

## **FAIR WORK COMMISSION**

**Matter No.: B2023/1235 — Application for a supported bargaining authorisation – social, community, home care and disability services sector**

**Applicants: Health Services Union; Australian Education Union**

### **WITNESS STATEMENT OF JUSTIN MULLALY**

I, Justin Mullaly, of 126 Trenerry Crescent, Abbotsford, Victoria, a union official, say and affirm as follows:

1. I make this witness statement from my own personal knowledge save where stated otherwise. Where I depose to matters from information and belief, I believe those matters to be true based on my personal knowledge, involvement in the industrial affairs of the Victorian Branch of the Australian Education Union (**AEU**).

#### **Qualifications and experience**

2. I am an elected officer of the Australian Education Union, Victorian Branch (AEU) — I hold the position of Branch Deputy President of the AEU. I have held this position since 1 January 2013.
3. In 2003, I obtained a Graduate Diploma of Education from the University of Melbourne.
4. My work history is as follows:
  - a. Teacher: Princess Hill Secondary College (2004—2006);
  - b. Deputy Vice President (Secondary) of the AEU (2007-2009);
  - c. Vice President (Secondary) of the AEU (2010-2012).
5. I have served on the AEU's Branch Executive since 2006. The Branch Executive's role is to provide management, oversight, and strategic direction for the running of the AEU's operations. Branch Executive meets at least once each month except in January.
6. I also serve on the Federal Executive of the AEU. The Federal Executive provides oversight to the management and strategic direction of the AEU at a national level. The Federal Executive meets at least four times in each year.

#### **Lodged by: Australian Education Union — Victorian Branch**

Telephone: (03) 9418 4815

Address for Service: 126 Trenerry Crescent, Abbotsford, Victoria, 3067 (Attention: Umeya Chaudhuri)

Fax: (03) 9417 6198

Email: [umeya.chaudhuri@aeuvic.asn.au](mailto:umeya.chaudhuri@aeuvic.asn.au)

7. In fulfilling the duties associated with these positions:
- a. I visit workplaces regularly and meet with members;
  - b. I regularly speak to AEU representatives (i.e., delegates) who provide me with information about professional, industrial and political matters;
  - c. I receive reports from organisers and other AEU employees about professional, industrial and political matters;
  - d. I am heavily involved in negotiating enterprise bargaining agreements on behalf of members. I am a leader in enterprise bargaining teams and I am familiar with the industrial instruments that cover, and apply to, members working in preschools, schools, TAFEs and disability service providers as well as the nature of the work that is performed in those sectors and the systemic issues concerning those sector;
  - e. I regularly meet with representatives of employers, industry groups, regulators and relevant public sector departments about matters affecting the employment of employees in these sectors.
8. Since February 2024 I have been responsible for the AEU's collective bargaining in the disability sector, advocating for members' professional interests in the disability sector; and for the AEU's research and campaigning in the disability sector.

## **AEU Coverage**

### *Mambourin*

9. The AEU and Mambourin have a history of protracted and contested bargaining, particularly since around 2020.
10. On 5 March 2020, the AEU made an application to the Fair Work Commission for a majority support determination of employees of Mambourin, the twelfth respondent in this proceeding, which was opposed (B2020/135) (**MSD Proceeding**).
11. On 28 July 2020, Deputy President Hamilton issued an order and majority support **determination** in respect of the MSD Proceeding in the following terms:
- “[A] majority of employees of Mambourin Enterprises Ltd employed as Instructors/Facilitators, Team Leaders, and Hub Managers at the Altona, Bacchus Marsh, Braybrook, Deer Park, Melton, Sunshine and Werribee hubs or day services centres.”
- Now produced and shown to me is a true copy of the orders of Deputy President Hamilton, which is annexed to this witness statement and marked “**JM-1**”.
12. The AEU's standing was not an issue in the MSD proceeding.

13. On 11 August 2020, Mambourin issued a Notice of Employee Representation Rights to employees covered by the determination. Now produced and shown to me is a true copy of the Notice of Employee Representation Rights annexed and marked “**JM-2**”.
14. Between 24 August 2020 and 12 May 2022, there were 22 negotiation meetings between the AEU and Mambourin. In each meeting, Mambourin’s representatives recognised the AEU representatives and their standing to represent the employees to be covered by the agreement.
15. On 10 September 2020, the AEU provided Mambourin with its log of claims.
16. On 13 September 2022, the AEU invited Mambourin to re-commence bargaining meetings, to which Mambourin responded noting that it was obtaining relevant legal advice. On 20 October 2022, Mambourin wrote to the AEU representative that it would provide a “final draft enterprise agreement” in mark-up for the AEU to review by November 2022 and no such document was provided.
17. On 14 December 2023, the AEU wrote to the Chief Executive Officer of Mambourin setting out the bargaining history. Now produced and shown to me is a true cope of the AEU’s correspondence to Mambourin dated 14 December 2023 annexed and marked “**JM-3**.”
18. Mambourin has continued to accept the AEU’s standing during the single-enterprise agreement bargaining by continuing to meet with the union.

*Asteria*

19. The AEU’s solicitors have referred me to the submissions of **ASTERIA** Services Inc, which have been filed in these proceedings. In particular, I have been referred to paragraph 106 of ASTERIA’s submissions. I understand that ASTERIA is a charitable organisation that operates as an incorporated association under Victorian law, and therefore has Rules of Incorporation. I have caused a search to be conducted of the Australian Charities and Not-for-Profits Commission’s Charity Register for a copy of ASTERIA’s Rules of Incorporation (**ASTERIA’s Rules**). Under ASTERIA’s Rules, which have been approved by Consumer Affairs Victoria in 2014, and continue to operate today, its purpose is to provide “education, training and life options for individuals with disabilities”. Now produced and shown to me is a true copy of ASTERIA’s Rules, which is annexed to this statement and marked **JM-4**.
20. I have also caused a search to be performed on ASTERIA’s website. On the ASTERIA website (at <https://www.asteria.net.au/support-services.html#GroupSupport>). Under the heading “Group Support”, it states that:

“Group Supports provide you with opportunities to:

- access the community

- access further education
- participate in personal development and communication activities
- access a wide and varied range of recreation and leisure options.

Activities are based on each person's personal plan, prepared in consultation with the individual and their family/carer/advocate/friends/or support workers. In this plan you can express your activity preferences, the skills you would like to learn, and the interests you would like to pursue. All activities operating within group supports are your choices.

ASTERIA Group Supports gives participants the opportunity to join group-based activities both on-site and in the community.

Programs operate weekdays Monday – Friday 9:30am – 3:30pm and run for 52 weeks of the year (excluding public holidays).

We offer you choice in your activities and interests such as:

- life skills - working on improving skills such as cooking
- woodwork / men's and women's social support group
- art, craft and pottery groups
- photography
- gardening
- health and wellbeing - swimming, yoga, men's and women's health groups
- joining community groups such as the local community house, library, croquet club and volunteering for meals on wheels.”

Now produced and shown to me is a true copy of ASTERIA's webpage, which is annexed to this statement and marked **JM-5**.

**2 April 2024**

**Justin Mullaly**

Deputy President

Australian Education Union (Victorian Branch)



# ORDER AND DETERMINATION

*Fair Work Act 2009*

s.236—Majority support determination

**Australian Education Union**

v

**Mambourin Enterprises Ltd T/A Mambourin**

(B2020/135)

DEPUTY PRESIDENT HAMILTON

MELBOURNE, 28 JULY 2020

*Application for majority support determination.*

[1] Further to the decision in [2020] FWC 3760 and pursuant to s.596 of *Fair Work Act 2009* (Cth) (FW Act), I order the amendment of the application as sought by the applicant.

[2] Further to the decision in [2020] FWC 3760 and pursuant to s.236 and s.237 of the Act, I am satisfied that a majority support the determination to be made.

[3] I therefore determine that a majority of employees of Mambourin Enterprises Ltd employed as Instructors/Facilitators, Team Leaders, and Hub Managers at the Altona, Bacchus Marsh, Braybrook, Deer Park, Melton, Sunshine and Werribee hubs or day services centres, want to bargain with the employer for an enterprise agreement.

[4] Pursuant to s.237(4) of the Act this Determination comes into operation on the day it is made.



DEPUTY PRESIDENT

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## **Schedule 2.1—Notice of employee representational rights**

(regulation 2.05)

*Fair Work Act 2009*, subsection 174(1A)

Mambourin Enterprises Ltd gives notice that it is bargaining in relation to an enterprise agreement (*Mambourin Enterprise Agreement 2020*) which is proposed to cover employees that were subject of the majority support determination made by the Deputy President Hamilton of the Fair Work Commission on 28 July 2020 (B2020/135).

