a) all appointments of office-bearers and members of the Management Committee, and
 - (b) the names of members of the Management Committee present at a Management Committee meeting or a general meeting, and

⁹ while the words of this clause are based on section 28(4) of the Act, the section appears to be intended to cover current documents required by the association for day to day business purposes such as member registers, current contracts, cheque books and the like rather than personal copies of meeting agendas or similar documents (of which there are multiple copies) being kept for the member's own records.

- (c) all proceedings at Management Committee meetings and general meetings (see section 50 of the Act¹⁰).
- (2) Minutes of proceedings at a meeting must be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting.¹¹
- (3) The Secretary will circulate minutes of Management Committee meetings and general meetings to all Management Committee members.

20. Treasurer

It is the duty of the Treasurer to ensure:

- (a) that all money due to the association is collected and received and paid into the association's account;
- (b) that all payments authorised by the Management Committee or the Executive are made, and
- (c) that correct books and accounts are kept showing the financial affairs of the association, including full details of all receipts and expenditure connected with the activities of the association.

(see also Part 8 relating to Financial Matters).

21. Public Officer

- (1) A public officer must be appointed who is aged 18 years or over and ordinarily resident in NSW. They may, but need not, also be a Management Committee member (see section 34 of the Act).
- (2) The public officer of the association must, as soon as practicable after being appointed, lodge notice with the association of his or her address.
- (3) The public officer's acts are valid despite any defect in his or her appointment (see section 34 of the Act).
- (4) Within 28 days after taking office as the public officer (other than the association's first public officer), a person must give notification to the Regulator of their personal details, in the approved form.
- (5) If there is any change in the details of the public officer, the public officer must give notification to the regulator, in the approved form, of the new address within 28 days after the change occurs (see section 34 of the Act).
- (6) The public officer vacates office in the following circumstances:
 - (a) if he or she dies,
 - (b) if he or she resigns the office in writing addressed to the association's Management Committee,

¹⁰ Clause 14 of the Regulations allows records required to be kept under section 50 of the Act (accounts and minutes of proceedings) to be kept in written or electronic form so long as they are convertible into hard copy and made available in that form within a reasonable time to a person who is entitled to inspect the records. Records must be kept for 5 years.

¹¹ Schedule 1 of the Regulations in clause 16(4) of the Model Constitution allows the signature to be affixed electronically.

- (c) if he or she is removed from office by resolution of a general meeting of the association,
 - (d) if he or she becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,
 - (e) if he or she becomes a mentally incapacitated person,
 - (f) if he or she ceases to ordinarily reside in New South Wales, or
 - (g) in such other circumstances as the Constitution may provide.
- (7) Within 14 days after vacating office, a former public officer of the association must ensure that all documents in his or her possession that belong to the association are delivered to a Management Committee member of the association.
- (8) The association's Management Committee must fill any vacancy in the office of public officer within 28 days after the vacancy arises (see section 35 of the Act).
- (9) The Public Officer is the official contact for the association, is an authorised signatory of the association¹² and may receive notices on behalf of the association.¹³

22. Spokesperson

The President shall act as a spokesperson unless an alternate spokesperson has been appointed by the Management Committee or a general meeting. The spokesperson shall make statements in accordance with existing policy or, in an emergency where existing policy does not apply, following consultation with at least two members of the Executive. Management Committee members shall not otherwise make public statements on behalf of the association.

23. Chairperson

At meetings of the Executive, Management Committee and at general meetings:

- (a) the President will act as chairperson, or
- (b) if the President is absent or unwilling to act, the Vice President will act as chairperson, or
- (c) failing the Vice President, such one of the remaining members as may be chosen by the members present at the meeting shall act as chairperson.

The chairperson shall encourage full balanced participation by all members present at the relevant meeting ensuring that adequate time is available for discussion on all agenda items, including strategic issues. The chairperson's decisions on matters of order shall be final.

¹² Section 36(1) of the Act.

¹³ Section 34 (6)(b) of the Act.

Part 5 – Management Committee business

24. *Deemed application*

- (a) The members of the Management Committee must retire as at the end of the annual general meeting at which their 2 year term comes to an end, and those vacant positions are to be filled through election.
- (b) The outgoing Management Committee members are eligible for re-election.
- (c) Where another person applies for that same position in accordance with the procedures in clause **Error! Reference source not found.**, then members must vote in relation to the position at the relevant annual general meeting.
- (d) Subject to the other provisions of this Constitution (including those relating to resignation and removal of members) other than clause 25(1), for so long as no other person applies for election to that same position in accordance with the procedures in clause **Error! Reference source not found.**, the office bearer or ordinary member is deemed to have re-applied and may continue in that position without a vote being held and be recorded as a member of the incoming Management Committee.

25. *Election of Management Committee members*

- (1) Subject to clause 24(e), applications from candidates for election at the annual general meeting to the various positions on the Management Committee which are open for election at that meeting:
 - (a) must be by current financial full members of the association;
 - (b) must be in any form (including electronic) as approved by the Executive from time to time, and
 - (c) must be delivered to the association by the method approved by the Executive from time to time but at least 7 days (or such other period as determined by the Management Committee and notified to members in the notice of annual general meeting¹⁴) before the date fixed for the holding of the annual general meeting at which the election is to take place.
- (2) If insufficient applications which meet the above criteria are received to fill any specific position on the Management Committee, further applications may be received at the annual general meeting, provided that they meet the criteria in subclause (1)(a).
- (3) If insufficient further applications are received, any vacant positions remaining on the Management Committee are taken to be casual vacancies.
- (4) If the number of applications received for any position is equal to or less than the number of vacancies to be filled, the persons applying are, subject always to a

¹⁴ If it is proposed that a method of voting be used that requires voting to commence or be concluded before the annual general meeting, then nominations will need to be made in sufficient time to be included in the notice of the AGM, together with full details of the voting procedure to be used.

majority of the existing Executive being satisfied that the requirements in (1)(a) are met, deemed elected.

- (5) If the number of applications received for any position exceeds the number of vacancies to be filled, including where this occurs by virtue of any deemed nomination pursuant to clause **Error! Reference source not found.**, a vote is to be held.
- (6) The vote for the election of any members of the Management Committee is to be conducted at the annual general meeting in such usual and proper manner as the Management Committee may direct. This may be by electronic vote, secret ballot, or a show of hands, provided that if the manner selected requires members to vote before the annual general meeting, full details of the procedure to be followed and the names of all applicants and deemed applicants must be included in the notice of annual general meeting.

