

## **THE COUNCIL OF NIGERIAN ASSOCIATIONS PRESIDENTS IN AUSTRALIA INCORPORATED ARTICLES OF ASSOCIATION**

This document includes additional summaries of the obligations arising from the *Associations Incorporation Act 2015* and other explanatory material. These are presented in the form of ‘Guidance Notes’ and ‘Act Requirements’. These summaries do not form part of the model rules. They have been included to assist associations adopting the model rules or modifying them to create a set of own rules to understand each of the various requirements.

### Note for these rules:

If an association or incorporated association approves the adoption of these model rules as its own rules, section 7(4) or 29(5) of the Act, as appropriate, requires the association or incorporated association to notify the Commissioner of the following information —

- (a) the name of the association;
- (b) the objects or purposes of the association;
- (c) the quorum for a general meeting of members of the association;
- (d) the quorum for a meeting of the management committee of the association;
- (e) if relevant, the period of the first financial year of the association.

**Guidance Note – Information provided to the Commissioner under section 29(5)** – This information is part of the rules of your association and must be attached to the copy of the rules provided to members. The information provided to the Commissioner should be inserted here: The name of the Association is:

**Council of Nigerian Associations Presidents in Australia Incorporated**

The objects of the Association are:

**1) To promote unity, peace, prosperity and welfare of all Nigerians in Australia through registered or incorporated Nigerian national associations (associations where multi ethnic groups of Nigeria are represented) across all 6 Australian States and 2 Territories; and to advance the interest of Nigerians among credible African Associations in Australia. These national associations are identified in Division 1, Rule 4**

**2) To act as the apex leadership forum that comprises of leaders (Presidents and Vice Presidents) of Registered/Incorporated Nigerian national associations within the 6 States and 2 Territories in Australia.**

**3) To act as central reference body to Australian Commonwealth government, non-governmental organisations and businesses in matters of collective importance to Nigerian national associations in Australia**

**4) To provide strong advocacy for Nigerians and Nigerian Associations in Australia by engaging with the Nigerian government and its agencies, Nigerian High Commission and Australian government in matters of welfare for all Nigerians in Australia.**

**5) To enhance networking between Nigerian national associations and provide culturally appropriate mediation in dispute situations within member associations, including among members of the Executive or Management Committee of State's or Territory's associations**

**6) To Coordinate and promote mentoring programs for emerging leaders of Nigerian heritage in Australia to build capacity for the future growth of the council and member associations.**

- A. Any 8 (**Eight**) members personally present (being members entitled to vote under these rules at a general meeting) will constitute a quorum for the conduct of business at a general meeting.
- B. Any 2 (**Two**) management committee members constitute a quorum for the conduct of the business of a management committee meeting.
- C. The association's financial year will be the period of 12 months commencing on **July 1 of one year** and ending on **June 30<sup>th</sup>** of the next year in line with the financial year of Australia.

## PART 1 — PRELIMINARY

### 1. Terms used

In these rules, unless the contrary intention appears —

**Act** means the *Associations Incorporation Act 2015*;

**Association** means the incorporated association to which these rules apply which in this case is Council of Nigerian Associations Presidents in Australia Incorporated;

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

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

**Chairperson** means the council member holding office as the chairperson of the council;

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

**Council** means the Council of Nigerian Associations Presidents in Australia;

**Council meeting** means a meeting of the council;

**Council member** means a member of the council;

**Financial records** includes —

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

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

**Financial statements** mean the financial statements in relation to the council required under Part 5 Division 3 of the Act;

**Financial year**, of the council, has the meaning given in rule 2;

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

**Management Committee** means the committee that manages the affairs of the council

**Ordinary council member** means a council member who is not an office holder of the council

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

**Rules** mean these rules of the council, as in force for the time being;

**Secretary** means the council member holding office as the secretary of the council;

**General meeting** means bimonthly general meeting of the council;

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

**Subcommittee** means a subcommittee appointed by the council

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

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

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

**Treasurer** means the council member holding office as the treasurer of the council.

## 2. Financial year

- (1) The financial year of the council means the operational year that commences on July 1 of one year and ends June 30<sup>th</sup> of the next year in line with Australia's financial year calendar.

## (2) PART 2 — ASSOCIATION TO BE NOT FOR PROFIT BODY

### 3. Not-for-profit body

- (1) The property and income of the council must be applied solely towards the promotion of the objects or purposes of the council and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to any member, except in good faith in the promotion of those objects or purposes.
- (2) A payment may be made to a member out of the funds of the council only as authorised under sub rule 49 (3).
- (3) A payment to a member out of the funds of the council is authorised if it is —
  - (a) the payment in good faith to the member as reasonable remuneration for any services provided to the council, or for goods supplied to the council, in the ordinary course of business; or
  - (b) the payment of interest, on money borrowed by the council from the member, at a rate not greater than the cash rate published from time to time by the Reserve Bank of Australia; or
  - (c) the payment of reasonable rent to the member for premises leased by the member to the council; or
  - (d) the reimbursement of reasonable expenses properly incurred by the member on behalf of the council.

