

# Part 1 Preliminary

## 1 Definitions

- (1) In this constitution, except in so far as the context or subject-matter otherwise indicates or requires:

**Ordinary Committee Member** means a member of the committee who is not an office-bearer of the association.

**Secretary** means:

- (a) the person holding office under this constitution as Secretary of the association; or
- (b) if no person holds that office - the Public Officer of the association.

**Special General Meeting** means a general meeting of the association other than an annual general meeting.

**the Act** means the *Associations Incorporation Act 2009*.

**the Regulation** means the *Associations Incorporation Regulation 2016*.

- (2) In this constitution:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.

- (3) The provisions of the *Interpretation Act 1987* apply to and in respect of this constitution in the same manner as those provisions would so apply if this constitution were an instrument made under the Act.

## Aims and Objectives

The Dance Educators' Professional Association of NSW was formed in 1999.

Its purpose is to support the teaching of dance across the New South Wales Education Standards Authority (NESA) approved K-12 syllabuses.

Its objectives are to promote quality dance education, to foster the continuing development of dance as an art form in education and to support the recognition of the value and status of dance in schools.

In order to achieve these objectives DEPA undertakes to:

- (1) Foster Teaching and Learning in Dance
  - (a) Promote quality dance teaching.
  - (b) Encourage effective student learning in dance.
  - (c) Share information on quality classroom practices.
  - (d) Develop networks of information on dance.

(2) Assist with Professional Development.

- (a) Provide dance professional development courses.
- (b) Encourage cooperation and understanding between teachers in various Key Learning Areas.
- (c) Promote mutually beneficial activities between schools, tertiary institutions and others involved in dance.
- (d) Provide dance professionals with a forum for discussion.

(3) Act as an Advocacy body

- (a) Represent the Association's views on dance education on various boards and committees.
- (b) Make submissions on issues relating to dance in education to various organisations.
- (c) Encourage links with state, national and international bodies with interests in dance as an art form in education.

## **Part 2 Membership**

### **2 Membership generally**

- (1) A person is eligible to be a member of the association if:
- (a)–the person is a natural person; and
  - (b)–the person has applied and been approved for membership of the association in accordance with clause 3.

### **3 Application for membership**

- (1) An application by a person for membership of the association:
- (a) must be made in writing (including by email or other electronic means, if the committee so determines) in the form determined by the committee; and
  - (b) must be lodged (including by electronic means, if the committee so determines) with the Secretary of the association.
- (2) As soon as practicable after receiving an application for membership, the Secretary must refer the application to the committee, which is to determine whether to approve or to reject the application.
- (3) The Secretary must, on payment by the applicant of the designated membership fee, enter or cause to be entered the applicant’s name in the register of members and, on the name being so entered, the applicant becomes a member of the association.

### **4 Cessation of membership**

A person ceases to be a member of the association if the person:

- (a) dies; or
- (b) resigns membership; or
- (c) is expelled from the association; or
- (d) fails to pay the annual membership fee under clause 8 (2) within 3 months after the fee is due.

### **5 Membership entitlements not transferable**

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

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

## **6 Resignation of membership**

- (1) A member of the association may resign from membership of the association by first giving to the Secretary written notice of at least 1 month (or any other period that the committee may determine) of the member's intention to resign and, on the expiration of the period of notice, the member ceases to be a member.
- (2) If a member of the association ceases to be a member under subclause (1), and in every other case where a member ceases to hold membership, the Secretary must make an appropriate entry in the register of members recording the date on which the member ceased to be a member.

## **7 Register of members**

- (1) The Secretary must establish and maintain a register of members of the association (whether in written or electronic form) specifying the name and postal, residential or email address of each person who is a member of the association together with the date on which the person became a member.
- (2) The register of members must be kept in New South Wales:
  - (a) at the main premises of the association; or
  - (b) if the association has no premises, at the association's official address.
- (3) If the register of members is kept in electronic form:
  - (a) it must be convertible into hard copy.

## **8 Fees and subscriptions**

- (1) A member of the association must, on admission to membership, pay to the association a fee of \$1 or, where some other amount is determined by the committee, that other amount.
- (2) In addition to any amount payable by the member under subclause (1), a member of the association must pay to the association an annual membership fee of \$2 or, if some other amount is determined by the committee, that other amount:
  - (a) except as provided by paragraph (b), before the 1<sup>st</sup> July in each calendar year; or
  - (b) if the member becomes a member on or after the 1<sup>st</sup> July in any calendar year—on becoming a member and before the first day of the financial year of the association in each succeeding calendar year.

## **9 Members' liabilities**

The liability of a member of the association to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of the winding up of the association is limited to the amount, if any, unpaid by the member in respect of membership of the association as required by clause 8.