26. *Casual vacancies*

- (1) In the event of a casual vacancy occurring in any position on the Management Committee, the Management Committee may by majority decision appoint a full member to fill the vacancy and the member so appointed is to hold the office, subject to this Constitution, until the conclusion of the annual general meeting next following the date of the appointment.
- (2) A casual vacancy in the position of a member of the Management Committee occurs if the member:
 - (a) ceases to be a member of the association (including by death or resignation, or expulsion) or is suspended from membership, or
 - (b) becomes an insolvent under administration within the meaning of the Corporations Act 2001 of the Commonwealth, is prohibited from being a director of a company under Part 2D.6 (Disqualification from managing corporations) of the Corporations Act 2001 of the Commonwealth, is convicted of an offence requiring imprisonment.

27. *Removal of Management Committee members*

- (1) The association in a general meeting may by special resolution (see clause **Error! Reference source not found.**) remove any member of the Management Committee from their position before the expiration of the member's term of office and may by special resolution appoint another person to fill the vacancy. .
- (2) If a member of the Management Committee to whom a proposed resolution referred to in clause (a) relates makes representations in writing to the Secretary or President (not exceeding a reasonable length) and requests that the representations be notified to the members of the association, the Secretary or the President may send a copy of the representations to each member of the association or, if the representations are not so sent, the member is entitled to require that the representations be read out at the meeting at which the resolution is considered.

- (3) The Management Committee may in its absolute discretion at any time by a resolution by a simple majority of members remove any Committee member from their position.
- (4) The grounds on which a Committee member may be removed include behaviour which could bring the association into disrepute or which is inconsistent with the aims, works or objectives of the association (for example, material breach of this Constitution or the association's current policies or procedures, including but not limited to: failure to attend more than three consecutive meetings or provide three consecutive reports without valid cause or Management Committee permission, or failure to carry out their role to a satisfactory standard).

28. *Management Committee meetings and quorum*

- (1) Following each Annual General Meeting, the Executive will arrange dates and times for the Management Committee meetings for the next twelve months. The Management Committee must meet at least every second month at such place and time as the Management Committee may determine.
- (2) Additional meetings of the Management Committee may be convened by any member of the Management Committee on reasonable notice.
- (3) Oral or written notice of a meeting of the Management Committee must be given by the secretary to each member of the Management Committee at least 48 hours (or such other shorter period as may be agreed by a majority of members of the Management Committee) before the time appointed for the holding of the meeting.
- (4) Notice of a meeting given under subclause (3) must specify the general nature of the business to be transacted at the meeting and no business other than that business is to be transacted at the meeting, except as agreed by a majority of the Management Committee members present at the meeting.
- (5) A quorum for the transaction of the business of a meeting of the Management Committee is three persons, each being a financial member and an office-bearer, and at least one of the three must be the President or the Vice-President.
- (6) No business is to be transacted by the Management Committee unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to stand adjourned to the same place and at the same hour of the same day in the following week.
- (7) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.
- (8) Management Committee members are not entitled to vote or carry out functions of the association unless they are current financial members and any money due and payable by them to the association has been paid.

29. *Management Committee meeting procedures*

- (1) A Management Committee meeting may be held at 2 or more venues using any technology that gives each of the Management Committee members a reasonable

opportunity to participate (see section 30 of the Act) and to hear all other participants¹⁵. Where voting cannot be taken on a show of hands (for example, because participants cannot see each other if the meeting is held by telephone and not video conference), voting may be by email or SMS to either the Secretary, President or Vice President (as may be nominated from time to time).

- (2) A chairperson will be appointed and act in accordance with clause **Error! Reference source not found..**

(3) If:

- (a) a Management Committee member has a direct or indirect interest in a matter being considered or about to be considered at a Management Committee meeting, and
- (b) the interest appears to raise a conflict with the proper performance of the Management Committee member's duties in relation to the consideration of the matter,

the Management Committee member must, as soon as possible after the relevant facts have come to their knowledge, disclose the nature of the interest at a Management Committee meeting and the particulars must be recorded in a book kept for that purpose (see section 31 of the Act). The book must be kept at the same address as the register of Management Committee members¹⁶ (see section 31 of the Act).

- (4) A disclosure by a Management Committee member at a Management Committee meeting that they:
- (a) are a member, or in the employment, of a specified company or other body, or
 - (b) are a partner, or is in the employment, of a specified person, or
 - (c) have some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed (see section 31 of the Act).

- (5) After a Management Committee member has disclosed the nature of an interest in any matter, the Management Committee member must not, unless a majority of the Management Committee otherwise determines:
- (a) be present during any deliberation of the Management Committee or any subcommittee or advisory committee with respect to the matter, or
 - (b) take part in any decision of the Management Committee, subcommittee or

¹⁵ See also clause 22 of the Model Constitution in Schedule 1 to the Regulations. A committee member who participates in a committee meeting using that technology is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

¹⁶ See clause **Error! Reference source not found..**

advisory committee with respect to the matter.

- (6) For the purposes of the making of a determination by the Management Committee, a Management Committee member who has a direct or indirect interest in a matter to which the disclosure relates must not, unless the Management Committee otherwise determines:
 - (a) be present during any deliberation of the Management Committee for the purpose of making the determination, or
 - (b) take part in the making by the Management Committee of the determination.
- (7) A contravention of this section does not invalidate any decision of the Management Committee (see section 31 of the Act).

30. Ordinary members of the Management Committee

- (1) The Management Committee may from time to time determine specific roles and responsibilities for each ordinary member of the Management Committee whether for the purpose of carrying out finite projects or for continuing activities. The ordinary members may be titled 'Portfolio Officers' or any other title agreed by the Management Committee from time to time.
- (2) Any current descriptions and expectations for those ordinary members will be provided with the notice for each Annual General Meeting.