#### Note for this rule-

Section 5(1) of the Act provides that an association is not eligible to be incorporated under the Act if it is formed or carried on for the purpose of securing pecuniary profit for its members from its transactions, and section 5(3) of the Act provides details about when an association is not ineligible under section 5(1) of the Act.

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

## PART 3 — MEMBERS

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

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

**Guidance Note – Liability of Members** - A member is only liable for their own outstanding membership fees (if any) payable under rule 12.

### Division 1 — Membership

#### 4. Eligibility for membership

- (1) Membership is open to registered or incorporated Nigerian national associations across the 6 Australian States and 2 Territories as far as these associations support the objects or purposes of the council. The automatic inaugural members of the council include the following: **Nigerian Association of Western Australia, Inc., The Nigerian Community Association of Queensland, Nigerian Association of Northern Territory Australia, The Nigerian Association in the ACT, Nigerian Community in Tasmania, Inc., Nigerian Association in South Australia, Nigerian Society of Victoria, Nigerian Association of Newcastle and Nigerian Association of NSW.,**
- (2) Individuals are not eligible to become members of the council as only Nigerian national associations in a State or Territory are eligible for council membership through the representation by their Presidents and Vice Presidents respectively
- (3) Where there is more than one Nigerian national association in a State or Territory, approval of membership to the council will be by two-third majority vote by members of the council present at the next general Meeting.

**Guidance Note – Eligibility for membership**

- *The by-laws may require members to hold specified educational, trade or professional qualifications.*
- *The association must comply with all legal and regulatory obligations that may apply to the association under any other law when assessing eligibility of an applicant for membership.*

#### 5. Applying for membership

1. The council has ordinary membership as the only category of membership
2. The two delegated representatives, namely the Presidents and Vice Presidents from each member Nigerian national association in Australia must be 18 years and above.

3. An ordinary member through their delegated representatives on the council has full voting rights and any other rights conferred on members by these rules or approved by resolution at a general meeting or determined by the council
4. The number of members is only limited by the number of current members in addition to any future membership applications approved by resolution at a general meeting of the council
5. A registered or incorporated Nigerian national association in Australia besides those listed in subrule 4 (1) that wants to become a member of the council must apply in writing to the council
6. The application must be endorsed by a current council member nominating the applicant for membership
7. The application must be signed by the applicant and the council member nominating the applicant
8. There is only one category of membership (ordinary membership) for the purpose of membership application to the council

#### **6. Dealing with membership applications**

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

#### **7. Becoming a member**

An applicant for membership of the council becomes a member when –

- a. the council accepts the application; and
- b. the applicant pays any membership fees payable to the council under rule 12

**Guidance Note – Becoming a member** - *The applicant immediately becomes a member, when rule 7 has been fulfilled, and is entitled to exercise all the rights and privileges of membership, including the right to vote (if applicable), and must comply with all of the obligations of membership under these rules.*

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

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

## 8. Classes of membership

1. The council consists of ordinary members only
2. The representatives of Nigerian national associations on the council, namely the Presidents and the Vice Presidents must be 18 years and above
3. An ordinary member has full voting rights and any other rights conferred by these rules or approved by resolution at a general meeting of the council
4. The number of members of the council is limited by the number of Nigerian national association approved for membership besides those automatic members listed in subrule 4 (1)

## 9. When membership ceases

- (1) A Nigerian national association ceases to be a member of the council when any of the following takes place —
  - (a) The Nigerian national association ceases to exist
  - (b) The Nigerian national association applies with endorsement of two-thirds of its general assembly to withdraw from the council
  - (c) The Nigerian national association's membership is terminated by two-thirds vote of the members of the council

## 10. Resignation

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



## 11. Rights not transferable

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

### Division 2 — Membership fees

#### 12. Membership fees

- (1) Each Nigerian national association pays one fifty dollars (\$50) for initial membership subscription and thereafter pays the same amount every 3 months to maintain membership in the council. This can be made as a lump sum of \$200 per year and subject to periodic review as will be determined by the council at a general meeting..

### Division 3 — Register of members

#### 13. Register of members

##### ***Act Requirements – Register of members***

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

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

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

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

- (1) The secretary, or another person authorised by the council, is responsible for the requirements imposed on the council under section 53 of the Act to maintain the register of members and record in that register any change in the membership of the council.
- (2) The register of members must be kept at the secretary's place of residence, or at another place determined by the council.
- (3) A council member who wishes to inspect the register of members must contact the Secretary to make the necessary arrangements.
- (4) If —
  - (a) a member inspecting the register of members wishes to make a copy of, or take an extract from, the register under section 54(2) of the Act; or
  - (b) a member makes a written request under section 56(1) of the Act to be provided with a copy of the register of members,

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

## **PART 4 — DISCIPLINARY ACTION, DISPUTES AND MEDIATION**

### **Division 1 — Term used**

#### **14. Term used: member**

In this Part —

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

### **Division 2 — Disciplinary action**

#### **15. Suspension or expulsion**

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

- (5) A decision of the council to suspend the member's membership or to expel the member from the council takes immediate effect once the Nigerian national association he or she represents on the council has been duly advised of the development.
- (6) The council must give the member written notice of the council's decision, and the reasons for the decision, within 7 days after the council meeting at which the decision is made.
- (7) A member whose membership is suspended or who is expelled from the council may, within 14 days after receiving notice of the Committee's decision under sub rule (6), give written notice to the Secretary requesting the appointment of a mediator under rule 20.
- (8) If notice is given under sub rule (7), the member who gives the notice and the council are the parties to the mediation.

