

Making Your Constitution Work For You:

Legislative and Good Practice Constitutional Changes for WA Associations

Template Constitution for service based non-profits to adopt or adapt for their organisation.

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<http://www.commerce.wa.gov.au/consumer-protection/associations-and-clubs>

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DISCLAIMER

The information provided in this manual is specific in nature that it has been developed with the full co-operation of Linkwest Inc. for the use of its member organisations.

This manual is not intended to be legal advice for your specific organisation and the trainers who are delivering training are not legal experts. You should undertake your own discussion and research, which may include obtaining specific legal advice respective to the particular needs of your association. This manual may not address every requirement and obligation under the noted Acts or under any other law applicable to incorporated associations and/or charities.

This document should not be relied upon as giving tailored legal advice, but as a manual for training purposes to guide and assist with compliance with the requirements of the Associations Incorporation Act 2015 (WA) and the Australian Charities and Not-for-profits Commission Act 2012 (Cth) (the ACNC Act).

From time to time acts and regulations are amended by Parliament and you should always refer particular questions that relate to your association to a legal adviser to ensure its currency.

All Acts or regulations referred to in this manual relate to legal instruments current as at 15 February 2016.

Specifically, the Associations Incorporation Act 2015 (WA) refers to the release date and version below:
02 Nov 2015 Version 00-a0-01

GUIDE TO THIS MANUAL

1. INTRODUCTION

For a number of years, the Western Australian Parliament has been reviewing the legislation governing the operation of incorporated associations in that state, namely the Associations Incorporation Act 1987 (WA).

The Western Australian Parliament eventually passed a new Act, the Associations Incorporation Act 2015 (WA), which is due to take effect from 1 July 2016.

This manual details the requirements of the Incorporations Association Act 2015 (WA) in relation to the template constitution with a commentary on each clause of the template constitution.

Typical questions in relation to these clauses include:

- Is the clause required or can it be removed?
- What are the minimal requirements under the Act?
- What considerations (pros and cons) need to be given to each clause?

This manual is designed to assist organisations needing to update their own rules or constitutions (constitution).

An association's current constitution may contain clauses that are confusing, have not been used or are not relevant to the way the association operates. This is a perfect time to review them as well as ensure the constitution is compliant with the Incorporations Association Act 2015 (WA).

The aim of the template constitution was to propose clauses that are in plain English and explain their purpose and to make it easier for board members to:

- Review their own constitution
- Remove what is no longer needed
- Understand what is mandatory and what is optional, and
- Be prepared to revise your governing document to prepare you for the imminent arrival of the Incorporations Association Act 2015 (WA).

The template constitution included in this manual has been developed for the purposes of WA associations, which are soon to be governed by the Incorporations Association Act 2015 (WA). This template constitution only applies to associations incorporated in Western Australia and it has been developed primarily for service based non-profit organisations who may either be, or wish to be, a registered charity.

2. COMPLYING WITH THE ASSOCIATIONS INCORPORATION ACT 2015 (WA)

The WA government has allowed WA associations a three-year transition period (to 1 July 2019) in order to ensure that an association's constitution complies with the Incorporations Association Act 2015 (WA).

There have been provisions to enable organisations to change their constitution but only in order to comply with the new Act, without seeking member approval. You will find more information on this in the penalties checklist section of this manual with a direct extract of this clause from the Act.

Associations are not permitted to use a new constitution until the WA Commissioner for Consumer Protection (Commissioner) has provided the association with an approval to do so. This will be sent to the association in the form of an official letter from the Commissioner.

It is also important to note that if an association adopts any change in their constitution that is inconsistent with the Acts (Associations Incorporation Act 2015 (WA) and subsequently the model constitution, will take precedence over an associations constitution (Section 201 of the Associations Act). This also applies to the Australian Charities and Not-for-profits Commission Act 2012 (Cth) (the ACNC Act).

One example is that associations who develop their own constitution have to ensure that they comply with schedule, division 1 and division 2 requirements, otherwise the new model rules for associations will apply where there is a section missing from your constitution that is in the model rules, or that section is non-compliant with the Act.

3. PROCESS FOR CHANGING YOUR CONSTITUTION

Once your association settles on the wording of its new constitution you must:

- Provide notice to the Commissioner within twenty eight (28) days of the changes being approved by your members (see Form 5 – note you can do this via associations online).
- If you have amended your constitution to adopt mandatory clauses as per Section 200 of the Act you also need to advise members of these amendments with the notice of the next annual general meeting (Section 200 (6))
- If your association is registered as a charity with the Australian Charities & Not-for-profits Commission (ACNC) you must also notify the ACNC (see ACNC Form 3B)

The Commissioner will permit associations to alter their constitution without the need to seek the approval of your association's members (Section 200 of the Associations Act). This is only allowable if the alterations are made to comply with the Act and the Act only (not adding in extra bits and pieces as well!).

This means that any new mandatory clause under the Associations Act can be inserted into your constitution without the need for a meeting of members. Your members can simply be advised of the change after the Commissioner confirms, in writing, the acceptance of your changes.

However, the template constitution has not been prepared with such an intention in mind and includes a number of other areas as recommended by the ACNC and the WA model rules as well as a number of options that make it easier for service based non-profits to clearly spell out what rights and responsibilities members and board members have.

Therefore, we recommend that your association prepare its new constitution and then seek approval from your members before submitting it to the Commissioner for formal acceptance.

4. RELEASE NOTES

Linkwest may from time to time release updated manuals. Each release may also have updated versions (Release 1 V1; Release 1 V2 etc.). These may be due to provision of user feedback and the solicitor conducting post-model rules review in July (after the Commissioner finalises the current draft model rules) and from then, expected annual reviews.

Please check with Linkwest as to the current release and version release. At this time, we envision the following schedule of releases:

Release 1: April 2016.

Release 2: July 2018

Release 3: July 2019

5. HOW CLAUSES CAN BE MISUSED OR MISINTERPRETED

Some clauses can and have been misinterpreted. Where this is the case, we identify the differing points of view and clarify the intended focus of the clause.

DEFINITIONS are necessary as some terms in the template constitution carry a special meaning, or are not commonly in use. These terms are defined in clause 3 of the template constitution.

6. A NOTE ON CHARITIES

Some associations are, or hope to be, registered as charities with the ACNC. This may also enable them to receive certain charity tax concessions from the Australian Taxation Office (ATO).

Application for charity tax concessions can be made using the same ACNC charity registration form, in the same ACNC charity registration application form.

The section in the form relating to the application for tax concessions will be sent by the ACNC to the ATO, who will decide on the association's eligibility for charity tax concessions.

The benefits of registering as a charity with the ACNC can be significant and may include:

- Obtaining endorsement to access charity tax concessions such as income tax exemption or goods and services tax concessions. See the ATO's guidance for not-for-profit organisations.
- Possibility of obtaining endorsement to access additional tax benefits as a public benevolent institution (PBI).
- Possibility of applying for endorsement as a deductible gift recipient (DGR).
- Accessing a range of other concessions, benefits or exemptions available to registered charities under Commonwealth Law.

In relation to DGR endorsement, even if the association is already registered as a charity with the ACNC, it will still need to meet all of the ATO's requirements for DGR endorsement as set out in tax law.

PRELIMINARY QUESTIONS

1. What is an incorporated association?

An incorporated association is an organisation that is registered under state or territory law and, because of that registration, becomes a legal entity that is separate from its members. It has the ability to own property and to sue or be sued, much the same as if it were an individual person.

An incorporated association provides legal protection for its members who comply with relevant legislation as members are covered under statutory law. This means that providing they comply with legislation and their duty of care to the association, then generally they will not be held personally liable, unlike common law situations where individuals can be sued or jailed.

2. What is a constitution?

A constitution is a set of rules by which the association and its members must abide. The Associations Incorporation Act 2015 (WA) explains that a constitution operates as a contract (legal agreement):

- Between the association and each of its member, and
- Between each individual member of the association.

The role of a constitution is to describe:

- The association's basic structure and processes.
- The association's object and purposes.
- How members are admitted to the association.
- The rights and obligations of members of the association.
- How officeholders and members of the association's board are elected or appointed.
- How general meetings of members of the association are called and run.
- How board meetings are called and run.
- How the association is managed.
- What happens with the association's assets when is wound up and de-registered.

3. What if our association wants to operate outside Western Australia?

If an association wishes to operate in another state or territory of Australia, it will need to seek further advice.

That said, the most common organisational structures by which WA associations can operate outside Western Australia are:

- A registrable Australian body, or
- An Australian public company limited by guarantee.

The Corporations Act 2001 (Cth) governs both types of entities and the Australian Securities and Investments Commission maintain oversight of them (ASIC) unless you are a charity - then you must report to the Australian Charities and Not-for-profits Commission (ACNC).

4. We want to raise funds in WA - will our constitution allow this?

If your association wishes to carry out charitable fundraising in WA it will also need to ensure that it complies with the Charitable Collections Act 1946 (WA) (WA Charitable Collections Act). The WA Department of Commerce has oversight of the WA Charitable Collections Act.

Only associations who raise funds in WA (see section 6 of the Charitable Collections Act) are required to be licensed. This section includes fundraising activities such as door knocking, telemarketing, television-radio appeals, street appeals, mail outs, entertainment, fetes and functions etc., as well as advertising at certain types of events.

If your association also wishes to conduct fundraising events outside WA, then you must comply with the legislation of the other state or territory in which you wish to operate.

At present there is no national system of registration for charitable fundraising. However, there has been discussion about introducing a national scheme.

5. Why do some organisations have constitutions and others have rules?

Sections 21 to 37 (Part 3) of the Associations Incorporation Act 2015 (WA) 2015 refer to the 'rules' of an association. You will note that, in the template constitution included in this manual, we have used the term 'constitution' rather than 'rules'. They mean the same thing.

The use of the word 'constitution' is simply intended to encourage associations to take their governance responsibilities seriously.

6. Should we adopt the model rules or use (or create) our own?

When an association is registered, it can choose between adopting the:

- a) WA Model Rules which will soon be adopted by the WA Parliament by way of a regulation made under the Associations Incorporation Act 2015 (WA). They will be a 'one size fits all' set of association rules and are expected to be released on the 1 July 2016, or
- b) ACNC Model Constitution for associations that are registered as charities with the ACNC, or
- c) Your association's own constitution based on the template constitution, or
- d) Your association's own constitution drafted by you, or someone else independently.

7. What are the WA model rules?

Section 26 of the Associations Incorporation Act 2015 (WA) states that the WA Parliament is to pass a regulation to prescribe new WA model rules for associations operating in WA.

The new WA model rules will be released on 1 July 2016 to coincide with the commencement of the Associations Incorporation Act 2015 (WA). A draft version of the WA model rules was released for consultation in October 2014.

The WA model rules can be wholly or partly replaced by an association's own constitution.

8. Can we just adopt the template constitution?

All associations that are already registered in WA have been allowed a three (3) year transition period (1 July 2016 to 30 June 2019) in which to ensure that they comply with the Associations Incorporation Act 2015 (WA).

The template constitution has been drafted to assist associations with this obligation. Its preparation has included a review of the draft WA model rules, the ACNC model constitution and the Associations Incorporation Act 2015 (WA).

If an association adopts the template constitution the WA model rules will not apply to that association. However, many clauses in the template constitution are based on elements within the WA model rules, as they cover useful operational matters for the governance of an association and are consistent with many other state incorporation Acts.

The template constitution is a basic set of rules for an association. It can be used as a guidance document with some small additions, or it can be changed to suit the specific needs of your association. It has not been developed for, and may not be suitable for, an association needing complex provisions (e.g. a complex membership structure or detailed election procedures).

9. Are there any non-mandatory clauses we should be looking at?

Yes there are. The following items have been recommended on the basis that they'll help organisations better manage their affairs:

- Nominations for membership or the board to be made by an existing member - with no need for it to be seconded. – as per WA model rules 5.3 and 12.2.
- An association can have different classes of members with different voting rights i.e. associate members - as per WA model rule 6.1.
- The board may request that anyone seeking to see a copy of the members register to provide a statutory declaration outlining the purpose of that request - as per WA model rule 8.3.
- Members may make by-laws to supplement their constitution provided they're consistent with the requirements of the new law, and their constitution - as per WA model rule 25.
- The responsibilities of officeholders are included in the constitution, to reflect their inclusion in the new law - as per WA model rule 11.
- The constitution has procedures governing the conduct of board and sub-committee meetings - as per WA model rules 14 and 16.

10. We refer to our governing body as a 'board', however other similar organisations use the term 'management committee'. Which term should we use?

Throughout this manual and the template constitution we refer to the 'board'.

A review of the constitution is the perfect time for your association to discuss which term it prefers to use for the association's governing body. For example, a youth organisation recently decided that the term 'board' sounded too formal and inaccessible for them, so they chose to use the term 'management committee'

Section 38 of the Associations Incorporation Act 2015 (WA) refers to the 'management committee' when referring to the governing body of an association. It states: "the persons who, under the rules of the incorporated association have the power to manage the affairs of the association, constitute the management committee of the association for the purposes of this Act."

However, in the template constitution, we have decided to use the term ‘board’ instead of ‘management committee’ for the simple reason that we see the role of the governing body to ‘govern’ and not ‘manage’. The term ‘board’ seems much better to convey this purpose. However, it is up to you to choose.

11. We refer to the members of our governing body as ‘directors’, however other similar organisations use the term ‘management committee members’. Which term should we use?

For similar reasons to those stated above, the template constitution also uses the term ‘director’ instead of ‘management committee member’. Again, the principal reason for this decision is that it is the board’s responsibility to ‘govern’ and not ‘manage’ the association.

Some people associate the words ‘director’ and ‘board’ with corporate organisations who are responsible for millions of dollars, a lot of staff and a lot of laws they have to comply with.

What many non-profit incorporated entities don’t realise is that in developing state based incorporations Acts a lot of factors such as precedence set in a court of law for associations and companies, including best practice processes and judge’s rulings, are considered in the establishment of the new 2015 Associations Incorporation Act.

Non-profits may operate on a different financial scale, deliver different services and ensure that individual members don’t profit from it, however the foundational governance rules of companies are the same as any non-profit organisation. Clear evidence of this shift for WA is the big shift toward directors’ governance responsibilities and eligibility – these clauses directly reflect clauses in the Corporations Act.

The use of the term ‘director’ also works well for associations wishing to operate in a more professional service and product business model rather than that of a smaller volunteer-led not-for-profit.

Regardless of the terminology you choose to use, you must ensure your constitution reflects that terminology throughout.

12. What term should we use -‘Chairperson’ or ‘president’?

The WA model rules use the term ‘Chairperson’ for the person who leads an association. For the sake of simplicity and for the reasons stated above, we use the same term in the template constitution.

ASSOCIATIONS INCORPORATION ACT 2015: PENALTIES CHECKLIST

Below is a list of items under the new Western Australian Associations Incorporations Act (02 Nov 2015 Version 00-a0-01) where penalties for non-compliance matters may be given.

You should discuss how you will develop or amend processes to ensure that you have systems to help you comply with the below matters. Items where penalties apply in the new Act have been listed below and grouped into 'events' rather than topics so that it's easier to understand what actions need to occur as they will be triggered by an 'event'.

You should also check your current compliance level with all of these matters whilst you integrate them into your processes.

Practical advice has been provided on some approaches or systems you can adopt that will help you to reduce the likelihood of a non-compliance matter.

1. Changing/Updating the Constitution:

Section 30. (3): Within one (1) month after the passing of a special resolution altering its rules, or such further time as the Commissioner may in a particular case allow, an incorporated association must lodge the required documents with the Commissioner. *Penalty: a fine of \$1,000.*

Section 35. (1): An incorporated association must keep and maintain in an up-to-date condition a copy of the rules of the association. *Penalty: a fine of \$2,750.*

What this means

Keep your constitution up-to-date.

When you change the rules you must make sure you lodge this change of rules notice with the Commissioner within one (1) month of passing the special resolution (unless the Commissioner has agreed otherwise).

Recommended compliance system/document

Note in the minutes of the board following the members meeting where the change was adopted what actions have been taken. For example, the minutes would provide details on when the form was lodged, the lodgement fee paid and the date the Commissioner's letter was received, either accepting the constitution or noting any other subsequent action.

This item should be kept on as 'business arising' until you have received written confirmation from the Commissioner of its final acceptance.

Section 200: Rule alterations may be made by management committee

- (1) This section has effect despite the provisions of section 30(1).
- (2) The management committee of an incorporated association may, by resolution made not later than three (3) years after the commencement day, make any alteration to the rules of the association that
 - (a) Is required to ensure that the rules comply with section 22; and
 - (b) Does no more than give effect to a requirement, restriction or prohibition imposed under the authority of this Act.
- (3) An alteration referred to in subsection (2) does not take effect unless it is approved by the Commissioner.

- (4) The incorporated association, within twenty eight (28) days after the management committee passes a resolution under subsection (2) to alter the rules of the association, must lodge the required documents with the Commissioner. *Penalty: a fine of \$1 000.*
- (6) If the alteration is approved, the incorporated association must give notice of the alteration to its members with notice of the next annual general meeting of the association after the approval is given.

What this means

1. In order to comply with the new Associations Incorporation Act, the board may make changes its constitution without member approval providing that these changes are only necessary to comply with the Act. You can't change anything else such as quorum etc. You still need to go through the process of lodging the changes with the Commissioner and awaiting written approval before adopting into the organisation.

Recommended compliance system/document

1. You must provide members with notice of the change at the next annual general meeting after approval is given.
2. We suggest communicating to members either before, or immediately after about the urgency of these changes and the above provisions in the Act that enable/d you to do this. If you do this you still need to have official notice of changes on the agenda at the next annual general meeting.

2. New Member Joins:

Section 36 (1) :

- (b) Give to each person who becomes a member of the association a copy of the association's rules as in force when the membership commences.

Section 36 (2) : An incorporated association must not make a charge for taking any action that it is required to take under this section.

Penalty: a fine of \$2,750.

What this means

You have to give new members a copy of the constitution and you can't charge for it. It is recommended that you provide these upon member application with the included statement described below.

Recommended compliance system/document

New membership application procedure should include a confirmation from the board accepting the member's application.

You include in your member application procedure that that letter/email sent to the nominating person includes the constitution in digital format (note: your constitution should also be dated and version controlled so there is no confusion about which is the current document should you update it in the future and will then provide them with another copy).

We recommend you include on your membership application form that the member understands that they are bound by the constitution and will comply with it. If you do this then you should provide them with a copy at the time they apply (otherwise legally how could they have agreed to something they haven't seen!). This is important from a legal perspective as Part 3, Division 1:21 (1) states the rules of the association only bind the members if they have agreed that they would be bound by, and observe all the provisions of the rules.

Given the changes also to director qualifications, we are also recommending that you have a statement on your members form that clearly states that the boards acceptance of a person's membership does not automatically qualify them for nomination to the board as there are additional requirements to be met as per the constitution, (and by-laws if (1) you have them, and (2) they include rules about eligibility) and the Associations Incorporation Act 2015 (WA).

3. Members Change:

Section 53 (1) : An incorporated association must —

- (a) Maintain a register of its members in accordance with the regulations and the requirements of this section; and
- (b) Record in the register any change in the membership of the association within twenty eight (28) days after the change occurs. *Penalty: a fine of \$2,750.*

Section 53 (2) : The register of members must include each member's name and —

- (a) Residential address; or
- (b) Postal address; or
- (c) Email address; or
- (d) Information, by means of which contact can be made with the member, that is prescribed for the purposes of this paragraph.

Section 58(2): An incorporated association must maintain a record of —

- (a) The names and addresses of the persons who —
 - (i) Are members of its management committee; or
 - (ii) Hold other offices of the association provided for by its rules;
 and
- (b) The name and address of any person who is organisation to use the common seal of the association (if it has a common seal); and
- (c) The name and address of any person who is appointed or Acts as trustee on behalf of the association. *Penalty: a fine of \$2,750.*

What this means

1. You must keep a register of members and keep it up-to-date.
2. You need to keep a register of board members and the offices they hold in your organisation
3. If you have a common seal you need to specify who has permission to use it.

Recommended compliance system/document

1. There is no stipulation on what a 'register of members' looks like. It could be a database or a spreadsheet.
2. If you use a common seal, a delegation of authority policy should also be developed to govern its use.

4. Member requests copy of constitution:

Section 35 (2) : At the request of a member of an incorporated association, the association must make the copy of the rules available for inspection by the member.

Penalty: a fine of \$2,750

Section 36 (1): Without limiting section 35, an incorporated association must at the request of a member of the association, give to the member a copy of the association's rules, or of any particular part of those rules to which the request relates, as in force at the time of the request,

Penalty: a fine of \$2,750

Section 36 (2) : An incorporated association must not make a charge for taking any action that it is required to take under this section.

What this means

You have to provide any member with a copy and/or section of the constitution at their request and cannot charge for it.

Recommended compliance system/document

If you are registered with the ACNC, your constitution is probably already public information, so you can promote its availability there or consider putting it on your website so members can easily access it.

5. Member requests copy of members register:

Section 54 (1) : An incorporated association must, at the request of a member, make the register of members available for inspection by the member.

Penalty: a fine of \$2,750.

Section 56 :

- (1) A member of an incorporated association may in writing request the association to provide the member with a copy of the register of members.
- (2) The rules of an incorporated association may require a member who requests a copy of the register of members to provide a statutory declaration setting out the purpose for which the request is made, and declaring that the purpose is connected with the affairs of the association.
- (3) Subject to any rules of the kind mentioned in subsection (2), the incorporated association must comply with the request on payment of any amount required to be paid under subsection (4).
Penalty: a fine of \$2,750.
- (4) The management committee may —
 - (a) Determine a reasonable charge for the cost of complying with a request under subsection (1); and
 - (b) Require the person making the request to pay the charge to the association.

Section 57 (1) : A person must not use or disclose information in the register of members of an incorporated association except for a purpose —

- (a) That is directly connected with the affairs of the association; or
- (b) That is related to the administration of this Act.

Penalty: a fine of \$10,000.

What this means

1. You must provide the members register to the member requesting it.
2. If you wish to set an access charge for this, you should have a charge policy.
3. The template constitution recommends the requestor puts their request in writing in the form of a statutory declaration explicitly outlining the purposes for their request.
4. You can charge a reasonable fee, payable to the organisation to cover the cost to the organisation for providing copies

Recommended compliance system/document

1. There is a concern, particularly one related to domestic violence situations in providing members details. To ensure you are not risking individuals who are in such situations and to still comply with the Act it is suggested you put a privacy statement on the member's application form that provides the member with the option to withdraw their permission under the Privacy Act 1987 or due to personal reasons such as a safety risk. This is another reason why a membership application form is a good process to have. Without this, or a process where a member can withdraw this right, you have no cause for not providing this list to a member who requests it.
2. Have a policy that governs the procedure for accessing your membership directory.

6. Member requests copy of record of officeholders:

Section 58 (2) : An incorporated association must maintain a record of —

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

Penalty: a fine of \$2,750.

Section 58 (3) : The incorporated association must, upon the request of a member of the association, make available the record for the inspection of the member. *Penalty: a fine of \$5,000.*

Section 58 (5) : A person must not use or disclose information in the record maintained under subsection (2) except for a purpose —

- (a) That is directly connected with the affairs of the association; or
- (b) That is related to the administration of this Act.

Penalty: a fine of \$10,000.

What this means

You must maintain details of your board and make those details available for inspection at the request of a member.

Recommended compliance system/document

Many organisations make it public who is on their board. Ensure your board is trained on the appropriate response processes should they be contacted about the organisation. For example, if a member of the public complains about a staff member, make sure they are aware of the operational process that should be followed, including the appropriate person (eg CEO) in which to refer the complaint to.

7. Commissioner May Request Copies of Records/Reports

Section 55 (1) : The Commissioner may request an incorporated association to provide the Commissioner with a copy of the register of members.