31. Sub-committees and Advisory committees¹⁷

- (1) The Management Committee may, by a majority resolution, appoint sub-committees or advisory committees consisting of such member or members of the association as the Management Committee thinks fit. The Management Committee and such sub-committees or advisory committees may co-opt or seek pro bono advice from non - member experts as they see fit. Where expert advice would involve a cost to the association it must be approved by the Management Committee.
- (2) The Management Committee may, by a majority resolution, delegate to one or more sub-committees or advisory committees the exercise of such of the functions of the Management Committee as are specified in the resolution or instrument of delegation, but cannot delegate:
 - (a) this power of delegation, or
 - (b) a function which is a duty imposed on the Management Committee by the Act or by any other law.
- (3) A function which has been delegated to a sub-committee under this clause may, while the delegation remains unrevoked, be exercised from time to time by the sub-committee in accordance with the terms of the delegation.
- (4) A delegation under this clause may be made subject to such conditions or limitations as to the exercise of any function, or as to time or circumstances, as may be specified in the instrument of delegation.

¹⁷ See clause 23 of the Model Constitution in Schedule 1 to the Act.

- (5) Despite any delegation under this clause, the Management Committee may continue to exercise any function delegated.
- (6) Any act or thing done by a sub-committee or advisory committee acting in the exercise of a delegation under this clause has the same force and effect as it would have if it had been done by the Management Committee, provided however that nothing in this clause restricts the Management Committee from overturning a decision of a sub- committee or advisory committee.
- (7) The Management Committee may, by instrument in writing, revoke wholly or in part any delegation under this clause, whereupon the relevant subcommittee or advisory committee is immediately terminated.
- (8) A sub-committee or advisory committee may hold meetings from time to time as they think proper, in accordance with the meeting procedures described in clause **Error! Reference source not found.** and any directions of the Management Committee from time to time, and shall report to the Management Committee.

32. Voting and decisions

- (1) Except as otherwise provided in this Constitution, questions arising at a meeting of the Management Committee, the Executive and any sub-committee or advisory committee appointed by the Management Committee are to be determined by a majority of the votes of members of the members of that body present at the meeting, and the body may act despite any vacancy existing.
- (2) Each member present at such a meeting (including the person presiding at the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the chairperson may exercise a second or casting vote.
- (3) A Committee may pass a resolution without a meeting being held if a majority of Committee members send an email or SMS to either the Secretary, President or Vice President (as may be nominated from time to time) confirming that they approve the resolution. The resolution is passed on the date the majority vote is reached. This procedure should not be used other than for simple resolutions which require minimal discussion.
- (4) Any act or thing done, or purporting to have been done, by the Management Committee, the Executive, or by a sub-committee or advisory committee appointed by the Management Committee, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the relevant body.
- (5) Nothing in this clause restricts the power of the Management Committee to control and manage the affairs of the association, except those required by the Act to be exercised by general meeting, and all decisions of the Executive, and any sub-committee or advisory committee, are subject to the final decision of the Management Committee on the issue.

Part 6 - General meetings

Note: Schedule 1, clause 8 of the Act provides that an association's constitution is to address the intervals between general meetings of the association's members and the manner of calling general meetings.

33. Annual general meetings - holding of

- (1) The association must hold its first annual general meeting within 18 months after its registration under the Act.
- (2) The association must hold its subsequent annual general meetings:
 - (a) within 6 months after the close of the association's financial year, or
 - (b) within such later time as may be allowed or prescribed by the Regulation.

The annual general meeting shall where possible be held to coincide with the association's conference.

- (3) A general meeting may be held at 2 or more venues using any technology that gives each of the association's members a reasonable opportunity to participate (see section 37 of the Act).¹⁸ A member who participates in a general meeting using that technology is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

34. Annual general meetings - calling of and business at

- (1) The annual general meeting of the association is, subject to the Act, to be convened on such date and at such place and time as the Management Committee thinks fit.
- (2) In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting is to include the following:
 - (a) to confirm the minutes of the last preceding annual general meeting and of any special general meeting held since that meeting,
 - (b) to receive from the Management Committee reports on the activities of the Regional Chapters and the association generally during the last preceding financial year,
 - (c) to elect Management Committee members to fill any vacant positions,
 - (d) to receive and consider any financial statement or report required to be submitted to members under the Act.¹⁹
- (3) An annual general meeting must be specified as such in the notice convening it.

35. Special general meetings - calling of

- (1) The Management Committee may, whenever it thinks fit, convene a special general meeting of the association.
- (2) The Management Committee must, on the requisition in writing of:
 - (a) at least 5 per cent of the total number of members, or
 - (b) 3 Management Committee members,

¹⁸ Section 37(3) of the Act: If the association's constitution so provides, a general meeting may be held at 2 or more venues using any technology that gives each of the association's members a reasonable opportunity to participate. See also clause 37 of the Model Constitution in Schedule 1 to the Regulations.

¹⁹ see clause **Error! Reference source not found.**

(each, a 'requisition of members'), convene a special general meeting of the association.

- (3) A requisition of members for a special general meeting²⁰ must be in writing (including electronic form) and:
 - (a) must state the purpose or purposes of the meeting, and
 - (b) must be signed by the members making the requisition, and
 - (c) must be lodged with the Secretary, and
 - (d) may consist of several documents in a similar form, each signed by one or more of the members making the requisition.
- (4) If the Management Committee fails to convene a special general meeting to be held within 1 month after the date on which a requisition of members for the meeting is lodged with the secretary, any one or more of the members who made the requisition may convene a special general meeting to be held not later than 3 months after that date.
- (5) A special general meeting convened by a member or members as referred to in subclause (4) must be convened as nearly as is practicable in the same manner as general meetings are convened by the Management Committee.

36. Notice

Note: Schedule 1, clause 9 of the Act provides that an association's constitution is to address the time within which, and the manner within which, notices of general meetings and notices of motion are to be given, published or circulated.

- (1) Except if the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the association, the secretary must, at least 14 days before the date fixed for the holding of the general meeting, give a notice to each member specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- (2) If the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the association, the secretary must, at least 21 days before the date fixed for the holding of the general meeting, cause notice to be given to each member specifying, in addition to the matter required under subclause (1), the intention to propose the resolution as a special resolution.
- (3) No business other than that specified in the notice convening a general meeting is to be transacted at the meeting except, in the case of an annual general meeting, business which may be transacted under clause **Error! Reference source not found.**
- (4) A member desiring to bring any business before a general meeting may give notice in writing of that business to the secretary who must include that business in the

²⁰ Clause 27(6) of the Model Constitution in Schedule 1 to the Regulations permits a requisition in electronic form and permits a signature to be transmitted, and a requisition to be lodged, by electronic means.

next notice calling a general meeting given after receipt of the notice from the member.