***Guidance Note – Suspension or expulsion of a Member - Once the committee has decided to suspend or expel a member under rule 15(5) the member is immediately suspended or expelled.***

## 16. Consequences of suspension

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

## Division 3 — Resolving disputes

### 17. Terms used

In this Division —

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

***party to a dispute*** includes a person —

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

**Guidance Note - Resolving disputes**

- For the purposes of rules 17 and 18, the term **this Division** relates to rules 19 – 21.

## 18. Application of Division

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

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

## 19. Parties to attempt to resolve dispute

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

## 20. How grievance procedure is started

- (1) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 19, any party to the dispute may start the grievance procedure by giving written notice to the Secretary of —
  - (a) the parties to the dispute; and
  - (b) the matters that are the subject of the dispute.
- (2) Within 28 days after the Secretary is given the notice, a council meeting must be convened to consider and determine the dispute.
- (3) The Secretary must give each party to the dispute written notice of the council meeting at which the dispute is to be considered and determined at least 7 days before the meeting is held.
- (4) The notice given to each party to the dispute must state —
  - (a) when and where the council meeting is to be held; and
  - (b) that the party, or the party's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the council about the dispute.
- (5) If —
  - (a) the dispute is between one or more members and the council; and
  - (b) any party to the dispute gives written notice to the Secretary stating that the party —
    - (i) does not agree to the dispute being determined by the council; and
    - (ii) requests the appointment of a mediator under rule 20,the committee must not determine the dispute.

## **21. Determination of dispute by council**

- (1) At the council meeting at which a dispute is to be considered and determined, the council must —
  - (a) give each party to the dispute, or the party's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the council about the dispute; and
  - (b) give due consideration to any submissions so made; and
  - (c) determine the dispute.
- (2) The council must give each party to the dispute written notice of the council's determination, and the reasons for the determination, within 7 days after the council meeting at which the determination is made.
- (3) A party to the dispute may, within 14 days after receiving notice of the council's determination under subrule (1)(c), give written notice to the Secretary requesting the appointment of a mediator under rule 20.
- (4) If notice is given under subrule (3), each party to the dispute is a party to the mediation.

## Division 4 — Mediation

### **Guidance Note - Mediation**

- For the purposes of rule 22, the term **this Division** relates to rules 22-25.

### **22. Application of Division**

- (1) This Division applies if written notice has been given to the Secretary requesting the appointment of a mediator —
  - (a) by a member under rule 12(7); or
  - (b) by a party to a dispute under rule 17 (5)(b)(ii) or 18(3).
- (2) If this Division applies, a mediator must be chosen or appointed under rule 20.

### **23. Appointment of mediator**

- (1) The mediator must be a person chosen —
  - (a) if the appointment of a mediator was requested by a member under rule 12(7) — by agreement between the member and the council; or
  - (b) if the appointment of a mediator was requested by a party to a dispute under rule 17(5)(b)(ii) or 18(3) — by agreement between the parties to the dispute.
- (2) If there is no agreement for the purposes of subrule (1)(a) or (b), then, subject to subrules (3) and (4), the council must appoint the mediator.
- (3) The person appointed as mediator by the council must be a person who acts as a mediator for another not-for-profit body, such as a community legal centre, if the appointment of a mediator was requested by —
  - (a) a member under rule 12(7); or
  - (b) a party to a dispute under rule 17(5)(b)(ii); or
  - (c) a party to a dispute under rule 18(3) and the dispute is between one or more members and the council.
- (4) The person appointed as mediator by the council may be a member or former member of the council but must not —
  - (a) have a personal interest in the matter that is the subject of the mediation; or
  - (b) be biased in favour of or against any party to the mediation.

### **24. Mediation process**

- (1) The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.

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

Note for this rule:

Section 182(1) of the Act provides that an application may be made to the State Administrative Tribunal to have a dispute determined if the dispute has not been resolved under the procedure provided for in the incorporated association's rules.

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

If —

- (a) mediation takes place because a member whose membership is suspended or who is expelled from the council gives notice under rule 12(7); and
- (b) as the result of the mediation, the decision to suspend the member's membership or expel the member is revoked,

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

## PART 5 — COUNCIL

### Division 1 — Powers of Council

#### 26. Council

- (1) The council members are the persons who have the power to manage the affairs of the council.
- (2) Subject to the Act, these rules, the by-laws (if any) and any resolution passed at a general meeting, the council has power to do all things necessary or convenient to be done for the proper management of the affairs of the council.
- (3) The council must take all reasonable steps to ensure that the council complies with the Act, these rules and the by-laws (if any).

### Division 2 — Composition of Council and duties of members

#### 27. Council members

- (1) The council members consist of —
  - (a) the Presidents or Chairpersons and Vice Presidents or Deputy Chairpersons of Nigerian national associations across Australia's 6 States and 2 Territories.
- (2) The following are the management committee of the council —
  - (a) the chairperson;
  - (b) the secretary;
  - (c) the treasurer.
- (3) A person must not hold 2 or more of the offices mentioned in sub rule (2) at the same time.
- (4) Members of the council may from time to time be delegated to undertake ad hoc assignments for the council.