Section 55 (2) : The incorporated association must comply with the request within fourteen (14) days after it is made.

Penalty: a fine of \$5,000.

Section 59 (2) : The Commissioner may, by notice served on the person, require the person, within the time specified in the notice, to lodge with the Commissioner in writing —

- (a) Particulars of the person's residential address; and
- (b) A statement showing —

- (i) Whether or not the person holds or has held the office specified in the Commissioner's notice; and
- (ii) If the person has held the office, when the person ceased to hold it.

Section 59 (3) : A person must comply with any requirement made of the person by a notice under subsection (2).

Penalty: a fine of \$5,000.

Section 60 (3): The Commissioner may in writing given to a relevant officeholder of the incorporated association direct the officeholder to take such steps as are required under the rules of the association to convene a general meeting of the association at a specified time or within a specified period.

Section 60(6): A relevant officeholder to whom a direction is given under subsection (3) must not, without reasonable excuse, fail to comply with the direction.

Penalty: a fine of \$5,000.

Section 157

- (1) The Commissioner may by written notice require an incorporated association to produce to the Commissioner at a time and place specified in the notice a specified relevant document relating to the financial affairs of the incorporated association.
- (2) The incorporated association must produce the document, unless the association has a reasonable excuse for not producing it.

Penalty: a fine of \$2,750.

What this means

You must provide all documentation requested by the Commissioner.

Recommended compliance system/document

Make sure that your information is up-to-date.

8. Board Member (Director) Changes/Nominations:

Section 39: Persons who are not to be members of management committee —

- (1) Subject to section 40, this section applies to the following persons—
 - (a) A person who is, according to the Interpretation Act 1984 section 13D, a bankrupt or person whose affairs are under insolvency laws;
 - (b) A person who has been convicted, within or outside the state, of —
 - (i) An indictable offence in relation to the promotion, formation or management of a body corporate; or
 - (ii) An offence involving fraud or dishonesty punishable by imprisonment for a period of not less than three (3) months; or
 - (iii) An offence under Division 3 or section 127.
- (2) A person to whom this section applies must not, without leave of the Commissioner, accept an appointment or act as a member of a management committee of an incorporated association. *Penalty: a fine of \$10 000.*

What this means

The person nominating to be a member of the board (management committee) who meets matters under section 39 of the Act must not accept a director's position. They can be ordinary members but cannot sit on the board. The onus on accepting this position is clearly on the individual, however the board would be remiss in their duty of care if there wasn't a process they adopted to ensure that the likelihood of this situation occurring is minimised.

Recommended compliance document

1. Membership application form states that there are eligibility requirements to be a director on the board and that the board's acceptance of membership does not include acceptance of eligibility for a board position.
2. Ensure you have nomination forms for people to be on the board. The nomination forms need to clearly state eligibility requirements and have the nominating person sign to state that they agree they meet these eligibility requirements and understand the penalties involved for providing false or misleading information.

9. Director Resignation

Section 41 (3) : As soon as is practicable after a person has ceased to be a member of the management committee of an incorporated association, they or their representative must deliver to a member of the management committee of the association all relevant documents and records or, in the case of relevant documents or records that are stored on a computer, a copy of all such documents and records.

Penalty: a fine of \$10 000.

What this means

Make sure all directors know about this provision.

Recommended compliance system/document

1. Include this in your induction and exit procedures
2. Include this statement in the code of conduct/confidentiality agreement board members sign when they join the organisation.

10. Participating in Meetings

Section 42 (1) : A member of the management committee of an incorporated association who has a material personal interest in a matter being considered at a management committee meeting must, as soon as the member becomes aware of the interest, disclose the nature and extent of the interest to the management committee.

Penalty: a fine of \$10,000.

Section 42 (2) : A member of the management committee of an incorporated association who has a material personal interest in a matter being considered at a management committee meeting must disclose the nature and extent of the interest at the next general meeting of the association.

Penalty: a fine of \$10,000.

What this means

1. Any director who has a conflict of interest must declare it to the Board as soon as they become aware of it.
2. This conflict of interest must also be disclosed to members, at the next members' meeting

Recommended compliance system/document

1. All directors should have a discussion about what constitutes a conflict of interest and this should be put into a conflict of interest policy. You should also have a procedure on how you deal with this in meetings eg. if a person raises a conflict, the board agrees that they should leave the room.
2. Directors should be asked to declare any conflicts in writing either before, or as soon as practicably after their director appointment
3. There should be an agenda item on every meeting agenda asking 'Does anyone have any conflicts of interest with any item on the agenda?' and as new agenda items are raised, the question is asked again
4. On every agenda have a table listing every persons declared conflicts so that it is transparent to all concerned
5. Agendas for members' meetings should include an item called 'Director's Declarations' so that any conflicts can be communicated to the members

11. Voting in Meetings

Section 43 (1) : A member of the management committee of an incorporated association who has a material personal interest in a matter being considered at a meeting of the management committee must not —

- (a) Be present while the matter is being considered at the meeting; or
- (b) Vote on the matter.

Penalty: a fine of \$10 000.

What this means:

If the conflict raised is one of a material personal interest matter then after they raise that conflict they must leave the room whilst the matter is being discussed and voted on.

Recommended compliance system/document:

Have a meeting procedure that specifically states actions that must be taken. It should also expand out to include the provision of information. For example, if it is an ongoing matter then it may not be appropriate to provide the person who has the conflict with any more documentation or papers about that matter in their board papers.

12. Director Mindset/Actions

Section 44 (1) : An officer of an incorporated association must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if that person—

- (a) Were an officer of the association in the association's circumstances; and
- (b) Occupied the office held by, and had the same responsibilities within the association as, the officer.

Penalty: a fine of \$10 000.

Section 45 : Duty of good faith and proper purpose.

An officer of an incorporated association must exercise his or her powers and discharge his or her duties—

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

Penalty: a fine of \$10 000.

Section 46 : Use of position.

An officer of an incorporated association must not improperly use his or her position to —

- (a) Gain an advantage for the officer or another person; or
- (b) Cause detriment to the association.

Penalty: a fine of \$10 000.

Section 47 : Use of information. A person who obtains information because the person is, or has been, an officer

of an incorporated association must not improperly use the information to—

- (a) Gain an advantage for the person or another person; or
- (b) Cause detriment to the association.

Penalty: a fine of \$10 000.

Section 76 : At the annual general meeting of an incorporated association that is a tier 3 association in respect of its last financial year, the association must present for consideration —

- (a) The financial report of the association for that financial year audited as required under section 75; and
- (b) A copy of the auditor's report on the financial report.

Penalty: a fine of \$5,500.

Section 127 (1) : If an incorporated association incurs a debt and —

- (a) The association is insolvent at the time the debt is incurred or becomes insolvent by incurring that debt, or by incurring at that time debts including that debt; and
- (b) Immediately before the debt is incurred —
 - (i) There are reasonable grounds to expect that the association is insolvent; or
 - (ii) There are reasonable grounds to expect that, if the association incurs the debt, the association will become insolvent,

any person who was a member of the management committee of the association at the time the debt was incurred commits an offence.

Penalty: a fine of \$5,000.

What this means:

1. Directors must take their roles seriously and training should be provided so they understand what these mean in practice.
2. Financial training should also be given so they understand the impact of their decisions and the flags that indicate a solvency issue.

Recommended compliance system/document:

1. Board training calendar
2. Board induction procedure
3. Provide written board manual that discusses these roles and requirements
4. Have board members sign in their code of conduct/confidentiality agreement that they understand these matters.

13. Holding an annual general meeting

Section 50 (1) : Except as allowed under subsection (2), an incorporated association must in each calendar year hold an annual general meeting.

Penalty: a fine of \$5,000.

Section 50 (3): Except as allowed under subsection (2), an incorporated association must hold its annual general meeting—

- (a) Within six (6) months after the end of the association's financial year; or
- (b) Within such longer period as may in a particular case be allowed by the Commissioner.

Penalty: a fine of \$2,750.

Section 70 (1) : This section applies to an incorporated association that is a tier 1 association in respect of its last financial year.

Section 70 (2) : At the annual general meeting of an incorporated association, if section 69(1)(a) or (b) does not apply in respect of its last financial year, the association must present for consideration the financial statements of the association for that financial year.

Penalty: a fine of \$5,500.

Section 70 (3): At the annual general meeting of an incorporated association to which section 69(1)(a) or (b) applies in respect of its last financial year, the association must present for consideration —

- (a) The financial statements of the association for that financial year reviewed or audited as required under section 69; and
- (b) A copy of the report of the review or the auditor's report, as the case requires, on those financial statements.

Penalty: a fine of \$5,500.

Section 70 (4): If section 69(1)(b) applies to an incorporated association in respect of its last financial year, the association must give to the Commissioner as soon as is practicable after receiving them —

- (a) The financial statements of the association for that financial year reviewed or audited as required under section 69; and
- (b) A copy of the report of the review or the auditor's report, as the case requires, on those financial statements.

Penalty: a fine of \$5,500.

Section 73 (2) : At the annual general meeting of an incorporated association to which section 72(3)(a) or (b) does not apply in respect of its last financial year, the association must present for consideration —

- (a) The financial report of the association for that financial year reviewed as required under section 72(1); and
- (b) A copy of the report of the review of the financial report.

Penalty: a fine of \$5,500.

Section 73 (3): At the annual general meeting of an incorporated association to which section 72(3)(a) or (b) applies in respect of its last financial year, the association must present for consideration —

- (a) The financial report of the association for that financial year audited as required under section 72 (3); and
- (b) A copy of the auditor's report on the financial report.

Penalty: a fine of \$5,500.

What this means:

You must hold an annual general meeting in compliance with the Act and your constitution.

Recommended compliance system/document:

1. Schedule this to occur on the same month of every year and communicate this to stakeholders via your annual calendar.
2. If you have a compliance calendar you would also include it on that.

14. Preparing the association's financial statements

Section 66 : An incorporated association must keep financial records that —

- (a) Correctly record and explain its transactions and financial position and performance; and
- (b) Enable true and fair financial statements to be prepared in accordance with Division 3.

Penalty: a fine of \$2,750.

Section 67 : An incorporated association must retain its financial records for at least seven (7) years after the transactions covered by the records are completed.

Penalty: a fine of \$2,750.

Section 68 (1) : Within six (6) months after the end of each financial year, a tier 1 association in respect of the financial year must prepare financial statements that give a true and fair view of the financial position and performance of the association.

Penalty: a fine of \$2,750.

Section 71 (1) : Within six (6) months after the end of each financial year, a tier 2 association in respect of the financial year must prepare a financial report for the financial year that complies with subsection (2).

Penalty: a fine of \$2,750

Section 72 (1) : A tier 2 association in respect of a financial year must ensure that its financial report for the year is reviewed in accordance with Divisions 5, 6 and 7.

Penalty: a fine of \$2,750.

Section 72 (3): A tier 2 association in respect of a financial year must ensure that its financial report for the year is audited in accordance with Divisions 5, 6 and 7 if —

- (a) A majority of the members present at a general meeting of the association make a resolution to that effect; or
- (b) The association is directed by the Commissioner to do so.

Penalty: a fine of \$2,750.

Section 74 (1): Within six (6) months after the end of each financial year, a tier 3 association in respect of the financial year must prepare a financial report for the financial year that complies with subsection (2).

Penalty: a fine of \$2,750.

What this means:

You have to keep financial records up-to-date and accurate.

Recommended compliance system/document:

Speak to your auditor and ask them for an audit plan that outlines what information they need and when.

15. Tier 1 Financial Statements

A special note on tier 1 financial statements. We are including this because if you are a tier 2 or a tier 3 an auditor either reviews or audits your statements to ensure compliance however a tier 1 is not required to do so which means you don't have an independent checking compliance with the financial statement provisions in the Act.

Whilst there is no fine attached with the below requirements it's important to know that the Act stipulates these requirements under Part 5 Division 3 Subdivision 1 68(2)

For the purposes of subsection (1) —

- a. A tier 1 association that uses the cash basis of accounting may prepare —
 - (i) A statement of receipts and payments for the financial year; and
 - (ii) A reconciled statement of bank account balances as at the end of the financial year; and
 - (iii) A statement of assets and liabilities as at the end of the financial year;
 and;
- b. A tier 1 association that uses the accrual basis of accounting may prepare —
 - (i) A statement of income and expenditure for the financial year; and
 - (ii) A balance sheet.

What this means:

You need to know if you are under a cash or accrual basis for your accounting as the requirements do differ as noted above.

In practical terms this is something you should know anyway as it can affect your financial risk position if, for example, you are accrual accounting but treating the income stated as 'cash at bank' and making expenditure decisions on this and potentially risking insolvency.

16. Audit of the Association's Financial Statements

Section 69 (1) : A tier 1 association in respect of a financial year must ensure that its financial statements for the financial year are reviewed or audited in accordance with Divisions 5, 6 and 7 before being submitted to the annual general meeting of the association if —

- (a) A majority of the members present at a general meeting of the association pass a resolution to that effect; or
- (b) The association is directed by the Commissioner to do so.

Penalty: a fine of \$2,750.

Section 73 (4) : If section 72 (3) (b) applies to an incorporated association in respect of its last financial year, the association must give to the Commissioner as soon as is practicable after receiving them —

- (a) The financial report of the association for that financial year audited as required under section 72 (3); and
- (b) A copy of the auditor's report on the financial report.

Penalty: a fine of \$5,500.

Section 75 : A tier 3 association in respect of a financial year must ensure that its financial report for the year is audited in accordance with Divisions 5, 6 and 7.

Penalty: a fine of \$2,750.

Section 77

- (1) The Commissioner may direct an incorporated association to cause —
 - (a) The whole or any specified part of the association's financial records to be audited; and
 - (b) An auditor's report to be lodged with the Commissioner, within the time specified in the direction.

- (2) The direction may be given regardless of whether the financial records have previously been audited.
- (3) An incorporated association to which the direction is given must ensure that the direction is complied with.
- Penalty: a fine of \$2,750.*

Section 78 : A reviewer or auditor must conduct a review or audit under this part in accordance with the auditing standards.

Penalty: a fine of \$5,500.

Section 79 : A reviewer or auditor who conducts a review or audit under this part must retain all working papers prepared by or for, or considered or used by, the reviewer or auditor in accordance with the requirements of the auditing standards for at least seven (7) years after the date of the report prepared in relation to the review or audit.

Penalty: a fine of \$5,500.

Section 80 (1) : A reviewer or auditor who conducts a review or audit of financial statements or a financial report of an incorporated association under Division 3 must give the management committee of the association with the report of the review or audit —

- (a) A written declaration that, to the best of the reviewer's or auditor's belief, there have been no contraventions of any applicable code of professional conduct in relation to the review or audit; or
- (b) A written declaration that, to the best of the reviewer's or auditor's belief, the only contraventions of any applicable code of professional conduct in relation to the review or audit are those contraventions details of which are set out in the declaration.

Penalty: a fine of \$5,500.

Section 81 : A reviewer must include in the reviewer's report on financial statements or a financial report of an incorporated association —

- (a) A statement as to whether the reviewer became aware of any matter that causes the reviewer to believe that the financial statements do not, or the financial report does not, satisfy the requirements of Division 3; and
- (b) A description of any matter that causes the reviewer to believe that the financial statements do not, or the financial report does not, satisfy the requirements of Division 3; and
- (c) A statement as to why that matter causes the reviewer to so believe.

Penalty: a fine of \$5,500.

Section 82 (2) : An auditor who audits the financial statements or the financial report of an incorporated association must report to the members of the association in accordance with subsection (3).

Penalty: a fine of \$5,500.

Section 83 (1) : If —

- (a) A reviewer or auditor conducting a review or audit of the financial statements or the financial report of an incorporated association under this part is aware of circumstances that —
- (i) The reviewer or auditor has reasonable grounds to suspect amount to a contravention of this part; or
- (ii) Amount to an attempt, in relation to the review or audit, by any person to unduly influence, coerce, manipulate or mislead a person involved in the conduct of the review or audit; or

- (iii) Amount to an attempt, by any person, to otherwise interfere with the proper conduct of the review or audit; and
- (b) If paragraph (a)(i) applies —
 - (i) The contravention is a significant one; or
 - (ii) If the contravention is not a significant one and the reviewer or auditor believes that the contravention has not been or will not be adequately dealt with by commenting on it in the reviewer's or auditor's report or bringing it to the attention of the management committee of the incorporated association, the reviewer or auditor must notify the Commissioner in writing of those circumstances as soon as practicable, and in any case within twenty eight (28) days, after the auditor becomes aware of those circumstances.

Penalty: a fine of \$5,500.

Section 85 :

- (1) An officer of an incorporated association must allow a reviewer or auditor of the association access at all reasonable times to the books of the association.

Penalty: a fine of \$2,750.

- (2) A reviewer or auditor of an incorporated association may require an officer of the association to give the reviewer or auditor information, explanations or other assistance for the purposes of the review or audit.
- (3) A requirement under subsection (2) must be a reasonable one.
- (4) An officer of an incorporated association must comply with a requirement under subsection (2).

Penalty: a fine of \$2,750.

Section 86

- (1) : A reviewer or auditor of an incorporated association, or an agent of a reviewer or auditor authorised by the reviewer or auditor in writing for the purpose, is entitled —

- (a) To receive all notices of and other communications relating to any general meeting of the association that a member is entitled to receive; and
- (b) To attend any general meeting of the association; and
- (c) To be heard at any general meeting that the reviewer or auditor attends on any part of the business of the meeting that concerns the functions of the reviewer or auditor under this Part.

- (2) Subsection (1) applies despite the fact that the reviewer or auditor retires at the meeting or a resolution to remove the reviewer or auditor from office is passed at the meeting.
- (3) An incorporated association must ensure that a reviewer or auditor is afforded the rights conferred by this section.

Penalty: a fine of \$2,750.

What this means:

1. You must determine the appropriate tier for your organisation based on turnover and charitable status
2. Your members can determine in some cases if they wish to have a review or an audit and you must follow this determination
3. If you have an audit, ensure your auditor is appointed at the annual general meeting.

Recommended compliance system/document:

1. Schedule this to occur on the same month of every year and communicate this to stakeholders via your annual calendar.
2. Discuss the audit plan with the auditor.
3. If you have a compliance calendar you would also include it on that.
4. Ensure that any auditors appointed are qualified auditors.
5. You and your auditor must ensure compliance with the Act. Ensure the chosen Auditor has experience working with the Associations Incorporation Act and is fully aware of their compliance obligations with this Act and others such as the ACNC Act that may apply.

17. Appointment/resignation/removal of auditor

Section 87 (6) : An incorporated association must, within fourteen (14) days after being given a notice of resignation by a reviewer or auditor, lodge with the Commissioner notice of the resignation in the approved form.

Penalty: a fine of \$1 000.

Section 89 :

- (1) A reviewer or auditor of an incorporated association may be removed from office by resolution at a general meeting of the association in accordance with this section but not otherwise.
- (2) Written notice of an intention to move a resolution referred to in subsection (1) must be given to every member of the association at least two (2) months before the general meeting is to be held.
- (3) The notice must state in full the proposed resolution.
- (4) As soon as possible after being given the notice of the resolution, the committee of management of the association must —
 - (a) Give a copy of the notice to the reviewer or auditor; and
 - (b) Lodge a copy of the notice with the Commissioner.

Penalty: a fine of \$1 000.

What this means:

1. If you wish to remove your auditor, you must have the member's pass that motion.
2. You must notify the Commissioner of any resignation/change of auditor.

Recommended compliance system/document:

The annual general meeting agenda should have an agenda item titled 'auditor appointment/resignation'

18. Winding up/changing structure

Section 99 (2) : If an incorporated association becomes registered or incorporated as a prescribed body corporate, the body must notify the Commissioner in writing of the registration or incorporation within fourteen (14) days after it occurs.

Penalty: a fine of \$5,000.

Section 129 : Before the incorporation of an incorporated association may be cancelled under this Division —

- (a) The management committee of the association must examine the affairs of the association and by resolution declare that in its opinion the association is able to pay or meet its debts and liabilities; and
- (b) The association must then pass special resolutions —
 - (i) That its incorporation be cancelled under this division; and
 - (ii) Approving a distribution plan that complies with sections 133 and 134; and
- (c) The distribution plan must be approved by the Commissioner.

S130 (1) : If an incorporated association has passed the special resolutions referred to in section 129(b), the association must apply in the approved form to the Commissioner for —

- (a) Approval of the distribution plan; and
- (b) Cancellation of incorporation.

Penalty: a fine of \$1 000.

What this means:

If you change the legal structure of your organisation you must notify the Commissioner.

Recommended compliance system/document:

N/A

19. Association changes its address

Section 174 (1) : An incorporated association must lodge with the Commissioner notice of an address or postal address for service of any process, notice or other document on the association.

Penalty: a fine of \$1 000.

Section 175 :

- (1) An incorporated association must give notice to the Commissioner of the change of its address —
- (a) As specified under section 7(2)(a) or 103(1); or
 - (b) As notified under section 174 or 203; or
 - (c) As previously notified under this section.

Penalty: a fine of \$1 000.

- (2) The notice must be given within twenty eight (28) days after the change occurs.

What this means:

Notify the Commissioner if you change your address and you must do this within twenty eight (28) days after that change.

Recommended compliance system/document:

N/A

20. Making a false declaration

Section 177 (1) : A person must not in a document required by or for the purposes of this Act or lodged with or submitted to the Commissioner or in a document submitted to a meeting of members of an incorporated association —

- (a) Make or authorise the making of a statement that to the person's knowledge is false or misleading in any material particular; or
- (b) Omit or authorise the omission of any matter or thing without which the document is to the person's knowledge misleading in any material respect.

Penalty: a fine of \$5,000.

What this means:

All persons submitting information to the organisation must not provide false or misleading information, nor remove or authorise the removal of information.

Recommended compliance system/document:

1. Board induction procedure
2. Provide written board manual that discusses these roles and requirements
3. Have board members sign in their code of conduct/confidentiality agreement that they understand these matters.
4. Ensure that staff who are providing reports to the board also sign a similar declaration in their employment contract.

GUIDE TO THE TEMPLATE CONSTITUTION

Each topic of the constitution is identified in the table of contents (e.g. members.) Those topics are divided into sections focusing on a group of clauses relating to the same topic (e.g. becoming a member, members register, classes of members etc.).

They have been grouped so that when you go to a clause looking for information you should find all the information you need. The clauses may refer to another clause in the constitution, which means you will also need to look at that clause and consider its contents. In most cases there has been additional detail provided to each clause in the template constitution, which may seem like it is repeating information in other clauses. This has been done this way in line with the scope of the project to provide for transparency and clarity when the clause is read in its entirety.

Guide to the clauses

The below symbols and statements refer to the template constitution provided in this document and will help to interpret the requirement and situations relevant for your organisation. There have also been alternate clauses suggested throughout the document.

(M) = Mandatory Clause. This means that the Associations Incorporation Act 2015 (WA) has stipulated that you must have a clause that deals with this in your constitution. Where this symbol follows a number or a percentage in the template constitution, then this number or percentage is a mandatory, or minimum mandatory requirement.

It's important to understand that this means exactly that. You need a clause that deals with this in the constitution. The clause that's been provided in this document isn't what you have to have, it's a mix of what has been provided in the model rules from the Department of Commerce or it's what the solicitor working on this project has recommended to you as a best practice approach.

(R) = Model Rules. This means that this clause appears in the model rules released by the Department of Commerce, however it is not mandatory unless you see the ^(M) symbol that precedes it. Note that the wording may be different, as we have expanded on many areas to make it simpler or to consider scenarios and alternative clauses for those.

(BP) = Best Practice. This means that what is provided is recommended for best practice.

(C) = Charitable Status Clause. This is required if you are an organisation who holds charitable status.