37. Quorum for general meetings

Note: Schedule 1, clause 10 of the Act provides that an association's constitution is to address the quorum and procedure at general meetings of the association's members, and whether members are entitled to vote by proxy at general meetings

- (1) No item of business is to be transacted at a general meeting unless a quorum of members entitled under this Constitution to vote is present during the time the meeting is considering that item.
- (2) Five members present in person or by proxy (being members entitled under this Constitution to vote at a general meeting) constitute a quorum for the transaction of the business of a general meeting.
- (3) If within half an hour after the appointed time for the commencement of a general meeting a quorum is not present, the meeting:
 - (a) if convened on the requisition of members, is to be dissolved, and
 - (b) in any other case, is to stand adjourned to the same day in the following week at the same time and (unless another place is specified at the time of the adjournment by the Chairperson at the meeting or communicated by written notice to members given before the day to which the meeting is adjourned) at the same place.
- (4) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members present (being at least 3) are to constitute a quorum.

38. Adjournment

- (1) The chairperson of a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (2) If a general meeting is adjourned for 14 days or more, the public officer must give written or oral notice of the adjourned meeting to each member of the association stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- (3) Except as provided in subclauses (1) and (2), notice of an adjournment of a general meeting or of the business to be transacted at an adjourned meeting is not required to be given.

39. General Meeting procedures

- (1) Rules for the proper administration of meetings or business which are not inconsistent with the Act or this Constitution may be made, repealed or amended

by the Management Committee from time to time, including rules as to electronic or direct voting by members at general meetings.²¹

- (2) Such rules need not be approved by a general meeting but may be ratified, disallowed or amended by an ordinary resolution at a general meeting if a resolution to that effect is put to the meeting.
- (3) Members must be notified at least 7 days before any such procedural change may come into effect, which notification may be by way of notice on the association's website.

40. Making of decisions

- (1) Resolutions of which prior notice has been given to members in accordance with clause **Error! Reference source not found.** and which the Management Committee reasonably believes do not require discussion at a general meeting may be voted on by electronic vote, or at a general meeting by direct vote. The Management Committee's decision on this point shall be final.
- (2) Votes must be given personally or, where permitted at the meeting, by proxy (in accordance with clause **Error! Reference source not found.**). A question arising at, or resolution put to, a general meeting of the association is to be determined, in accordance with any rules made under clause **Error! Reference source not found.**, by either:
 - (a) a show of hands or any corresponding method that the Management Committee may determine²², or
 - (b) if on the motion of the chairperson or if 3 or more members present at the meeting request that the question should be determined by a poll or written ballot—a poll/written ballot. The chairperson shall require a poll or written ballot on a resolution where he or she believes that, having regard to the proxies received, the result may differ from that obtained on a show of hands, and may require a poll or written ballot after a show of hands has taken place if the chairperson believes the vote is sufficiently close to warrant the taking of a poll or written ballot.
- (3) If the question is to be determined by a show of hands, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book of the association, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- (4) If the question is to be determined by a written ballot, the ballot is to be conducted in accordance with the directions of the chairperson.

²¹ Clause 37 of the Model Constitution in Schedule 1 of the Regulations allow a general meeting to be held at 2 or more venues using any technology approved by the committee that gives each of the association's members a reasonable opportunity to participate and clause 32 allows electronic votes to be counted as determined by the Management Committee.

²² Clause 32 of the Model Constitution in Schedule 1 to the Regulations allows electronic votes to be counted as determined by the Management Committee.

- (5) If the question is to be determined by electronic vote or solely by direct vote, the votes shall be counted in accordance with the Management Committee's rules from time to time on such type of voting, and a declaration by the President that a resolution has been carried or carried by a particular majority or lost, or an entry to that effect in the minute book of the association, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.

41. Resolutions

- (1) Subject to the Act,²³ a resolution is passed by the association as an **ordinary resolution**:

- (a) at a general meeting of the association, or
- (b) in an electronic or direct vote ballot conducted by the association, or
- (c) by resolution in writing signed by members in counterparts (that is, in the form of separate documents signed by individual members),

if it is supported by more than half of the votes cast by those members of the association who are entitled to vote on the proposed resolution.

- (2) A special resolution shall be passed by the association:

- (a) in accordance with the requirements of the Act from time to time, including where required by the Act (for example, any amendment of the name or objects of the association or of this Constitution²⁴). Section 39 of the Act currently reads as follows:

"39 Voting on special resolutions

- (1) A resolution is passed by an association as a **special resolution**:*

- (a) at a meeting of the association of which notice has been given to its members no later than 21 days before the date on which the meeting is held, or*
- (b) in a postal or electronic ballot conducted by the association, or*
- (c) in such other manner as the Secretary may direct,*

²³ Section 38 of the Act sets out the requirements for an ordinary resolution as follows:

- (1) A resolution is passed by an association as an **ordinary resolution**:

- (a) at a general meeting of the association, or
- (b) in a postal or electronic ballot conducted by the association, if it is supported by more than half of the votes cast by members of the association who, under the association's constitution, are entitled to vote on the proposed resolution.

- (2) A postal or electronic ballot referred to in subsection (1) (b) may only be conducted in relation to resolutions of a kind that the association's constitution permits to be voted on by means of a postal or electronic ballot and, if conducted, must be conducted in accordance with the regulations.

²⁴ see Section 10 of the Act. The Act also requires the following issues to be voted on as special resolutions: voluntary winding up (s 62) and consequent disposal of assets (s 64), cancellation of registration (s 72) and consequent distribution of assets (s 75), transfer of registration to another jurisdiction (s 78).

if it is supported by at least three-quarters of the votes cast by members of the association who, under the association's constitution, are entitled to vote on the proposed resolution.