#### ***Act Requirements – Persons who are not to be members of Committee***

- *Under section 39 of the Act the following persons must not, without leave of the Commissioner, accept an appointment or act as a member of a management committee of an association:*
    - *a person who is, according to the Interpretation Act 1984 section 13D, a bankrupt or person whose affairs are under insolvency laws;*
    - *a person who has been convicted, within or outside the State, of-*
      - *an indictable offence in relation to the promotion, formation or management of a body corporate; or*
      - *an offence involving fraud or dishonesty punishable by imprisonment for a period of not less than three months; or*
      - *an offence under Part 4 Division 3 or section 127 of the Act*
- Section 39 only applies to a person who has been convicted of the above offences only for a period of 5 years from the time of the person's conviction, or if the*



*conviction results in a term of imprisonment, from the time of the person's release from custody.*

### ***Act Requirements - Duties of Committee Members and Officers***

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

- *Under section 44 of the Act an officer of an association must exercise his or her powers and discharge his or her duties with a degree of care and diligence that a reasonable person would exercise if that person-*
  - (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.*
- *Under section 45 of the Act an officer of an 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.*
- *Under section 46 an officer of an 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.*
- *Under section 47 a person who obtains information because the person is, or has been, an officer of an association must not improperly use the information to-*
  - (a) gain an advantage for the person or another person; or*
  - (b) cause detriment to the Association.*

## **28. Chairperson**

- (1) It is the duty of the chairperson to consult with the secretary regarding the business to be conducted at each council meeting.
- (2) The chairperson has the powers and duties relating to convening and presiding at all council meetings provided for in these rules.
- (3) The chairperson is the spokesperson of the council and responsible for direct liaison with agencies of government in Australia and Nigeria in matters affecting the council or welfare of Nigerians in Australia.

## 29. Secretary

The Secretary has the following duties —

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

***Guidance note – Record of Office Holders - detailed information about what must be included in the record of office holders is included under rule 68.***

## 30. Treasurer

The treasurer has the following duties —

- (a) ensuring that any amounts payable to the council are collected and issuing receipts for those amounts in the council's name;
- (b) ensuring that any amounts paid to the council are credited to the appropriate account of the council, as directed by the council;
- (c) ensuring that any payments to be made by the council that have been authorised by the council are made on time;
- (d) ensuring that the council complies with the relevant requirements of Part 5 of the Act;
- (e) ensuring the safe custody of the council's financial records, financial statements and financial reports, as applicable to the council;
- (f) As the council is a tier 1 association (income of less than \$250,000 a year), coordinating the preparation of the council's financial statements before their submission to the council's bimonthly meetings;
- (g) carrying out any other duty given to the treasurer under these rules or by the council.

### **31. How members become part of council's management committee**

A member automatically becomes a council management committee member if the member —

(1a) is President or Chairperson (or deputy) of a Nigerian national association whose turn it is to join the management team of the council; or

(1b) is appointed to the council by two-third majority of the council to fill a casual vacancy

- (2) Membership of the council management committee is rotational and lasts for one year except where there are extenuating circumstances that warrant extension or an election at State or Territory level has removed a member of the management committee. Any extension must be approved by two-thirds of the council membership at a general meeting of the council.
- (3) The position of council chairperson will rotate annually in the order outlined in Section 4, sub rule 1 while the Secretary and Treasurer are elected from other State or Territory national associations which has not produced the chairperson.
- (4) The annual tenure of the management committee starts on July 1<sup>st</sup> of one year and ends on June 30<sup>th</sup> of the following year in line with Australia's financial calendar.

### **32. Nomination of council management committee members**

- (1) At least 42 days before expiration of tenure, the secretary must send written notice to all the members —
  - (a) Advising of imminent expiration of a management committee member's tenure; and
  - (b) stating the date by which another designated States or Territories should take over management of the council.

### **33. Term of office**

- (1) The term of office of a council management committee member begins when the member —
  - (a) is endorsed at a council general meeting or under sub rule 33(b); or
  - (b) is appointed to fill a casual vacancy under rule 33.
- (2) Subject to rule 32, a council management committee member holds office until the expiration of his or her tenure, he or she resigns or suspended or he or she is replaced by his State or Territory Nigerian national association.
- (3) A council management committee member may be re-endorsed to serve in same role or different role when it is the turn of his or her State or Territory to serve on the council's management committee.

**Guidance Note – Committee members upon incorporation** - *The committee members appointed on incorporation of the association will hold office until the conclusion of the first annual general meeting of the association and will be eligible for re-election.*

### **34. Resignation and removal from office**

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

### **35. When membership of management committee ceases**

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

- (a) dies or otherwise ceases to be a member; or
- (b) resigns from the council or is removed from office under rule 31; or
- (c) becomes ineligible to accept an appointment or act as a management committee member under section 39 of the Act;
- (d) becomes permanently unable to act as a committee member because of a mental or physical disability; or
- (e) fails to attend 3 consecutive council meetings, of which the person has been given notice, without having notified the council that the person will be unable to attend.