### **What is an enterprise agreement?**

An enterprise agreement is an agreement between an employer and its employees that will be covered by the agreement that sets the wages and conditions of those employees for a period of up to 4 years. To come into operation, the agreement must be supported by a majority of the employees who cast a vote to approve the agreement and it must be approved by an independent authority, Fair Work Commission.

### **If you are an employee who would be covered by the proposed agreement:**

You have the right to appoint a bargaining representative to represent you in bargaining for the agreement or in a matter before Fair Work Commission about bargaining for the agreement.

You can do this by notifying the person in writing that you appoint that person as your bargaining representative. You can also appoint yourself as a bargaining representative. In either case you must give a copy of the appointment to your employer.

If you are a member of a union that is entitled to represent your industrial interests in relation to the work to be performed under the agreement, your union will be your bargaining representative for the agreement unless you appoint another person as your representative or you revoke the union's status as your representative.

### **Questions?**

If you have any questions about this notice or about enterprise bargaining, please speak to your employer or bargaining representative, or contact the Fair Work Ombudsman or the Fair Work Commission.



14 December 2023

Danielle Carey-Munro  
Chief Executive Officer  
Mambourin Enterprises Ltd  
159 Derrimut Drive  
Derrimut VIC 3026

By email: [danielle.carey-munro@mambourin.org](mailto:danielle.carey-munro@mambourin.org)

Dear Ms Carey-Munro

**Re: Proposed Mambourin Enterprises Ltd Agreement notice and vote**

1. The AEU writes in relation to the proposed enterprise agreement (**Proposed Agreement**) that **Mambourin** Enterprises Ltd intends to put to a vote on 15 December 2023. The AEU does not support the Proposed Agreement, as was indicated in the bargaining meeting on 5 December 2023.
2. The AEU writes to provide Mambourin with notice about concerns about non-compliance with the pre-approval requirements ascribed in section 180 of the *Fair Work Act 2009* (Cth) (**FW Act**) and to put it on notice regarding the operation of s 243A(3) of the FW Act.

**A. FACTS AND BACKGROUND**

**History of bargaining**

3. In October 2019, Mambourin applied to the Fair Work Commission (the **FWC**) to terminate the *Mambourin Enterprise Inc Disability Services Victoria (Part 1) Collective Agreement 2008* (AC314453) (**2008 Agreement**). The Applicant opposed the termination of the 2008 Agreement.

4. In March 2020, the AEU applied for a majority support determination, which Mambourin opposed.
5. On 17 July 2020, the Fair Work Commission (**FWC**) granted the majority support determination (**MSD**) ([2020] FWC 3760).
6. On 28 July 2020, the MSD was issued to commence bargaining.
7. On 6 August 2020, the FWC decided to terminate the 2008 Agreement effective 6 November 2020 ([2020] FWC 37600).
8. Since 24 August 2020, the AEU and Mambourin have engaged in a series of negotiation meetings, with the AEU providing Mambourin with its log of claims on 10 September 2020.
9. Between 24 August 2020 and 12 May 2022, there were 26 negotiation meetings between the parties.
10. On 13 September 2022, the AEU invited Mambourin to re-commence bargaining meetings, to which Mambourin responded noting that it was obtaining legal advice.
11. On 20 October 2022, Mambourin indicated that a “final draft enterprise agreement” would be sent in marked-up copy by the end of November 2022. No such marked-up agreement was provided or forthcoming.
12. Following further email correspondence between November 2022 and January 2023, the AEU last communicated to Mambourin on 30 January 2022, again requesting to meet and to be provided a copy of the promised marked-up enterprise agreement. Mambourin did not respond to these requests.
13. Mambourin’s previous CEO continued to be employed throughout 2022 until approximately March 2023.



## **Supported Bargaining Authorisation Application**

14. On 9 November 2023, the Health and Community Services Union (**HACSU**) and AEU filed an application for supported-bargaining authorisation that covers nineteen employers in the Disability Services Sector, which included Mambourin (**Supported Bargaining Application**).
15. On 20 November 2023, Mambourin requested an “urgent meeting” to discuss the Supported Bargaining Application. The AEU responded that its representatives were not available at short notice.
16. On 21 November 2023, Mambourin wrote about its intention to put the Proposed Agreement to a vote, and for that to be made known the Deputy President Wright, who has been allocated the Supported Bargaining Application. Clearly, but for the Supported Bargaining Application, Mambourin was not intending to continue bargaining and pursuing authentic agreement-making with the AEU as a bargaining representative.
17. Although Mambourin maintains that its failure to engage with bargaining until 21 November 2023 was due to the change of leadership, you were appointed in September 2023. This does not explain Mambourin’s failure to engage with bargaining throughout 2022 and the majority of 2023.

## **Voting of Proposed Agreement**

18. From late November 2023, the AEU continued to request a marked-up agreement from Mambourin, in order to advance productive bargaining discussions on 1 December 2023, the date the parties had agreed to meet.
19. Mambourin provided a final version of the Proposed Agreement on 29 November 2023 and then, upon the insistence by the AEU, a marked-up version of the Proposed Agreement late on 30 November 2023.

20. The AEU and Mambourin conducted a bargaining meeting at 11am on 5 December 2023. At the meeting, the AEU set out the bargaining history and presented outstanding issues from the 2020 log of claims. You indicated that you would genuinely consider those matters as you were unaware of them as a recently appointed CEO.
21. At 1.44pm the same day, you wrote to the AEU:
- a) indicating that you intended to put the Proposed Agreement to a vote to covered employees on 15 December 2023; and
  - b) perfunctorily responding to the matters the AEU raised in the meeting two hours prior and noted that the claims were ‘new’. Your representation of the claims as being “new” was factually inaccurate, as they were matters raised in the AEU log of claims during bargaining for this agreement.
22. On 7 December 2023, Mambourin commenced the 7-day access period and notified employees covered by the Proposed Agreement of an electronic vote to be conducted on 15 December 2023.

## **B. RELEVANT LEGAL PRINCIPLES**

### **Approval of enterprise agreement**

23. Part 2-4, Division 4 of the FW Act sets out the statutory requirements in respect of approving any proposed agreement. Section 186 FW Act sets out general requirements for the approval of an enterprise agreement, which importantly concerns whether the agreement has been ‘genuinely agreed to’ by the employees covered by it.
24. Section 180 requires pre-approval requirements to be met, and specific to this Proposed Agreement voting process, for Mambourin to comply with sub-section (5):
- (5) The employer must take all reasonable steps to ensure that:

- (a) the terms of the agreement, and the effect of those terms, are explained to the employees employed at the time who will be covered by the agreement; and
  - (b) the explanation is provided in an appropriate manner taking into account the particular circumstances and needs of those employees.
- 25. When the FWC considers whether to approve any proposed agreement, it will have regard to whether the agreement has been 'genuinely agreed to' by employees, with consideration of the factors prescribed in section 188 FW act.
- 26. Relevant to the FWC's consideration of whether there could have been 'genuine agreement' will be:
  - a) The employer's compliance with the pre-approval steps including s180(5) FW Act (s188(1)(a)); and
  - b) there are no other reasonable grounds for believing that the agreement has not been genuinely agreed to by the employees (s188(1)(c)).
- 27. A further consideration is that the FWC must be satisfied that approving the agreement would not be inconsistent with or undermine good faith bargaining, in relation to which a scope order is in operation (s187(2) FW Act).

### **Supported-Bargaining Authorisation**

- 28. Although the supported bargaining authorization application is being heard separate to any application to approve a proposed agreement covering Mambourin and relevant employees, there are relevant statutory provisions that will apply to any agreement, even if approved by the FWC.
- 29. Section 243A FW Act sets out a number of restrictions on making supported-bargaining authorisations:

#### *Relationship between this section and section 243*

- (1A) Section 243 has effect subject to this section.

#### *Employees covered by single-enterprise agreement that has not passed nominal expiry date*

- (1) The FWC must not make a supported bargaining authorisation specifying an employee who is covered by a single-enterprise agreement that has not passed its nominal expiry date.

(2) A supported bargaining authorisation has no effect to the extent that it specifies an employee who is covered by a single-enterprise agreement that has not passed its nominal expiry date.

(3) However, subsections (1) and (2) do not apply if the FWC is satisfied that the employer's main intention in making the agreement with the employees covered by it was to avoid being specified in a supported bargaining authorisation.