- (2) *A notice referred to in subsection (1) (a) must include the terms of the resolution and a statement to the effect that the resolution is intended to be passed as a special resolution.*
- (3) *A postal or electronic ballot referred to in subsection (1) (b) may only be conducted in relation to resolutions of a kind that the association's constitution permits to be voted on by means of a postal or electronic ballot and, if conducted, must be conducted in accordance with the regulations.*
- (4) *A direction under subsection (1) (c) may not be given unless the Secretary is satisfied that, in the circumstances, it is impracticable to require votes to be cast in the manner provided by subsection (1) (a) or (b)."*

- (b) where the Act does not require a special resolution in accordance with the Act's definition of a special resolution, the Executive may in its discretion determine that a resolution should still be put to members as a special resolution. In such a case, a special resolution may be passed either in accordance with paragraph (a) of this subclause or:
 - (i) by direct votes in favour of the resolution supported by at least three-quarters of the direct votes cast by members of the association who are entitled to vote on the proposed resolution; or
 - (ii) by resolution in writing signed by at least three-quarters of the votes cast by members of the association who are entitled to vote on the proposed resolution and who give their resolution in writing. The resolution may be in counterparts (that is, in the form of separate documents signed by individual members).
- (3) In relation to proceedings of the Management Committee, the Executive, or any subcommittee or advisory committee,
 - (a) an ordinary resolution shall be a resolution of a majority of members of that body voting on the resolution (and who are entitled to vote), and
 - (b) a special resolution shall be a resolution of three quarters of the members of that body voting on the resolution (and who are entitled to vote).

42. Chairperson and Voting

- (1) A chairperson will be appointed and act at a general meeting in accordance with clause **Error! Reference source not found.**
- (2) Subject to subclause (3), on any question arising at a general meeting of the association a member has one vote only.
- (3) In the case of an equality of votes on a question at a general meeting, the chairperson of the meeting is entitled to exercise a second or casting vote.

- (4) A member is not entitled to vote at any general meeting of the association unless they are a full member, a current financial member, and all other money due and payable by the member to the association has been paid.
- (5) A member is not entitled to vote at any general meeting of the association if the member is under 18 years of age.
- (6) Any issue or proposal other than a disciplinary appeal by a member may, in the discretion of the Management Committee, be voted on by electronic ballot where permitted by the Act.

43. Proxy votes permitted

Note: Schedule 1, clause 10 of the Act provides that an association's constitution is to address the quorum and procedure at general meetings of the association's members, and whether members are entitled to vote by proxy at general meetings

- (1) Members are entitled to vote by proxy voting at a general meeting where so determined by the Executive and notified in the notice of meeting.
- (2) The form of appointment of proxy is valid if it is substantially in accordance with the form approved by the Executive from time to time.
- (3) Proxies may direct the manner in which the proxy holder is to vote on a resolution or may be undirected or 'open' in relation to any specific resolution so that the proxy holder may exercise their own discretion in voting on the resolution. No person other than the chairperson may hold more than 5 'open' proxies in relation to any resolution. The holder of a proxy must complete a written ballot on behalf of each donor of a proxy in accordance with the instructions given to them by that donor.
- (4) A person may not be appointed as a proxy for a member unless the proxy is:
 - (a) 18 years of age or older, and
 - (b) a full member, and
 - (c) a current financial member, and
 - (d) all other money due and payable by the proxy to the association has been paid.
- (5) Subject to the Act, a notice of meeting may provide for electronic lodgment of proxies.
- (6) A proxy lodged at the electronic address specified in the notice is taken to have been received by the association and validated by the member if the member complies with the requirements set out in the notice.
- (7) The Management Committee may from time to time determine additional procedures to be followed where proxy voting occurs.

44. Electronic ballots

Note: Schedule 1, clause 11 of the Act provides that an association's constitution is to address the kind of resolution that may be voted on by means of an electronic ballot.

- (1) The association may hold an electronic ballot to determine any issue or proposal, other than issues or proposals which are not permitted to be voted on by electronic vote under the Act or which are not practical to be determined in that manner because they depend upon the voter receiving information which needs to be given in person or at a meeting (such as an appeal under clause **Error! Reference source not found.**).
- (2) An electronic ballot is to be conducted in accordance with any procedures determined from time to time by the Management Committee which are not inconsistent with the Act or the Regulations and, failing such determination, in accordance with Schedule 3 to the Regulations.²⁵

Part 7 - Administration

45. Registers of members

Note: Schedule 1 clause 2 of the Act provides that an association's constitution is to address the register of the association's members.

- (1) The public officer must establish and maintain a Register of Members specifying the name and postal, residential and/or email address of each member of the association and their class of membership together with the date on which they became a member and any date on which they cease to be a member.²⁶ The register may also include details of membership fee status.
- (2) The Register of Members may be kept wherever the Management Committee determines from time to time.²⁷
- (3) The details held on the Register of Members are not to be made available to any person other than Management Committee members unless:
 - (a) required by law; or
 - (b) authorised by the Management Committee.²⁸
- (4) If a member requests that any information contained on the Register about the member (other than the member's name) not be available for inspection that information must not be made available for inspection.²⁹

²⁵ Clause 13 of the Regulations states that 'A postal or electronic ballot for the passing by an association of an ordinary resolution or a special resolution under section 38 or 39, respectively, of the Act is to be conducted in accordance with Schedule 3.'

²⁶ Schedule 1 of the Regulations in clause 7(1) of the Model Constitution

²⁷ While Schedule 1 of the Regulations provides in clause 7(2) of the Model Constitution that the Register must be kept at the association's main premises or official address in NSW, that clause can be overridden by specific provisions in this Constitution. Schedule 1 of the Regulations provides in clause 7(7) of the Model Constitution that the register may be kept in electronic form so long as it is capable of being printed in hard copy.

²⁸ While Schedule 1 of the Regulations provides in clause 7(3) of the Model Constitution that the Register must open for inspection by members free of charge, and in clause 7(4) that members may obtain copies of any part of the register for no more than \$1 per page, those clauses can be overridden by specific provisions in this Constitution.

²⁹ Schedule 1 of the Regulations in clause 7(5) of the Model Constitution.

- (5) A member must not use information about a person obtained from the Register to contact or send material to the person, other than for:
- (a) the purposes of sending the person a newsletter, a notice in respect of a meeting or other event relating to the association or other material relating to the association, or
 - (b) any other purpose necessary to comply with a requirement of the Act or the Regulation.³⁰

46. Register of Executive Management Committee members

Section 29 of the Act and clause 12 of the Regulations set out requirements in relation to the Management Committee Register.