(O) = Optional Clause. An optional clause offered where there are various scenarios and ways of approaching a situation that may apply to your organisation

You may also see a mixture of the above symbols. Where there are one or more symbols together than those elements apply in that example. For example ^{(M)(BP)(R)} tells you that the Act has stipulated you must have a clause that deals with this in the constitution and you have been provided with a recommended best practice clause to adopt/adapt and you will find a similar clause in model rules.

Blue text means that the clause is an optional one, or that you must choose one from a range of provided options. There will be accompanying comments to guide the use of that optional clause.

To provide you with more information on the use or purpose of a clause or a sub-clause or scenarios some organisations face and how you might manage those, you will see comments that look like this **[NB:]** throughout the template.

Where **[charitable]^(C)** exists, you must insert relevant information if you are a registered charity. If not, delete that word or requirement to fill in relevant information in the sentence.

MANDATORY CLAUSES

There are certain clauses that are required for compliance to the Associations Incorporation Act 2015 (WA). The below mandatory clauses are extracted from the Act. These clauses are noted throughout the manual and indicated by the symbol **(M)** where the Act has stipulated that you must have a clause that deals with this in your constitution.

Compliance to Associations Incorporation Act 2015 (WA)

Key:

S1 refers to Schedule 1 of the Act.

D1 refers to Division 1 of Schedule 1

D2 refers to Division 2 of Schedule 1

The number following refers to the item (think about it like a clause and sub clause) within Schedule 1 and that Division

Mandatory Clauses for Incorporated Associations in Western Australia: Associations Incorporation Act 2015 (WA), Part 3 – Rules; Division 1 – Rules of incorporated association		
Clause # in this document	Clause # in the Act.	Summary of Clause
Cover Page	22(1)(a); S1:D1:1	The name of your organisation.
Clause 1	22(1)(a); S1:D1:2	The name of your organisation.
Clause 3(y)(ii)	S1:D1:12 S1:D2:4	The day in each year on which the financial year of the incorporated association commences.
Clause 4	22(1)(b) S1:D1:2	The objects or purposes of the incorporated association.
Clause 6.1 Clause 29	22(2)	Property or income to be applied to promoting objects and purposes.
Clause 6.2 Clause 27	S1:D1:6(g) S1:D2:1	The circumstances (if any) in which payment may be made to a member of the committee out of the funds of the association.
Clause 7	S1:D1:3	The qualifications (if any) for membership of the incorporated association.
Clause 8	S1:D1:3	Provision for when membership commences.
Clause 9	52, 53, 54, 55, 56, 57, 58, S1:D1:4	The register of members of the incorporated association.
Clause 11	S1:D1:5	The entrance fees, subscriptions and other amounts (if any) to be paid by members of the incorporated association.
Clause 12	S1:D1:3	Provision for when membership ceases.
Clauses 13-18	50, 51, 52 S1:D1:9	Annual general meetings and special resolutions. The time within which, and manner in which, notices of general meetings and notices of motion are to be given, published or circulated.
Clause 14	S1:D1:13	The intervals between general meetings of members of the incorporated association and the manner of calling general meetings.
Clause 14	S1:D1:8 S1:D2:2	The notification of members or classes of members of general meetings of the incorporated association and their rights to attend and vote at those meetings.

Clause 14.3	73, 74, 75, 76	Financial reporting to the annual general meeting and Commissioner
Clause 14.9	S1:D1:10 S1:D2:3	The number of members, expressed as a percentage of membership, who may at any time require that a general meeting of the incorporated association be convened.
Clause 14.9	22(1)(c), S1:D1:7	The quorum and procedure at general meetings of members of the incorporated association.
Clause 17	30 S1:D1:14	The manner of altering and rescinding the rules and of making additional rules of the incorporated association.
Clauses 19-22	38 S1:D1:6(a)	Persons who have the power to manage the affairs of the association and constitute the board
Clause 20.3	39, 40 S1:D1:6(a)	Persons who are not to be members of the board
Clause 23.3	41	Handing over of documents and records when a person ceases to be a member of the board
Clause 21.1	42, 44	Directors duties and material personal interest
Clause 21.2	43	Voting where a Director has a material personal interest
Clauses 19-24	S1:D1:6	The name, constitution, membership and powers of the board or other body undertaking the management of the incorporated association (in this clause referred to as the committee) and provision for the election or appointment of members of the board.
Clause 22.4	S1:D1:6(d)	The filling of casual vacancies occurring on the board.
Clause 22.4	22(1)(d), S1:D1:6(e)	The quorum required for a board meeting.
Clause 22.5 Clause 25	S1:D1:6(b)	The terms of office of members of the board.
Clause 23	S1:D1:6(c)	The grounds on which, or reasons for which, the office of a member of the board shall become vacant.
Clause 30	S1:D1:11	The manner in which the funds of the association are to be controlled.
Clause 31	S1:D1:15	Provisions for the custody and use of the common seal of the incorporated association, if it has one.
Clauses 32-33	S1:D1:6(f)	The making and keeping of records of the proceedings at meetings of the committee.
Clause 33.2	S1:D1:16	The custody of books and securities of the incorporated association.
Clause 33.3	S1:D1:17	The inspection by members of the incorporated association of records and documents of the incorporated association.
Clause 34-35	S1:D1:18(a)	A procedure for dealing with any dispute under or relating to the rules between members.
Clause 34-35	S1:D1:18(b)	A procedure for dealing with any dispute under or relating to the rules between members and the incorporated association.
Clause 44.3	35, S1:D1:17	The association must keep the rules up-to-date and must make a copy of the rules available to members
Clause 48	24(1), 120, S1:D1:19	The manner in which surplus property of the incorporated association must be distributed or dealt with if the association is wound up or its incorporation is cancelled.

SOURCE: *Associations Incorporation Act 2015 (WA)*, Western Australian Government, 2016

Template constitution for service – based non-profits

CONSTITUTION OF

[Insert association name]

Incorporated

ABN [insert ABN]

An association incorporated pursuant to the Associations
Incorporation Act 2015 (WA)

PRELIMINARY MATTERS

1. Name ^{(M)(C)(R)}

The name of the association is [Insert Association Name] Incorporated. ^{(M)(C)(R)}

[NB: Schedule 1, Division 1, Item 1]

2. Type of entity ^(BP)

The association is a not-for-profit association incorporated under the *Associations Incorporation Act 2015* (WA). ^(BP)

[NB: Recommended for clarity and transparency]

3. Definitions ^{(R)(BP)}

[NB: We recommend including any other definitions that you use and delete those you choose not to adopt. e.g. if you don't adopt circular resolutions delete from this list.

You will also note as you progress through this template constitution that we have included definitions in specific areas to provide clarity to that clause when read 'in isolation']

In this Constitution, unless the contrary intention appears, words and phrases have the following meaning:

- (a) **ACNC** means the Australian Charities and Not-for-profits Commission. ^(C)
- (b) **ACNC Act** means the Australian Charities and Not-for-profits Commission Act 2012 (Cth). ^(C)
- (c) **Administrative Tribunal** means the State Administrative Tribunal of Western Australia.
- (d) **Annual General Meeting** means a general meeting of members called under clause 14.4.
- (e) **Associate member** means a member who has no right to vote but has all other rights of members as determined by the board or by the members at a general meeting.
- (f) **Association** means [insert full name] ^(M) Incorporated.
- (g) **Associations Act 2015** means the *Associations Incorporation Act 2015* (WA).
- (h) **Association's books** means the association's registers, minutes, documents, securities, financial records, financial statements and financial reports as defined in Section 62 of the Associations Act, however compiled, stored or recorded.
- (i) **Association's Regulations** means the regulations made under the Associations Act (if any).
- (j) **Board** means the group of people, called directors, who are responsible for the management of the affairs of the association.
- (k) **Board meeting** means a meeting of the directors.
- (l) **By-laws** mean any additional arrangements or processes adopted by members by ordinary resolution to supplement this constitution. ^(O)
[NB: Remove sub-clause (l) By-laws above if you don't have by-laws]
- (m) **Chairperson** means the person elected by the board to hold this office.
- (n) **Charitable Collections Act** means the *Charitable Collections Act 1946* (WA).
- (o) **Circular Resolution**, which may be a member's circular resolution or a board circular resolution, means a resolution that is passed without a face-to-face general meeting or board meeting being held. Separate copies of the circular resolution may be used for signing by members or directors provided the wording of the circular resolution and statement is identical in each copy. The circular resolution is passed when the last member or director signs the circular resolution.
[NB: Remove sub clause (O) circular resolution if you choose not to allow circular resolutions]
- (p) **Clause** means a clause of this constitution.
- (q) **Commissioner** means the person designated as the Commissioner from time to time under the Associations Act, currently the Executive Officer of the Western Australian Department of Commerce.
- (r) **Constitution** means this document as amended from time to time.
- (s) **Corporations Act** means the *Corporations Act 2001* (Cth).

- (t) **Department** means the Western Australian government department principally assisting with the administration of the Associations Act, currently the Western Australian Department of Commerce.
- (u) **Director means** a member of the board appointed under clause 22.
- (v) Financial records means:
- (i) Invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers,
- (ii) Documents of prime entry such as sales day books, purchase day books, sales returns day books, purchases returns day books, bank books, cash receipts books, cash payments books, petty cash receipts books, petty cash payments books and journals, and
- (iii) Working papers and other documents needed to explain:
- (A) The methods by which financial statements are prepared, and
- (B) Adjustments to be made in preparing financial statements.
- (w) **Financial report** refers to the financial report for a financial year of a tier 1, 2 or 3 ^(o) association and comprises:
- (i) The financial statements for the financial year of a tier 1, 2 or 3 ^(o) association,
- (ii) The notes to the financial statements for the financial year of a tier 1, 2 or 3 ^(o) association, and
- (iii) The declaration about the financial statements and notes made by the board of a tier 1, 2 or 3 ^(o) association.
- [NB: If you are a tier 1 and do not complete a financial report you can delete all of the above clause (w). If you are a tier 1 and wish to have a financial report then select 1. If you are a tier 2 or a tier 3 this definition applies, and you should keep this, selecting the appropriate tier number. For a definition on what the tiers mean see below under T]*
- (x) Financial Statements means:
- (i) If the association uses the cash basis of accounting:
- (A) a statement of receipts and payments for the financial year,
- (B) a reconciled statement of bank account balances as at the end of the financial year, and
- (C) a statement of assets and liabilities as at the end of the financial year.
- (ii) If the association uses the accrual basis of accounting:
- (A) a statement of income and expenditure for the financial year, and
- (B) a balance sheet.
- (y) Financial year means:
- (i) In relation to the association's first financial year, the period ending twelve (12) months from the date of incorporation of the association, and
- (ii) After the association's first financial year, a period of twelve (12) months commencing on 1 July ^(o) and ending on 30 June ^(o) each year.
- [NB: For existing organisations, remove (i). For new organisations, retain both clauses. Change the financial year if this isn't your financial year.]*
- (z) **General meeting** means a meeting of the members of the association to which all Members (including associate members, if any) are invited to attend, and is either:
- (i) an annual general meeting, or
- (ii) a special general meeting.
- (aa) **Meeting Chair** means the person who chairs a general meeting or a board meeting.
- (bb) **Member** means a person or organisation that is a member of the association.
- (cc) **Minutes** means a permanent and detailed record of the deliberations of, and resolutions adopted at, general meetings and board meetings and may include a hardcopy or an authorised softcopy documentation of those deliberations and resolutions.
- (dd) **Model rules** means the template set of rules for incorporated associations established under the

- associations regulations.
- (ee) **Officeholder** means a director referred to in clause 20.2(a)
- (ff) **Ordinary resolution** means a resolution at a meeting that:
- (i) Is not a special resolution, and
 - (ii) Is passed by the votes of more than 50% of the persons who are entitled to cast a vote at that meeting.
- (gg) **Organisational member** means a member of the association that is a corporation, incorporated association or other form or body corporate.
[NB: You can delete if not applicable. See clause 10 for examples of this member]
- (hh) **Organisational representative** means a natural person (i.e. human being) nominated by the organisational member to represent the organisational member at 1 or more general meetings.
[NB: You can delete if not applicable. See clause 10 for examples of this member]
- (ii) **Poll** means voting conducted by a show of hands which is recoded in writing in the minutes.
- (jj) **Quorum** means the number of persons required to be present in order to conduct a meeting.
- (kk) *[NB: Insert if the association is, or intends to be, registered as a charity with the ACNC].*
“Registered Charity means an organisation that is registered as a charity under the ACNC Act”. ^(c)
- (ll) **Special general meeting** means any general meeting of members that is not an annual general meeting.
- (mm) **Special resolution** means a resolution proposed at a meeting and passed by the votes of not less than seventy five (75)% ^(M) of the persons who are entitled to cast a vote at that meeting.
[NB: It differs from an ordinary resolution by the number of votes needed to pass a motion and there are clear guidelines in section 51 of the Act on the requirements for a special resolution (see clause 15 that includes these requirements)]
- (nn) **Surplus property** means the property remaining when the association is wound up or cancelled after satisfying:
- (i) The debts and liabilities of the association, and
 - (ii) The costs, charges and expenses of winding up the association, but does not include books relating to the management of the association.
- [NB: Choose one of below :]*
- (oo) **Tier 1 association** means an association that, in a financial year:
- (i) Has a revenue of less than \$250,000 or such other amount that is prescribed from time to time under section 64(1) of the Associations Act, or
 - (ii) Has been declared by the Commissioner to be a Tier 1 association.
- Tier 1 associations can also elect to prepare basic financial statements with no independent review or audit
- (pp) **Tier 2 association** means an association that, in a financial year:
- (i) Has a revenue of more than \$250,000 but less than \$1,000,000, or
 - (ii) Has been declared by the Commissioner to be a Tier 2 association.
- Tier 2 associations must prepare financial reports that give a true and fair view of the association in accordance with Australian Accounting Standards that is reviewed by a professional accounting body holding a public practicing certificate.
[NB: A review is a minimum requirement but an association can be audited if so chosen or required by members or the Commissioner]
- (qq) **Tier 3 association** means an association that, in a financial year, has revenue of \$1,000,000 or more or such other amount that is prescribed from time to time under section 64(3) of the Associations Act.
Tier 3 associations must prepare financial reports that give a true and fair view of the association in accordance with Australian Accounting Standards which is audited by a professional accounting body holding a public practicing certificate.
[NB: Select the tier above that applies – either (oo) or (pp) or (qq) and delete the other two]

3.1. Relationship between Constitution and Associations Act ^(BP)

The Associations Act overrides any provision in this constitution, which is inconsistent with the Associations Act.

[NB: Whilst it's not mandatory to include the provisions of clause 3.1 in your constitution, this rule is in the Act at section 201. Including this in the constitution just ensures everyone understands that the Act takes precedence.]

3.2. Interpretation ^(BP)

In this Constitution:

- (a) The words '**including**', '**for example**', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- (b) Reference to an '**Act**' includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as the Associations Regulations).

[CHARITABLE] OBJECT, PURPOSES AND POWERS**4. Object and purposes ^{(M)(C)(R)}**

The Association's object is to pursue the following [charitable] ^(C) purposes: ^{(M)(C)(R)}

[Insert Association's object/s and [charitable] ^(C) purposes here]

[NB: Compliant with Schedule 1, Division 1, Item 2]

5. Powers ^{(M)(C)(R)}

Subject to the Associations Act, the association may do all things necessary to lawfully pursue its objects [and charitable] ^(C) purposes. ^{(M)(C)(R)}

[NB: Compliant with Schedule 1, Division 1, Item 6]

6. Not-for-profit ^{(M)(C)(R)}**6.1. Property and income ^{(M)(C)(R)}**

The property and income of the association shall be applied solely to promoting its object and purposes and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to any member, except in good faith in promoting such object and purposes. ^{(M)(C)(R)}

[NB: Compliant with Section 22]

6.2. Permitted payments ^{(M)(C)(R)}

Provided it is done in good faith, clause 6.1 does not prevent the association from:

- (a) Paying a member for goods or services they have provided, or expenses they have properly incurred at fair and reasonable rates, or ^{(M)(C)(R)}
- (b) Making payment to a member in carrying out the association's objects [and charitable] ^(C) purposes ^{(M)(C)(R)}

[NB: Compliant with Schedule 1, Division 1, Item 6(g) and Schedule 1, Division 2, Item 1]

MEMBERS – MEMBERSHIP REQUIREMENTS

[NB: Some associations limit membership to their directors only. This template constitution will allow for this. The board simply needs to ensure that it only accepts such people as members as it proposes to appoint as directors, and a minimum of six (6) people.]

7. Number, qualifications and liability of members ^{(M)(R)}

[NB: Schedule 1, Division 1, Item 3 in the Act required you to have clauses that provides for ‘the qualifications (if any) for membership of the incorporated association and provision for when membership commences and when it ceases. There are some components such as member numbers that are mandatory, and others where it is mandatory to have a clause and what is being suggested is best practice and may also be in model rules]

7.1. Number ^{(M)(R)}

The association shall have a minimum of six (6) members with full voting rights. ^{(M)(R)}

[NB: This is the minimum number of members you must have to comply with the Associations Incorporations Act 2015 (WA) Section 4 (b).

You may choose to have a minimum and a maximum amount. If so, you would state: ‘The association shall have a minimum of six (6) and a maximum of __ members with full voting rights’.

If you want to include a maximum number, we recommend you always show a minimum number to make sure that you will always be compliant with the Act.

The number of members is an important consideration because there are requirements throughout the constitution for a percentage of members needed to make decisions, and vote on membership matters.]

7.2. Qualifications ^{(M)(R)}

[NB: It is important to note that whilst in this template and in the proposed draft model rules there are not eligibility requirements for membership, there is minimum eligibility requirements for directors. This means that when you are drawing from your membership for director positions, to ensure your duty of care you should have processes in place so that ineligible members don’t end up sitting on the board and those members breach the Act, possibly facing a fine of \$10,000 under Section 39 (2).]

- (a) Subject to clause 7.2 (b), any person who supports the object [and charitable]^(C) purposes of the association is eligible to apply for membership. ^{(BP)(R)(O)}

[NB: Alternative clauses below:]

Where the only members of the association are the directors:

- a) *Subject to clause 7.1 the number of members shall be [insert number no less than six (6)].*
^{(BP)(R)(O)}

Where staff are not permitted to become a member :

- a) *Subject to clause 7.2(b) and except for paid staff members, any other person who supports the object [and charitable] (C) purposes of the association is eligible to apply for membership* ^{(BP)(R)(O)}

- (b) **By-laws made under clause 45 require members to hold specified educational, trade or professional qualifications.** ^{(O)(R)}

[NB: Delete 7.2(b) if:

- a) *You do not have by-laws, or*
b) *If you have by-laws but they don’t note any special member qualifications.*

If you delete this clause, also delete ‘subject to clause 7.2(b) wording in clause 7.2(a).]

- (c) The association must comply with all legal and regulatory obligations that apply to the association when assessing eligibility of an applicant to become a member. ^{(BP)(R)}
- (d) A person under the age of fifteen (15) years cannot belong to a class of members that has voting rights. ^{(BP)(R)}

*[NB: We cannot comment on the rationale for the Department of Commerce setting a minimum age for voting members to be aged fifteen (15) years or older. We believe this relates to *doli incapax* (section 7.1 of the Commonwealth Criminal Code) which is the presumption that a child under the age of ten (10) is ‘incapable of crime’ under legislation or common law and ages ten (10) - fourteen (14) ‘can only be criminally responsible for an offence if the child knows that his or her conduct is wrong’. The burden of proof for this lies with the prosecution. State law does differ but in Western Australia this is currently applicable for ages ten (10) to fourteen (14). With the maximum age for an appearance in a child, juvenile or youth court being 18 years old. This complexity in law is one of the main reasons many associations prefer to appoint members aged 18 or over. We have retained the model rules clause that uses a fifteen (15) year old minimum age for a voting member. If you wish to have members under the age of fifteen (15) years old, consider a different class of membership for those members – an associate membership (e.g. youth or junior member) that does not have voting rights. This also provides opportunities for associations to review their succession plans and strategies for encouraging younger people on their boards.]*

7.3. Liability ^{(BP)(R)}

[NB: This clause recognises members liability to the association, and on behalf of the association. This Act states that board members are not liable by reason only of being a member of the board (Section 19 (1)). Having this liability provision extended to all members ensures that all members have a degree of protection (noting inappropriate practices e.g. deliberate fraud etc. are a different matter). Whilst you don't have to have this in the constitution, it's recommended as it provides transparency and clarity for members on the limits of their liability.]

- (a) Members are to pay any membership fees set by the association. ^{(BP)(R)}
- (b) Members are not liable to pay, by reason of the person's membership, any other debts incurred by or on behalf of the association, including the costs of winding up of the association. ^{(BP)(R)}

8. Becoming a member

[NB: A membership application form and process is a ‘best practice’ approach to having members agree to the organisations objectives and (charitable) purposes and any matters such as privacy provisions of their information and any particulars of the membership level such as voting rights. You can also include a confirmation that the person applying to be a member agrees to be bound by the constitution and any member grievance procedures you have.

*Given the change to director eligibility, it's also an opportunity to inform members that if their application for membership is successful, it does not necessarily constitute eligibility for a directors position (or any other eligibility for any other role e.g. *Walsh v St Vincent de Paul Society Queensland (No. 2) [2008]*) <https://wiki.qut.edu.au/pages/viewpage.action?pageId=86778127>*

The application form also ensures you to comply with the Privacy Act 1988 by stipulating why you are collecting the information from a member and how this will be used and stored (you will need a privacy policy as well!) A template member's application form has been included at the end of this manual.

Note the ‘in writing’ could be an application lodged via email or in an online form if you choose to accept that. If so, add this to clause 8.1a of the constitution.

We have also included a sample organisational member application form in the appendix where the organisational member appoints an organisational representative.]

8.1. Application ^{(BP)(R)}

- (a) A person who wishes to become a member (**applicant**) shall:
 - (i) Make a written membership application to the Association in the form set out in schedule 1 to this constitution (**membership application form**), and ^{(BP)(R)}
 - (ii) Be nominated for membership by a current member (**nominee**). ^{(BP)(R)}
- (b) The applicant and the nominee shall sign the membership application form. ^{(BP)(R)}

- (c) If the association has more than one class of members, the membership application form shall specify the applicable class of membership applied for by the applicant. ^{(BP)(R)}
- (d) An applicant becomes a member if:
 - (i) they meet all membership qualifications under clause 7.2, ^{(BP)(R)}
 - (ii) they complete and forward a membership application form to the Secretary under clause 8.1(a)(i), ^(BP)
 - (iii) the board approves their membership application, and ^{(BP)(R)}
 - (iv) they pay any membership fees due under clause 11. ^(BP)
- (e) When the requirements of clause 8) have been fulfilled the person becomes a member, is entitled to exercise all the rights a.1(d nd privileges of a member and is bound by this constitution. ^{(BP)(R)}

8.2. Consideration of membership application ^{(BP)(R)}

- (a) The board shall consider and decide whether to approve or reject a membership application. ^{(BP)(R)}
- (b) Subject to clause 8.2(c), a membership application shall be considered and decided in the order in which it was received. ^{(BP)(R)}
- (c) When considering a membership application, the board may seek clarification of any matter or further information in support of the application, and may delay its decision to allow for that material to be provided. ^{(BP)(R)}
- (d) The board shall not approve a membership application unless the applicant: ^{(BP)(R)}
 - (i) meets all the membership qualifications under clause 7.2, and ^{(BP)(R)}
 - (ii) makes a written membership application under clause 8.1(a)(i), ^{(BP)(R)}
- (e) The board may refuse to accept a membership application even if the applicant has applied in writing and meets all membership qualifications under clause 7.2. ^{(BP)(R)}
- (f) As soon as is practicable after a decision is made under clause 8.2(a) the board shall give written notification to the applicant of the outcome of the membership application. ^{(BP)(R)}
- (g) The board is not obliged to provide reasons to the applicant or to any other person for its decision to accept or reject a membership application. ^(BP)

[NB: This optional clause below has been included as there may be a concern from members that providing the board with the power to reject an application without providing grounds for that rejection is too risky. This optional clause means that it provides the applicant with an alternative option to appeal to all members to override that board decision.]