## 10 Resolution of internal disputes

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

## 11 Disciplining of members

- (1) A complaint may be made to the committee by any person who is a member of the association:
  - (a) has refused or neglected to comply with a provision or provisions of this constitution; or
  - (b) has persistently and wilfully acted in a manner prejudicial to the interests of the association.
- (2) The committee may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.
- (3) If the committee decides to deal with the complaint, the committee:
  - (a) must cause notice of the complaint to be served on the member concerned; and
  - (b) must give the member at least 14 days from the time the notice is served within which to make submissions to the committee in connection with the complaint; and
  - (c) must take into consideration any submissions made by the member in connection with the complaint.
- (4) The committee may, by resolution, expel the member from the association or suspend the member from membership of the association if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved and the expulsion or suspension is warranted in the circumstances.
- (5) If the committee expels or suspends a member, the Secretary must, within 7 days after the action is taken, cause written notice to be given to the member of the action taken, of the reasons given by the committee for having taken that action and of the member's right of appeal under clause 12.
- (6) The expulsion or suspension does not take effect:
  - (a) until the expiration of the period within which the member is entitled to appeal against the resolution concerned; or
  - (b) if within that period the member exercises the right of appeal, unless and until the association confirms the resolution under clause 12, whichever is the later.

## 12 Right of appeal of disciplined member

- (1) A member may appeal to the association in a General Meeting against a resolution of the committee under clause 11, within 7 days after notice of the resolution is served on the member, by lodging with the Secretary a notice to that effect.
- (2) The notice may, but need not, be accompanied by a statement of the grounds on which the member intends to rely for the purposes of the appeal.
- (3) On receipt of a notice from a member under subclause (1), the Secretary must notify the committee, which is to convene a general meeting of the association to be held within 28 days after the date on which the Secretary received the notice.
- (4) If at a general meeting of the association convened under subclause (3):
  - (a) no business other than the question of the appeal is to be transacted; and
  - (b) the committee and the member must be given the opportunity to state their respective cases orally or in writing, or both; and
  - (c) the members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- (5) The appeal is to be determined by a simple majority of votes cast by members of the association.

## Part 3 The Committee

### 13 Powers of the committee

Subject to the Act, the Regulation, this constitution and any resolution passed by the association in general meeting, the committee:

- (a) is to control and manage the affairs of the association; and
- (b) may exercise all the functions that may be exercised by the association, other than those functions that are required by this constitution to be exercised by a general meeting of members of the association; and
- (c) has power to perform all the acts and do all things that appear to the committee to be necessary or desirable for the proper management of the affairs of the association.

### 14 Composition and membership of committee

- (1) The committee is to consist of:
  - (a) the office-bearers of the association; and
  - (b) 6 ordinary committee members;each of whom is to be elected at the annual general meeting of the association under clause 15.
- (2) The total number of committee members is to be no more than 11.
- (3) The office-bearers of the association are as follows:
  - (a) the President;
  - (b) the Vice-President;
  - (c) the Treasurer;
  - (d) the Secretary;
  - (e) the Public Officer.
- (4) A committee member may hold up to 2 offices (other than both the offices of President and Vice-President).
- (5) There is no maximum number of consecutive terms for which a committee member may hold office.
- (6) Each member of the committee is, subject to this constitution, to hold office until immediately before the election of committee members at the annual general meeting next following the date of the member's election, and is eligible for re-election.
- (7) A committee member must commit to attending 50% of scheduled committee meetings throughout the calendar year, in order to hold their position on the committee. If a committee member is unable to meet this quota, they must seek approval from the President.

## 15 Election of committee members

- (1) Nominations of candidates for election as office-bearers of the association or as ordinary committee members:
  - (a) must be made in writing, signed by 2 members of the association and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination); and
  - (b) must be delivered to the Secretary of the association at least 7 days before the date fixed for the holding of the annual general meeting at which the election is to take place.
- (2) If insufficient nominations are received to fill all vacancies on the committee, the candidates nominated are taken to be elected and further nominations are to be received at the annual general meeting.
- (3) If insufficient further nominations are received, any vacant positions remaining on the committee are taken to be casual vacancies.
- (4) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are taken to be elected.
- (5) If the number of nominations received exceeds the number of vacancies to be filled, a ballot is to be held.
- (6) The ballot for the election of office-bearers and ordinary committee members of the committee is to be conducted at the annual general meeting in any usual and proper manner that the committee directs.
- (7) A person nominated as a candidate for election as an office-bearer or as an ordinary committee member of the association must be a financial member of the association.

## 16 President

- (1) It is the duty of the President to:
  - (a) Chair committee meetings;
  - (b) Act as the authorised spokesperson on behalf of all association communication;
  - (c) Act on behalf of the committee and members best interests without prejudice.