Note for this rule:

Section 41 of the Act imposes requirements, arising when a person ceases to be a member of the management committee of an incorporated association, that relate to returning documents and records.

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

### **36. Management committee meetings**

1. The committee must meet at least 3 times in each year on the dates and at the times and places determined by the committee.
2. The date, time and place of the first committee meeting must be determined by the committee members as soon as practicable after the annual general meeting at which the committee members are elected.
3. Special committee meetings may be convened by the chairperson or any 2 committee members.

### **37. Notice of management committee meetings**

1. Notice of each committee meeting must be given to each committee member at least 48 hours before the time of the meeting.
2. The notice must state the date, time and place of the meeting and must describe the general nature of the business to be conducted at the meeting.
3. Unless subrule (4) applies, the only business that may be conducted at the meeting is the business described in the notice.
4. Urgent business that has not been described in the notice may be conducted at the meeting if the committee members at the meeting unanimously agree to treat that business as urgent.

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

1. The chairperson or, in the chairperson's absence, the deputy-chairperson must preside as chairperson of each committee meeting.
2. If the chairperson and deputy chairperson are absent or are unwilling to act as chairperson of a meeting, the committee members at the meeting must choose one of them to act as chairperson of the meeting.
3. The procedure to be followed at a committee meeting must be determined from time to time by the committee.
4. The order of business at a committee meeting may be determined by the committee members at the meeting.
5. A member or other person who is not a committee member may attend a committee meeting if invited to do so by the committee.
6. A person invited under subrule (5) to attend a committee meeting —
  - a. has no right to any agenda, minutes or other document circulated at the meeting; and

- b. must not comment about any matter discussed at the meeting unless invited by the committee to do so; and
- c. cannot vote on any matter that is to be decided at the meeting.

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

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

### **40. Quorum for management committee meetings**

1. Subject to rule 38(4), no business is to be conducted at a committee meeting unless a quorum is present.
2. If a quorum is not present within 30 minutes after the notified commencement time of a committee meeting —
  - a. in the case of a special meeting — the meeting lapses; or
  - b. otherwise, the meeting is adjourned to the same time, day and place in the following week.
3. If —
  - a. a quorum is not present within 30 minutes after the commencement time of a committee meeting held under subrule (2)(b); and
  - b. at least 2 committee members are present at the meeting,

those members present are taken to constitute a quorum.

#### **1. Note for this rule:**

If these model rules are adopted, the quorum for a committee meeting is as notified to the Commissioner under section 7(4)(d) or 29(5)(d) of the Act.

### **41. Voting at management committee meetings**

1. Each committee member present at a committee meeting has one vote on any question arising at the meeting.
2. A motion is carried if a majority of the committee members present at the committee meeting vote in favour of the motion.
3. If the votes are divided equally on a question, the chairperson of the meeting has a second or casting vote.
4. A vote may take place by the committee members present indicating their agreement or disagreement or by a show of hands, unless the committee decides that a secret ballot is needed to determine a particular question.

5. If a secret ballot is needed, the chairperson of the meeting must decide how the ballot is to be conducted.

#### **42. Minutes of management committee meetings**

1. The committee must ensure that minutes are taken and kept of each committee meeting.
2. The minutes must record the following —
  - a. the names of the committee members present at the meeting;
  - b. the name of any person attending the meeting under rule 38(5);
  - c. the business considered at the meeting;
  - d. any motion on which a vote is taken at the meeting and the result of the vote.
3. The minutes of a committee meeting must be entered in the Association's minute book within 30 days after the meeting is held.
4. The chairperson must ensure that the minutes of a committee meeting are reviewed and signed as correct by —
  - a. the chairperson of the meeting; or
  - b. the chairperson of the next committee meeting.
5. When the minutes of a committee meeting have been signed as correct they are, until the contrary is proved, evidence that —
  - a. the meeting to which the minutes relate was duly convened and held; and
  - b. the matters recorded as having taken place at the meeting took place as recorded; and
  - c. any appointment purportedly made at the meeting was validly made.

#### **2. Note for this rule:**

Section 42(6) of the Act requires details relating to the disclosure of a committee member's material personal interest in a matter being considered at a committee meeting to be recorded in the minutes of the meeting.

#### **43. Subcommittees and subsidiary offices**

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

- b. the holder of a subsidiary office may carry out the functions given to the holder as the holder considers appropriate.

#### **44. Delegation to subcommittees and holders of subsidiary offices**

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

#### **45. Filling casual vacancies**

- (1) The management committee may endorse a member who is eligible under rule 33 (1a) (1b)
- (2) (2) to fill a position on the committee that —
  - (a) has become vacant under rule 32; or
  - (b) was not filled at the most recent council general meeting or under rule 31(3)(b).
- (3) If the position of secretary becomes vacant, the council must endorse a member who is eligible under rule 33 (1a) (1b) (2) to fill the position within 14 days after the vacancy arises.
- (4) Subject to the requirement for a quorum under rule 40, the management committee may continue to act despite any vacancy in its membership.



- (5) If there are fewer management committee members than required for a quorum under rule 40, the committee may act only for the purpose of —
- (a) appointing committee members under this rule; or
  - (b) convening a general meeting.