- (1) The association must keep a register of Management Committee members and office-bearers in accordance with this clause (see section 29 of the Act and clause 12 of the Regulations).
- (2) The register must contain in relation to each Management Committee member:
 - (a) their name, date of birth and residential address,
 - (b) the date on which they became a Management Committee member,
 - (c) the date on which they ceased to be a Management Committee member,
 - (d) the names of any members of the Management Committee who hold the positions (if any) of president, vice-president, secretary or treasurer,
 - (e) the date on which any such member was elected or appointed to such a position,
 - (f) the date on which any such member ceased to hold such a position,
 - (g) such other particulars as are required by the Regulations,³¹
 and any change must be registered within one month of the date on which it occurred³².
- (3) The register must be kept in New South Wales at the association's main premises or, if it has no premises, at its official address.³³
- (4) The register must, at all reasonable hours, be kept available for inspection, free of charge, by any person.³⁴

47. Employees and Volunteers

- (1) Association employees may be members of the association and members of any subcommittee or advisory committee. Generally, Management Committee members should not be employed by the association on a regular or substantial

³⁰ Schedule 1 of the Regulations in clause 7(6) of the Model Constitution.

³¹ All requirements except (d) and (e) apply under Section 29(2) of the Act. Clause 12 of the Regulations relates to (d) and (e).

³² Section 29(4) of the Act.

³³ Section 29(3) of the Act.

³⁴ Section 29(5) of the Act.

basis (see clause **Error! Reference source not found. Error! Reference source not found.**).

- (2) DANA may also use the services of volunteers who are not eligible for DANA membership.

48. Insurance

The association may effect and maintain such insurance as deemed necessary from time to time by the Management Committee.

49. Name of association

The association must not issue any letter, statement, invoice, notice, publication, order for goods or services or receipt in connection with its activities unless the association's name appears in legible characters on the document (section 41 of the Act).

50. Official Address

The association's official address must be in NSW and must (section 13(3) of the Act) be the address at which:

- (a) at which documents can be served on the association by post, and
- (b) the public officer can generally be found.

51. Custody of books etc

Note: Schedule 1, clause 14 of the Act provides that an association's constitution is to address the custody of books, documents and securities of the association.

Except as otherwise provided by this Constitution, the public officer must keep in his or her custody or under his or her control all records, books and other documents relating to the association.

52. Inspection of books etc³⁵

Note: Schedule 1, clause 15 of the Act provides that an association's constitution is to address the inspection by the association's members of books and documents of the association.

- (1) The following documents must be open to inspection, free of charge, by a member of the association at any reasonable hour:
 - (a) records, books and other financial documents of the association,
 - (b) this Constitution,
 - (c) minutes of all Management Committee meetings and general meetings of the association.
- (2) A member of the association may obtain a copy of any of the documents referred to in subclause (1) on payment of a fee of not more than \$1 for each page copied.
- (3) The book recording disclosures of Management Committee members' interests (see clause **Error! Reference source not found.**) must be open to inspection by a member of the association at any reasonable hour on payment of the fee

³⁵

See clause 45 of the Model Constitution in Schedule 1 to the Regulations.

determined by the Management Committee (but not exceeding the maximum fee prescribed by the regulations) (see section 31 of the Act).

- (4) The Management Committee may refuse to permit a member of the association to inspect or obtain a copy of records of the association that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the association.³⁶

53. Service of notices

- (1) Subject to the Act, for the purpose of this Constitution, a notice may be served on or given to a person:
- (a) by delivering it to the person personally, or
 - (b) by sending it by pre-paid post to the address of the person, or
 - (c) by sending it by email to the email address specified by the person for giving or serving the notice.
- (2) For the purpose of this Constitution, a notice is taken, unless the contrary is proved, to have been given or served:
- (a) in the case of a notice given or served personally, on the date on which it is received by the addressee, and
 - (b) in the case of a notice sent by pre-paid post, on the date when it would have been delivered in the ordinary course of post, and
 - (c) in the case of a notice sent by email, on the date it was successfully sent without receipt of a 'delivery failure' notification.
- (3) Unless a notice is required by the Act or this Constitution to be served on members or a specific member, notification of any matter of general interest to members may be given by publication on the association's website.

Part 8 – Financial matters

54. Funds - source

Note: Schedule 1, clause 12 of the Act provides that an association's constitution is to address the sources from which the funds of the association are to be or may be derived.

This clause is subject to clause **Error! Reference source not found..**

- (1) The funds of the association are to be derived from entrance fees and annual subscriptions of members, donations and, subject to any resolution passed by the association in general meeting, such other sources as the Management Committee determines.
- (2) All money received by the association must be deposited as soon as practicable and without deduction to the credit of the association's bank or other authorised deposit-taking institution account.

³⁶ Clause 45(3) of the Model Constitution in Schedule 1 to the Regulations.

- (3) The Secretary or Treasurer must, as soon as practicable after receiving any money, issue an appropriate receipt.

55. Funds – management

Note: Schedule 1, clause 13 of the Act provides that an association's constitution is to address the manner in which the funds of the association are to be managed and, in particular, the mode of drawing and signing cheques on behalf of the association

- (1) Subject to clause **Error! Reference source not found.**, and to any resolution in accordance with clause **Error! Reference source not found.** passed by the association in general meeting, the funds of the association are to be used in pursuance of the objects of the association in such manner as the Management Committee determines.
- (2) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by any 2 authorised signatories³⁷, being members or employees authorised as such by the Management Committee³⁸.
- (3) All major or unusual expenditures must be authorised in advance by the Executive or the Management Committee.

56. Financial year

Note: Schedule 1, clause 16 of the Act provides that an association's constitution is to address the association's financial year.

The financial year of the association is each period of 12 months after the expiration of the previous financial year of the association, commencing on 1 May and ending on the following 30 April, or such other period as the Management Committee may from time to time determine.

57. Financial Records and Reporting

(1) Records

The association must keep records that correctly record and explain its financial transactions and financial position (see section 50 of the Act³⁹).

(2) Reporting

For so long as the association is a Tier 2 association, the following provisions apply:

³⁷ the public officer is an authorised signatory by virtue of their position – see 36(1).

³⁸ Section 36(2) of the Act: An association's committee may from time to time appoint additional authorised signatories from among such of its members as are ordinarily resident in Australia, and may at any time revoke any such appointment.

(3) A person (other than the association's public officer) vacates office as an association's authorised signatory if:

- (a) his or her appointment as an authorised signatory is revoked, or
 (b) he or she ceases to be a committee member, or
 (c) he or she ceases to be ordinarily resident in Australia.

³⁹ Clause 14 of the Regulations allows records required to be kept under section 50 of the Act to be kept in written or electronic form so long as they are convertible into hard copy and made available in that form within a reasonable time to a person who is entitled to inspect the records. Records must be kept for 5 years.