- (g) If the applicant's membership application is rejected by the board, the applicant may request that their membership application, accompanied by with a brief document prepared by the applicant in support of their membership application, be put in the form of an ordinary resolution to the next occurring general meeting of the association. ^(O)

9. Members register ^{(M)(R)}

9.1. Content of members register ^{(M)(R)}

- (a) The association shall maintain and keep updated a members register which shall contain: ^{(M)(R)}
 - (i) the full names of each member, ^{(M)(R)}
 - (ii) the contact postal, residential and email addresses of each member, ^{(M)(R)}
 - (iii) the class of membership held by each member, and ^{(M)(R)}
[NB: if only one (1) class of members, this clause can be deleted],
 - (iv) the date upon which a person became a member. ^{(M)(R)}
- (b) Within twenty eight (28) days after a change in membership the Secretary shall ensure that a membership change is recorded in the members register. ^{(M)(R)}
- (c) The Secretary shall ensure that the members register is kept and maintained at such place as the board decides. ^{(M)(R)}

[NB: As this is the first clause that mentions a Secretary (officeholder) and knowing that some

Linkwest member organisations don't have/don't wish to have officeholders (nor under the Act do they need to) then amend the word 'Secretary' to Board. See clause 24. Officeholders in this template constitution for more information on this scenario. Note also when it states 'ensure' this means that this function can be delegated, but that doesn't absolve that officeholder of their responsibility for ensuring that delegation has been carried out.]

9.2. Inspection and copying of members register ^{(M)(R)}

- (a) A member shall be entitled to inspect the members register free of charge, at such time and place as is mutually convenient to the association and the member. ^{(M)(R)}
- (b) A member shall contact the Secretary to request to inspect the members register. ^{(BP)(R)}
- (c) A member may make a copy of details from the members register but has no right to remove the members register. ^{(M)(R)}
- (d) A member may make a request in writing to the Secretary for a copy of the members register for which the association may charge a reasonable fee, which is to be determined by the board from time to time. ^{(BP)(R)}

[NB: Whilst you can't charge for a copy of the rules of the organisation (Section 36 (2) of the Act) you are able to set a 'reasonable charge' for photocopying the/parts of the members register under Section 56 (4) of the Act]

- (e) The board may require a member who requests a copy of the members register under clause 9.2(d) to provide a statutory declaration to the Secretary setting out the purpose of the request and declaring that the purpose is connected with the association's affairs. ^{(BP)(R)}

[NB: You can change the wording 'may' to 'will' if you choose. Under Section 54 (3) you are permitted to include this requirement in your constitution.]

9.3. Prohibited use of information on members register ^{(M)(R)}

[NB: Section 57 of the Act provides for scenarios where the members register may be used improperly and there are fines of up to \$10,000 where a person uses or discloses information in the register of members except for the conditions provided for in the below clause.

We suggest that you have a members register access policy and ask the person when making a statutory declaration to also declare that they are aware of the \$10,000 fine under Section 57 of the Associations Incorporations Act should they use or disclose information that contravenes the Act and the below clause in your constitution.]

A member shall not use or disclose the information on the members register: ^{(M)(R)}

- (a) To gain access to information that a member has deliberately denied to them (for example, in relation to a social, family or legal difference or dispute involving the latter member), ^{(M)(R)}
- (b) To contact, send material to the association or a member for the purpose of advertising for political, religious, charitable or commercial purposes, or ^{(M)(R)}
- (c) For any other purpose unless the use of the information: ^{(M)(R)}
 - (i) Is approved by the board, and ^{(M)(R)}
For a purpose directly connected: ^{(M)(R)}
 - (A) To the association's affairs, or ^{(M)(R)}
 - (B) To the provision of information to the Commissioner under the Incorporations Associations Act. ^{(M)(R)}

10. Classes of members ^{(BP)(R)}

[NB: There are two options for clauses in this section.

- (a) *The first is where you only have one class, and*
- (b) *The second is where you have more than one class of members.*

Some organisations have associate members to enable them to elect suitably qualified persons to the board

where they have, for example, industry qualifications in their membership eligibility.

Another example is where you may choose to have a ‘junior’ member mentioned earlier where a person under the age of fifteen (15) can join this membership class that has no voting rights. Select the one that applies to you.

One more example that may apply to some of you is where an organisation is a member of the association. For example, this could be a council representative who is on your board or is a member of the organisation but the membership rights are assigned to that council, not the individual. This means that if that individual is no longer assigned representative rights from the council, the council will appoint another individual]

10.1. Classes of members ^{(BP)(R)}

[NB: Where there is only one (1) class of member]

- (a) The membership of the association consists of only one class of members. ^{(O)(R)}
- (b) A member has all rights provided to members under the constitution, including the right to vote, and other rights and benefits as determined by the board or by resolution of the members at a general meeting. ^{(M)(R)}
- (c) A person under the age of fifteen (15) years cannot be a member. ^{(BP)(R)}

[NB: See comments at 7.2(d) relating to non-voting members under fifteen (15) years of age]

10.1. Classes of members ^{(BP)(R)(O)}

[NB: Where there are proposed to be more than one class of Members]

- (a) The membership of the association consists of: ^{(BP)(R)(O)}
 - (i) Ordinary members, and ^{(BP)(R)(O)}
 - (ii) Associate members where the association has created such a category of membership as provided in clause 10.1(b). ^{(BP)(R)(O)}

[NB: Associate member is just one example. If you call them something else then you could either leave it as it is – see sub clause (b) that provides for this, or be more specific and change the name from associate members to whatever you call that class of members. If you have more than these two membership classes and you wish to have them specifically mentioned in the constitution then add them to this list. You will also have to ensure you note voting rights. See sub clause (e) and (f).]

- (b) The Association may have any category of associate members determined by resolution of members at a general meeting, including junior membership, senior membership, honorary membership, or life membership etc. ^{(BP)(R)(O)}

[NB: You can delete this clause if you don’t want to leave it too ‘open’. If you choose to do this, this will restrict you from only having the classes listed at sub clause (a) until you change your constitution]

- (c) A member under the age of fifteen (15) years cannot be an ordinary member, but may be an associate member. ^{(BP)(R)(O)}

[NB: See comments at 7.2(d) relating to non-voting members under fifteen (15) years of age]

- (d) If the association has two or more classes of members, no member can belong to more than one class of members. ^{(M)(R)}

- (e) An ordinary member has rights of a member, including: ^{(M)(R)}

- (i) The right to vote, ^{(M)(R)}
- (ii) Other rights and benefits determined by the board, or ^{(M)(R)}
- (iii) Other rights and benefits determined by resolution of the members at a general meeting. ^{(M)(R)}

- (f) An associate member does not have a right to vote but has all other rights of a member referred to in clauses 10.1 (e)(ii) and 10.1 (e)(iii). ^{(BP)(R)}

[NB: If you don’t use associate member class then you can replace with a specific class name]

[NB: If you have specifically listed any other classes of member at sub clause (a) you need to list below the class name and what voting rights you are assigning them.]

11. Membership fees ^{(M)(R)(O)}

11.1. Entrance fee ^{(M)(R)(O)}

[NB: You don't have to have an entrance fee. Whilst it's coloured blue for optional, it has the mandatory symbol as Schedule 1, Division 1, Item 5 requires you to have a clause for any 'entrance fees, subscriptions or other amounts (if any) to be paid by members. This could be something like an admin fee for members who are joining for the first time. If you don't have a charge, nor wish to have this then you can delete this clause.

If you wish to (or may wish to in the future) charge an entrance fee then:

- *If only one class of members delete the words "or each class of members"*
- *If more than one class of members delete the words 'member, or each'.*

- (a) **The board may from time to time determine the entrance fee, to be paid to the association by each member, or each class of members, upon becoming a member (membership entrance fee)**

^{(M)(R)(O)}

11.2. Annual membership fee ^{(M)(R)}

[NB: You don't have to have an annual membership fee, although most organisations do. See 11.3 alternate clause if you don't. The mandatory symbol is on this because Schedule 1, Division 1, Item 5 requires you to have a clause for any 'entrance fees, subscriptions or other amounts (if any) to be paid by members.]

- (a) The board may from time to time determine the annual membership fee, if any, to be paid by each member (**annual membership fee**). ^{(M)(R)}

[NB: You could include the membership fee amount in this clause however this does restrict your ability to amend that amount without modifying the constitution. Most organisations keep it flexible and then have membership policy document that sets out the amount/s for membership fees]

- (b) Each member shall pay the annual membership fee to the association as and when decided by the board. ^{(BP)(R)}

[NB: As membership applications and their fees are accepted throughout the year, you generally wouldn't put a date or event.]

- (c) Subject to clause 11.2(d), if a person fails to pay the annual membership fee to the association within three months after the due date or **forty eight (48) hours** ^(O) prior to the AGM, whichever comes first, the person ceases to be a member. ^{(BP)(R)}

[NB: You can change the 'three month' timeline if you choose. This clause clearly makes it known that whilst your application may be accepted, if you haven't paid at the same time and your fees are still owing then your membership can be terminated.

An example scenario: someone gets a heap of members together to vote at the AGM and they vote but they still haven't paid membership! You can also change the words 'or forty eight (48) hours prior to the AGM' to be another deadline such as 'seven days to the AGM' etc.]

- (d) If a person ceases to be a member under clause 11.2(c) and subsequently pays all the member's outstanding fees to the association, the board may, if it considers fit and at its sole discretion, reinstate the members rights and privileges from the date on which the outstanding fees are paid, including the right to vote. ^{(BP)(R)}

- (e) The board shall not be obliged to provide reasons for its decision to, or not to, reinstate the member's rights and privileges under clause 11.2(d). ^(O)

11.2 Annual membership fee ^{(M)(R)}

[NB: Alternate clause if you don't charge a membership fee, nor wish to in the future. Remember once it's in the constitution it's more difficult to change. The mandatory symbol is on this because Schedule 1, Division 1, Item 5 requires you to have a clause for any 'entrance fees, subscriptions or other amounts (if any) to be paid by members.]

- (a) **Members are not required to pay any annual membership fees to the organisation.** ^{(M)(O)}

12. Termination of membership ^{(M)(R)}

[NB: Schedule 1, Division 1, Item 3 requires you to have clause/s for ‘when membership commences and when it ceases.’ We have noted this clause (12) of the template constitution as mandatory but the below clauses and sub-clauses are best practice, unless it has the mandatory symbol]

12.1. Circumstances when membership terminates ^{(BP)(R)}

- (a) A member’s membership terminates if the member: ^{(BP)(R)}
- (i) Ceases to be a member under clause 12.2 (c), ^{(BP)(R)}
 - (ii) Resigns as a member under clause 12.2 ^{(BP)(R)}
 - (iii) Is expelled as a member under clause 12.3 or ^{(BP)(R)}
 - (iv) Dies. ^{(BP)(R)}
- (b) The Association shall keep a record of: ^{(M)(R)}
- (i) The date on which member’s membership terminates under clause 12.1 (a) and ^{(M)(R)}
 - (ii) The reason the member’s membership terminates ^{(M)(R)} within twenty eight (28) days after the change occurs ^(M) and retain this information for a period of one year after a person’s membership terminates. ^{(BP)(R)}

12.2. Resignation of member ^{(BP)(R)}

- (a) A member who has paid all membership fees may resign as a member by giving written notice of their resignation to the Secretary. ^{(BP)(R)}
- (b) The member’s resignation is effective as at: ^{(BP)(R)}
- (i) The time of receipt by the Secretary of the person’s written notice of resignation, or ^{(BP)(R)}
 - (ii) If a later time is stated in the notice, at that later time. ^{(BP)(R)}
- (c) Despite their resignation, any member who resigns from the association remains liable to pay any outstanding membership fees to the association. ^{(BP)(R)}
- (d) The outstanding fees referred to in clause 12.2(c) may be recovered as a debt due by the member to the association. ^{(BP)(R)}

12.3. Suspension or expulsion of member ^(R)

[NB: You don’t have to have provision to provide the board with the power to suspend or expel a member however this does give you them the ability to do so if there are issues. The following clauses 12.3; 12.4 and 12.5 provide for a procedural process to manage the suspension and expulsion. Model rules have similar processes however we have expanded on a few areas. We have also included the mandatory twenty eight (28) days to record a change in the members register (Section 53 (1)(b)) that model rules does not include, however if you don’t do this within this period you can receive a penalty so this makes your responsibilities to comply with Section 53 (1)(b) in the Act transparent.]

- (a) The association may, by board resolution, suspend or expel a member from membership if: ^{(BP)(R)}
- (i) The member refuses or neglects to comply with this constitution, or ^{(BP)(R)}
 - (ii) The member’s conduct or behaviour is detrimental to the interests of the association. ^{(BP)(R)}

[NB: Section 21 of the Act provides that each member is bound by, and observes all the provisions of the organisations constitution (rules). Another reason why you would have them sign this on the membership application form so that it is clear they agreed to be bound by the constitution.]

- (b) The Secretary shall, not less than twenty eight (28) days ^{(R)(O)} before the board meeting at which the suspension or expulsion resolution is to be considered, give written notice to the member: ^{(BP)(R)}
- (i) Of the proposed suspension or expulsion and the grounds on which it is based, ^{(BP)(R)}
 - (ii) Of the date, place and time of the board meeting at which the suspension or expulsion resolution is to be considered, ^{(BP)(R)}
 - (iii) That the member, or the member’s representative, may attend the board meeting at

- which the suspension or expulsion resolution is to be considered, and ^{(BP)(R)}
- (iv) That the member, or the member's representative, may address the board at the board meeting at which the suspension or expulsion resolution is to be considered and shall be given a full and fair opportunity to state the member's case orally, in writing, or both. ^{(BP)(R)}
- (c) At the board meeting at which the suspension or expulsion resolution is to be considered the board shall: ^{(BP)(R)}
- (i) Give the member, or the member's representative, a full and fair opportunity to state the member's case orally, ^{(BP)(R)}
 - (ii) Give due consideration to any written statement submitted by the member, and ^{(BP)(R)}
 - (iii) Determine whether or not the member should be: ^{(BP)(R)}
 - (A) expelled as a member, or ^{(BP)(R)}
 - (B) suspended as a member, and if so, the period of the member's suspension. ^{(BP)(R)}
- (d) Once the board has decided to suspend or expel a member, the member is immediately suspended or expelled. ^{(BP)(R)}
- (e) Within seven (7) days ^{(R)(O)} of the board meeting at which the suspension or expulsion resolution is considered, the Secretary shall ensure that the member is informed in writing of the board's decision and the reasons for the board's decision. ^{(BP)(R)}

12.4. After suspension of member ^{(BP)(R)}

[NB: See comments under 12.3]

- (a) If a member's membership is suspended under clause 12.3 the Secretary shall record in the members register within twenty eight (28) days ^(M) of the date of suspension: ^{(BP)(R)}
 - (i) The suspended member's name, ^{(BP)(R)}
 - (ii) The date on which the member's suspension takes effect, and ^{(BP)(R)}
 - (iii) The length of the suspension determined by the board under clause 12.3(c)(iii)(b) ^{(BP)(R)}
- (b) A suspended member cannot exercise any rights or privileges of a member, including voting rights, during the period of suspension. ^{(BP)(R)}
- (c) Upon the expiry of the suspension period, the Secretary shall record in the members register that the member is no longer suspended within twenty eight (28) days ^(M) of that expiration date. ^{(BP)(R)}

12.5. Member's right of appeal against suspension or expulsion ^{(M)(R)}

[NB: This is mandatory because you are required under Schedule 1 Division 1 item 18 to document 'a procedure for dealing with any dispute under or relating to the rules between members or between member and the incorporated association'. If you have the power to suspend or expel in the constitution, you must have a dispute resolution process and this is the process related to suspension or expulsion. Whilst there are other dispute resolution processes contained within this constitution, again for the principle of transparency and relevance this information is contained where it specifically relates – in such as in this clause rather than a clause further on where association members may not realise that the dispute resolution applies to this scenario.]

Within fourteen (14) days ^{(R)(O)} of receiving notice of the board's decision under clause 12.3(c), an expelled or suspended member may appeal the board's suspension or expulsion decision by giving written notice of the expelled or suspended member's intention to seek: ^{(BP)(R)}

- (a) An appeal of the board's suspension or expulsion decision, and ^{(BP)(R)}
- (b) The appointment of a mediator under clause 35. ^{(BP)(R)}

12.6. Reinstatement of member ^{(M)(R)}

[NB: Mandatory as part of your process under Schedule 1 Division 1 item 18]

If the board's decision to suspend or expel a member is revoked, any act performed by the board or members in general meeting during the period that the member was suspended or expelled from membership under clause 12.3, is deemed to be valid, notwithstanding the member's inability to exercise their rights or privileges of a member, including the right to vote, during that suspension period.

(BP)(R)

ANNUAL GENERAL MEETING AND SPECIAL GENERAL MEETING

[NB: Some organisations have three (3) types of member meetings:

- 1. General meeting (regular meeting of members – e.g. monthly sporting club who has members attend after or before the board meeting);*
- 2. Special general meeting which is a meeting that is not scheduled regularly like the general meeting but is called for a special purpose usually to deal with items under special resolution, and*
- 3. Annual general meeting, which is mainly for the purposes of presenting financials; appointing an Auditor and appointing new members to the board.*

Note: we have not mentioned board meetings, as these are a separate matter. We are only talking about member meetings here. Where the board members are the only members you still need to have provisions for these two types of member meetings in the following clauses as board members are first and foremost, members of the association

This template, being primarily developed for service-based non-profits who may also be charities, only contains provisions for special general meetings and annual general meetings given regular members meetings are extremely unusual/not done in this scenario for members of Linkwest.

Any rights conferred in the Act that relate to general meetings (Section 87 (1) and (3); Section 89 (1) and (2) have been assigned to either the annual general meeting or the special general meeting.

Schedule 1 Division 1 only contains the wording ‘general meetings’ when discussing meetings of members.

There are a number of items in the schedule that you must comply with including 7, 8, 9, 10, and 12. These are cross-referenced in the mandatory clauses table and below as you work your way through the clauses.]

13. General meeting ^(M)**13.1. Definition ^(BP)**

A general meeting is a meeting of the members of the association. ^(BP)

13.2. Two types of general meeting ^(BP)

There are two types of general meetings, namely: ^(BP)

- (a) An annual general meeting, and ^(BP)
- (b) A special general meeting. ^(BP)

14. Annual general meeting ^(M)

[NB: Schedule 1 Division 1 requires the inclusion of items such as are noted below. Whilst there are only references in Schedule 1 Division 1 to general meetings, the Act contains references to annual general meetings throughout. The items recommended below are best practice. Division 7 contains pertinent information referring to the Auditor]

14.1. Purpose of annual general meeting ^(M)

An annual general meeting is:

- (a) A general meeting of all the members that is to be held once during each calendar year. ^{(M)(R)}
- (b) Called to conduct the following business: ^{(BP)(R)}
 - (i) Confirmation of the minutes of the previous annual general meeting, ^{(BP)(R)}
 - (ii) Confirmation of the minutes of any special general meeting held since the previous annual general meeting (if the minutes of that special general meeting have not yet been confirmed), ^{(BP)(R)}
 - (iii) Elect or appoint directors ^{(M)(R)}
 - (iv) Receive the financial statements for the previous financial year ^{(M)(R)}, and
 - (v) Receive
 - (A) The review report on the financial statements for the previous financial year (if any), or ^{(M)(R)}
 - (B) The Auditor’s report on the financial statements for the previous financial year (if any). ^{(M)(R)}

- (vi) If applicable,
- (A) Appointment and/or removal of the auditor ^{(BP)(R)}
 - (B) Appointment and/or removal the reviewer ^{(BP)(R)}

[NB: If you don't have a financial review or a financial audit (eg tier 1 that has chosen not to or has not been required to do so by members or the Commissioner) then you can delete the v or vi, and delete the one that doesn't apply. For example, if you have an Auditor's report you can delete (v)(A).]

14.2. Date, time and place of annual general meeting ^{(M)(R)}

An annual general meeting shall be held on a date, and at a time and place, decided by the board. ^{(M)(R)}

14.3. Financial statements and reports and annual general meetings ^{(M)(R)}

[NB: Section 73, 74 and 76 in the Act requires you to prepare, and report your financials to the annual general meeting and the Commissioner. Section 75 requires an audit if you are a tier 3 association and the Act contains specific requirements for Auditors to comply with under Division 5, 6 and 7.

The following three clauses (a) (b) and (c) are mandatory in the sense that if you have a review or audit as a tier 1, or you are a tier 2 or 3 organisation you must fulfill these requirements below.

To make the below directly relevant to your organisation, you would keep only one of these clauses – either (a) or (b) or (c) that reflects which financial reporting tier you are under.]

- (a) **As a tier 1 association and where:** ^{(M)(R)}
- (i) **A majority ^(M) (more than 50%) of members present at a general meeting pass a resolution to this effect, or ^{(M)(R)}**
[NB: Section 69 (1)(a) states the majority, we have included '(more than 50%)' to ensure clarity]
 - (ii) **The Commissioner directs the association to do so,**
[NB: You should keep sub clauses (i) and (ii) for transparency to members as this is in the Act under Section 69]
 - (iii) **The association shall ensure that:**
 - a. **Its financial statements for the relevant financial year are either reviewed ^(O) or audited ^(O), and**
[NB: Referring to sub clause (iii). If you are a tier 1 association you may choose to have your options open as to whether you get a financial review or an audit done. If so, the wording would remain unchanged. If you wish to make it either one or the other in the constitution then:
 - *If you have an annual audit that members, or the Commissioner require or you have chosen to provide then you would remove the words 'either reviewed'*
 - *If you have an annual review (not an audit) then you would remove the words 'or audited']*
 - (iv) **a copy of the review report^(O) or auditor's report^(O) is submitted to the annual general meeting.**
[NB: Referring to sub clause (iv). If you are a tier 1 association you may choose to have your options open as to whether you get a financial review or an audit done. If so, the wording would remain unchanged. If you wish to make it either one or the other in the constitution then:
 - *If you have an annual audit that members, or the Commissioner require or you have chosen to provide then you would remove the words 'review report or'*
 - *If you have an annual review (not an audit) then you would remove the words 'or Auditors report'.]*
 - (v) **If required by the Associations Regulations [and/or the ACNC] ^(C), lodge the annual return with the Commissioner [and/or the ACNC] ^(C). ^{(BP)(R)}**
 - (vi) **As a tier 2 association:** ^{(M)(R)}
 - (i) **Within six (6) months from the end of a financial year the association shall prepare**

- a financial report for the financial year. ^{(M)(R)}
- (ii) It shall ensure that the financial report is reviewed and that a review report is prepared and presented for consideration by the annual general meeting, and, ^{(M)(R)}
- (iii) if :
- (A) A majority ^(M) (more than 50%) of members present at a general meeting pass a resolution to this effect, or ^{(M)(R)}
- [NB: Section 72 (3)(a) states the majority, we have included '(more than 50%)' to ensure clarity]**
- (B) The Commissioner directs the association to do so, it shall ensure: ^{(M)(R)}
- (1) That its financial statements for the relevant financial year are audited, and ^{(M)(R)}
- (2) That a copy of the Auditor's report is submitted to the annual general meeting. ^{(M)(R)}
- [NB: Referring to sub clause (ii) and (iii)]**
- (a) If you choose to have a review then you must keep (ii) and (iii) so that members and you are aware of the other provisions requiring an audit regardless of the current decision.**
- (b) If you have chosen, or been directed to have an audit by members or the Commissioner and wish to reflect this in your constitution (if you wish, you can leave as is otherwise), then you can change the wording of (ii) from 'reviewed' to 'audited'. You can also remove (iii) as you have fulfilled these requirements by having an audit.]**
- (iv) As required by the Associations Regulations [and/or the ACNC] ^(C), lodge the annual return with the Commissioner [and/or the ACNC] ^(C). ^{(BP)(R)}
- (vii) As a tier 3 association: ^{(M)(R)}
- (i) Within six (6) months from the end of a financial year the association shall prepare a financial report for the financial year. ^{(M)(R)}
- (ii) The association shall ensure that:
- a. The financial report is audited and that an audit report is prepared, and ^{(M)(R)}
- b. Copies of the Auditor's report are submitted to the annual general meeting. ^{(M)(R)}
- (iii) As required by the associations regulations [and/or the ACNC] ^(C), lodge the annual return with the Commissioner [and/or the ACNC] ^(C). ^{(BP)(R)}
- [NB: Referring to clause 14.3 (e) Section 74, 75 and 76 of the Act summarised following: provide that tier 3 organisations must prepare the financial statement, and notes to the financials that are true and comply with accounting standards and that these must be audited and that the audited statements be presented to members].**

[NB: Referring to the following clauses 14.4 to 14.12 to save putting this paragraph under each of these clauses:

Schedule 1 Division 1 of the Act requires you to provide for the following matters in your constitution:

- **Item 7. The quorum and procedure at general meetings of members of the incorporated association.**
- **Item 8. The notification of members or classes of members of general meetings of the incorporated association and their rights to attend and vote at those meetings.**
- **Item 9. The time within which, and manner in which, notices of general meetings and notices of motion are to be given, published or circulated.**
- **Item 10. Subject to Division 2 clause 3, the number of members, expressed as a percentage of membership, who may at any time require that a general meeting of the incorporated association be convened.**

- **Item 12.** Subject to Division 2 clauses 4 and 5, the day in each year on which the financial year of the incorporated association commences.
- **Item 13.** The intervals between general meetings of members of the incorporated association and the manner of calling general meetings.