#### **46. Validity of acts**

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

#### **47. Payments to management committee members**

- (1) A management committee member is entitled to be paid out of the funds of the Association for any out-of-pocket expenses in connection with the Association's business.

### **Division 4 — General meetings**

#### **48. General meetings**

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

#### **3. Note for this rule:**

Unless the Commissioner allows otherwise, under section 50(3) of the Act the annual general meeting must be held within 6 months after the end of the Association's

financial year. If it is the first annual general meeting, section 50(2) of the Act provides that it may be held at any time within 18 months after incorporation.

#### **49. Notice of general meetings**

1. The secretary or, in the case of a special general meeting convened under rule 51(5), the members convening the meeting, must give to each member -
  - a. at least 21 days' notice of a general meeting if a special resolution is to be proposed at the meeting; or
  - b. at least 14 days' notice of a general meeting in any other case.
2. The notice must —
  - a. specify the date, time and place of the meeting; and
  - b. indicate the general nature of each item of business to be considered at the meeting; and
  - c. if the meeting is the annual general meeting, include the names of the members who have nominated for election to the committee under rule 32(2); and
  - d. if a special resolution is proposed —
    - i. set out the wording of the proposed resolution as required by section 51(4) of the Act; and
    - ii. state that the resolution is intended to be proposed as a special resolution; and
    - iii. comply with rule 53(7).

#### **4. Note for this paragraph:**

Section 51(1) of the Act states that a resolution is a special resolution if it is passed —

- a. at a general meeting of an incorporated association; and
- b. by the votes of not less than three-fourths of the members of the association who cast a vote at the meeting.

*Act requirements – Notice to be given to reviewer or auditor – For Tier 2 and 3 associations – under section 86 of the Act a reviewer or auditor of an incorporated association is entitled to receive all notices of and other communications relating to any general meetings of the association that a member is entitled to receive.*

#### **50. Giving notices of general meeting to members**

1. In this rule —  
*recorded* means recorded in the register of members.
2. A notice or other document that is to be given to a member under these rules is taken not to have been given to the member unless it is in writing and —
  - a. delivered by hand to the recorded address of the member; or
  - b. sent by prepaid post to the recorded postal address of the member; or

- c. sent by facsimile or electronic transmission to an appropriate recorded number or recorded electronic address of the member.

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

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

### ***Act Requirements -Material Personal Interests of Committee Members***

- *Under section 42 of the Act a member of the committee who has a material personal interest in a matter being considered at a committee meeting must:*
  - *as soon as he or she becomes aware of that interest, disclose the nature and extent of his or her interest to the Committee;*
  - *disclose the nature and extent of the interest at the next general meeting of the association*
- *Under section 42(3) of the Act this rule does not apply in respect of a material personal interest*
  - (a) *that exists only because the member-*
    - *is an employee of the incorporated association; or*
    - *is a member of a class of persons for whose benefit the association is established; or*

*(b) that the member has in common with all, or a substantial proportion of, the members of the Association.*

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

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

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

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

## **53. Quorum for general meetings**

- (1) Subject to rule 40, no business is to be conducted at a general meeting unless a quorum is present.
- (2) If a quorum is not present within 30 minutes after the notified commencement time of a general meeting —
  - (a) the meeting lapses; or
  - (b) otherwise, the meeting is adjourned to the same time, day and place in the following week.
- (3) If —
  - (a) a quorum is not present within 30 minutes after the commencement time of a general meeting held under subrule (2)(b); but if;
  - (b) at least 2 committee members are present at the meeting,

those members present are taken to constitute a quorum.

### **Note for this rule:**

If these model rules are adopted, the quorum for a committee meeting is as notified to the Commissioner under section 7(4)(d) or 29(5)(d) of the Act.

## **54. Voting at general meetings**

- (1) Each council member present at a general meeting has one vote on any question arising at the meeting.

- (2) A motion is carried if a two-third majority of the council members present at the general meeting vote in favour of the motion.
- (3) If the votes are divided equally on a question, the chairperson of the meeting has a second or casting vote.
- (4) A vote may take place by the council members present indicating their agreement or disagreement or by a show of hands, unless the council decides that a secret ballot is needed to determine a particular question.
- (5) If a secret ballot is needed, the chairperson of the meeting must decide how the ballot is to be conducted.

### **55. When special resolutions are required**

1. A special resolution is required if it is proposed at a general meeting —
  - a. to affiliate the Association with another body; or
  - b. to request the Commissioner to apply to the State Administrative Tribunal under section 109 of the Act for the appointment of a statutory manager.
2. Subrule (1) does not limit the matters in relation to which a special resolution may be proposed.

#### **5. Note for this rule:**

Under the Act, a special resolution is required if an incorporated association proposes to do any of the following—

- a. to adopt these model rules (section 29(1));
- b. to alter its rules, including changing the name of the association (section 30(1));
- c. to decide to apply for registration or incorporation as a prescribed body corporate (section 93(1));
- d. to approve the terms of an amalgamation with one or more other incorporated associations (section 102(4));
- e. to be wound up voluntarily (section 121(2)) or by the Supreme Court (section 124(a) and Schedule 4 item 9);
- f. to cancel its incorporation (section 129).