## **C. CONCLUSIONS**

### **Failure to comply with pre-Approval Requirements**

30. Mambourin has failed to comply with pre-approval requirements as outlined below and without limitation to the AEU raising further objections to any approval of the proposed agreement:

- a) Mambourin's conduct during the bargaining for this agreement detailed in paragraphs 3 to 22 above demonstrates that Mambourin has not engaged in any authentic agreement-making process, and has acted inconsistently with good faith bargaining obligations. Not only did you as Mambourin's CEO misrepresent claims made in the bargaining meeting on 5 November 2023 as "new" claims despite the fact that they were logged since 2020, but by Mambourin's conduct since 2020 in refusing to meet and conduct genuine bargaining. It is clear that Mambourin had no intention of genuinely considering its employee's logged claims. The FWC may not approve this agreement on the basis that it would be inconsistent or undermine good faith bargaining pursuant to s187(2) FW Act.
- b) Failure to comply with s180(5) FW Act:
  - i. The comparison document provided to employees on 7 December 2023 simply provides an 'infographic' image of a thumbs up, open palm and thumbs down for terms of the Proposed Agreement as compared to the applicable modern award, with limited text. There is insufficient explanation of the effect of these terms on employees.

- ii. Further, the employees covered by the Proposed Agreement are all literate adults who should be provided detailed explanations of the proposed terms so they can make an informed decision. The simple images used in Mambourin's information is grossly inadequate in explaining the operation and effect of terms of the proposed agreement.
  - iii. There is also a representation about a percentage increase of rates of pay between 0.5% to 0.65% above the award. This does not sufficiently represent what the value of the minimum rates of pay will be for employees to properly understand the effect of these terms, particularly in circumstances where the award rates of pay are not readily understood by employees by simply reading the instrument.
  - iv. Further, clause 20 of the Proposed Agreement is represented to employees with a thumbs up and words "*employees covered by the EBA will be allocated paid non-contact time subject to customer flexibility and operational needs*". There is no explanation about the effect of this clause on employees, namely that do not have a guaranteed number of hours paid non-contact time, and it will be entirely conditional on Mambourin providing this entitlement, if at all. This could also be considered a misleading representation.
- c) Mambourin's notice to vote provided to employees on 7 December 2023 notes that the vote will be conducted between 8am and 5pm on 15 December 2023 by secret ballot via a third-party platform called "Vero". It is concerning that the voting period is not extended to a full 7-day week to allow for employees who work across the ordinary days of a week to be afforded a fair and reasonable opportunity to vote.

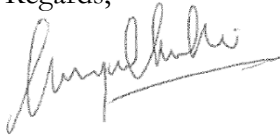
31. By virtue of this letter's concerns about the genuineness of any agreement to Mambourin's proposed agreement, the FWC will give these concerns significant weight.

#### **D. IMPLICATIONS**

32. Should Mambourin proceed with the vote on 15 December 2023, the AEU will object to the approval of the agreement.

33. In any event, even if this Proposed Agreement is approved by the Fair Work Commission, the AEU will press its supported bargaining application in relation to Mambourin on the basis that Mambourin's main intention in making this agreement was to avoid being specified in the supported-bargaining authorisation.

Regards,



Umeya Chaudhuri

**Industrial Officer**

**Australian Education Union – Victorian Branch**

*Associations Incorporation Reform Act 2012*

**ASTERIA SERVICES INC.**

(Registration number A0008059X)

**RULES OF INCORPORATION**

AS ADOPTED BY SPECIAL RESOLUTION OF THE MEMBERS AT THE  
ANNUAL GENERAL MEETING ON 29 OCTOBER 2014

AND APPROVED BY CONSUMER AFFAIRS VICTORIA  
EFFECTIVE 11<sup>TH</sup> NOVEMBER 2014

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## PART 1 – PRELIMINARY

### 1 Name

The name of the incorporated association is "ASTERIA Services Incorporated".

**Note**

Under section 23 of the Act, the name of the association and its registration number must appear on all its business documents.

### 2 Purposes

The purposes of the association are:

- 2.1 to provide accommodation, employment, education, training and life options for individuals with disabilities;
- 2.2 to research, develop and deliver an integrated range of accommodation services for individuals with disabilities;
- 2.3 to provide employment services to assist individuals with disabilities to engage or re-engage in the workforce;
- 2.4 to provide training and support services to assist individuals with disabilities to develop and maintain skills through a wide range of activities based on their individual needs, strengths and interests;
- 2.5 to advance community awareness of the needs of people with disabilities;
- 2.6 to promote the principles and objectives of both State and Commonwealth disability legislation;
- 2.7 to actively promote the interests of individuals with disabilities;
- 2.8 to cooperate with or support any association, agency or other government or private sector entity established for the purpose of caring for and supporting individuals with disabilities; and
- 2.9 to do all things necessary, incidental or conducive to the above purposes.

### 3 Financial year

The financial year of the Association is each period of 12 months ending on 30 June.

### 4 Definitions

In these Rules—

**"absolute majority"**, of the Board, means a majority of the Board members currently holding office and entitled to vote at the time (as distinct from a majority of Board members present at a Board meeting);

**"Act"** means the *Associations Incorporation Reform Act 2012* and includes any regulations made under that Act;

**"Board"** means the Board having management of the business of the Association and being the committee for the purposes of the Act;

**"Board meeting"** means a meeting of the Board held in accordance with these Rules;

**"Board member"** means a member of the Board elected or appointed under Division 3 of Part 5 and being a committee member for the purposes of the Act;

**"Chairperson"**, of a general meeting or Board meeting, means the person chairing the meeting as required under rule 46;

**"Chief Executive Officer"** means the person appointed by the Board under rule 42.3.1 to be the Chief Executive Officer of the Association;

**"disciplinary appeal meeting"** means a meeting of the members of the Association convened under rule 23.3;

**"disciplinary meeting"** means a meeting of the Board convened for the purposes of rule 22;

**"disciplinary subcommittee"** means the subcommittee appointed under rule 20;

**"Family Member"** means the natural or adoptive parent, sibling or legal guardian of an individual receiving services from the Association. This category of membership acknowledges the contribution these members have made throughout the history of the Association;

**"financial year"** means the 12 month period specified in rule 3;

**"general meeting"** means a general meeting of the members of the Association convened in accordance with Part 4 and includes an annual general meeting, a special general meeting and a disciplinary appeal meeting;

**"General Member"** means a Member of the Association, who is not a Family Member;

**"member"** means a member of the Association;

**"member entitled to vote"** means a member who under rule 13.2 is entitled to vote at a general meeting;

**"Registrar"** means the Registrar of Incorporated Associations;

**"special resolution"** means a resolution that requires not less than three-quarters of the members voting at a general meeting to vote in favour of the resolution.

## **PART 2 – POWERS OF ASSOCIATION**

### **5 Powers of Association**

5.1 Subject to the Act, the Association has power to do all things incidental or conducive to achieve its purposes.

5.2 Without limiting subrule 5.1, the Association may—

5.2.1 acquire, hold and dispose of real or personal property;

5.2.2 open and operate accounts with financial institutions;

5.2.3 invest its money in any security in which trust monies may lawfully be invested;

5.2.4 raise and borrow money on any terms and in any manner as it thinks fit;

- 5.2.5 secure the repayment of money raised or borrowed, or the payment of a debt or liability;
  - 5.2.6 appoint agents to transact business on its behalf;
  - 5.2.7 enter into any other contract it considers necessary or desirable.
- 5.3 The Association may only exercise its powers and use its income and assets (including any surplus) for its purposes.

## 6 **Not for profit organisation**

- 6.1 The Association must not distribute any surplus, income or assets directly or indirectly to its members.
- 6.2 Subrule 6.1 does not prevent the Association from paying a member—
- 6.2.1 reimbursement for expenses properly incurred by the member; or
  - 6.2.2 for goods or services provided by the member—
- if this is done in good faith on terms no more favourable than if the member was not a member.

**Note**

Section 33 of the Act provides that an incorporated association must not secure pecuniary profit for its members. Section 4 of the Act sets out in more detail the circumstances under which an incorporated association is not taken to secure pecuniary profit for its members.

## **PART 3 – MEMBERS, DISCIPLINARY PROCEDURES AND GRIEVANCES**

### **Division 1 - Membership**

#### 7 **Minimum number of members**

The Association must have at least 5 members.

#### 8 **Who is eligible to be a member**

Any natural person who supports the purposes of the Association is eligible for membership.

#### 9 **Application for membership**

- 9.1 To apply to become a member of the Association, a person must submit a written application to the Chief Executive Officer stating that the person—
- 9.1.1 wishes to become a member of the Association; and
  - 9.1.2 supports the purposes of the Association; and
  - 9.1.3 agrees to comply with these Rules.
- 9.2 The application must be signed by the applicant and may be accompanied by the entrance fee and first annual subscription.

**Note**

The entrance fee is the fee (if any) determined by the Association under rule 12.