There are also a number of Sections in the Act that provide for specific information relating to the above, specifically Sections 22(1)(c); Sections 50, 51, 52 and Schedule 1 Division 2 Item 3 and Item 2.

The below clauses are a mix of mandatory provisions, best practice and model rules inclusions to meet these requirements.]

14.4. Holding annual general meeting ^{(M)(R)}

- The association shall hold an annual general meeting each calendar year: ^{(M)(R)}
 - Within six (6) months after the end of the financial year, or ^{(M)(R)}
 - Within a longer period if the Commissioner so allows. ^{(M)(R)}
- If the association requires the approval from the Commissioner to hold its annual general meeting within a longer period under Clause 14.4(a)(a)(ii) the Secretary shall ensure that application is made to the Commissioner for such approval no later than four (4) months after the end of the financial year. ^{(BP)(R)}
- The notice calling for an annual general meeting shall specify that it is an annual general meeting of the association and shall comply with Clause 14.1. ^{(M)(R)}

14.5. Special general meeting ^{(M)(BP)}

[NB: Mandatory in that you have to have a clause, what's recommended below is best practice and some wording also appears in model rules]

- Any meeting of members that is not an annual general meeting is called a special general meeting. ^(BP)
- A special general meeting:
 - Shall have a specific purpose, ^(BP)
 - Is often called to deal with business that cannot wait until the annual general meeting, and ^(BP)
 - May consider a range of matters, including matters that shall be decided by a special resolution. ^(BP)
- The manner of calling, the quorum and procedure of a special general meeting are the same as for an annual general meeting, although the business to be conducted will be different. ^{(M)(BP)}

[NB: This clause provides clarity around what a special general meeting is and why you would have one.]

14.6. Calling annual general meeting or special general meeting ^{(M)(BP)}

[NB: Mandatory in that you have to have a clause, what's recommended below is best practice and some wording also appears in model rules]

- An annual general meeting or special general meeting may be called by:
 - The board, at any time, or ^{(BP)(R)}
 - At least five (5)% ^(O) of the total number of members entitled to vote at an annual general meeting or special general meeting. ^{(BP)(R)}

[NB: Model rules provides for 20% of members. You can choose your %.]

- Members may call an annual general meeting or special general meeting under Clause 14.6(a)(ii) by forwarding a notice in writing to the Secretary or, in the absence of the Secretary, to the Chairperson. ^{(BP)(R)}

14.7. Members call for annual general meeting or special general meeting ^{(M)(BP)}

[NB: Mandatory in that you have to have a clause, what's recommended below is best practice. It provides for a detailed procedure on what the process is should members call a meeting. All the below is optional, however mandatory in the sense that you have a clause dealing with this.]

- (a) In the event that members request an annual general meeting or special general meeting to be held under Clause 14.6(a)(ii) the board shall: ^{(BP)(R)}
- (i) Within twenty one (21) days ^(O) of the member's request, forward notice of a an annual general meeting or special general meeting to all members, and ^{(BP)(R)}
 - (ii) Hold the annual general meeting or special general meeting within two (2) months ^(O) of the member's request. ^{(BP)(R)}
[NB: Model rules recommends a meeting be held no later than twenty eight (28) days from the date of request. Sub clause (i) provides for twenty one (21) days notice of a meeting to be held within (sub clause (ii)) two months. You can amend these if you choose.]
- (b) The percentage of votes of members set out in Clause 14.6(a)(ii) is to be calculated as at midnight ^(O) before the day upon ^(O) which the members request the annual general meeting or special general meeting to be called. ^(BP)
[NB: Just helps prevent a 'numbers' game of a sudden influx of members then a sudden calling of a meeting using those new members. Timeline is at your discretion if you choose to retain this clause.]
- (c) A request by the members for an annual general meeting or special general meeting to be held under Clauses 14.6(a)(ii) and 14.6(b) shall: ^{(BP)(R)}
- (i) State the purpose of the annual general meeting or special general meeting, ^{(BP)(R)}
 - (ii) Be signed by at least five (5)% ^(O) of the members entitled to vote at an annual general meeting or special general meeting, and ^{(BP)(R)}
[NB: Model rules provides for 20% of members. You can choose your %.]
 - (iii) Be lodged with the Secretary or, in the absence of the Secretary, with the Chairperson. ^{(BP)(R)}
- (d) Separate copies of a document setting out the request by the members for an annual general meeting or special general meeting to be held under Clauses 14.6(a)(ii) and 14.6(b) may be signed by members if the wording of the request is the same in each copy of the request. ^{(BP)(R)}

14.8. Failure to hold annual general meeting or special general meeting requested by members ^{(M)(R)}

[NB: Mandatory in that you have to have a clause, what's recommended below is best practice]

- (a) If the board does not call the annual general meeting or special general meeting requested by members under Clauses 14.6(a)(ii) and 14.6(b) within twenty one (21) days of being requested, a majority (being more than 50%) of the percentage of members who made the request under 14.6(a)(ii) and 14.7(c)(ii), may call and arrange to hold an annual general meeting or special general meeting. ^{(BP)(R)}
[NB: Currently this template provides for five (5)% of members to call a meeting so this would mean that only 50% of the five (5)% of members are needed to enact this clause]
- (b) To call and hold an annual general meeting or special general meeting under Clause 14.8(a), the members shall: ^{(BP)(R)}
- (i) As far as possible, follow the procedures for an annual general meeting or special general meeting set out in this Constitution, ^{(BP)(R)}
 - (ii) Call the annual general meeting or special general meeting using the list of members on the members register, which the association shall provide at no cost to the members making the request, and ^{(BP)(R)}
 - (iii) Hold the annual general meeting or special general meeting within three months after the request for an annual general meeting or special general meeting to be held under Clauses 14.6(a)(ii) and 14.6(b) was lodged with the Secretary or, in the absence of the Secretary, with the Chairperson. ^{(BP)(R)}
[NB: It was two (2) months at clause 14.7(a)(i), three (3) months has been provided here to allow for additional time members may require to procure items such as a copy of the

members register etc. from the association]

- (c) The association shall pay the members calling and holding the annual general meeting or special general meeting under Clauses 14.8(a) and 14.8(b) any reasonable expenses incurred by them because the board did not call and hold the annual general meeting or special general meeting under Clause 14.7. ^{(BP)(R)}

14.9. Quorum at annual general meeting or special general meeting ^{(M)(R)}

[NB: Mandatory in that you have to have a clause, what's recommended below is best practice]

- (a) Five (5) Members^(O) personally present and entitled to vote shall constitute a quorum for an annual general meeting or special general meeting.

[NB: You may wish to change the quorum number or have it expressed as a percentage.. See alternate clause below:

- a) ___% members^(O) personally present and entitled to vote shall constitute a quorum for an annual general meeting or special general meeting.

You can also choose to have different quorums for annual general meetings than special general meetings. If so, for clarity you would insert the following two clauses in place of sub-clause (a)

- a) ___^(O) members personally present and entitled to vote shall constitute a quorum for an annual general meeting.^(O)

- b) ___^(O) members personally present and entitled to vote shall constitute a quorum for a special general meeting.^(O)

or as a percentage

- a) ___%^(O) member personally present and entitled to vote shall constitute a quorum for an annual general meeting.^(O)

- b) ___%^(O) members personally present and entitled to vote shall constitute a quorum for a special general meeting.^{(O)]}

- (b) Subject to Clauses 14.9(c) and 14.9(d), no business shall be conducted at an annual general meeting or special general meeting unless a quorum of members entitled to vote is present at the time the annual general meeting or special general meeting considering that item. ^{(BP)(R)}
- (c) If, within half an hour of the time appointed for the commencement of an annual general meeting or special general meeting, a quorum is not present: ^{(BP)(R)}
- (i) In the case of a special general meeting, the meeting lapses, or ^{(BP)(R)}
- (ii) In the case of an annual general meeting, the meeting is to stand adjourned to: ^{(BP)(R)}
- (A) The same time and day in the following week, and^{(BP)(R)}
- (B) The same place unless another place is specified by the Chairperson at the time of the adjournment or by written notice given to the members before the day to which the meeting is adjourned. ^{(BP)(R)}
- (d) If at the adjourned annual general meeting or special general meeting a quorum is not present within half an hour of the time appointed for the commencement of the meeting, the members present are to constitute a quorum. ^{(BP)(R)}

14.10. Notice of, and motions at, annual general meeting or a special general meeting ^{(M)(R)}

[NB: Mandatory in that you have to have a clause, what's recommended below is best practice]

- (a) The Secretary shall ensure that each member is given at least: ^{(BP)(R)}
- (i) Fourteen (14) days notice of a general meeting, or ^{(BP)(R)}
- (ii) Twenty one (21) days notice of a general meeting if a special resolution is proposed to be moved at that general meeting. ^{(BP)(R)}
- (b) The notice of an annual general meeting or special general meeting shall specify: ^{(BP)(R)}
- (i) The place, date and time of the annual general meeting or special general meeting, ^{(BP)(R)}
- (ii) That the member is entitled to attend and vote at the annual general meeting or special general meeting, and ^{(BP)(R)}
- (iii) The particulars and order of the business to be conducted at the annual general meeting

- or special general meeting. ^{(BP)(R)}
- (c) The notice of an annual general meeting or special general meeting or any notice of motion must be issued in the manner set out in Clauses 37 and 38. ^{(BP)(R)}

14.11. Using technology to hold annual general meeting or special general meeting ^{(O)(M)(R)}

[NB: Mandatory in that you have to have a clause governing the use of technology should you choose to allow this. If you elect not to allow technology – this could be someone phoning in, teleconferencing or videoconferencing then you would delete clause 14.11 from your constitution, or you could have a clause that states you do not allow the use of technology for members to participate in meetings. Just note though you could potentially be called on for discriminating against some members should you choose not to allow this practice.]

- (a) **An annual general meeting or special general meeting may take place:** ^{(O)(M)(R)}
- (i) **Where the members are physically present together, or** ^{(O)(M)(R)}
 - (ii) **By the use of any technology (such as video or teleconferencing) that is agreed to by all members, if it reasonably allows each member to participate fully in discussions and decisions as they happen in the annual general meeting or special general meeting and provided that the participation of each member is made known to all other members in attendance.** ^{(O)(M)(R)}
- (b) **A member who participates in an annual general meeting or special general meeting as set out in Clause 14.11(a).** ^{(O)(M)(R)}
- (i) **Is deemed to be present at the annual general meeting or special general meeting, and** ^{(O)(M)(R)}
 - (ii) **Continues to be present at the annual general meeting or special general meeting for the purposes of establishing a quorum, until the member notifies the other members that they are no longer taking part in the annual general meeting or special general meeting.** ^{(O)(M)(R)}

14.12. Conducting annual general meeting or special general meeting ^{(M)(R)}

[NB: Mandatory in that you have to have a clause, what's recommended below is best practice]

- (a) The Chairperson shall normally act as Meeting Chair of each annual general meeting or special general meeting. ^{(BP)(R)}
- (b) The members at an annual general meeting or special general meeting may elect a director other than the Chairperson to be the Meeting Chair for that annual general meeting or special general meeting if the Chairperson is: ^{(BP)(R)}
- (i) Not present within 30 minutes after the starting time set for the annual general meeting or special general meeting, or ^{(BP)(R)}
 - (ii) Present but does not want to act as Meeting Chair of the annual general meeting or special general meeting. ^{(BP)(R)}
- (c) The annual general meeting or special general meeting cannot conduct business unless the quorum specified in Clause 14.9 is present. ^{(BP)(R)}
- (d) At an annual general meeting or special general meeting at which the quorum specified in Clause 14.9 is present, the Meeting Chair may adjourn the annual general meeting or special general meeting with the consent of a majority (more than 50%) of the members present. ^{(BP)(R)}
- (e) No business shall be conducted at a rescheduled annual general meeting or special general meeting other than the unfinished business from the adjourned annual general meeting or special general meeting ^{(BP)(R)}
- (f) When an annual general meeting or special general meeting is adjourned for fourteen (14) days or more, the Secretary shall ensure that notice of the adjourned annual general meeting or special general meeting is given to the members in accordance with Clause 14.10 as if that general meeting was a new annual general meeting or special general meeting. ^{(BP)(R)}
- (g) If, within half an hour of the time appointed for the annual general meeting or special general

meeting the quorum specified in Clause 14.9 is not present, the annual general meeting or special general meeting is to stand adjourned to the same time, day and place in the following week.

- (h) The Secretary shall ensure that minutes of the resolutions and proceedings of all annual general meetings or special general meetings are recorded and maintained together with a record of the names of persons present at each annual general meeting or special general meeting. *(BP)(R)*
- (i) The Auditor is entitled to attend any annual general meeting or special general meeting and to be heard by the members on any part of the business of the annual general meeting or special general meeting that concerns the Auditor in the capacity of Auditor. *(BP)(R)*

[NB: Delete sub clause (i) if the requirement to have an Auditor is not applicable]

- (j) The association shall give the Auditor any communications relating to the annual general meeting or special general meeting that a member is entitled to receive.

[NB: Delete sub clause (j) if the requirement to have an Auditor is not applicable]

ANNUAL GENERAL MEETING AND SPECIAL GENERAL MEETING – RESOLUTIONS ^{(M)(R)}15. Ordinary ^(BP) and special resolutions ^(M)15.1. Definitions ^(BP)

- (a) There are two types of member's resolutions, namely: ^(BP)
- (i) An ordinary resolution, and ^(BP)
 - (ii) A special resolution. ^(BP)
- (b) An ordinary resolution: ^(BP)
- (i) Is a resolution that is not a special resolution as described in 15.1(c), and ^(BP)
 - (ii) Shall: ^(BP)
 - (A) Be passed at an annual general meeting or special general meeting at which a quorum is present, and ^(BP)
 - (B) Be supported by the votes of a majority (more than 50%) of the members present, in person or by proxy, and entitled to vote at the annual general meeting or special general meeting. ^(BP)
- (c) A special resolution: ^(M)

[NB: there are a number of specific sections in the Act that provide for specific actions in relation to the use of, the recording of and determinations that require special resolutions. These include the following sections: 29; 30; 51; 102; 103; 106; 121; 129; 130; 141; 142; 143; 191; 195. Section 1 Division 1 Item 9 also requires for organisations to include a clause that deals with 'The time within which, and manner in which, notices of general meetings and notices of motion are to be given, published or circulated.']

- (i) shall be necessary to: ^(M)
- (A) Amend the name of the association, ^(M)
 - (B) Amend the constitution, ^(M)
 - (C) Affiliate the association with another body, ^(M)
 - (D) Transfer the incorporation of the association, ^(M)
 - (E) Amalgamate the association with one or more other incorporated associations, ^(M)
 - (F) Voluntarily wind up the association, ^(M)
 - (G) Cancel the incorporation of the association, or ^(M)
 - (H) Request that a statutory manager be appointed to the association, and ^(M)

[NB: another word for statutory manager you may be familiar with would be administrator]

- (ii) shall:
- (A) Be passed at an annual general meeting or special general meeting at which the quorum specified in Clause 14.9 is present, and ^(M)
 - (B) Be supported by the votes of not less than seventy five (75)% of the members present, in person or by proxy, and entitled to vote at the annual general meeting or special general meeting. ^(M)

[NB: Section 51(1)(b) states that a special resolution can only be passed by not less than three-fourths (which is seventy five (75)% when expressed in a percentage) of the members who cast a vote at the meeting. Only members may vote in person, by proxy or postal (if proxies or postal votes are allowed by the association) as per Section 51(2)]

15.2. Notice of special resolution ^(M)

[NB: Section 51(3) requires written notice be given to each member, setting out the wording of the resolution (Section 51(4)) and if this doesn't occur the special resolution has no effect (Section 51(5))]

For a special resolution to be passed by the members at an annual general meeting or special general meeting: ^(M)

- (a) Members shall receive notice of the special resolution twenty one (21) days (in accordance

with clause 14.10(a)(ii)) before the date of the annual general meeting or special general meeting. ^(M)

[NB: Section 51(3) does not state a time limit, however model rules proposes twenty one (21) days and twenty one (21) days has been noted in this constitution for the number of days notice required for a special resolution at clause 14.10(a)(ii) so if you wish to change either one ensure you cross reference/modify to be the same]

- (b) The notice of the special resolution shall: ^(M)
- (i) Be in writing, ^(M)
 - (ii) Include the place, date and time of the general meeting where it is proposed that the special resolution be put, ^(M)
 - (iii) Include the intention to propose a special resolution, and ^(M)
 - (iv) Set out the wording of the proposed special resolution. ^(M)

[NB: as per Section 51(3) and 51(4) of the Act]

- (c) If notice is not given in accordance with Clause 15.2(b) the special resolution shall have no effect. ^(M)

[NB: as per Section 51(5) of the Act]

16. Members circular resolutions ^(O)

[NB: Circular resolutions are enacted for standard non-contentious items that don't require members to have a discussion.

Circular resolutions of members are extremely rare and the purpose of putting this clause in was mainly for those associations whose only members of the association are their board members. This means that general member business can be taken care of via circular resolution rather than the calling of a special general meeting.

This does remove time-delays in getting the 'business' of the association done and as a measure to prevent its misuse we have 1) included a provision that all directors who are entitled to vote must agree to the circular resolution in order for it to be passed and 2) stipulated items that the circular resolution cannot be used for. As a best practice process, if the circular resolution is sent by email, you would provide the circular resolution (and each directors emailed agreement) at the next meeting of members for ratification and to be entered into the minutes so that it is on record]

- (a) **The board may put a circular resolution to the members (members circular resolution).** ^(O)
- (b) **A members circular resolution cannot be used:** ^{(M) if you adopt circular resolutions clause}
 - (i) **To pass a special resolution,** ^{(M) if you adopt circular resolutions clause}
 - (ii) **To remove an Auditor,** ^{(M) if you adopt circular resolutions clause}
 - (iii) **To appoint or remove a director, or** ^{(M) if you adopt circular resolutions clause}
 - (iv) **Where the associations Act or this constitution requires an annual general meeting or special general meeting to be held.** ^{(M) if you adopt circular resolutions clause}
- (c) **The Secretary may arrange for a members circular resolution to be sent by email to members and members may agree to the members circular resolution by sending a reply email to the Secretary including the text of the members circular resolution in their reply.** ^(O)
- (d) **A members circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the members circular resolution by:** ^(O)
 - (i) **Signing a single document setting out the members circular resolution and containing a statement that the members agree to the members circular resolution, or** ^(O)
 - (ii) **Signing separate copies of the document setting out the members circular resolution and containing a statement that the members agree to the members circular resolution, provided that the wording in each copy of the document is identical, or forwarding an email referred to in Clause 16(c)** ^(O) .
- (e) **The Secretary shall ensure that the associations Auditor is:** ^(O)
 - (i) **Notified as soon as possible that a members circular resolution has or is to be put to members, and** ^(O)
 - (ii) **Provided with a copy of the members circular resolution.** ^(O)

[NB: 16(e) is applicable if you have an Auditor, otherwise you can delete if you adopt the circular resolution clause]

ANNUAL GENERAL MEETING AND SPECIAL GENERAL MEETING – VOTING

17. Voting conditions at annual general meeting and special general meeting ^(M)**17.1. Number of votes per member at annual general meeting and special general meeting ^(M)**

- (a) Each member has one vote at an annual general meetings and special general meeting.

[NB: if there is more than one class of member then the following optional clause can be used.

Each member as per membership classes under clause 10.2 has voting rights assigned as per clause 10.2 ^(O)]

17.2. Entitlement to vote at annual general meeting and special general meeting

- (a) A member or their proxy ^(O) is not entitled to vote at any annual general meeting or special general meeting unless all money due and payable to the association by the member or their proxy ^(O) has been paid. ^{(BP)(R)}

[NB: you would only include proxy in this clause if you permit proxy voting otherwise delete the blue optional text].

- (b) A member is only entitled to vote at an annual general meeting or special general meeting if the member's name is recorded in the members register as at the date the notice of the general meeting was sent out. ^{(BP)(R)}

17.3. Challenge to member's right to vote at annual general meeting and special general meeting ^(O)

[NB: This provides for an optional clause to deal scenarios where this constitution has not been complied with and a member may not have the power assigned to a board, yet under this clause can challenge a members right to vote. It also enables the Meeting Chair to have the power to make a final determination and the challenging person to be bound by that decision under the constitution.]