### **56. Determining whether resolution carried**

1. In this rule —  
*poll* means the process of voting in relation to a matter that is conducted in writing.

2. Subject to subrule (4), the chairperson of a general meeting may, on the basis of general agreement or disagreement or by a show of hands, declare that a resolution has been —
  - a. carried; or
  - b. carried unanimously; or
  - c. carried by a particular majority; or
  - d. lost.
3. If the resolution is a special resolution, the declaration under subrule (2) must identify the resolution as a special resolution.
4. If a poll is demanded on any question by the chairperson of the meeting or by at least 3 other ordinary members present in person or by proxy —
  - a. the poll must be taken at the meeting in the manner determined by the chairperson;
  - b. the chairperson must declare the determination of the resolution on the basis of the poll.
5. If a poll is demanded on the election of the chairperson or on a question of an adjournment, the poll must be taken immediately.
6. If a poll is demanded on any other question, the poll must be taken before the close of the meeting at a time determined by the chairperson.
7. A declaration under subrule (2) or (4) must be entered in the minutes of the meeting, and the entry is, without proof of the voting in relation to the resolution, evidence of how the resolution was determined.

### **57. Minutes of general meetings**

- (1) The council must ensure that minutes are taken and kept of each general meeting.
- (2) The minutes must record the following —
  - (a) the names of the council members present at the meeting;
  - (b) the name of any person attending the meeting under rule 38(5);
  - (c) the business considered at the meeting;
  - (d) any motion on which a vote is taken at the meeting and the result of the vote.
- (3) The minutes of a general meeting must be entered in the council's minute book or electronic file within 30 days after the meeting is held.
- (4) The chairperson must ensure that the minutes of a general meeting are reviewed and signed as correct by —
  - (a) the chairperson of the meeting; or
  - (b) the chairperson of the next council meeting.
  - (c) This could be carried out electronically via digital signature
- (5) When the minutes of a general meeting have been signed as correct, they are, until the contrary is proved, evidence that —
  - (a) the meeting to which the minutes relate was duly convened and held; and

- (b) the matters recorded as having taken place at the meeting took place as recorded; and
- (c) any appointment purportedly made at the meeting was validly made.

Note for this rule:

Section 42(6) of the Act requires details relating to the disclosure of a committee member's material personal interest in a matter being considered at a committee meeting to be recorded in the minutes of the meeting.

### **58. Special general meetings**

- (1) The council may convene bimonthly special general meetings as far as 20% of the council membership approves these special general meetings.
- (2) The council must convene a special general meeting if at least 20% of the members require a special general meeting to be convened.
- (3) The members requiring a special general meeting to be convened must —
  - (a) make the requirement by written notice given to the secretary; and
  - (b) state in the notice the business to be considered at the meeting; and
  - (c) each sign the notice.
- (4) The special general meeting must be convened within 28 days after notice is given under subrule (3)(a).
- (5) If the council does not convene a special general meeting within that 28 day period, the members making the requirement (or any of them) may convene the special general meeting.
- (6) A special general meeting convened by council members under subrule (5) —
  - (a) must be held within 3 months after the date the original requirement was made; and
  - (b) may only consider the business stated in the notice by which the requirement was made.
- (7) The council must reimburse any reasonable expenses incurred by the members convening a special general meeting under subrule (5).

### **59. Proxies**

- (1) Subject to subrule (2), a council member may appoint an individual who is an Executive Committee member of his State or Territory association as his or her proxy to vote and speak on his or her behalf at a general meeting. This can only happen where the President or Chairperson and/or deputies are absent from the meeting.



- (2) The appointment of a proxy must be in writing, including via email or other electronic media to the chairperson of the council and signed by the member making the appointment.
- (3) The member appointing the proxy may give specific directions as to how the proxy is to vote on his or her behalf.
- (4) If no instructions are given to the proxy, the proxy may vote on behalf of the member in any matter as the proxy sees fit.

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

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

#### **61. Adjournment of general meeting**

- (1) The chairperson of a general meeting at which a quorum is present may, with the consent of a majority of the ordinary members present at the meeting, adjourn the meeting to another time at the same place or at another place.
- (2) Without limiting subrule (1), a meeting may be adjourned —
  - (a) if there is insufficient time to deal with the business at hand; or
  - (b) to give the members more time to consider an item of business.
- (3) No business may be conducted on the resumption of an adjourned meeting other than the business that remained unfinished when the meeting was adjourned.
- (4) Notice of the adjournment of a meeting under this rule is not required unless the meeting is adjourned for 14 days or more, in which case notice of the meeting must be given in accordance with rule 44.
- (1) A copy of the document by which the appointment is made must be given to the secretary before any general meeting to which the appointment applies.
- (2) The appointment has effect until —
  - (a) the end of any general meeting to which the appointment applies; or
  - (b) the appointment is revoked by the body corporate and written notice of the revocation is given to the secretary.