- (a) As soon as practicable after the end of each financial year, the Management Committee must cause financial statements for that year to be prepared, in accordance with this section, in relation to the association's financial affairs (including its affairs as trustee of any trust) (section 47 of the Act).
- (b) The financial statements must give a true and fair view of the association's affairs and must deal with such matters as are prescribed by the regulations (section 47 of the Act) and must include:
 - (i) an income and expenditure statement and a balance sheet that sets out the appropriately classified individual sources of income and individual expenses incurred in the operation of the association and the assets and liabilities of the association,
 - (ii) details of any mortgages, charges and other securities affecting any property owned by the association,
 - (ii) a separate income and expenditure statement and balance sheet for each trust for which the association is the trustee (see clause 9 of Regulations).
- (3) At each annual general meeting, the association's Management Committee must cause the association's financial statements for the previous financial year to be submitted to the meeting (see section 48 of the Act).
- (4) Each year the association must lodge a summary, in the approved form, of the association's financial affairs for the previous financial year, as required by the Act. The summary must be lodged within:
 - (i) one month after the annual general meeting for the current financial year, or
 - (ii) 7 months after the end of the previous financial year,
 whichever is the earlier, or within such further time as may be allowed, and must be accompanied by the fee prescribed by the Regulations (see section 49 of the Act).
- (5) Should the association become a Tier 1 association, it must comply with the requirements under the Act for Tier 1 associations.

58. *Non-profit association*⁴⁰

(1) Non-profit nature of association

Notwithstanding any other provision of this Constitution, the association must not conduct its affairs so as to provide pecuniary gain for any of its members, their relatives or associates. The assets and income of the association shall be applied solely in furtherance of its objects and no portion shall be distributed directly or indirectly to the members, their relatives or associates except as bona fide compensation for:

- (a) services rendered to the association, or
- (b) expenses incurred on behalf of the association,

⁴⁰

See clause 41 of the Model Constitution in Schedule 1 to the Regulations.

with the approval of the Executive and/or Management Committee.

(2) **Distribution on Dissolution**⁴¹

In the event of the association being dissolved, the amount that remains after such dissolution and the satisfaction of all debts and liabilities (the 'residue') shall be transferred to any association with similar purposes which is not carried on for the profit or gain of its individual members. Such other body must also prohibit the distribution of income and property to its members to substantially the same extent as is provided in this clause. If donations to this association are, at the date of its dissolution, able to be claimed by donors as tax deductions, then the residue must be transferred to an association with equivalent tax status.

(3) **Pecuniary Gain**

For the purposes of subclause (1),

- (a) the definition of 'pecuniary gain' in the Act applies. The Act defines 'pecuniary gain' in section 5 as follows:

*'(1) An organisation provides **pecuniary gain** for its members if:*

- (a) it carries on any activity for the purpose of securing pecuniary gain for its members, or*
- (b) it has capital that is divided into shares or stock held by the organisation's members, or*
- (c) it holds property in which the organisation's members have a disposable interest (whether directly, or in the form of shares or stock in the capital of the organisation or otherwise), or*
- (d) it is an organisation that is, or is included in a class of organisations that is, prescribed by the regulations for the purposes of this subsection.*

(2) For the purposes of subsection (1) (a), an organisation does not provide pecuniary gain for its members merely because of any of the following:

- (a) the organisation itself makes a pecuniary gain, unless that gain or any part of it is divided among or received by the organisation's members or any of them,*
- (b) the organisation is established for the protection of a trade, business, industry or calling in which the organisation's members are engaged or interested, but the organisation itself does not engage or take part in, or in any part or branch of, any such trade, business, industry or calling,*
- (c) members of the organisation derive pecuniary gain through the enjoyment of facilities or services provided by the organisation for social, recreational, educational or other like purposes,*

⁴¹

See clause 42 of the Model Constitution in Schedule 1 to the Regulations.

- (d) *members of the organisation derive pecuniary gain from the organisation by way of bona fide payment of remuneration,*
 - (e) *members of the organisation derive pecuniary gain from the organisation of a kind which they could also derive if they were not members of the organisation,*
 - (f) *members of the organisation compete for trophies or prizes in contests directly related to the objects of the organisation,*
 - (g) *the organisation provides pecuniary gain of a class prescribed by the regulations for the purposes of this section.'*
- (b) references to 'bona fide compensation for services rendered or expenses incurred on behalf of the association' include:
- (i) reasonable payments at market rate to any member or officer for services provided to the association;
 - (ii) reimbursement of reasonable expenses incurred by any Management Committee member or the Public Officer in attending workshops, seminars or courses relating to the objects of the association, or which they reasonably believe will assist them in carrying out the objects of the association, subject to prior approval of the Executive;
 - (iii) reimbursement of fees and expenses incurred by any person in relation to incorporation, registration and regulatory compliance of or by the association.

Part 9 – Disputes and complaints

59. Resolution of disputes

Note: Schedule 1, clause 6 of the Act provides that an association's constitution is to address the procedure (if any) for resolution of disputes between members (in their capacity as members) and between members and the association

- (1) A dispute between a member and another member (in their capacity as members) of the association, or a dispute between a member or members and the association, may be referred to a community justice centre for mediation under the *Community Justice Centres Act 1983*.
- (2) If a dispute is not resolved by mediation within 3 months of the referral to a community justice centre, the dispute may be referred to arbitration.
- (3) The *Commercial Arbitration Act 2010* applies to any such dispute referred to arbitration.

60. Suspension or expulsion of members

Note: Schedule 1, clause 5 of the Act provides that an association's constitution is to address the procedure (if any) for disciplining of the association's members.

The procedure for disciplining members may be determined by the Management Committee in consultation with legal advice. Without limiting the generality of the foregoing, the Management Committee may suspend or expel a member who:

- (a) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth,
- (b) is convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than 3 months,
- (c) is prohibited from being a director of a company under Part 2D.6 (Disqualification from managing corporations) of the *Corporations Act 2001* of the Commonwealth, or
- (d) in the opinion of a majority of the Management Committee is unreasonably disruptive of association business or otherwise likely to bring the association into disrepute.

61. Complaints about members

Note: Schedule 1, clause 5 of the Act provides that an association's constitution is to address the procedure (if any) for disciplining of the association's members.