- (a) A member or the Meeting Chair may only challenge a person's right to vote at an annual general meeting or special general meeting at that same annual general meeting or special general meeting. ^(O)
- (b) If a challenge is made under Clause 17.3(a) the Meeting shall review the person's right to vote under Clause 17.2 and then decide whether or not the person may vote. ^(O)
- (c) The Meeting Chair's decision on this point is final. ^(O)

17.4. Organisational members and organisational representatives – voting at annual general meeting and special general meeting ^(O)

[NB: This clause is only applicable if you have organisational members such as the example provided at clause 10]

- (a) An organisational member shall appoint a natural person (i.e. a human being) to represent the organisational member at annual general meetings and special general meetings (**organisational representative**). ^(O)
- (b) An organisational representative shall be appointed in writing using the form set out at schedule 3 (**Appointment of Organisational Member Representative Form**). ^(O)
- (c) A copy of the Appointment of Organisational Member Representative Form shall be forwarded by the organisational member to the Secretary. ^(O)
- (d) An organisational representative has authority to represent the organisational member: ^(O)
- (i) If appointed for a particular annual general meeting or special general meeting, until the conclusion of that annual general meeting or special general meeting, or ^(O)
 - (ii) Otherwise, until the appointment of the organisational representative is revoked by the organisational member and notice of this revocation is given by the organisational member to the Secretary. ^(O)

17.5. Voting procedure at annual general meeting and special general meeting ^(M)

[NB: Section 1 Division 1 Item 8 requires associations to have a clause that outlines a members right to vote at meetings. The process below is a best practice approach and whilst some wording is also used by model rules we have expanded on for clarity]

- (a) Voting at an annual general meeting and special general meeting shall be conducted and decided by: ^(BP)
- (i) A show of hands, ^(BP)
 - (ii) A vote in writing, or ^(BP)
 - (iii) Another method chosen by the Meeting Chair that is fair and reasonable in the circumstances. ^(BP)
- [NB: Note 17.5(a)(iii) includes those members who may be using technology if you have allowed this for meetings]*
- (b) Before a vote is taken, the Meeting Chair shall state whether any proxy votes have been received and, if so, how the proxy votes shall be cast. ^(O)
- [NB: If you allow proxies otherwise delete this clause]*
- (c) The Meeting Chair's decision is conclusive evidence of the result of the vote. ^{(BP)(O)}
- [NB: the term Meeting Chair has been used here as it may not be the Chairperson of the board who is running the meeting (e.g. if the Chairpersons position is called vacant pending election)]*
- (d) The Meeting Chair and the minutes of the annual general meeting and special general meeting do not need to state the number or proportion of the votes recorded in favour or against on a show of hands. ^{(BP)(O)}
- (e) In the case of an equality of votes at an annual general meeting or special general meeting, the Meeting Chair is entitled to exercise a second or casting vote. ^{(BP)(O)}

17.6. When and how a vote in writing shall be held at annual general meeting and special general meeting ^{(M)(BP)(O)}

[NB: Mandatory if you allow a vote in writing as per clause 17.5(a)(ii) as you must have a clause that provides a process for how members can vote in this case, in writing (Schedule 1 Division 1 Item 8), however the below is best practice clauses that are optional. If you don't allow a vote in writing you would delete this whole clause. Note: if you don't allow this, how are you going to deal with silent votes that are in writing?]

- (a) A vote in writing may be demanded on any resolution instead of, or after, a vote by a show of hands by: ^{(BP)(O)}
- (i) At least five (5) ^(O) members present, or ^{(BP)(O)}
 - [NB: you can change the number or put in a percentage instead. Suggest you keep the word 'present' otherwise you will have to make up that number and that percentage from your total membership]*
 - (ii) The Meeting Chair. ^{(BP)(O)}
- (b) A vote in writing shall be taken when and how the Meeting Chair directs. ^{(BP)(O)}
- (c) A vote in writing shall be held immediately if it is demanded under Clause 17.6(a)
- (i) For the election of a Meeting Chair under Clause 14.2(b) or ^{(BP)(O)}
 - (ii) To decide whether to adjourn the annual general meeting or special general meeting. ^{(BP)(O)}

18. Proxies at annual general meeting and special general meeting ^{(M)(BP)(O)}

[NB: Mandatory if you allow proxy voting as you must have a clause that provides a process for how members can vote in writing (Schedule 1 Division 1 Item 8), however the below is best practice clauses that are optional. If you don't allow proxy voting then you would either delete this clause 18 in its entirety or you would note the alternate clause: (a) No member may vote by, or appoint a proxy to vote on their behalf at an annual general meeting or special general meeting.

Section 51(s)(b) states 'where proxies or postal votes are allowed by the rules of the association' so it's your decision.

Model rules has very little in 'detail' about proxies and as with anything out of the ordinary, it's the detail that counts in terms of managing potentially challenging situations.]

18.1. Annual general meeting and special general meeting requirements ^{(BP)(O)}

- (a) A member may appoint a proxy to attend and vote at an annual general meeting or special general meeting on their behalf. ^{(BP)(O)}
- (b) The appointed proxy must be a member. ^{(BP)(O)}
[NB: It could be either a member or a non-member if you prefer]
- (c) No member may hold more than two (2) proxy votes at an annual general meeting or special general meeting. ^{(BP)(O)}
[NB: This can be changed e.g. to four (4) or five (5) etc. It's just a suggestion at two (2) to ensure against members 'fixing' votes. Model rules suggests five (5).]
- (d) A proxy appointed to attend and vote for a member has the same rights as the member to: ^{(BP)(O)}
 - (i) speak at the annual general meeting or special general meeting, ^{(BP)(O)}
 - (ii) cast a vote in writing (but only to the extent allowed by the proxy's appointment), and ^{(BP)(O)}
 - (iii) join in to demand a vote in writing under Clause 17.6. ^{(BP)(O)}
[NB: This is standard as a member assigns a proxy their membership right and membership vote for the specifics outlined in the proxy form]
- (e) An appointment of proxy, in the form as set out in Schedule 2 to this Constitution (**Proxy Form**), shall be signed by the appointing member and shall contain: ^{(BP)(O)}
 - (i) The appointing member's name and address, ^{(BP)(O)}
 - (ii) The association's name, ^{(BP)(O)}
 - (iii) The proxy's name or the name of the office held by the proxy, and ^{(BP)(O)}
 - (iv) The annual general meeting(s) and special general meeting(s) at which the appointment may be used by the proxy. ^{(BP)(O)}
- (f) A proxy appointment may be a standing (i.e. ongoing) proxy appointment. ^(O)
- (g) At least forty eight (48) hours ^(O) before the annual general meeting or special general meeting for which the proxy relates is scheduled to commence, proxy forms shall be received by the association at the address stated in the notice of the annual general meeting or special general meeting, or at the association's registered address. ^{(BP)(O)}
[NB: You could specific another time here if you choose]
- (h) A proxy does not have the right to speak or vote for a member at an annual general meeting or special general meeting while the member is present at the annual general meeting or special general meeting. ^{(BP)(O)}
- (i) Unless the association receives written notice before the start or resumption of an annual general meeting or special general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member: ^{(BP)(O)}
 - (i) Dies, ^{(BP)(O)}
 - (ii) Is mentally incapacitated, ^{(BP)(O)}
 - (iii) Revokes the proxy's appointment, or ^{(BP)(O)}
 - (iv) Revokes the authority of a representative or agent who appointed the proxy. ^{(BP)(O)}
- (j) A member may specify the way the proxy shall vote on a particular resolution. ^{(BP)(O)}
- (k) When a vote in writing is held, a proxy does not need to vote, unless the proxy form appointment specifies the way they shall vote. ^{(BP)(O)}

18.2. Determining whether ordinary resolution carried at annual general meeting and special general meeting ^(M)

[NB: Mandatory as it complies with Schedule 1 Division 1 Item 6 'the procedure at general meetings of the incorporated association and also relates to the members rights to vote (Schedule 1 Division 1 Item 8) and the keeping of minutes for the associations meetings. What is

proposed below is a mix of best practice and model rules inclusions]

- (a) Unless a poll is demanded under Clause 18.3, if a question arising at an annual general meeting or special general meeting is determined by general agreement or a show of hands, a declaration shall be made by the Meeting Chair of the annual general meeting or special general meeting that the ordinary resolution has been: ^{(BP)(R)}
 - (i) Carried unanimously, ^{(BP)(R)}
 - (ii) Carried by a majority (more than 50%) of members present, or ^{(BP)(R)}
 - (iii) Lost. ^{(BP)(R)}
- (b) If the declaration relates to a special resolution then all items under clause 15.1(c) and 15.2 must be fulfilled. The minutes must also state that a special resolution has been determined. ^(BP)
- (c) A declaration made under Clause 18.2(a) shall be entered into the minutes. ^{(M)(R)}
- (d) The entry in the minutes under Clause 18.2(c) is evidence of the fact that the resolution has been determined, without proof of the number or proportion of the votes recorded in favour of or against that resolution. ^(O)

[NB: You could choose to record votes in favour and votes against]**18.3. Poll at annual general meeting and special general meeting ^(M)*****[NB: Mandatory as it complies with Schedule 1 Division 1 Item 6 'the procedure at general meetings of the incorporated association and also relates to the members rights to vote (Schedule 1 Division 1 Item 8). What is proposed below is a mix of best practice and model rules inclusions]***

- (a) At an annual general meeting or special general meeting, a poll on any question may be demanded by either: ^{(BP)(R)}
 - (i) The Meeting Chair, or ^{(BP)(R)}
 - (ii) At least three members present in person or by proxy ^(O). ^{(BP)(R)}***[NB: If you allow proxy otherwise delete 'or by proxy']***
- (b) If a poll is demanded at an annual general meeting or special general meeting, the poll shall be taken in a manner as the Meeting Chair directs and a declaration by the Meeting Chair of the result of the poll is evidence of the matter so declared. ^{(BP)(R)}
- (c) If a poll is demanded at an annual general meeting or special general meeting, the poll shall be taken: ^{(BP)(R)}
 - (i) Immediately in the case of a poll which relates to electing a Meeting Chair to chair the an annual general meeting or special general meeting, ^{(BP)(R)}
 - (ii) Immediately in the case of a poll which relates to adjourning the annual general meeting or special general meeting, or ^{(BP)(R)}
 - (iii) In any other case, in the manner and time before the close of the annual general meeting or special general meeting as the Meeting Chair directs. ^{(BP)(R)}

BOARD AND DIRECTORS
19. Board role and powers*[NB: Compliant with Section 44]***19.1. Role ^(M)**

The board shall control and manage the association's affairs and take all reasonable steps to ensure the association complies with its obligations under the Associations Act, this constitution and all other applicable laws. ^(M)

19.2. Powers ^(M)

Subject to the Associations Act, this constitution and any lawful resolution passed by the association in general meeting, the board: ^(M)

- (a) May exercise all powers and functions as may be exercised by the association, other than those powers and functions that are required by this constitution to be exercised by a general meeting, and ^(M)
- (b) Has power to perform all acts and do all things as appear to the board to be necessary or desirable for the proper management of the association's business and affairs. ^(M)

20. Number of directors, composition and qualifications ^(M)**20.1. Number of directors on board ^(M)**

The board shall have no less than four (4) directors. ^(BP)

[NB: Note where the board members are the only members of your association you must not have any less than six (6) members as per clause 7.1. You may also choose to have a minimum and a maximum number of directors]

20.2. Composition of board ^(M)

[NB: This clause includes a minimum of six (6) directors which you can increase however you cannot decrease that number if your board are the only members of the association. This is because six (6) members is the minimum number of members you must have to comply with the Associations Incorporation Act 2015 (WA) Section 4 (b). See also Clause 7 in this template constitution.]

- (a) The directors shall include:
 - (i) The Chairperson, ^{(O) (BP)}

[NB: You may wish to include a Vice-Chairperson. If you do and you wish the Vice-Chairperson to be the Meeting Chair in the Chairperson's absence, you will also need to change a number of other clauses to make this clear.]

 - (ii) The Secretary, ^{(O) (BP)}
 - (iii) The Treasurer, ^{(O) (BP)}

(collectively called the **officeholders**), and ^{(O) (BP)}

 - (iv) At least one (1) and no more than three (3) additional directors. ^{(O) (BP)}
- (b) A director is not entitled to hold more than one officeholder position at any time. ^{(O) (BP)}

[NB: Alternative where you don't have officeholders]

- (a) The directors shall include at least ___ and no more than ___ additional directors. ^(O)

[NB: Alternative where you don't have officeholders and your directors are your only members]

- (a) The directors shall include no less than six (6) and no more than ___ additional directors. ^(O)
- (b) A director is not entitled to hold more than one officeholder position at any time. ^(O)

20.3. Qualifications of directors ^(M)

[NB: Section 38, 39 and 40 provide specific provisions for directors' qualifications. This is a best practice procedure below and follows wording in the Act under these sections]

- (a) A director shall be: ^(M)

- (i) A natural person i.e. a human being, ^(M)
- (ii) Aged over 18, and ^(M)
- (iii) A member. ^(M)
- (b) A person cannot be a director if: ^(M)
 - a. They are a current employee of the association, ^(O)
[NB: clause 21.3(b) was included to reduce the likelihood of pecuniary interest breaches under the new requirements in the Act. You can have members as board members however you should consider carefully how you would manage conflicts]
 - b. In the previous five years, they have been convicted of, or imprisoned for: ^(M)
 - (A) An indictable offence under the laws of any state or territory of the Commonwealth of Australia in relation to the promotion, formation or management of a body corporate, ^(M)
 - (B) An offence involving fraud or dishonesty punishable by imprisonment for a period of three (3) months or more under the laws of any state or territory of the Commonwealth of Australia, or ^(M)
 - c. They are: ^(M)
 - (A) bankrupt, or ^(M)
 - (B) unless the person has obtained the consent of the Commissioner, a person whose affairs are under insolvency laws. ^(M)
 - d. Unless they have obtained the consent of the Commissioner, a person who has committed a breach of the following director's duties: ^(M)
 - (A) Duty of care and diligence, ^(M)
 - (B) Duty of good faith and proper purpose, ^(M)
 - (C) Duty to not improperly use their position, ^(M)
 - (D) Duty to ensure that the association does not incur a debt while insolvent, or ^(M)
 - (E) Duty to not improperly use information gained while a director. ^(M)
- (c) A director who has been suspended as a member under Clause 12.2 cannot act in the position of a director until their period of suspension as a member has expired. ^(M)

21. Directors duties ^(M)

21.1. General directors duties ^(M)

[NB: Compliant with Section 44, 45, 46 and 47 of the Act]

Directors shall comply with their duties as directors under legislation and common (judge-made) law and shall [and, where applicable, with the duties described in Governance Standard 5 of the ACNC Regulations] ^(C):

- (a) Exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the association, ^(M)
- (b) Act in good faith in the best interests of the association, ^(M)
- (c) Act for a proper purpose, ^(M)
- (d) Act to further the [charitable] ^(C) object and purposes of the association, ^{(M) (C)}
- (e) Act in the best interests of the association, ^(M)
- (f) Not misuse information gained in their role as a director, ^(M)
- (g) Disclose any perceived or actual material conflicts of interest, ^(M)
- (h) Ensure that the financial affairs of the association are managed responsibly, and
- (i) Not allow the association to operate while insolvent. ^(M)
- (j) Not improperly use: ^(M)
 - (i) Information obtained because they are or were a director, or ^(M)
 - (ii) Their position of director, to: ^(M)
 - a. Gain an advantage for themselves or another person, or ^(M)
 - b. Cause detriment to the association. ^(M)

21.2. Directors conflict of interest ^(M)

[NB: Compliant with Section 42 and 43 of the Act]

- (a) A director shall disclose to all the directors present at the board meeting the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at the board meeting. ^(M)
- (b) The disclosure of a conflict of interest by a director shall be recorded in the minutes of the board meeting. ^(M)
- (c) Each director who has a material personal interest in a matter that is being considered at a board meeting (or that is proposed in a board circular resolution) shall not, except as provided under Clause 21.2(d): ^(M)
 - (i) Be present at the board meeting while the matter is being discussed, or ^(M)
 - (ii) Vote on the matter. ^(M)
- (d) A director may still be present and vote if: ^(M)
 - (i) Their interest relates to an insurance contract that insures, or would insure, the director against liabilities incurred by the director as a director, ^(M)
 - (ii) The directors who do not have a material personal interest in the matter pass a resolution that: ^(M)
 - (A) Identifies the director, the nature and extent of the director's interest in the matter and how it relates to the association's affairs, and ^(M)
 - (B) States that those directors who do not have a material personal interest in the matter are satisfied that the director's material personal interest in the matter should not prevent the director from being present at the board meeting while the matter is being discussed or from voting on the matter. ^(M)

22. Appointment of directors ^(M)**22.1. Nomination for appointment as directors ^(M)**

[NB: Schedule 1 Division 1 Item 6(a) requires the election or appointment of members of the committee to be detailed. You don't have to have a nomination procedure however with the new director qualification requirements under Section 38, 39, 40, 42 to 49. This is a best practice procedure]

- (a) A member who wishes to be a director shall be nominated by one (1)^(O) other member as a candidate for election as a director. ^{(BP)(R)}
[NB: You can change this to two (2) or more if you choose]
- (b) Nominations for election as a director shall close at least twenty eight (28) days before the annual general meeting. ^{(BP)(R)}
[NB: Allows for appropriate notice period as per clause 14.7(a)(i)]
- (c) The Secretary must ensure a notice is sent, calling for nominations for election as a director and specifying the date for the close of nominations, to all members at least fourteen (14) days before the date for the close of nominations. ^{(BP)(R)}
- (d) Nominations for election as director shall be: ^{(BP)(R)}
 - (i) In writing, and ^{(BP)(R)}
 - (ii) Delivered to the Secretary on or before the date for the close of nominations. ^{(BP)(R)}
- (e) A member may only be nominated for one (1)^(O) director position prior to the annual general meeting. ^{(BP)(R)}
- (f) If a nomination for election as a director is not made in accordance with Clauses 22.1(a) to 22.1(e) the nomination shall be invalid and the member shall not be eligible for election as a director. ^{(BP)(R)}

22.2. Methods ^(M)

[NB: Schedule 1 Division 1 Item 6(a) requires the election or appointment of members of the committee to be detailed. This is a best practice procedure providing clarity on how appointments are undertaken]

Directors shall be appointed to the board by: ^{(BP)(R)}

- (a) Election at an annual general meeting, or ^{(BP)(R)}
- (b) Appointment by the board to fill a casual vacancy under Clause 22.4. ^{(BP)(R)}

22.3. Election of directors at an annual general meeting ^(M)

[NB: Schedule 1 Division 1 Item 6(a) requires the election or appointment of members of the committee to be detailed. This is a best practice procedure]

- (a) Subject to this constitution, the board shall decide the procedure for the election of directors at the annual general meeting. ^{(BP)(R)}
- (b) If the number of valid nominations received under Clause 22.1 is equal to the number of director vacancies to be filled, the member nominated will be regarded as being elected as a director at the annual general meeting. ^{(BP)(R)}
- (c) If the number of valid nominations exceeds the number of director vacancies to be filled, elections for the director vacancies shall be conducted at the annual general meeting. ^{(BP)(R)}
- (d) If there are not enough valid nominations to fill the number of director vacancies, the candidates nominated (if any) shall be deemed to be elected as directors and further nominations may be received from the floor of the annual general meeting. ^{(BP)(R)}
- (e) Where the number of nominations as directors from the floor exceeds the remaining number of director vacancies, elections for those director positions shall be conducted. ^{(BP)(R)}
- (f) *If an insufficient number of nominations as directors are received from the floor for the number of director vacancies that remain, each relevant director position is declared vacant by the Meeting Chair of the annual general meeting and:* ^(O)
 - (i) *A new annual general meeting shall be scheduled by the board to take place within fourteen (14) days; and* ^(O)
 - (ii) *The board shall continue to operate, as long as there is a quorum, until the declaration of the new election of directors at the rescheduled annual general meeting.* ^(O)
- (g) A list of candidates for election as directors, with their names in alphabetical order, together with the names of the members who nominated each candidate, shall accompany the notice of the annual general meeting. ^{(BP)(R)}
- (h) Each member present and eligible to vote at the annual general meeting may vote for one candidate for each director vacancy. ^{(BP)(R)}
- (i) A member who nominates for election or re-election as a director may vote for themselves. ^{(BP)(R)}
- (j) *If, at the new annual general meeting scheduled under Clause 22.3(f)(i) the association fails to fill the director vacancies the board shall consider the vacant director positions to be casual vacancies and proceed to appoint directors to fill such casual vacancy (ies) under Clause 23.4.* ^(O)

[NB: Alternate Clause to replace Clause 23.3(f) and (j)]

"If an insufficient number of nominations are received from the floor for the number of vacancies on the board that remain, each relevant position on the board is declared vacant by the Meeting Chair and Clause 22.4(b) applies."

22.4. Appointment of directors by board to fill a casual vacancy ^(M)

[NB: Schedule 1 Division 1 Item 6(d) requires for the details on the filling of casual vacancies occurring on the board. This is mandatory, the below is a best practice approach]

- (a) A casual vacancy occurs in board membership and that position of director becomes vacant if: ^{(BP)(R)}
 - (i) A director ceases to be a member, ^{(BP)(R)}
 - (ii) A director dies, ^{(BP)(R)}
 - (iii) A director becomes disqualified from holding a position under Clause 20.3(b), ^{(BP)(R)}
 - (iv) A director becomes permanently incapacitated by mental or physical ill-health, ^{(BP)(R)}
 - (v) A director resigns as a director, ^{(BP)(R)}
 - (vi) A director is removed as a director, ^{(BP)(R)}
 - (vii) A director is absent from more than: ^{(BP)(R)}

- (A) Three (3) consecutive board meetings without a good reason, or ^{(BP)(R)}
- (B) Three (3) board meetings in the same financial year without tendering an apology to the Meeting Chair of each of those board meetings, and the board has resolved to declare the position of director vacant, or ^{(BP)(R)}
- (viii) The association fails to fill a director vacancy under Clause 22.3(j) ^{(BP)(R)}
- (b) If there is a casual vacancy within the meaning of Clause 22.3(j) the continuing directors may: ^{(BP)(R)}
 - (i) Appoint a member to fill that director vacancy until the conclusion of the next annual general meeting, and ^{(BP)(R)}
 - (ii) Subject to Clause 22.3(j), continue to act despite the vacant position on the board. ^{(BP)(R)}
- (c) If the number of directors is less than the number fixed under Clause 25.5 as the quorum for board meetings, the continuing directors may act only to: ^{(BP)(R)}
 - (i) Increase the number of directors on the board to the number required for a quorum, or ^{(BP)(R)}
 - (ii) Call a special general meeting. ^{(BP)(R)}

22.5. Term of office ^(M)

[NB: Schedule 1 Division 1 Item 6(b) requires the boards term of office to be detailed]

- (a) The directors appointed on incorporation of the association shall remain as directors until the conclusion of the first annual general meeting and shall be eligible for re-election. ^(M)
- (b) At each annual general meeting the following directors shall retire: ^(BP)
 - (i) Any director appointed by the directors to fill a casual vacancy, and ^(BP)
 - (ii) At least 33% (one third) ^(O) of the remaining directors. ^(BP)

[NB: You can change the number of years if you choose to keep these]

- (c) The directors who retire at each annual general meeting under Clause 22.5(b)(ii) will be those directors who have been longest in office since last being elected. ^(O)
 - (d) Where directors were elected on the same day, the director(s) to retire will be decided by ballot, unless the directors agree otherwise. ^(BP)
 - (e) A director's term of office starts on the date at which they were elected, and ends on the date on which they retire, am expelled or suspended or where membership is terminated under Clause 12.1 ^(M)
- [NB: The below clauses provide for 'sunset' clauses. You may not choose to have these in your constitution. They are an option to have to encourage a turnover of directors and 'new blood' into the board. Sunset clauses for many are best practice. You can change the number of years if you choose to keep these]***
- (f) Each director must retire at least once every three (3) ^(O) years. ^(O)
 - (g) A director who retires under Clause 22.5(b) may nominate for election or re-election, subject to Clause 22.5(h) ^(O)
 - (h) Unless the Members pass a special resolution authorising such an action, a director who has held office for a continuous period of nine (9) ^(O) years or more may only be re-appointed or re-elected if a period of one calendar year has passed since the end of the director's continuous period of nine (9) ^(O) years as a director. ^(O)

23. Resignation and removal of directors ^(M)

23.1. Resignation ^(M)

[NB: Schedule 1 Division 1 Item 6(a) requires the election or appointment of members of the committee to be detailed. This is a best practice procedure]

- (a) A director may resign from the board by giving written notice of resignation to the Secretary, or if the director is the Secretary, to the Chairperson. ^{(BP)(R)}
- (b) The director's resignation is effective: ^{(BP)(R)}
 - (i) At the time the notice is received by the Secretary or Chairperson under Clause

23.1(a) or ^{(BP)(R)}

- (ii) If a later time is stated in the notice, at the later time. ^{(BP)(R)}

23.2. Removal ^(M)

[NB: Schedule 1 Division 1 Item 6(a) requires the election or appointment of members of the committee to be detailed. This is a best practice procedure]

- (a) A director may only be removed from his or her position on the board by ordinary resolution at a general meeting if a majority (more than 50%) ^(o) of the members present and eligible to vote at the general meeting vote in favour of the director's removal. ^{(BP)(R)}

[NB: you may change the % if you choose]

- (b) The director who faces removal is to be allowed a full and fair opportunity at the general meeting to review the proposed ordinary resolution, and state their case as to why they should not be removed from their position on the board. ^{(BP)(R)}
- (c) If all directors are removed by ordinary resolution at a general meeting, the members shall, at the same general meeting, elect an interim board. The interim board shall, within two (2) months, hold a general meeting for the purpose of electing a new board. ^{(BP)(R)}

23.3. Assets and records of director who ceases to be a director ^(M)

[NB: Complies with Section 41 and makes this transparent for all members and board members. There is a penalty of \$10,000 for not complying with this which is a good reason you would have some documentation board members sign when they join – see the Penalty Checklist within this manual for more information.]