## **PART 7 — FINANCIAL MATTERS**

### **62. Source of funds**

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

### **63. Control of funds**

- (1) The council must open an account in the name of the council with a financial institution from which all expenditure of the council is made and into which all funds received by the council are deposited.
- (2) Subject to any restrictions imposed at a council meeting, the management committee of the council may approve expenditure on behalf of the council.
- (3) The council may authorise the treasurer to expend funds on behalf of the council up to a specified limit without requiring approval from the management committee or council for each item on which the funds are expended. This amount should not exceed \$500.
- (4) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments of the council must be signed by —
  - (a) Two management committee members (one of which must be the chairperson); or
  - (b) one management committee member and a person authorised by the council.
- (5) All funds of the council must be deposited into the council's account within 5 working days after their receipt.

### **64. Financial statements and financial reports**

- (1) For each financial year, the management committee must ensure that the requirements imposed on the council under Part 5 of the Act relating to the financial statements or financial report of the council is met.
- (2) Without limiting subrule (1), those requirements include —
  - (a) For the council as a tier 1 association (less than \$250,00 income a year), the preparation of the financial statements; and
  - (b) if required, the review or auditing of the financial statements or financial report, as applicable; and
  - (c) the presentation to a council's general meeting of the financial statements or financial report, as applicable; and
  - (d) if required, the presentation to the council's general meeting of the copy of the report of the review or auditor's report, as applicable, on the financial statements or financial report.

## Notes for this rule:

1. Under section 66 of the Act, an incorporated association must keep financial records that: -
  - (a) correctly record and explain its transactions and financial position and performance; and
  - (b) enable true and fair financial statements to be prepared in accordance with Part 5 Division 3 of the Act.
2. Under section 67 of the Act, an incorporated association must retain its financial records for at least 7 years after the transactions covered by the records are completed.

## **PART 8 — GENERAL MATTERS**

### **65. Executing documents and common seal**

- (1) The council may execute a document without using a common seal if the document is signed by —
  - (a) The chairperson, any member of the management committee or delegated member of the council
- (2) If the council has a common seal —
  - (a) the name of the council must appear in legible characters on the common seal; and
  - (b) a document may only be sealed with the common seal by the authority of the management
- (3) The common seal must be kept in the custody of the secretary or another management committee member authorised by the council.

### **66. Custody of books and securities**

- (1) Subject to subrule (2), the books and any securities of the council must be kept in the secretary's custody or under the secretary's control.
- (2) The financial records and, as applicable, the financial statements or financial reports of the council must be kept in the treasurer's custody or under the treasurer's control.
- (3) Subrules (1) and (2) have effect except as otherwise decided by the council.
- (4) The books of the council must be retained for at least 7 years.

## 67. Record of office holders

### **Act Requirements – Record of office holders**

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

- *the names and addresses of the persons who are members of its management committee; or hold other offices of the association provided for by its rules;*
- *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*
- *the name and address of any person who is appointed or acts as trustee on behalf of the association.*

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

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

### Note for this rule

Section 58 of the Act —

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

Inspection of records and documents

(1) Subrule (2) applies to a member who wants to inspect —

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

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

(3) The inspection must be free of charge.

(4) If the council member wants to inspect a document that records the minutes of a management committee meeting, the right to inspect that document is subject to any

decision the council has made about minutes of council meetings generally, or the minutes of a specific management committee meeting, being available for inspection by members.

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

Note for this subrule:

Sections 54(2) and 58(4) of the Act provide for the making of copies of, or the taking of extracts from, the register referred to in subrule (1)(a) and the record referred to in subrule (1)(b).

- (6) The member must not use or disclose information in a record or document referred to in subrule (1)(c) except for a purpose —
- (a) that is directly connected with the affairs of the council; or
  - (b) that is related to complying with a requirement of the Act.

Note for this subrule:

Sections 57(1) and 58(5) of the Act impose restrictions on the use or disclosure of information in the register referred to in subrule (1)(a) and the record referred to in subrule (1)(b).

### **68. Publication by council members of statements about council's business prohibited**

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

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

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

#### ***Act Requirements – Distribution of surplus property***

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

- *an incorporated association;*
- *a company limited by guarantee that is registered as mentioned in the Corporations Act section 150;*
- *a company holding a licence that continues in force under the Corporations Act section 151;*
- *a body corporate that at the time of the distribution is the holder of a licence under the*

*Charitable Collections Act 1946;*

- *a body corporate that —*
  - *is a member or former member of the incorporated association; and*
  - *at the time of the distribution of surplus property, has rules that prevent the distribution of property to its members;*
- *a trustee for a body corporate referred to in paragraph (e);*
- *a co-operative registered under the Co-operatives Act 2009 that, at the time of the distribution of surplus property, is a non-distributing co-operative as defined in that Act.*

(1) In this rule —

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

- (a) the debts and liabilities of the council; and
- (b) the costs, charges and expenses of winding up or cancelling the incorporation of the council,

but does not include books relating to the management of the council.

(2) On the cancellation of the incorporation or the winding up of the council, its surplus property must be distributed as determined by special resolution by reference to the persons mentioned in section 24(1) of the Act.

Note for this rule:

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

## 70. Alteration of rules

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

Note for this rule:

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

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

**Guidance Note – Alteration of Rules.** *Amendments to the rules do not take effect until required documents are lodged with the Commissioner, even if the amendments do not require the approval of the Commissioner under section 31 or section 33. The required*

*documents must be lodged within one month after the special resolution is passed.*