## 17 Vice-President

- (1) It is the duty of the Vice-President to:
  - (a) Chair committee meetings in the absence of the President;
  - (b) Assist the President where necessary;
  - (c) In the absence of the President the Vice-President will assume the role of President;
  - (d) If the President resigns the Vice-President will assume the role of President until the next Annual General Meeting.

## 18 Secretary

- (1) The Secretary of the association must, as soon as practicable after being appointed as Secretary, lodge notice with the association of his or her address.
- (2) It is the duty of the Secretary to keep minutes (whether in written or electronic form) of:
  - (a) all appointments of office-bearers and members of the committee; and
  - (b) the names of members of the committee present at a committee meeting or a general meeting; and
  - (c) all proceedings at committee meetings and general meetings.
- (3) Minutes of proceedings at a meeting must be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting.
- (4) The signature of the chairperson may be transmitted by electronic means for the purposes of subclause (3).

## 19 Treasurer

It is the duty of the Treasurer of the association to ensure:

- (1) that all money due to the association is collected and received and that all payments authorised by the association are made; and
- (2) that correct books and accounts are kept showing the financial affairs of the association, including full details of all receipts and expenditure connected with the activities of the association;
- (3) that correct books and accounts are kept showing the financial affairs of all DEPA events.

## 20 Casual vacancies

- (1) A casual vacancy in the office of a member of the committee occurs if the member:
  - (a) dies; or
  - (b) ceases to be a member of the association; or
  - (c) is or becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or
  - (d) resigns office by notice in writing given to the Secretary; or
  - (e) is removed from office under clause 19; or
  - (f) becomes a mentally incapacitated person; or
  - (g) is absent without the consent of the committee from 3 consecutive meetings of the committee; or
  - (h) is convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than 3 months; or
  - (i) is prohibited from being a director of a company under Part 2D.6 (Disqualification from managing corporations) of the *Corporations Act 2001* of the Commonwealth.
  
- (2) In the event of a casual vacancy occurring in the membership of the committee, the committee may appoint a member of the association to fill the vacancy and the member so appointed is to hold office, subject to this constitution, until the annual general meeting next following the date of the appointment.

## 21 Removal of committee members

- (1) The association in general meeting may by resolution remove any member of the committee from the office of member before the expiration of the member's term of office and may by resolution appoint another person to hold office until the expiration of the term of office of the member so removed.
- (2) If a member of the committee to whom a proposed resolution referred to in subclause (1) relates makes representations in writing to the Secretary or President (not exceeding a reasonable length) and requests that the representations be notified to the members of the association, the Secretary or the President may send a copy of the representations to each member of the association or, if the representations are not so sent, the member is entitled to require that the representations be read out at the meeting at which the resolution is considered.

## **22 Committee meetings and quorum**

- (1) The committee must meet at least 4 times in each period of 12 months at the place and time that the committee may determine.
- (2) Additional meetings of the committee may be convened by the President or by any member of the committee.
- (3) Written notice of a meeting of the committee must be given by the Secretary to each member of the committee at least 48 hours (or any other period that may be unanimously agreed on by the members of the committee) before the time appointed for the holding of the meeting.
- (4) Notice of a meeting given under subclause (3) must specify the general nature of the business to be transacted at the meeting and no business other than that business is to be transacted at the meeting, except business which the committee members present at the meeting unanimously agree to treat as urgent business.
- (5) Any 3 members of the committee constitute a quorum for the transaction of the business of a meeting of the committee.
- (6) No business is to be transacted by the committee unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to stand adjourned to the same place and at the same hour of the same day in the following week.
- (7) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.
- (8) At a meeting of the committee:
  - (a) the President or, in the President's absence, the Vice-President is to preside; or
  - (b) if the President and the Vice-President are absent or unwilling to act, one of the remaining members of the committee chosen by the members present at the meeting is to preside.

## **23 Appointment of association members as committee members to constitute quorum**

- (1) If at any time the number of committee members is less than the number required to constitute a quorum for a committee meeting, the existing committee members may appoint a sufficient number of members of the association as committee members to enable the quorum to be constituted.
- (2) A member of the committee so appointed is to hold office, subject to this constitution, until the annual general meeting next following the date of the appointment.
- (3) This clause does not apply to the filling of a casual vacancy to which clause 18 applies.