- (1) A complaint may be made to the Management Committee by any person that a member of the association:
 - (a) has refused or neglected to comply with a provision or provisions of this Constitution or of any current association governance policies or procedures, or
 - (b) has wilfully acted in a manner prejudicial to the interests of the association.
- (2) The Management Committee may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.
- (3) If the Management Committee decides to deal with the complaint, the Management Committee:
 - (a) must cause notice of the complaint to be served on the member concerned, and
 - (b) must give the member at least 14 days from the time the notice is served within which to make submissions to the Management Committee in connection with the complaint, and
 - (c) must take into consideration any submissions made by the member in connection with the complaint.
- (4) The Management Committee may, by resolution, expel the member from the association or suspend the member from membership of the association if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved and the expulsion or suspension is warranted in the circumstances.

62. Procedures in relation to expulsion or suspension

- (1) If the Management Committee decides to expel or suspend a member, the secretary must, within 7 days after the decision is taken, cause written notice to be given to the member of the decision, of the reasons given by the Management Committee for having taken that decision and of the member's right of appeal under clause **Error! Reference source not found.**

- (2) The expulsion or suspension does not take effect:
- (a) until the expiration of the period within which the member is entitled to appeal against the decision, or
 - (b) if within that period the member exercises the right of appeal, unless and until the association confirms the resolution under clause **Error! Reference source not found.**,

whichever is the later. However the association is not required to accept the renewal of membership of a member where the renewal falls due during the process of suspension or expulsion and the process is not yet complete.

63. Right of appeal of disciplined member

Note: Schedule 1, clause 5 of the Act provides that an association's constitution is to address the mechanism (if any) for appeals by members in respect of disciplinary action taken against them.

- (1) A member may appeal to a general meeting of the association against a resolution of the Management Committee under clause **Error! Reference source not found.** or **Error! Reference source not found.**. The notice of intention to appeal must be lodged with the public officer within 7 days after the Management Committee's notice is served on the member.
- (2) The notice may, but need not, be accompanied by a statement of the grounds on which the member intends to rely for the purposes of the appeal.
- (3) On receipt of a notice from a member under subclause (1), the public officer must notify the Management Committee. The Management Committee must either:
 - (a) convene a general meeting of the association to be held within 28 days after the date on which the public officer received the notice, or
 - (b) if the member concerned agrees, arrange for an electronic vote of members on the issue.
- (4) At a general meeting of the association convened under subclause (3)(a):
 - (a) no business other than the question of the appeal is to be transacted;
 - (b) the Management Committee and the member must be given the opportunity to state their respective cases orally or in writing, or both;
 - (c) the members who attend the meeting whether in person or by electronic means are to vote (if possible, by secret ballot) on the question of whether the decision should be confirmed or revoked;
 - (d) the appeal is to be determined by a simple majority of votes cast by members of the association.

Part 10 – Offences

64. Incurring Debts

- (1) If the association incurs a debt and immediately before the debt is incurred:
 - (a) there are reasonable grounds for believing that the association is or will

become insolvent, or

- (b) there are reasonable grounds to expect that, if the association incurs the debt, the association will become insolvent,

any person who was a Management Committee member at the time the debt was incurred may be guilty of an offence under the Act.

- (2) The association and any person who was a Management Committee member at the time the debt was incurred may be jointly and severally liable under the Act for the payment of the debt.
- (3) In any proceedings against a Management Committee member or former Management Committee member, it is a defence under the Act if the defendant proves:
 - (a) that the debt was incurred without the defendant's express or implied authority or consent, or
 - (b) that, at the time the debt was incurred, the defendant did not have reasonable grounds:
 - (i) to believe that the association was insolvent, or
 - (ii) to expect that, if the association incurred that debt, it would become insolvent.
- (4) If a person is liable under the Act to pay a debt incurred by the association, the payment by that person of the whole or any part of the debt does not render the association liable to repay that amount to the person concerned.

(see section 68 of the Act).

65. *Liability of Management Committee members for association offences*

- (1) If the association contravenes, whether by act or omission, any provision of the Act or the Regulations, each Management Committee member may be taken under the Act to have contravened the same provision if he or she knowingly authorised or permitted the contravention.
- (2) A Management Committee member may be proceeded against and convicted under the Act whether or not the association has been proceeded against or convicted.
- (3) Each person who is taken to have contravened the Act may be, together with the association, jointly and severally liable for all debts incurred by the association as a consequence of that contravention.
- (4) Nothing in this clause affects any liability imposed on the association for an offence committed by the association under the Act.
- (5) For the purposes of the relevant provisions of the Act, the association's public officer (not otherwise being a Management Committee member) is taken to be a Management Committee member.

(see section 91 of the Act).

66. *Offence of use of information or position*

- (1) A Management Committee member or former Management Committee member who uses information obtained as a Management Committee member dishonestly with the intention directly or indirectly of:
 - (a) gaining an advantage for himself or herself or for any other person, or
 - (b) causing detriment to the association,
 is guilty of an offence (see section 32 of the Act).
- (2) A Management Committee member who uses his or her position as a Management Committee member dishonestly with the intention of directly or indirectly:
 - (a) gaining an advantage for himself or herself or for any other person, or
 - (b) causing detriment to the association,
 is guilty of an offence (see section 33 of the Act).

Part 11 - Termination or Amalgamation of Association

Note: Schedule 1 clause 17 of the Act provides that an association's constitution is to address the winding up of the association

67. Termination

- (1) The association may apply for cancellation of its registration in accordance with the Act.
(see section 72 of the Act).
- (2) The association may be wound up voluntarily if the association so resolves by special resolution (see section 62 of the Act).⁴²
- (3) The Supreme Court may order the winding up of the association in certain circumstances specified under the Act (see section 63 of the Act).
- (4) The association's registration may be cancelled in accordance with the Act.
(see section 76 of the Act).
- (5) Subject to the Act and the Regulations, in a winding up of the association, any surplus property is to be transferred to another organisation with similar objects and which is not carried on for the profit or gain of its individual members.
- (6) In this clause, a reference to the surplus property of the association is a reference to that property of the association remaining after satisfaction of the debts and liabilities of the association and the costs, charges and expenses of the winding up of the association.

68. Amalgamation

Subject to clause **Error! Reference source not found.**, the association may be amalgamated with another association having substantially similar objects if the association so resolves by special resolution.

⁴² see section 62 of the Act. Note that Section 65 of the Act limits the distribution of surplus property in the event of winding up.