#### 10 **Consideration of application**

- 10.1 As soon as practicable after an application for membership is received, the Chief Executive Officer must refer the application to the Board. The Board must decide by resolution whether to accept or reject the application.
- 10.2 The Board must notify the applicant in writing of its decision as soon as practicable after the decision is made. If the Board rejects the application, it must return any money accompanying the application to the applicant.
- 10.3 No reason need be given for the rejection of an application.

## 11 **New membership**

- 11.1 If an application for membership is approved by the Board—
  - 11.1.1 the resolution to accept the membership must be recorded in the minutes of the Board meeting; and
  - 11.1.2 the Chief Executive Officer must, within 28 days after receipt of the entrance fee and first annual subscription, enter the name and address of the new member, and the date of becoming a member, in the register of members.
- 11.2 A person becomes a member of the Association and, subject to rule 13.2, is entitled to exercise his or her rights of membership from the date, whichever is the later, on which—
  - 11.2.1 the Board approves the person's membership; or
  - 11.2.2 the person pays the entrance fee and the first annual subscription.

## 12 **Annual subscription and entrance fee**

- 12.1 At each annual general meeting, the Association must determine—
  - 12.1.1 the amount of the annual subscription (if any) for the following financial year; and
  - 12.1.2 the date for payment of the annual subscription.
- 12.2 The Association may determine that any new member who joins after the start of a financial year must, for that financial year, pay a fee equal to—
  - 12.2.1 the full annual subscription; or
  - 12.2.2 a pro rata annual subscription based on the remaining part of the financial year; or
  - 12.2.3 a fixed amount determined from time to time by the Association, (**“first annual subscription”**) plus an entrance fee set by the Board.
- 12.3 The rights of a member (including the right to vote) who has not paid the annual subscription by the due date are suspended until the subscription is paid.
- 12.4 The annual subscription is non-refundable unless the Board determined otherwise in its absolute discretion.

### 13 **General rights of members**

- 13.1 A member of the Association who is entitled to vote has the right—
- 13.1.1 to receive notice of general meetings and of proposed special resolutions in the manner and time prescribed by these Rules; and
  - 13.1.2 to submit items of business for consideration at a general meeting; and
  - 13.1.3 to attend and be heard at general meetings; and
  - 13.1.4 to vote at a general meeting; and
  - 13.1.5 to have access to the minutes of general meetings and other documents of the Association as provided under rule 75; and
  - 13.1.6 to inspect the register of members.
- 13.2 A member is entitled to vote if:
- 13.2.1 more than 10 business days have passed since he or she became a member of the Association; and
  - 13.2.2 the member's membership rights are not suspended for any reason.

### 14 **[Contents deleted, clause maintained for numbering purposes]**

### 15 **Rights not transferable**

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

### 16 **Ceasing membership**

- 16.1 The membership of a person ceases on resignation, expulsion or death.
- 16.2 If a person ceases to be a member of the Association, the Chief Executive Officer must, as soon as practicable, enter the date the person ceased to be a member in the register of members.

### 17 **Resigning as a member**

- 17.1 A member who has paid all moneys due and payable as a member may resign by one month's notice in writing given to the Chief Executive Officer of his or her intention to resign.

**Note**

Rule 74.3 sets out how notice may be given to the association. It includes by post or by handing the notice to a member of the Board.

- 17.2 A member is taken to have resigned if—
- 17.2.1 the member's annual subscription is more than 12 months in arrears; or
  - 17.2.2 where no annual subscription is payable—
    - (a) the Chief Executive Officer has made a written request to the member to confirm that he or she wishes to remain a member; and



- (b) the member has not, within 3 months after receiving that request, confirmed in writing that he or she wishes to remain a member.

## 18 Register of members

- 18.1 The Chief Executive Officer must keep and maintain a register of members that includes—
- 18.1.1 for each current member—
- (a) the member's name;
  - (b) the address for notice last given by the member;
  - (c) the date of becoming a member;
  - (d) the category of membership;
  - (e) any other information determined by the Board; and
- 18.1.2 for each former member, the date of ceasing to be a member.
- 18.2 Any member may, at a reasonable time and free of charge, inspect the register of members.

### Note

Under section 59 of the Act, access to the personal information of a person recorded in the register of members may be restricted in certain circumstances. Section 58 of the Act provides that it is an offence to make improper use of information about a person obtained from the Register of Members.

## Division 2 – Disciplinary Action

### 19 Grounds for taking disciplinary action

The Association may take disciplinary action against a member in accordance with this Division if it is determined that the member—

- 19.1 has failed to comply with these Rules; or
- 19.2 refuses to support the purposes of the Association; or
- 19.3 has engaged in conduct prejudicial to the Association.

### 20 Disciplinary subcommittee

- 20.1 If the Board is satisfied that there are sufficient grounds for taking disciplinary action against a member, the Board must appoint a disciplinary subcommittee to hear the matter and determine what action, if any, to take against the member.
- 20.2 The members of the disciplinary subcommittee—
- 20.2.1 may be Board members, members of the Association or anyone else; but
  - 20.2.2 must not be biased against, or in favour of, the member concerned.

## 21 Notice to member

- 21.1 Before disciplinary action is taken against a member, the Chief Executive Officer must give written notice to the member—
- 21.1.1 stating that the Association proposes to take disciplinary action against the member; and
  - 21.1.2 stating the grounds for the proposed disciplinary action; and
  - 21.1.3 specifying the date, place and time of the meeting at which the disciplinary subcommittee intends to consider the disciplinary action (the ***disciplinary meeting***); and
  - 21.1.4 advising the member that he or she may do one or both of the following—
    - (a) attend the disciplinary meeting and address the disciplinary subcommittee at that meeting;
    - (b) give a written statement to the disciplinary subcommittee at any time before the disciplinary meeting; and
  - 21.1.5 setting out the member's appeal rights under rule 23.
- 21.2 The notice must be given no earlier than 28 days, and no later than 14 days, before the disciplinary meeting is held.

## 22 Decision of subcommittee

- 22.1 At the disciplinary meeting, the disciplinary subcommittee must—
- 22.1.1 give the member an opportunity to be heard; and
  - 22.1.2 consider any written statement submitted by the member.
- 22.2 After complying with subrule 22.1, the disciplinary subcommittee may—
- 22.2.1 take no further action against the member; or
  - 22.2.2 subject to subrule 22.2.2(d)—
    - (a) reprimand the member; or
    - (b) suspend the membership rights of the member for a specified period; or
    - (c) expel the member from the Association.
    - (d) The disciplinary subcommittee may not fine the member.
- 22.3 The suspension of membership rights or the expulsion of a member by the disciplinary subcommittee under this rule takes effect immediately after the vote is passed.

## 23 Appeal rights

- 23.1 A person whose membership rights have been suspended or who has been expelled from the Association under rule 22 may give notice to the effect that he or she wishes to appeal against the suspension or expulsion.
- 23.2 The notice must be in writing and given—
- 23.2.1 to the disciplinary subcommittee immediately after the vote to suspend or expel the person is taken; or
- 23.2.2 to the Chief Executive Officer not later than 48 hours after the vote.
- 23.3 If a person has given notice under subrule 23.2, a disciplinary appeal meeting must be convened by the Board as soon as practicable, but in any event not later than 21 days, after the notice is received.
- 23.4 Notice of the disciplinary appeal meeting must be given to each member of the Association who is entitled to vote as soon as practicable and must—
- 23.4.1 specify the date, time and place of the meeting; and
- 23.4.2 state—
- (a) the name of the person against whom the disciplinary action has been taken; and
- (b) the grounds for taking that action; and
- (c) that at the disciplinary appeal meeting the members present must vote on whether the decision to suspend or expel the person should be upheld or revoked.

## 24 **Conduct of disciplinary appeal meeting**

- 24.1 At a disciplinary appeal meeting—
- 24.1.1 no business other than the question of the appeal may be conducted; and
- 24.1.2 the Board must state the grounds for suspending or expelling the member and the reasons for taking that action; and
- 24.1.3 the person whose membership has been suspended or who has been expelled must be given an opportunity to be heard.
- 24.2 After complying with subrule 24.1, the members present and entitled to vote at the meeting must vote by secret ballot on the question of whether the decision to suspend or expel the person should be upheld or revoked.
- 24.3 A member may not vote by proxy at the meeting.
- 24.4 The decision is upheld if not less than two-thirds of the members voting at the meeting vote in favour of the decision.

## **Division 3 – Grievance Procedure**

### 25 **Application**

- 25.1 The grievance procedure set out in this Division applies to disputes under these Rules between—
- 25.1.1 a member and another member;
  - 25.1.2 a member and the Board;
  - 25.1.3 a member and the Association.
- 25.2 A member must not initiate a grievance procedure in relation to a matter that is the subject of a disciplinary procedure until the disciplinary procedure has been completed.