Upon ceasing to be a director, outgoing directors are responsible for transferring all relevant assets and association's books to the new board within fourteen (14) days ^{(O)(BP)(R)} of ceasing to be a director. ^(M)

[NB: You could change the fourteen (14) day timeline if you choose].

24. Officeholders

24.1. Election of officeholders by board ^(M)

[NB: Schedule 1 Division 1 Item 6(a) requires the election or appointment of members of the committee to be detailed. Officeholders means directors as per clause 22.2(a)]

An officeholder shall: ^(M)

- (a) Be elected by the board, and ^(M)
- (b) Remain as an officeholder for as long as the board deems fit. ^(M)

[NB: One scenario presented has been where an organisation has a board of directors, but no director carries any titles. There is no specific requirement in the Act for you to have people holding titles; the Act simply refers to officeholders.

If this is your situation, throughout this document you would remove Chairperson with Meeting Chair in most areas and Secretary and Treasurer with board directors. In relation to this clause, you would group clauses 24.3 and 24.4 together under one heading called 'board directors will ensure that...'

Note: whilst many of these specific requirements are contained throughout the template constitution, they have been organised by officeholder title for clarity of the roles and responsibilities that office holder should have towards the association to ensure its compliance.]

24.2. Chairperson ^{(BP)(R)}

[NB: Alternatively called 'Meeting Chair']

- (a) The board must elect a director as the Chairperson. ^{(BP)(R)}
- (b) The Chairperson: ^{(BP)(R)}
- (i) Must ensure that they consult with the Secretary regarding the business to be conducted at each board meeting and each general meeting, ^{(BP)(R)}
- (ii) May call board meetings under Clause 25, ^{(BP)(R)}

- (iii) May chair board meetings under Clause 25.1(c)(i) ^{(BP)(R)}
- (iv) May chair annual general meetings and special general meetings under Clause 14.12(a) ^{(BP)(R)}
- (v) Must ensure that the minutes of general meetings or board meetings are reviewed and signed as correct, and ^{(BP)(R)}
- (vi) Must carry out any other duties required of the Chairperson by this constitution. ^{(BP)(R)}

24.3. Secretary ^{(BP)(R)}

[NB: Note many of the below functions are contained where required throughout this template constitution. Below is not mandatory, however there are some mandatory components contained. That is not to say you have to keep this clause as those mandatory provisions have been inserted elsewhere. For the sake of simplicity we will call the below best practice provisions that are also recognised in the WA model rules. Should you wish to change any of these clauses and sub-clauses we have recognised those mandatory clauses you will need to first check]

The Secretary shall ensure the: ^{(BP)(R)}

- (a) Maintenance of a current delegation of authority, ^{(BP)(R)}
- (b) The co-ordination of correspondence of the association, ^{(BP)(R)}
- (c) Calling and holding of general meetings and board meetings, ^{(BP)(R)}
- (d) In consultation with the Chairperson, preparation of notices of general meetings and board meetings and the details of business to be conducted at each such meetings, ^{(BP)(R)}
- (e) Maintenance of the members register, ^{(BP)(R)}
- (f) Maintenance of the record of officeholders, ^{(BP)(R)}
- (g) Maintenance of the minutes, ^{(BP)(R)}
- (h) Safe custody of the association's books (with the exception of the accounting records), ^{(BP)(R)}
- (i) Safe custody and management of the association's record-keeping systems in hardcopy form, electronic form or a combination of forms, taking into account: ^{(BP)(R)}
 - (i) The nature of information to be stored and retrieved, ^{(BP)(R)}
 - (ii) The security and access of files and information (particularly computer records), ^{(BP)(R)}
 - (iii) The validity and reliability of the information collected and the system on which it is recorded, ^{(BP)(R)}
 - (iv) The resources and training required, and ^{(BP)(R)}
 - (v) The length of time that the records should be kept (minimum of 7 years or otherwise as required by other Acts or Regulations), ^{(BP)(R)}
- (j) Recording of full and correct minutes of board meetings and general meetings and their maintenance in the minutes, ^{(BP)(R)}

(k) [NB: Additional clause for a charity]

Compliance with all ACNC reporting requirements, including the following: ^(C)

- (i) Forwarding an annual information statement to the ACNC, and ^(C)
- (ii) Forwarding a financial report to the ACNC as per the following: ^(C)
 - (A) If the association has an annual revenue of less than \$250,000 (small ACNC charity) the association: ^(O)
 - (1) Is not obliged to submit an ACNC financial report to the ACNC, but can do so if it so wishes,
 - (2) Can choose whether to use cash or accrual accounting, and
 - (3) For ACNC purposes, is not required to have the financial statements either: ^(O)
 - (i) Reviewed, or
 - (ii) Audited.

[NB: Select either (i) or (ii)]

- (B) If the association has an annual revenue of more than \$250,000 but less than \$1 million (**medium ACNC charity**), the association shall submit to the ACNC an ACNC financial report that is either: ^(O)
- (1) Reviewed, or
 - (2) Audited.
- [NB: Select either (i) or (ii)]**
- (C) If the association has annual revenue of \$1 million or more (**large ACNC charity**), the association shall submit an audited ACNC financial report to the ACNC. ^(C)
- [NB: Select either (a), (b) or (c)]**
- (l) Compliance with all reporting obligations to the Department of Commerce as varied from time to time. ^{(BP)(R)}
- (m) Performance of any other duties required of the Secretary by this constitution. ^{(BP)(R)}

24.4. Treasurer ^{(BP)(R)}

[NB: Note many of the below functions are contained where required throughout this template constitution. Below is not mandatory, however there are some mandatory components contained. That is not to say you have to keep this clause as those mandatory provisions have been inserted elsewhere. For the sake of simplicity we will call the below best practice provisions that are also recognised in the WA model rules]

The Treasurer shall ensure the:

- (a) Collection of all moneys payable to the association are collected and the issuing of receipts in the name of the association for those monies, ^{(BP)(R)}
- (b) Payment of all monies received by the association into the account or accounts of the association as the board may direct from time to time, ^{(BP)(R)}
- (c) Timely payment of the expenses of the association from the funds of the association with the authority of the board or a general meeting, ^{(BP)(R)}
- (d) Taking out by the association of all necessary insurances. ^{(BP)(R)}
- (e) Maintenance by the association of financial records that comply with the requirements of Clause 30.3. ^{(BP)(R)}
- (f) Safe custody of financial records and any other relevant association records in hardcopy form, electronic form or a combination of forms, taking into account: ^{(BP)(R)}
 - (i) The nature of information to be stored and retrieved, ^{(BP)(R)}
 - (ii) The security and access of files and information (particularly computer records), ^{(BP)(R)}
 - (iii) The validity and reliability of the information collected and the system on which it is recorded, ^{(BP)(R)}
 - (iv) The resources and training required, and ^{(BP)(R)}
 - (v) The length of time that the records should be kept (minimum of 7 years or otherwise as required by other Acts or Regulations), ^{(BP)(R)}
- (g) Co-ordination of the preparation of the financial statements prior to their submission to the annual general meeting, ^(O)

[NB: Sub clause (g) is only applicable for organisations that only have to prepare financial statements (usually tier 1 unless the association has been required by its members or the Commissioner or its charitable status to have a review or an audit. Delete if this doesn't apply – noting you should have chosen either sub clause (g), (h) or (i)]
- (h) Co-ordination of the preparation of the reviewed financial report prior to its submission to the annual general meeting, ^(O)

[NB: Sub clause (h) is only applicable for organisations that have a review of their financials carried out (usually tier 2 unless the association has been required by its members or the Commissioner or its charitable status to have an audit. Delete if this doesn't apply – noting you should have chosen either sub clause (g), (h) or (i)]
- (i) Co-ordination of the preparation of the Auditor's report prior to its submission to the annual

general meeting, ^(O)

[NB: Sub clause (i) applies to tier 3 associations. Delete if this doesn't apply – noting you should have chosen either sub clause (g), (h) or (i)]

- (j) Assistance of the reviewer or Auditor in performing their functions, and ^(O)
[NB: If applicable.]
- (k) Performance of any other duties required of the Treasurer by this constitution. ^{(BP)(R)}

24.5. Record of officeholders ^(M)

[NB: All below clauses comply with Section 58(1) and 58(2) of the Act]

- (a) The Secretary shall ensure that a record of officeholders is maintained. ^(M)
- (b) The record of officeholders shall include: ^(M)
 - (i) Each officeholder's full name, ^(M)
 - (ii) Current postal, residential and email addresses for each officeholder, ^(M)
 - (iii) Details of the office held by each officeholder, ^(M)
 - (iv) Dates of appointment of each officeholder to their respective office, and ^(M)
 - (v) If applicable, dates of cessation of the appointment of each officeholder to their respective office. ^(M)
- (c) The record of officeholders shall be kept and maintained at such place as the board decides. ^(M)

BOARD MEETINGS ^(M)**25. Calling and conducting board meetings** ^(M)**25.1. Calling board meetings** ^(M)

[NB: Schedule 1 Division 1 Item 6]:

- (a) The board shall hold no less than **three (3)** ^{(O)(BP)} and no more than **ten (10)** ^(O) board meeting in any one calendar year. ^{(O)(BP)}

[NB: you may wish to make this a maximum of ten (10) instead]

- (b) The board shall determine the place and time of all board meetings. ^{(O)(BP)}
- (c) A board meeting may be called by: ^{(O)(BP)}
- (i) The Chairperson, or ^{(O)(BP)}
 - (ii) Any two directors, ^{(O)(BP)}
- by giving notice as per clause 25.2(a) to all other directors. ^(M)

25.2. Notice ^(M)

[NB: Schedule 1 Division 1 Item 6(e)]

- (a) The Secretary shall ensure that each director is given at least forty eight (48) hours' ^(O) notice of each board meeting. ^(M)

[NB: Notice is mandatory, you may elect to change this timeline e.g. five (5) days]

- (b) Notice of a board meeting shall specify the general nature of the business to be transacted at the board meeting. ^(M)
- (c) **Subject to Clause 25.2(d) only the business specified on the notice of the board meeting is to be conducted at that board meeting.** ^(O)
- (d) **Urgent business may be conducted at a board meeting if the directors present at the board meeting unanimously agree to treat the business as urgent.** ^(O)

[NB: You may find that clauses 25.2 (c) and (d) are impractical to manage in your circumstances. Some boards prefer the level of control this provides to the meetings which is why this has been included. You can delete either one or both of those optional clauses if you choose.]

25.3. Using technology to hold board meeting ^{(O)(M)(R)}

[NB: Mandatory in that you have to have a clause governing the use of technology should you choose to allow this. If you elect not to allow technology – this could be someone phoning in, teleconferencing or videoconferencing then you would delete clause 14.11 from your constitution, or you could have a clause that states you do not allow the use of technology for members to participate in meetings. Just note though you could potentially be called on for discriminating against some members should you choose not to allow this practice.]

- (a) Board meeting may take place: ^{(O)(M)(R)}
- (i) Where the directors are physically present together, or ^{(O)(M)(R)}
 - (ii) By the use of any technology (such as video or teleconferencing) that is agreed to by all directors, if it reasonably allows each director to participate fully in discussions and decisions as they happen in the board meeting and provided that the participation of each director is made known to all other directors in attendance. ^{(O)(M)(R)}
- (b) A director who participates in a board meeting as set out in Clause 25.3(a): ^{(O)(M)(R)}
- (i) Is deemed to be present at the board meeting, and ^{(O)(M)(R)}
 - (ii) Continues to be present at the board meeting for the purposes of establishing a quorum, until the director notifies the other directors that they are no longer taking part in the board meeting. ^{(O)(M)(R)}

25.4. Conducting board meeting ^(M)

[NB: Schedule 1 Division 1 Item 6(e) provides that you must have a clause dealing with the procedure

at meetings of the board. It is mandatory that you have to have one but the below is best practice suggestion for you to follow. Much of this is standard across non-profits in Australia and that's also reflected in the WA model rules]

- (a) The Chairperson shall normally act as Meeting Chair of each board meeting. ^(BP)
- (b) The directors at a board meeting may elect a director other than the Chairperson to be the Meeting Chair for that board meeting if the Chairperson is: ^(BP)
 - (i) Not present within 30 minutes after the starting time set for the board meeting, or ^(BP)
 - (ii) Present but does not want to act as Meeting Chair of the board meeting. ^(BP)
- (c) The board cannot conduct business unless the quorum specified in Clause 25.5 is present. ^(BP)
- (d) If, within half an hour of the time appointed for the board meeting, the quorum specified in Clause 25.5 is not present the board meeting is to stand adjourned to the same time, day and place in the following week. ^(BP)
- (e) If at a board meeting adjourned under Clause 25.4(d), the quorum specified in Clause 25.5 is not present within half an hour of the time appointed for the board meeting, the directors personally present shall constitute a quorum. ^(BP)
- (f) Subject to this constitution, the directors present at the board meeting are to determine the procedure and order of business to be followed at the board meeting. ^(BP)
- (g) All directors have the right to attend and vote at board meeting. ^(BP)
- (h) All members, or other guests, may attend board meeting if invited by the board, but the member or guest shall not have any right to: ^(BP)
 - (i) Comment without invitation, ^(BP)
 - (ii) Vote, ^(BP)
 - (iii) Be provided with copies of any agenda, minutes of meetings, or documents presented at such board meeting. ^(BP)

[NB: Strongly suggest if this is a practice you are; have or will adopt as per sub clause (h) then you have those people signing a confidentiality and competitive neutrality agreement particularly if they are not members of the association and consequently, are not bound by the constitution!]

- (i) The Secretary, or such person authorised by the board from time to time, shall ensure that minutes of the resolutions and proceedings of all board meeting are recorded and maintained together with a record of the names of persons present at each board meeting. ^(M)

[NB: Mandatory to comply with Schedule 1 Division 1 Item 6(f)]

25.5. Quorum for board meeting ^(M)

[NB: Section 22(1)(d) and Schedule 1 Division 1 6(e) requires you to set the quorum]

- (a) Unless the board determines otherwise, the quorum for a board meeting shall be a majority (more than 50%)^(O) of total directors. ^(M)

[NB: You can change the percentage if you choose or use a number.]

- (b) A quorum must be present for the entire board meeting. ^(M)

26. Board resolutions ^(M)**26.1. Voting ^(M)**

[NB: This is mandatory as you are required to set out any matters related to how a members vote is managed in a meeting but there are optional clauses and best practice clauses within this process]

- (a) Each director present at a board meeting has one vote. ^(BP)
[NB: This clarifies the voting process to ensure that regardless of votes assigned to members, each director has one vote only. Some organisations choose to include an optional clause for the Chairperson to have a casting vote, which is in the next clause]
- (b) A question arising at a board meeting is to be decided by a majority (more than 50%) of votes, but, if there is an equality of votes, the Meeting Chair of the board meeting is *[NB: Alternative option "or is not"]* entitled to exercise a second or casting vote ^(O). ^(BP)
- (c) Decisions at a board meeting may be made by general agreement or by way of a show of hands. ^(O)
- (d) A poll by secret ballot may be used at a board meeting if the board prefers to determine a matter in this way, and if the Meeting Chair of the board meeting supervises the ballot. ^(O)

26.2. Board circular resolutions ^{(O)(BP)}

[NB: Circular resolutions are enacted for standard non-contentious items that don't require the directors to have a discussion. For example, circular resolutions may be made following a board meeting when potential outcomes of a decision have been discussed and once determined post-meeting a resolution is circulated to all directors to be agreed to.

This does remove time-delays in getting the 'business' of the association done and as a measure to prevent its mis-use we have 1) included a provision that all directors who are entitled to vote must agree to the circular resolution in order for it to be passed and 2) stipulated items that the circular resolution cannot be used for.

As a best practice process, if the circular resolution is sent by email, you would provide the circular resolution (and each director's emailed agreement) at the next meeting for ratification and to be entered into the minutes so that it is on record

Whilst this is a mandatory inclusion, you should either delete or adopt the below in its entirety]

- (a) The board may pass a circular resolution without a board meeting being held (**Board Circular Resolution**). ^{(M) if you adopt circular resolutions}
- (b) A board circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in Clause 26.2(c) ^{(M) if you adopt circular resolutions}
- (c) Each director may sign. ^{(M) if you adopt circular resolutions}
- (i) A single document setting out the resolution and containing a statement that they agree to the board circular resolution, or ^{(M) if you adopt circular resolutions}
- (ii) Separate copies of that document, as long as the wording of the board circular resolution is the same in each copy. ^{(M) if you adopt circular resolutions}
- (d) The association may send a board circular resolution by email to the directors and the directors may agree to the board circular resolution by sending a reply email to that effect, including the text of the board circular resolution in their reply. ^{(M) if you adopt circular resolutions}
- (e) A board circular resolution is passed when the last director signs or otherwise agrees to the board circular resolution. ^{(M) if you adopt circular resolutions}

27. Remuneration of directors ^{(M)(R)(C)}

[NB: The below complies with Section 22(2) of the Act. There are also specific requirement for payments to members of a board under Schedule 1 Division 2 Item 1 : 'Payment to members of management committee' that requires '

- (1) Any rules made as mentioned in Division 1 item 6(g) are to provide for payment to be made to a member of the management committee of an incorporated association out of the funds of the association only if the payment is authorised by resolution of the association.*

- (2) *Sub clause (1) does not apply to payment to a member of the management committee for out-of-pocket expenses for travel and accommodation in connection with the performance of the member's functions.]*

27.1. Travelling and other expenses ^{(M)(R)(C)}

The association may pay a director's travelling and other expenses properly incurred, such as: ^{(M)(R)(C)}

- (a) Attending board meeting *or subcommittee meeting*^(O), ^{(M)(R)(C)}

[NB: remove 'or subcommittee meetings' if you do not have subcommittees.]

- (b) Attending any general meeting, and ^{(M)(R)(C)}
(c) In connection with the association's business. ^{(M)(R)(C)}

27.2. No other remuneration ^{(M)(R)(BP)(C)}

Directors shall not receive any remuneration for their services as directors other than as described at Clause 27.1. ^{(M)(R)(BP)(C)}

[NB: Alternative clause is below. Note: If you choose this option, the association needs to undertake its own investigations given its own unique circumstances to ensure that the payment to the directors of a member-approved honorarium payment does not breach obligations owed by the association under other legislation e.g. Charitable Collections Act and the ACNC. As this needs to be carefully considered, we have retained the existing clause as mandatory, best practice, under the model rules of both the Department of Commerce WA and the ACNC and complies with charity obligations as per the ACNC model rules.]

In accordance with the object and purposes of the association, the members authorise payment to the directors of the following honorariums in respect of their attendance at board meeting

Also note that this needs to be approved by members and you may choose to include the fee amount or you may choose to include the words 'to be an amount agreed to annually by the members'.]

SUBCOMMITTEES AND OTHER DELEGATION *(BP)(R)(O)**[NB: Optional clauses with subcommittees]***28. Subcommittees and delegations** *(BP)(R)(O)***28.1. Establishment** *(BP)(R)(O)*

- (a) The board may establish subcommittees from time to time to assist with the conduct of the association's object [and charitable] *(C)* purposes. *(BP)(R)(O)*
- (b) Subcommittees may comprise (in such numbers as the board determines) members and non-members. *(BP)(R)(O)*
- (c) Subject to this constitution, subcommittee members shall determine the procedure to be followed at subcommittee meetings. *(BP)(R)(O)*

28.2. Delegation *(BP)(R)(O)*

- (a) The board may delegate, in writing, to any or all of the subcommittees, any authority, power or functions, and may cancel any authority, powers or functions, as the board sees fit from time to time. *(BP)(R)(O)*
- (b) Despite any delegation under Clause 28.2(a), the board may continue to exercise all its functions, including any function that has been delegated to a subcommittee and remains responsible for the exercise of those functions at all times. *(BP)(R)(O)*

28.3. Delegation to others *(BP)(R)(O)*

- (a) The board may delegate, in writing, to any person any authority, power or function and may cancel any authority, powers or functions, as the board sees fit from time to time. *(BP)(R)(O)*
- (b) Despite a delegation under this clause, the board may continue to exercise all its functions, including any delegated functions, and at all times remains responsible for the exercise of those functions. *(BP)(R)(O)*

*[NB: Alternative clause without any subcommittees]***Delegation to others** *(BP)(R)(O)*

- (c) The board may delegate, in writing, to any person any authority, power or function and may cancel any authority, powers or functions, as the board sees fit from time to time. *(BP)(R)(O)*
- (d) Despite a delegation under this clause, the board may continue to exercise all its functions, including any delegated functions, and at all times remains responsible for the exercise of those functions. *(BP)(R)(O)*

FINANCES ^{(M)(R)(C)}**29. Payment of income or property to members** ^{(M)(R)(C)}

[NB: Section 1 Division 1 Item 6(g) requires you to state the circumstances in which payment may be made to a member of the committee out of the funds of the association]

29.1. Not permitted ^{(M)(R)(C)}

[NB: The below complies with Section 22(2) of the Act.]

Subject to Clause 29.2, none of the income or property of the association may be paid directly or indirectly, by way of dividend, bonus or otherwise, to a member. ^{(M)(R)(C)}

29.2. Permitted payments ^{(M)(R)(C)}

[NB: The below complies with Section 22(2) of the Act. There are also specific requirement for payments to members of a board under Schedule 1 Division 2 Item 1 : 'Payment to members of management committee' that requires '

(1) Any rules made as mentioned in Division 1 item 6(g) are to provide for payment to be made to a member of the management committee of an incorporated association out of the funds of the association only if the payment is authorised by resolution of the association.

(2) Sub clause (1) does not apply to payment to a member of the management committee for out-of-pocket expenses for travel and accommodation in connection with the performance of the member's functions.]