## 26 **Parties must attempt to resolve the dispute**

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

## 27 **Appointment of mediator**

- 27.1 If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 26, the parties must within 10 days—
- 27.1.1 notify the Board of the dispute; and
  - 27.1.2 agree to or request the appointment of a mediator; and
  - 27.1.3 attempt in good faith to settle the dispute by mediation.
- 27.2 The mediator must be—
- 27.2.1 a person chosen by agreement between the parties; or
  - 27.2.2 in the absence of agreement—
    - (a) if the dispute is between a member and another member—a person appointed by the Board; or
    - (b) if the dispute is between a member and the Board or the Association—a person appointed or employed by the Dispute Settlement Centre of Victoria.
- 27.3 A mediator appointed by the Board may be a member or former member of the Association but in any case must not be a person who—
- 27.3.1 has a personal interest in the dispute; or
  - 27.3.2 is biased in favour of or against any party.

## 28 **Mediation process**

- 28.1 The mediator to the dispute, in conducting the mediation, must—
- 28.1.1 give each party every opportunity to be heard; and
  - 28.1.2 allow due consideration by all parties of any written statement submitted by any party; and

28.1.3 ensure that natural justice is accorded to the parties throughout the mediation process.

28.2 The mediator must not determine the dispute.

## 29 **Failure to resolve dispute by mediation**

If the mediation process does not resolve the dispute, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

## **PART 4 – GENERAL MEETINGS OF THE ASSOCIATION**

### 30 **Annual general meetings**

30.1 The Board must convene an annual general meeting of the Association to be held within 5 months after the end of each financial year.

30.2 Despite subrule 30.1, the Association may hold its first annual general meeting at any time within 18 months after its incorporation.

30.3 The Board may determine the date, time and place of the annual general meeting.

30.4 The ordinary business of the annual general meeting is as follows—

30.4.1 to confirm the minutes of the previous annual general meeting and of any special general meeting held since then;

30.4.2 to receive and consider—

(a) the annual report of the Board on the activities of the Association during the preceding financial year; and

(b) the financial statements of the Association for the preceding financial year submitted by the Board in accordance with Part 7 of the Act;

30.4.3 to elect the members of the Board;

30.4.4 to confirm or vary the amounts (if any) of the annual subscription and entrance fee; and

30.4.5 to appoint an auditor for the next financial year.

30.5 The annual general meeting may also conduct any other business of which notice has been given in accordance with these Rules.

### 31 **Special general meetings**

31.1 Any general meeting of the Association, other than an annual general meeting or a disciplinary appeal meeting, is a special general meeting.

31.2 The Board may convene a special general meeting whenever it thinks fit.

31.3 No business other than that set out in the notice under rule 33 may be conducted at the meeting.

#### **Note**

General business may be considered at the meeting if it is included as an item for consideration in the notice under rule 33 and the majority of members at the meeting agree.

## 32 **Special general meeting held at request of members**

- 32.1 The Board must convene a special general meeting if a request to do so is made in accordance with subrule 32.2 by at least 5% of the total number of members.
- 32.2 A request for a special general meeting must—
- 32.2.1 be in writing; and
  - 32.2.2 state the business to be considered at the meeting and any resolutions to be proposed; and
  - 32.2.3 include the names and signatures of the members requesting the meeting; and
  - 32.2.4 be given to the Chief Executive Officer.
- 32.3 If the Board does not convene a special general meeting within one month after the date on which the request is made, the members making the request (or any of them) may convene the special general meeting.
- 32.4 A special general meeting convened by members under subrule 32.3—
- 32.4.1 must be held within 3 months after the date on which the original request was made; and
  - 32.4.2 may only consider the business stated in that request.
- 32.5 The Association must reimburse all reasonable expenses incurred by the members convening a special general meeting under subrule 32.3.

## 33 **Notice of general meetings**

- 33.1 The Chief Executive Officer (or, in the case of a special general meeting convened under rule 32.3, the members convening the meeting) must give to each member of the Association—
- 33.1.1 at least 21 days' notice of a general meeting if a special resolution is to be proposed at the meeting; or
  - 33.1.2 at least 14 days' notice of a general meeting in any other case.
- 33.2 The notice must—
- 33.2.1 specify the date, time and place of the meeting; and
  - 33.2.2 indicate the general nature of each item of business to be considered at the meeting; and
  - 33.2.3 if a special resolution is to be proposed—
    - (a) state in full the proposed resolution; and
    - (b) state the intention to propose the resolution as a special resolution.
- 33.3 This rule does not apply to a disciplinary appeal meeting.

### **Note**

Rule 23.4 sets out the requirements for notice of a disciplinary appeal meeting.

34 **Proxies**

- 34.1 A member is not entitled to appoint another member as his or her proxy to vote and speak on his or her behalf at a general meeting.

35 [***Contents deleted, clause maintained for numbering purposes***]36 **Quorum at general meetings**

- 36.1 No business may be conducted at a general meeting unless a quorum of members is present.
- 36.2 The quorum for a general meeting is the presence in person of 10 members entitled to vote.
- 36.3 If a quorum is not present within 30 minutes after the notified commencement time of a general meeting—
- 36.3.1 in the case of a meeting convened by, or at the request of, members under rule 32—the meeting must be dissolved;

**Note**

If a meeting convened by, or at the request of, members is dissolved under this subrule, the business that was to have been considered at the meeting is taken to have been dealt with. If members wish to have the business reconsidered at another special meeting, the members must make a new request under rule 32.

- 36.3.2 in any other case—
- (a) the meeting must be adjourned to a date not more than 21 days after the adjournment; and
- (b) notice of the date, time and place to which the meeting is adjourned must be given at the meeting and confirmed by written notice given to all members as soon as practicable after the meeting.
- 36.4 If a quorum is not present within 30 minutes after the time to which a general meeting has been adjourned under subrule 36.3.2, the members present at the meeting (if not fewer than 5) may proceed with the business of the meeting as if a quorum were present.

37 **Adjournment of general meeting**

- 37.1 The Chairperson of a general meeting at which a quorum is present may, with the consent of a majority of members present at the meeting, adjourn the meeting to another time at the same place or at another place.
- 37.2 Without limiting subrule 37.1, a meeting may be adjourned—
- 37.2.1 if there is insufficient time to deal with the business at hand; or
- 37.2.2 to give the members more time to consider an item of business.

**Example**

The members may wish to have more time to examine the financial statements submitted by the Board at an annual general meeting.

- 37.3 No business may be conducted on the resumption of an adjourned meeting other than the business that remained unfinished when the meeting was adjourned.

- 37.4 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 33.

### 38 **Voting at general meeting**

- 38.1 On any question arising at a general meeting—
- 38.1.1 subject to subrule 38.3, each member who is entitled to vote has one vote; and
  - 38.1.2 members may vote personally by show of hands; and
  - 38.1.3 except in the case of a special resolution, the question must be decided on a majority of votes.
- 38.2 If votes are divided equally on a question, the Chairperson of the meeting has a second or casting vote.
- 38.3 If the question is whether or not to confirm the minutes of a previous meeting, only members who were present at that meeting may vote.
- 38.4 This rule does not apply to a vote at a disciplinary appeal meeting conducted under rule 24.

### 39 **Special resolutions**

A special resolution is passed if not less than three quarters of the members voting at a general meeting in person vote in favour of the resolution.

**Note**

In addition to certain matters specified in the Act, a special resolution is required—

- (a) to remove a Board member from office;
- (b) to alter these Rules, including changing the name or any of the purposes of the Association.

### 40 **Determining whether resolution carried**

- 40.1 Subject to subsection 40.2, the Chairperson of a general meeting may, on the basis of a show of hands, declare that a resolution has been—
- 40.1.1 carried; or
  - 40.1.2 carried unanimously; or
  - 40.1.3 carried by a particular majority; or
  - 40.1.4 lost—
- and an entry to that effect in the minutes of the meeting is conclusive proof of that fact.
- 40.2 If a poll (where votes are cast in writing) is demanded by three or more members on any question—
- 40.2.1 the poll must be taken at the meeting in the manner determined by the Chairperson of the meeting; and
  - 40.2.2 the Chairperson must declare the result of the resolution on the basis of the poll.



- 40.3 A poll demanded on the election of the Chairperson or on a question of an adjournment must be taken immediately.
- 40.4 A poll demanded on any other question must be taken before the close of the meeting at a time determined by the Chairperson.

#### 41 **Minutes of general meeting**

- 41.1 The Board must ensure that minutes are taken and kept of each general meeting.
- 41.2 The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.
- 41.3 In addition, the minutes of each annual general meeting must include—
- 41.3.1 the names of the members attending the meeting; and
  - 41.3.2 the financial statements submitted to the members in accordance with rule 30.4.2(b); and
  - 41.3.3 the certificate signed by two Board members certifying that the financial statements give a true and fair view of the financial position and performance of the Association; and
  - 41.3.4 any audited accounts and auditor's report or report of a review accompanying the financial statements that are required under the Act.

### **PART 5 – BOARD**

#### **Division 1 – Powers Of Board**

#### 42 **Role and powers**

- 42.1 The business of the Association must be managed by or under the direction of a Board.
- 42.2 The Board may exercise all the powers of the Association except those powers that these Rules or the Act require to be exercised by general meetings of the members of the Association.
- 42.3 The Board may—
- 42.3.1 appoint and remove staff, including the Chief Executive Officer;
  - 42.3.2 establish subcommittees consisting of members with terms of reference it considers appropriate.
- 42.4 The Chief Executive Officer must perform all duties and functions to be performed by the secretary of the Association as required under the Act, unless the Board appoints some other person for that purpose.
- 42.5 A subcommittee may consist of:
- 42.5.1 members of the Board;
  - 42.5.2 members of the Association;
  - 42.5.3 staff;

42.5.4 other persons; or

42.5.5 any combination of persons referred to in this rule 42.4.

### **Composition of subcommittees**

42.6 The Board must prescribe the purpose and function of any subcommittee appointed.

42.7 The President and Chief Executive Officer are ex-officio members of all subcommittees.

42.8 The Board may determine that a member of a subcommittee who is not a member of the Association does not have voting rights on the subcommittee.

42.9 A subcommittee may co-opt other persons to serve on it in an advisory capacity but no co-opted member will have voting rights unless approved by the Board.

42.10 Unless appointed by the Board a subcommittee must appoint a Chairperson.

42.11 Meetings of the subcommittee must be held at a time and place determined by the subcommittee.

42.12 A decision of a subcommittee which is outside the purpose for which it was established has no effect unless it is approved by the Board.

42.13 Each subcommittee will, unless otherwise prescribed, follow these Rules with such adaptations as necessary for the conduct of its operations and meetings.

42.14 The Board may dissolve a subcommittee at any time.

### **Auxiliaries**

42.15 The Board may form auxiliaries for the purpose of raising funds for the Association;

42.16 An auxiliary is deemed to be a subcommittee within the meaning of this rule 42.3.2;

42.17 The Board may appoint any person, including at least one Board member to an auxiliary; and

42.18 The Board may dissolve an auxiliary at any time.

## **43 Delegation**

43.1 The Board may delegate to a member of the Board, a subcommittee or staff, any of its powers and functions other than—

43.1.1 this power of delegation; or

43.1.2 a duty imposed on the Board by the Act or any other law.

43.2 The delegation must be in writing and may be subject to the conditions and limitations the Board considers appropriate.

43.3 The Board may, in writing, revoke a delegation wholly or in part.

## **Division 2 – Composition of Board and duties of members**

### **44 Composition of Board**

- 44.1 Noting that it is desirable that Board members should have skills, knowledge and/or experience in business leadership and management as well as a strong commitment to enhancing the lives of people with disabilities and the not-for-profit sector, the Board consists of—
- 44.1.1 six General Members elected under rule 53; and
  - 44.1.2 one Family Member elected under rule 53.
- 44.2 The officers of the Association are:
- 44.2.1 the President;
  - 44.2.2 the Vice-President; and
  - 44.2.3 the Treasurer.
- 44.3 At its first meeting after the Annual General Meeting the Board must elect from its members the officers provided by subrule 44.2 and any other officers as it considers necessary.

#### 45 **General Duties**

- 45.1 As soon as practicable after being elected or appointed to the Board, each Board member must become familiar with these Rules and the Act.
- 45.2 The Board is collectively responsible for ensuring that the Association complies with the Act and that individual members of the Board comply with these Rules.
- 45.3 Board members must exercise their powers and discharge their duties with reasonable care and diligence.
- 45.4 Board members must exercise their powers and discharge their duties—
- 45.4.1 in good faith in the best interests of the Association; and
  - 45.4.2 for a proper purpose.
- 45.5 Board members and former Board members must not make improper use of—
- 45.5.1 their position; or
  - 45.5.2 information acquired by virtue of holding their position—
- so as to gain an advantage for themselves or any other person or to cause detriment to the Association.
- Note**  
See also Division 3 of Part 6 of the Act which sets out the general duties of the office holders of an incorporated association.
- 45.6 In addition to any duties imposed by these Rules, a Board member must perform any other duties imposed from time to time by resolution at a general meeting.

#### 46 **President and Vice-President**

- 46.1 Subject to subrule 46.2, the President or, in the President's absence, the Vice-President is the Chairperson for any general meetings and for any Board meetings.

46.2 If the President and the Vice-President are both absent, or are unable to preside, the Chairperson of the meeting must be—

46.2.1 in the case of a general meeting—a member elected by the other members present; or

46.2.2 in the case of a Board meeting—a Board member elected by the other Board members present.

47 **[Contents deleted, clause maintained for numbering purposes]**

48 **Treasurer**

48.1 The Treasurer must—

48.1.1 oversee the receipt of all moneys paid to or received by the Association and issue receipts for those moneys in the name of the Association; and

48.1.2 ensure that all moneys received are paid into the account of the Association within 5 working days after receipt; and

48.1.3 make or oversee the making of any payments authorised by the Board from the Association's funds; and

48.1.4 ensure all cheques, drafts, bills of exchange, promissory notes and other negotiable instruments, as well as electronic funds transfers are signed by any two person approved by the Board.

48.2 The Treasurer must—

48.2.1 ensure that the financial records of the Association are kept in accordance with the Act; and

48.2.2 coordinate the preparation of the financial statements of the Association and their certification by the Board prior to their submission to the annual general meeting of the Association.

48.3 The Treasurer must ensure that at least one other Board member has access to the accounts and financial records of the Association.

### **Division 3 – Election of Board members and tenure of office**

49 **Who is eligible to be a Board member**

A member is eligible to be elected or appointed as a Board member if the member—

49.1 is 18 years or over;

49.2 is entitled to vote at a general meeting; and

49.3 is not:

49.3.1 an employee or client of the Association; or

49.3.2 a person who is receiving services or assistance from the Association.

**50 Positions to be declared vacant**

- 50.1 This rule applies to—
- 50.1.1 the first annual general meeting of the Association after its incorporation;  
or
  - 50.1.2 any subsequent annual general meeting of the Association, after the annual report and financial statements of the Association have been received.
- 50.2 The Chairperson of the meeting must declare those positions on the Board to be filled that are vacant and declare the result of the elections for those positions in accordance with rules 51 to 54.

**51 Nominations**

- 51.1 At least 30 days prior to the election of each position, the Chief Executive Officer of the meeting must call for nominations to fill that position.
- 51.2 An eligible member of the Association may—
- 51.2.1 nominate himself or herself; or
  - 51.2.2 with the member's consent, be nominated by any two members entitled to vote.
- 51.3 A member who is nominated for a position and fails to be elected to that position may be nominated for any other position for which an election is yet to be held.
- 51.4 The nomination process may otherwise be set out in by-laws.

**52 [*Contents deleted, clause maintained for numbering purposes*]****53 Election of Board members**

- 53.1 A single election may be held to fill all of those positions.
- 53.2 If the number of members nominated for the position of ordinary Board member is less than or equal to the number to be elected, the Chairperson of the meeting must declare each of those members to be elected to the position.
- 53.3 If the number of members nominated exceeds the number to be elected, a ballot must be held in accordance with rule 54.

**54 Ballot**

- 54.1 If a ballot is required for the election for a position, the Chief Executive Officer will act as returning officer to conduct the ballot.
- 54.2 The returning officer must not be a member nominated for the position.
- 54.3 The ballot is to be conducted at or before the annual general meeting.
- 54.4 The election must be by secret ballot.
- 54.5 The returning officer must give a blank piece of paper to each member eligible to vote.

- 54.6 If the ballot is for a single position, the voter must write on the ballot paper the name of the candidate for whom they wish to vote.
- 54.7 If the ballot is for more than one position—
- 54.7.1 the voter must write on the ballot paper the name of each candidate for whom they wish to vote;
- 54.7.2 the voter must not write the names of more candidates than the number to be elected.
- 54.8 Ballot papers that do not comply with subrule 54.7.2 are not to be counted.
- 54.9 Each ballot paper on which the name of a candidate has been written counts as one vote for that candidate.
- 54.10 The returning officer must declare elected the candidate or, in the case of an election for more than one position, the candidates who received the most votes.
- 54.11 If the returning officer is unable to declare the result of an election under subrule 54.10 because 2 or more candidates received the same number of votes, the returning officer must decide by lot which of them is to be elected.