- (a) Clause 29.1 does not prevent: ^{(M)(R)}
- (i) Subject to Clause 29.2(b) the payment in good faith of remuneration to any member, director, officer or employee in return for any services actually rendered to the association or for goods supplied to the association in the ordinary and usual course of business, ^{(M)(R)}
 - (ii) The payment of interest at a rate not exceeding the prevailing market rate published by the Reserve Bank of Australia as the **'Cash Rate Target'** from time to time on money borrowed from any member, ^{(BP)(R)}
 - (iii) The payment of reasonable and proper rent by the association to a member for premises leased to the association by the member, or ^{(BP)(R)}
 - (iv) The reimbursement of out-of-pocket expenses for travel and accommodation incurred on behalf of the association by any member or director in connection with the member's or director's functions as a member or director. ^{(BP)(R)}
- (b) Before a payment proposed to a member or director under Clause 29.2(a)(i) can be made, the payment must first be authorised by the members by way of an ordinary resolution. ^{(M)(R)}

30. Funds**30.1. Source of funds** ^{(BP)(R)}

- (a) The funds of the association may be derived from: ^{(BP)(R)}
- (i) Entrance fees, ^{(BP)(R)}
 - (ii) Annual membership fees, ^{(BP)(R)}
 - (iii) Donations, ^{(BP)(R)}
 - (iv) Fundraising activities, ^{(BP)(R)}
 - (v) Grants, ^{(BP)(R)}
 - (vi) Interest, and ^{(BP)(R)}
 - (vii) Any other sources approved by the board. ^{(BP)(R)}
- (b) The association shall, as soon as practicable: ^{(M)(R)}
- (i)* Deposit all money received to the credit of the association's bank account, without deduction, and ^{(M)(R)}

- (ii) After receiving any money, issue an appropriate receipt. ^{(M)(R)}
[NB: Clause 30(b) complies with Section 1 Division 1 Item 11 requires you to state the manner in which the funds of the association are controlled]

30.2. Control of funds ^(M)

[NB: Section 1 Division 1 Item 11 requires you to state the manner in which the funds of the association are controlled]

- (a) The funds of the association shall be kept in an account in the name of the association in a financial institution determined by the board. ^{(M)(BP)(R)}
- (b) The association shall use its funds in carrying out the association's object [and charitable] ^(C) purposes. ^{(M)(BP)(R)}
- (c) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments of the association shall be signed by: ^{(M)(BP)(R)}
- (i) Any two directors, or ^{(M)(BP)(R)}
- (ii) One director and another person authorised by the board. ^{(M)(BP)(R)}
- (d) All expenditure above the maximum amount set by the board from time to time shall be approved or ratified at a board meeting. ^{(M)(BP)(R)}

30.3. Financial records ^(M)

- (a) The association shall keep financial records that: ^(M)
- (i) Correctly record and explain its transactions, financial position and performance, and ^(M)
- (ii) Enable true and fair financial statements to be prepared. ^(M)
- (b) The association shall retain its financial records for at least 7 years after the transactions covered by the financial records are completed. ^(M)

[NB: Note: the period of 7 years is stipulated in Section 67 of the Act and you could receive a fine of \$2,750 for non-compliance]

BINDING THE ASSOCIATION (M)(O)(R)

[NB: It is mandatory that you must have a clause governing the use of a common seal compliant with Section 58(2)(b), however optional for those associations who don't have a common seal they can remove this clause in its entirety]

31. Use of common seal (M)(O)(R)

- (a) The association may decide to have a common seal on which its corporate name appears in legible characters. (M)(O)(R)
- (b) If the association does decide to have a common seal under Clause 31(a): (M)(O)(R)
 - (i) The Secretary shall ensure its safe custody, and (M)(O)(R)
 - (ii) It shall only be used under resolution of the board. (M)(O)(R)
- (c) The association shall sign off on a document without using a common seal (if any) if the document is signed by two directors. (M)(O)(R)
- (d) The association shall sign off on a document using its common seal (if any), if the fixing of the common seal is witnessed by: (M)(O)(R)
 - (i) Any two directors, or (M)(O)(R)
 - (ii) One director and another person authorised by the board. (M)(O)(R)
- (e) The Secretary shall ensure that every use of the common seal is recorded in the minutes. (M)(O)(R)

MINUTES, BOOKS AND RECORDS**32. Minutes ^(M)****32.1. Taking of minutes ^(M)**

[NB: All below clauses comply with the following sections in the Act: Section 1 Division 1 Item 6(f)]

- (a) The association shall keep minutes of the resolutions and proceedings of all annual general meeting, special general meeting and board meeting together with a record of the names of persons present at each General meeting and board meeting. ^(M)
- (b) The minutes of the annual general meeting, special general meeting and board meeting are to be entered into the Minute Book within 30 days ^(O) of the date of the annual general meeting, special general meeting and board meeting. ^(O)

[NB: Remove if you do not have a minute book]

32.2. Review and signing of minutes ^{(BP)(R)}

- (a) The Chairperson shall ensure that the minutes of an annual general meeting, special general meeting or board meeting are reviewed and signed as correct by: ^{(BP)(R)}
 - (i) The Meeting Chair of the annual general meeting, special general meeting or board meeting to which those minutes relate, or ^{(BP)(R)}
 - (ii) The Meeting Chair of the next succeeding annual general meeting, special general meeting or board meeting. ^{(BP)(R)}
- (b) When minutes have been entered and signed as correct under Clause 32.2(a) they are: ^{(BP)(R)}
 - (i) To be entered in the minute book, and ^(O)
 - (ii) Until the contrary is proved, evidence that: ^{(BP)(R)}

[NB: Remove if you do not have a minute book]

- (A) The annual general meeting, special general meeting or board meeting to which they relate was duly called and held, ^{(BP)(R)}
- (B) All proceedings recorded as having taken place at the annual general meeting, special general meeting or board meeting did in fact take place at the meeting, and ^{(BP)(R)}
- (C) All appointments or elections purporting to have been made at the annual general meeting, special general meeting or board meeting were validly made. ^{(BP)(R)}

32.3. Inspection of minutes ^(M)

- (a) The minutes of annual general meeting or special general meeting may be inspected by a member under Clause 33.3. ^(M)
- (b) The minutes of board meeting may be inspected by a member under Clause 33.3 unless the board determines that the minutes of board meeting generally, or the minutes of a specific board meeting, are not to be made available for inspection by a member. ^{(BP)(R)}

33. Records ^(M)**33.1. Inspecting record of officeholders ^(M)**

[NB: All below clauses comply with Section 58(3) and 58(4) of the Act]

- (a) Any member is able to inspect the record of officeholders free of charge, at such time and place as is mutually convenient to the association and the member. ^(M)
- (b) The member may make a copy of details from the record of officeholders, but has no right to remove the record of Officeholders for that purpose. ^(M)

33.2. Custody of association's books ^(M)

[NB: Complies with Section 1 Division 1 Item 6(f) and Item 17 and Section 162.]

- (a) Except as otherwise decided by the board from time to time: ^{(BP)(R)}
- (i) The Secretary shall be responsible for ensuring the maintenance and control of the association's books (except for the association's financial records). ^{(BP)(R)}
 - (ii) The Treasurer is responsible for ensuring the custody and maintenance of the association's financial records and securities. ^{(BP)(R)}

[NB: Referring to sub clauses 33.2(a)(i) and (ii) above. Where you do not have specific titles for your officeholders the alternate clause below would replace 33.2(a) in its entirety]

- (A) The board shall be responsible for ensuring the maintenance and control of the association's books including the association's financial records and securities. ^(O)
- (b) The association's books shall be retained for at least 7 years. ^(M)

[NB: Note: the period of 7 years is stipulated in Section 67 of the Act and you could receive a fine of \$2,750 for non-compliance]

33.3. Inspecting association's books ^(M)

[NB: Complies with Section 1 Division 1 Item 6(f) and Item 17 and Section 162]

- (a) Subject to this constitution, a member is able to inspect the association's books free of charge at such time and place as is mutually convenient to the association and the member. ^(M)
- (b) A member shall contact the Secretary to request to inspect the association's books. ^(M)
- (c) The member may copy details from the association's books but has no right to remove the association's books for that purpose. ^(M)

33.4. Prohibition on use of information in association's books and record of officeholders ^(M)

[NB: Complies with Section 58(5).]

A member shall not use or disclose information in the association's books and record of officeholders except for a purpose: ^(M)

- (a) That is directly connected with the affairs of the association, or ^(M)
- (b) Related to a requirement of the associations Act to provide information to the Commissioner. ^(M)

33.5. Returning the association's books ^(M)

[NB: Complies with Section 41 and makes this transparent for all members and board members. There is a penalty of \$10,000 for not complying with this which is a good reason you would have some documentation board members sign when they join – see the Penalty Checklist within this manual for more information.]

Outgoing directors are responsible for transferring all relevant assets and association's books to the new board within fourteen (14) days ^{(O)(BP)(R)} of ceasing to be a director. ^(M)

[NB: You could change the fourteen (14) day timeline if you choose].

DISPUTES ^(M)

[NB: These clauses comply with Section 1 Division 1 Item 18 and are mandatory in the sense that you are required to have a procedure for dealing with any dispute between members and between members and the association. The below clauses are provided as best practice disputes and you can amend any of the below procedure/s if you so choose. Clause 36 complies with Section 182 of the Act. All timelines in the below clauses are best practice options but can be amended if you choose.]

34. Disputes arising under constitution ^(M)

- (a) This clause applies to: ^(M)
- (i) Disputes between members, and ^(M)
 - (ii) Disputes between the association and one or more members that arise under the constitution or relate to the constitution. ^(M)
- (b) In this Clause 34, the term **member** includes any former member whose membership ceased not more than six (6) months before the dispute occurred ^{(BP)(R)(O)}
- [NB: This is an optional clause recommended by model rules. You could change the timeline to something else if you choose – e.g. two (2) months. It is suggested as best practice as it provides clarity when dealing with disputes from ‘past’ members]*
- (c) The parties to a dispute shall attempt to resolve the dispute between themselves within fourteen (14) days ^(O) of the dispute coming to the attention of each party. ^{(BP)(R)}
- (d) If the parties are unable to resolve the dispute, any party to the dispute may initiate a procedure under this Clause 34 by giving written notice to the Secretary of the parties to, and details of, the dispute. ^{(BP)(R)}
- (e) The association shall hold a board meeting within twenty eight (28) days ^(O) after the Secretary receives notice of the dispute under Clause 34(d) for the board to determine the dispute. ^{(BP)(R)}
- (f) At the board meeting to determine the dispute, all parties to the dispute shall be given a full and fair opportunity to state their respective cases orally, in writing, or both. ^{(BP)(R)}
- (g) The Secretary shall inform the parties to the dispute of the board’s decision and the reasons for the decision within 7 days ^(O) after the board meeting referred to in Clause 34(e). ^{(BP)(R)}
- (h) If any party to the dispute is dissatisfied with the decision of the board, they may elect to initiate further dispute resolution procedures as set out in the constitution. ^{(BP)(R)}

35. Mediation ^{(BP)(R)}

- (a) This Clause 35 applies: ^{(BP)(R)}
- (i) Where a person is dissatisfied with a decision made by the board under Clause 34(g) or ^{(BP)(R)}
 - (ii) Where a dispute arises between a member or more than one member and the association and any party to the dispute elects not to have the matter determined by the board. ^{(BP)(R)}
- (b) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by Clause 34(c) or a party to a dispute is dissatisfied with a decision made under Clause 34(g) a party to a dispute may: ^{(BP)(R)}
- (i) Provide written notice to the Secretary identifying the parties to, and the details of, the dispute, and ^{(BP)(R)}
 - (ii) Agree to, or request the appointment of, a mediator to resolve the dispute. ^{(BP)(R)}
- (c) The Secretary shall then ensure that a mediator is appointed to resolve the dispute who shall be: ^{(BP)(R)}
- (i) A person chosen by agreement between the parties to the dispute, or ^{(BP)(R)}
 - (ii) In the absence of agreement between the parties to the dispute, a mediator appointed by the board. ^{(BP)(R)}
- (d) Where the dispute relates to a proposal for the suspension or expulsion of a member this Clause 35 does not apply until the procedure under Clause 12 in respect of the proposed

- suspension or expulsion has been completed. ^{(BP)(R)}
- (e) The party or parties requesting the mediation shall pay the costs of the mediation. ^{(BP)(R)}
 - (f) The mediator can be a member provided the member is not a party to the dispute. ^{(BP)(R)}

[NB: Some may feel this inappropriate and wish to appoint a professional mediator rather than allow a member to mediate the issue. You could delete this or amend it to provide for a professional mediator instead. If you choose to do this, one thing you should consider is that the person requesting the mediation shall pay the costs as per clause 35(e) and you could be disadvantaging a member of the association by doing so]

- (g) The parties to the dispute shall attempt to settle the dispute by mediation in good faith. ^{(BP)(R)}
- (h) The parties are to exchange written statements of the issues that are in dispute between them and supply copies to the mediator at least five (5) days ^(O) before the date of the mediation. ^{(BP)(R)}
- (i) The mediator, in conducting the mediation, shall:
 - (i) Give the parties to the mediation every opportunity to be heard,
 - (ii) Allow all parties to consider any written statement submitted by any party, and
 - (iii) Ensure that natural justice is accorded to the parties to the dispute throughout the mediation.
- (j) The mediation shall be confidential.
- (k) Information provided by the parties in the course of the mediation cannot be used in any other legal proceedings that may take place in relation to the dispute.

36. Inability to resolve dispute ^(M)

If a dispute cannot be resolved under the procedures set out in Clauses 34 and 35, any party to the dispute may apply to the Administrative Tribunal to determine the dispute in accordance with the associations Act or otherwise at law. ^(M)

[NB: The above complies with section 182 of the Act and we have marked mandatory for that reason]

SERVICE OF NOTICES ^(M)

[NB: These clauses comply with Section 1 Division 1 Item 9 and Sections 50, 51, 52 in the Act. Additional clauses relating to notices have been included in the constitution in the appropriate place. e.g. meeting notices]

37. Legal requirements ^(M)

A notice or other communication in relation to this constitution has no legal effect unless it is in writing and given as follows: ^(M)

- (a) Delivered by hand to the nominated address of the addressee, ^(M)
- (b) Sent by post to the nominated postal address of the addressee, or ^(M)
- (c) Sent by e-mail or any other method of electronic communication (including facsimile transmission) to the nominated electronic address of the addressee. ^(M)

38. Service on members ^(M)

Any notice given to a member under this constitution shall be sent to the member's address as recorded in the members register. ^(M)

INDEMNITY AND INSURANCE ^(o)**39. Indemnity ^(o)**

- (a) The association shall indemnify each director out of the assets of the association against all losses and liabilities (including costs, expenses and charges) incurred by that person as a director:
- (i) When the association is not prevented by law from doing so, and
 - (ii) For an amount for which the director is not entitled to indemnity from another party (including an insurer under an insurance policy).
- (b) The indemnity in Clause 39(a) is a continuing obligation and is enforceable by a director even though that person is no longer a director of the association. ^(o)

[NB: Clause 39 is completely optional. It provides a higher degree of comfort for members who are board members. Whilst member's liability has been included at clause 7.3, some board members are uncertain if member's liability applies when they act in a director's role so this provides transparency and clarity.]

40. Director's insurance ^(o)

[NB: Clause 40 is completely optional. You don't have to have this in your constitution. A lot of service based non-profits do pay directors insurance, however you may choose not to. If you do include it then this provides directors with assurance and clarity on this matter. If you were to delete it delete the whole clause]

To the extent permitted by law, and if the board consider it appropriate, the association may pay or agree to pay a premium for a contract insuring a person who is or has been a director against any liability incurred by the director. ^(o)

41. Insurance covering workers, contractors, volunteers and visitors ^(o)

[NB: Clause 41 is completely optional. You don't have to have this in your constitution. It has been included for transparency and clarity and whilst it's of an operational nature it directly relates to members rights and responsibilities and the associations rights and responsibilities towards its members and it has been included. If you chose to include this you would include in its entirety]

The association shall ensure that appropriate insurance is obtained for:

- a) The association's workers,
- b) The association's contractors,
- c) The association's volunteers, and
- d) The association's visitors.

OCCUPATIONAL SAFETY AND HEALTH ^(o)

[NB: This entire section is completely optional. You don't have to have this in your constitution. You may have policy documents that deal with these matters. It has been included for transparency and clarity on these matters to members, particularly those members who volunteer and/or work in some way with the organisation. This is more of an operational matter than governance however as it directly relates to members rights and responsibilities and the associations rights and responsibilities towards its members it's been included.

If you chose to include this you would include in its entirety. Alternatively, you may wish to include this and reference any policies you have.]

42. Safe and healthy working environment ^(o)

The association is aware of its obligation to provide a safe and healthy working environment for its employees, contractors, volunteers and visitors and to remain familiar with the requirements of the *Occupational Safety and Health Act 1984* (WA) and the *Occupational Safety and Health Regulations 1996* (WA) and any amendments to these legal instruments made from time to time (**OSH Laws**).

43. Occupational Safety and Health obligations ^(o)

The association shall ensure that:

- (a) Where required, it obtains workers compensation insurance for its workers.
- (b) Where required, it obtains insurance to cover its:
 - (i) Contractors,
 - (ii) Volunteers, and
 - (iii) Visitors.
- (c) It complies with its obligations under the OSH laws, including any obligation:
 - (i) To complete a workers compensation claim form and submit it to the association's workers compensation insurer if a worker is injured while at work, and
 - (ii) to notify the WorkSafe WA Commissioner if an injury to a worker involves:
 - (A) A work-related death, or
 - (B) One of the following injuries or diseases:
 - (1) A fracture of the skull, spine or pelvis,
 - (2) A fracture of any bone in the arm (other than in the wrists or hand) or in the leg (other than a bone in the ankle or foot),
 - (3) An amputation of an arm, a hand, finger, finger joint, leg, foot, toe or toe joint,
 - (4) The loss of sight of an eye,
 - (5) Any injury other than those set out in Clauses 44(c)(ii) (B)(i) to 44(c)(ii) (B)(4), in the opinion of a medical practitioner, is likely to prevent the worker from being able to work within ten (10) days of the day on which the injury occurred,
 - (6) Infectious diseases such as tuberculosis, viral hepatitis, legionnaires' disease and HIV, where the disease is contracted during work involving exposure to human blood products, body secretions, excretions or other material which may be a source of infection, and
 - (7) Occupational zoonoses such as Q fever, anthrax, leptospiroses and brucellosis, where the disease is contracted during work involving the handling of, or contact with, animals, animal hides, skins, wool, hair, carcasses or animal waste products.

CONSTITUTION ^(M) AND BY-LAWS ^(O)

[NB: Compliant with Section 1 Division 1 Item 14; Section 1 Division 1 Item 17; Section 30 and 35]

44. Constitution ^(M)**44.1. Binding ^(M)**

This constitution imposes a legally binding obligation upon the association and upon each member to observe all of its Clauses. ^(M)

44.2. Amendment ^(M)

- (a) The association may amend the constitution or replace it with a new constitution by passing a special resolution. ^(M)

[NB: If the association is, or intends to be, registered as a charity with the ACNC an optional clause is below.]

- (a) The association shall not pass a special resolution amending the constitution if passing it causes the association to no longer be a charity ^{(O)(C)}
- (b) An amendment to the constitution changing: ^(M)
 - (i) The association's name, or ^(M)
 - (ii) The association's object or purposes, ^(M)
does not become effective until:
 - (iii) The required documents are lodged with the Commissioner, and ^(M)
 - (iv) The Commissioner's written approval to the changes is received by the association. ^(M)

44.3. Copies ^(M)

- (a) The association shall maintain a current copy of the constitution at all times. ^(M)
- (b) The association shall provide, free of charge, a copy of the constitution then in force, to each member at the time their membership commences. ^(M)

45. By-laws ^(O)

[NB: You can delete this clause if you don't have nor wish to have by-laws]

45.1. Power and purpose ^(O)

Provided that they are not inconsistent with the constitution or the associations Act, the members may make, amend and repeal by-laws for the management of the association by way of an ordinary resolution at an annual general meeting or a special general meeting. ^(O)

45.2. Not of constitution and not required to be lodged ^(O)

Any by-laws made under Clause 45.1 do not form part of the constitution and are not required to be lodged with the Commissioner. ^(O)

WINDING UP, CANCELLATION AND DISTRIBUTION OF SURPLUS PROPERTY ^{(M)(C)}

[NB: Compliant with Schedule 1 Division 1 Item 19. Surplus asset clauses are also compliant with Sections 24(1) and Section 120 of the Act]

46. Cessation of activities, winding up and cancellation of incorporation ^{(M)(C)}

- (a) The association may cease its activities and have its incorporation cancelled in accordance with the associations Act if the members resolve by special resolution that the association is to: ^{(M)(R)}
- (i) Apply to the Commissioner seeking the cancellation of the association's incorporation, or ^{(M)(R)}
 - (ii) Appoint a liquidator to wind up the association's affairs.
- (b) If the association has outstanding debts or any other outstanding legal obligations, or is a party to any current legal proceedings, the association must be wound up under Clause 46(a)(a)(ii) before cancellation of incorporation can take place. ^{(M)(R)}

47. Surplus assets not to be distributed to members ^{(M)(C)}

If the association is wound up, any surplus assets must not be distributed to a member or a former member, unless that member or former member is an entity described in Clause 48. ^{(M)(C)}

48. Distribution of surplus assets ^{(M)(C)}

- (a) Subject to the associations Act, any other applicable law and any court order, any surplus assets that remain after the association is wound up shall be distributed to one or more not-for-profit organisations that: ^{(M)(C)(R)}
- (i) Possess an object [and charitable] ^(C) purposes similar to, or inclusive of, the object [and charitable] ^(C) purposes of the association as set out in Clause 4, and ^{(M)(C)(R)}
 - (ii) Which also prohibit the distribution of any surplus assets to its members to at least the same extent as the association. ^{(M)(C)(R)}
- (b) The decision as to the not-for-profit organisation or organisations to receive the surplus assets of the association shall be made by a special resolution of members at or before the time of winding up. ^(M)
- (c) If the members do not make the decision set out in Clause 48(b) the association may make application to the Courts of Western Australia and request that the courts make this decision. ^(M)

Schedule 1 - Membership Application Form

A. Application

I, of
[Applicant's Full Name]

.....
[Applicant's Residential Address]

.....
[Applicant's Date of Birth]

.....
[Applicant's Telephone Number]

.....
[Applicant's Occupation]

.....
[Applicant's Email Address]

hereby apply to become a member of the above named incorporated association. In the event of my admission as a Member, I agree to be bound by the Constitution of the Association as amended from time to time. I also understand the acceptance of my membership application does not necessarily provide guarantee any nomination for a directors position in accordance with this constitution.

.....
Signature of Applicant

.....
Date

B. Nomination by two (2) Current Members

I,
[First Nominating Member's Full Name]

being a current Member of the Association and entitled to nominate persons for membership, hereby nominate the Applicant for membership of the Association.

.....
Signature of First Nominating Member

.....
Date

I,
[Second Nominating Member's Full Name]

being a current Member of the Association and entitled to nominate persons for membership, hereby second the nomination of the Applicant for membership of the Association.

.....
Signature of Second Nominating Member

.....
Date

Schedule 2 - Proxy Voting Form

(for use by Member who is unable to attend Annual or Special General Meeting)

A. Appointing a Proxy

I, of
[Member's Full Name]

.....
[Member's Residential Address]

.....
[Member's Telephone Number]

.....
[Member's Email Address]

being a Member of the above named incorporated association (**Association**) and authorised to vote at a General Meeting, hereby appoint:

Please Tick ONLY ONE (1) of the following:

- 1. Chairperson of General Meeting OR
- 2. Secretary of Association OR
- 3. Proxy identified below



I, of
[Proxy's Full Name]

.....
[Proxy's Residential Address]

to vote on my behalf at the Annual/Special (strike out '**Annual**' OR '**Special**') General Meeting (**General Meeting**) of the Association to be held on:

.....
Date of General Meeting Address of General Meeting

and at any adjournment of the General Meeting.

B. Proxy's Voting Directions

My proxy is authorised to vote:

Please Tick ONLY ONE (1) of the following:

- 1. As the proxy deems fit OR
- 2. According to the specific directions to my Proxy identified below



Specific directions to Proxy (please add further page if needed)

.....
Signature of Member

.....
Date

Schedule 3 – Appointment of Organisational Member Representative Form

.....
[Name of Organisational Member]

Advises that, on
[Insert date of meeting]

It was resolved that
[Name of Representative of Organisational Member]

Represent the Organisational Member at (tick only ONE of the following boxes):

The general meeting/s on
(Insert relevant date/s)

OR

General meetings

Of: Limited.
[Name of Association]

Witnessed/Authorised by ((if required under the CORPORATE MEMBER'S rules)

Signature:

Name:

Position:

Date:

Signature:

Name:

Position:

Date:



[Affix Organisational Members
Common Seal if required]

The Organisational Member acknowledges that according to Clause 17.4 of the Association's Constitution a person appointed to represent a member which is an association is deemed for all purposes to be a member until that appointment is revoked by the association or, in the case of an appointment in respect of a particular general meeting, which appointment is not so revoked, the conclusion of that general meeting.