**Examples**

The choice of candidate may be decided by the toss of a coin, drawing straws, drawing a name out of a hat.

- 54.12 The ballot may otherwise be conducted in accordance with the by-laws.

**55 Term of office**

- 55.1 Subject to subrule 55.3 and rule 56, a Board member for the purposes of subrule 44.1.2 holds office until the next annual general meeting.
- 55.2 Subject to subrule 55.3 and rule 56, a Board member for the purposes of subrule 44.1.1 generally holds office until the second annual general meeting after taking office but may be required to retire at the first annual general meeting after taking office under rule 55.3.
- 55.3 At each annual general meeting, at least 3 Board members for the purposes of subrule 44.1.1, being those who agree to resign, together with sufficient Board members who have been the longest in office since their last election, will retire at each annual general meeting.
- 55.4 A Board member may be re-elected.
- 55.5 For those general members in excess of 3 and who became members of the Board on the same day, those to retire first will be determined by lot drawn by the Chief Executive Officer at a meeting of the Board within 1 month of the election at which they were elected.
- 55.6 If the number of Board members is reduced to less than 5, the remaining Board members, or if there are none, the Chief Executive Officer, must call a special general meeting of members of the Association for the purpose of filling the vacancies and may do all acts and cause to be issued all notices which may be necessary for this purpose.
- 55.7 A general meeting of the Association may—

- 55.7.1 by special resolution remove a Board member from office; and
- 55.7.2 elect an eligible member of the Association to fill the vacant position in accordance with this Division.

55.8 A member who is the subject of a proposed special resolution under subrule 55.7.1 may make representations in writing to the Chief Executive Officer or President of the Association (not exceeding a reasonable length) and may request that the representations be provided to the members of the Association.

55.9 The Chief Executive Officer or the President may give a copy of the representations to each member of the Association or, if they are not so given, the member may require that they be read out at the meeting at which the special resolution is to be proposed.

## 56 **Vacation of office**

56.1 A Board member may resign from the Board by written notice addressed to the Board.

56.2 A person ceases to be a Board member if he or she—

- 56.2.1 ceases to be a member of the Association;
- 56.2.2 fails to attend 3 consecutive Board meetings (other than special or urgent Board meetings) without leave of absence under rule 67;
- 56.2.3 otherwise ceases to be a Board member by operation of section 78 of the Act;
- 56.2.4 becomes an employee or client of the Association;
- 56.2.5 receives services or assistance from the Association; or
- 56.2.6 is disqualified from being a responsible person of a registered charity under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

## 57 **Filling casual vacancies**

57.1 The Board may appoint an eligible member of the Association to fill a position on the Board that—

- 57.1.1 has become vacant under rule 56; or
- 57.1.2 was not filled by election at the last annual general meeting.

57.2 Rule 55 applies to any Board member appointed by the Board under subrule 55.1, 55.2 or 55.3.

57.3 The Board may continue to act despite any vacancy in its membership.

## **Division 4 – Meetings of Board**

### 58 **Meetings of Board**

58.1 The Board must meet monthly at the dates, times and places determined by the Board.

58.2 The date, time and place of the first Board meeting must be determined by the members of the Board as soon as practicable after the annual general meeting of the Association at which the members of the Board were elected.

58.3 Special Board meetings may be convened by the President or by any 4 members of the Board.

## 59 **Notice of meetings**

59.1 Notice of each Board meeting must be given to each Board member no later than 2 business days before the date of the meeting.

59.2 Notice may be given of more than one Board meeting at the same time.

59.3 The notice must state the date, time and place of the meeting.

59.4 If a special Board meeting is convened, the notice must include the general nature of the business to be conducted.

59.5 The only business that may be conducted at the meeting is the business for which the meeting is convened.

## 60 **Urgent meetings**

60.1 In cases of urgency, a meeting can be held without notice being given in accordance with rule 59 provided that as much notice as practicable is given to each Board member by the quickest means practicable.

60.2 Any resolution made at the meeting must be passed by an absolute majority of the Board.

60.3 The only business that may be conducted at an urgent meeting is the business for which the meeting is convened.

## 61 **Procedure and order of business**

61.1 The procedure to be followed at a meeting of a Board must be determined from time to time by the Board.

61.2 The order of business may be determined by the members present at the meeting.

## 62 ***[Contents deleted, clause maintained for numbering purposes]***

## 63 **Quorum**

63.1 No business may be conducted at a Board meeting unless a quorum is present.

63.2 The quorum for a Board meeting is the presence in person of 4 Board members holding office.

63.3 If a quorum is not present within 30 minutes after the notified commencement time of a Board meeting—

63.3.1 in the case of a special meeting—the meeting lapses;

63.3.2 in any other case—the meeting must be adjourned to a date no later than 14 days after the adjournment and notice of the time, date and



place to which the meeting is adjourned must be given in accordance with rule 59.

## 64 **Voting**

- 64.1 On any question arising at a Board meeting, each Board member present at the meeting has one vote.
- 64.2 A motion is carried if a majority of Board members present at the meeting vote in favour of the motion.
- 64.3 Subrule 64.2 does not apply to any motion or question which is required by these Rules to be passed by an absolute majority of the Board.
- 64.4 If votes are divided equally on a question, the Chairperson of the meeting has a second or casting vote.
- 64.5 Voting by proxy is not permitted.

## 65 **Conflict of interest**

- 65.1 A Board member who has a material personal interest in a matter being considered at a Board meeting must disclose the nature and extent of that interest to the Board.
- 65.2 The member—
  - 65.2.1 must not be present while the matter is being considered at the meeting; and
  - 65.2.2 must not vote on the matter.

### **Note**

Under section 81(3) of the Act, if there are insufficient Board members to form a quorum because a member who has a material personal interest is disqualified from voting on a matter, a general meeting may be called to deal with the matter.

- 65.3 This rule does not apply to a material personal interest—
  - 65.3.1 that exists only because the member belongs to a class of persons for whose benefit the Association is established; or
  - 65.3.2 that the member has in common with all, or a substantial proportion of, the members of the Association.

## 66 **Minutes of meeting**

- 66.1 The Board must ensure that minutes are taken and kept of each Board meeting.
- 66.2 The minutes must record the following—
  - 66.2.1 the names of the members in attendance at the meeting;
  - 66.2.2 the business considered at the meeting;
  - 66.2.3 any resolution on which a vote is taken and the result of the vote;
  - 66.2.4 any material personal interest disclosed under rule 65.

## 67 **Leave of absence**

- 67.1 The Board may grant a Board member leave of absence from Board meetings for a period not exceeding 3 months.
- 67.2 The Board must not grant leave of absence retrospectively unless it is satisfied that it was not feasible for the Board member to seek the leave in advance.

## **PART 6 – FINANCIAL MATTERS**

### 68 **Source of funds**

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

### 69 **Management of funds**

- 69.1 The Association must open an account with a financial institution from which all expenditure of the Association is made and into which all of the Association's revenue is deposited.
- 69.2 The Board may approve expenditure on behalf of the Association.
- 69.3 The Board may authorise an officer or employee of the Association to expend funds on behalf of the Association (including by electronic funds transfer) up to a specified limit without requiring approval from the Board for each item on which the funds are expended.
- 69.4 All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by any two persons approved by the Board
- 69.5 All funds transferred electronically by the Association must be authorised by any two persons approved by the Board.
- 69.6 All funds of the Association must be deposited into the financial account of the Association no later than 5 working days after receipt.
- 69.7 With the approval of the Board, an officer or employee of the Association may maintain a cash float provided that all money paid from or paid into the float is accurately recorded at the time of the transaction.
- 69.8 The Board may invest the Association's funds not immediately required for the Association's operational purposes in any manner authorised by law for investing trust funds.

### 70 **Financial records**

- 70.1 The Association must keep financial records that—
- 70.1.1 correctly record and explain its transactions, financial position and performance; and
- 70.1.2 enable financial statements to be prepared as required by the Act.
- 70.2 The Association must retain the financial records for 7 years after the transactions covered by the records are completed.

- 70.3 The Treasurer must keep in his or her custody, or under his or her control—
- 70.3.1 the financial records for the current financial year; and
  - 70.3.2 any other financial records as authorised by the Board.

## 71 **Financial statements**

- 71.1 For each financial year, the Board must ensure that the requirements under the Act relating to the financial statements of the Association are met.
- 71.2 Without limiting subrule 71.1, those requirements include—
- 71.2.1 the preparation of the financial statements;
  - 71.2.2 if required, the review or auditing of the financial statements;
  - 71.2.3 the certification of the financial statements by the Board;
  - 71.2.4 the submission of the financial statements to the annual general meeting of the Association;
  - 71.2.5 the lodgement with the Registrar of the financial statements and accompanying reports, certificates, statements and fee.

## **PART 7 – GENERAL MATTERS**

### 72 **Common seal**

- 72.1 The Association may have a common seal.
- 72.2 If the Association has a common seal—
- 72.2.1 the name of the Association must appear in legible characters on the common seal;
  - 72.2.2 a document may only be sealed with the common seal by the authority of the Board and the sealing must be witnessed by the signatures of two Board members;
  - 72.2.3 the common seal must be kept in the custody of the Chief Executive Officer.

### 73 **Registered address**

The registered address of the Association is—

- 73.1.1 the address determined from time to time by resolution of the Board; or
- 73.1.2 if the Board has not determined an address to be the registered address—the postal address of the Chief Executive Officer.

### 74 **Notice requirements**

- 74.1 Any notice required to be given to a member or a Board member under these Rules may be given—
- 74.1.1 by handing the notice to the member personally; or

74.1.2 by sending it by post to the member at the address recorded for the member on the register of members; or

74.1.3 by email or facsimile transmission.

74.2 Subrule 74.1 does not apply to notice given under rule 60.

74.3 Any notice required to be given to the Association or the Board may be given—

74.3.1 by handing the notice to a member of the Board; or

74.3.2 by sending the notice by post to the registered address; or

74.3.3 by leaving the notice at the registered address; or

74.3.4 if the Board determines that it is appropriate in the circumstances—

(a) by email to the email address of the Association or the Chief Executive Officer; or

(b) by facsimile transmission to the facsimile number of the Association.

## 75 **Custody and inspection of books and records**

75.1 Members may on request inspect free of charge—

75.1.1 the register of members;

75.1.2 the minutes of general meetings;

75.1.3 subject to subrule 75.2, the financial records, books, securities and any other relevant document of the Association, including minutes of Board meetings.

### **Note**

See note following rule 18 for details of access to the register of members.

75.2 The Board may refuse to permit a member to inspect records of the Association:

75.2.1 that relate to confidential, personal, employment, commercial or legal matters; or

75.2.2 where to do so may be prejudicial to the interests of the Association.

75.3 The Board must on request make copies of these Rules available to members and applicants for membership free of charge.

75.4 Subject to subrule 75.2, a member may make a copy of any of the other records of the Association referred to in this rule and the Association may charge a reasonable fee for provision of a copy of such a record.

75.5 For purposes of this rule—

**relevant documents** means the records and other documents, however compiled, recorded or stored, that relate to the incorporation and management of the Association and includes the following—

75.5.1 its membership records;

- 75.5.2 its financial statements;
- 75.5.3 its financial records;
- 75.5.4 records and documents relating to transactions, dealings, business or property of the Association.

## 76 **Winding up and cancellation**

- 76.1 The Association may be wound up voluntarily by special resolution.
- 76.2 Subject to rule 79, in the event of the winding up or the cancellation of the incorporation of the Association, the surplus assets of the Association must not be distributed to any members or former members of the Association.
- 76.3 Subject to the Act and any court order made under section 133 of the Act, the surplus assets must be given to a body that has similar purposes to the Association and which is not carried on for the profit or gain of its individual members.
- 76.4 The body to which the surplus assets are to be given must be decided by special resolution, but must be:
  - 76.4.1 a public benevolent institution under Division 30 of the *Income Tax Assessment Act 1997* (Cth);
  - 76.4.2 a registered charity under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth); and
  - 76.4.3 income tax exempt.

## 77 **Alteration of rules**

These Rules may only be altered by special resolution of a general meeting of the Association.

### **Note**

An alteration of these Rules does not take effect unless or until it is approved by the Registrar. If these Rules (other than rule 1, 2 or 3) are altered, the Association is taken to have adopted its own rules, not the model rules.

## 78 **By-Laws**

- 78.1 The Board has powers to make, alter and repeal by-laws for the administration and management of the Association.
- 78.2 To make, alter or repeal a by-law:
  - 78.2.1 the Board must hold a meeting and pass a resolution to adopt the proposed by-laws; and
  - 78.2.2 within 14 to 28 days after the first meeting, the Board must hold a further meeting and resolve to confirm the resolution adopting the proposed by-laws.

It is only after the second resolution that the by-law is made, altered or repealed.

- 78.3 A by-law must not be inconsistent with the Act or these Rules or affect or repeal anything contained in these Rules.

- 78.4 A by-law is inoperative to the extent that it is inconsistent with these Rules or any law.

**Note**

Notice of meetings for the purposes of this rule 78 is to be given in accordance with rule 59.

79 **Revocation of DGR**

- 79.1 If the Association is wound up or if the endorsement of the Association as a deductible gift recipient is revoked, the following assets must be transferred to a fund, authority or institution to which income tax deductible gifts can be made:

- 79.1.1 gifts of money or property for the principal purposes of the Association;
- 79.1.2 contributions made in relation to an eligible fundraising event held for the principal purpose of the Association, and
- 79.1.3 money received by the Association because of such gifts and contributions,

which are unspent (“**surplus donations**”).

- 79.2 The fund, authority or institution to which the surplus donations are to be given must be decided by the Board, but must be:

- 79.2.1 a public benevolent institution under Division 30 of the *Income Tax Assessment Act 1997* (Cth);
- 79.2.2 a registered charity under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth); and
- 79.2.3 income tax exempt.

NDIS FUNDED SUPPORT SERVICES

OUT OF HOME CARE

COMMERCIAL SERVICES

ABOUT US

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**ASTERIA  
SERVICES**

# NDIS-funded support services

ASTERIA is a registered National Disability Scheme (NDIS) provider and can help you with:

- [Support Coordination](#)
- [Group Support](#) (community and social)
- [Individual Support](#) (community and social)
- [accommodation](#)
- [gardening and cleaning services](#)
- [Supported Employment.](#)

To be eligible to access the listed services you will need to be a participant of the (NDIS).

To find out if you are eligible for the NDIS contact

**1800 800 100**

You can also contact ASTERIA intake to discuss:

- support for your goals
- your NDIS plan



## Individual Support

### HOW DOES THE SERVICE WORK? —

You have a choice in the days and times you would like to use ASTERIA services. You have a choice in which ASTERIA staff support you. We will work with you to reach your NDIS goals.

### WHO CAN ACCESS GROUP SUPPORTS? +

## Individual Support



ASTERIA Individual Support provides individuals with high quality support. We aim to assist you in maintaining and developing your skills through a wide range of activities based on your individual needs, strengths, interests, and wishes.

## Group Support



Group Supports provide you with opportunities to:

- access the community
- access further education
- participate in personal development and communication activities

## NDIS FUNDED SUPPORT SERVICES

## OUT OF HOME CARE

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community connections.

Support staff can also come to your home to provide assistance with daily living tasks: cooking, budgeting, or making a shopping list. Individual support can be provided 24 hours a day, seven days a week.

Individual Support can assist you with:

- your independence
- meaningful social participation
- meaningful community access
- recreation and leisure
- advocacy
- your NDIS service plan.

Other reasons you might like to access individual support:

- improve your health and fitness
- increase your independence
- learn new skills
- try new things
- explore and maintain friendships
- gain assistance with your morning or night-time routine.

**We acknowledge that everyone's supports and goals are unique and encourage you to contact us to find out more.**

Activities are based on each person's personal plan, prepared in consultation with the individual and their family/carer/advocate/friends/or support workers. In this plan you can express your activity preferences, the skills you would like to learn, and the interests you would like to pursue. All activities operating within group supports are your choices.

ASTERIA Group Supports gives participants the opportunity to join group-based activities both on-site and in the community.

**Programs operate weekdays Monday – Friday 9:30am – 3:30pm and run for 52 weeks of the year (excluding public holidays).**

We offer you choice in your activities and interests such as:

- life skills - working on improving skills such as cooking
- woodwork / men's and women's social support group
- art, craft and pottery groups
- photography
- gardening
- health and wellbeing - swimming, yoga, men's and women's health groups
- joining community groups such as the local community house, library,

**Head Office**  
 20 Christian  
 Street  
 Maryborough  
 VIC 3465  
 Open hours  
 8:30am -  
 4:30pm

*ASTERIA would like to acknowledge the Traditional Owners of the land on which we work and live. We would like to pay respect to Elders past, present and emerging.*



**ASTERIA** provides support and employment to people with a disability.

- Contact Us
- Privacy
- Document
- Feedback
- Form
- Feedback
- Form - Easy
- English

ASTERIA is a registered NDIS provider