## **24 Use of technology at committee meetings**

- (1) A committee meeting may be held at 2 or more venues using any technology approved by the committee that gives each of the committee's members a reasonable opportunity to participate.
- (2) A committee member who participates in a committee meeting using that technology is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

## **25 Delegation by committee to sub-committee**

- (1) The committee may, by instrument in writing, delegate to one or more sub-committees (consisting of the member or members of the association that the committee thinks fit) the exercise of any of the functions of the committee that are specified in the instrument, other than:
  - (a) this power of delegation; and
  - (b) a function which is a duty imposed on the committee by the Act or by any other law.
- (2) A function the exercise of which has been delegated to a sub-committee under this clause may, while the delegation remains unrevoked, be exercised from time to time by the sub-committee in accordance with the terms of the delegation.
- (3) A delegation under this clause may be made subject to any conditions or limitations as to the exercise of any function, or as to time or circumstances that may be specified in the instrument of delegation.
- (4) Despite any delegation under this clause, the committee may continue to exercise any function delegated.
- (5) Any act or thing done or suffered by a sub-committee acting in the exercise of a delegation under this clause has the same force and effect as it would have if it had been done or suffered by the committee.
- (6) The committee may, by instrument in writing, revoke wholly or in part any delegation under this clause.
- (7) A sub-committee may meet and adjourn as it thinks proper.

## 26 Voting and decisions

- (1) Questions arising at a meeting of the committee or of any sub-committee appointed by the committee are to be determined by a majority of the votes of members of the committee or sub-committee present at the meeting.
- (2) Each member present at a meeting of the committee or of any sub-committee appointed by the committee (including the person presiding at the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.
- (3) Subject to clause 22 (5), the committee may act despite any vacancy on the committee.
- (4) Any act or thing done or suffered, or purporting to have been done or suffered, by the committee or by a sub-committee appointed by the committee, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the committee or sub-committee.

## Part 4 General Meetings

### 27 Annual general meetings - holding of

- (1) With the exception of the first annual general meeting of the association, the association shall, at least once in each calendar year and within the period of 6 months after the expiration of each financial year of the association, convene an annual general meeting of its members.
- (2) The association must hold its annual general meetings:
  - (a) within the period of 18 months after its incorporation under the Act; and
  - (b) within the period of 6 months after the expiration of the first financial year of the association.
- (3) Clauses (1) and (2) have effect subject to any extension of permission granted by the Commission under section 26 (3) of the Act.

### 28 Annual general meetings - calling of and business at

- (1) The annual general meeting of the association is, subject to the Act and to clause 27, to be convened on the date and at the place and time that the committee thinks fit.
- (2) In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting is to include the following:
  - (a) to confirm the minutes of the last preceding annual general meeting and of any special general meeting held since that meeting;
  - (b) to receive from the committee reports on the activities of the association during the last preceding financial year;
  - (c) to elect office-bearers of the association and ordinary committee members; and
  - (d) to receive and consider any financial statement or report required to be submitted to members pursuant 26 (6) of the Act.
- (3) An annual general meeting must be specified as that type of meeting in the notice convening it.

## 29 Special general meetings - calling of

- (1) The committee may, whenever it thinks fit, convene a special general meeting of the association.
- (2) The committee must, on the requisition in writing of at least 5% of the total number of members, convene a special general meeting of the association.
- (3) A requisition of members for a special general meeting:
  - (a) must be in writing; and
  - (b) must state the purpose or purposes of the meeting; and
  - (c) must be signed by the members making the requisition; and
  - (d) must be lodged with the Secretary; and
  - (e) may consist of several documents in a similar form, each signed by one or more of the members making the requisition.
- (4) If the committee fails to convene a special general meeting to be held within 1 month after the date on which a requisition of members for the meeting is lodged with the Secretary, any one or more of the members who made the requisition may convene a special general meeting to be held not later than 3 months after that date.
- (5) A special general meeting convened by a member or members as referred to in subclause (4) must be convened as nearly as is practicable in the same manner as general meetings are convened by the committee.
- (6) For the purposes of subclause (3):
  - (a) a requisition may be in electronic form; and
  - (b) a signature may be transmitted, and a requisition may be lodged, by electronic means.

## 30 Notice

- (1) Except if the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the association, the Secretary must, at least 14 days before the date fixed for the holding of the general meeting, give a notice to each member specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- (2) If the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the association, the Secretary must, at least 21 days before the date fixed for the holding of the general meeting, cause notice to be given to each member specifying, in addition to the matter required under subclause (1), the intention to propose the resolution as a special resolution.

**Note.** A special resolution must be passed in accordance with section 39 of the Act.

- (3) No business other than that specified in the notice convening a general meeting is to be transacted at the meeting except, in the case of an annual general meeting, business which may be transacted under clause 25 (2).
- (4) A member desiring to bring any business before a general meeting may give notice in writing of that business to the Secretary who must include that business in the next notice calling a general meeting given after receipt of the notice from the member.

### **31 Quorum for general meetings**

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

### **32 Presiding member**

- (1) The President or, in the President's absence, the Vice-President, is to preside as chairperson at each general meeting of the association.
- (2) If the President and the Vice-President are absent or unwilling to act, the members present must elect one of their number to preside as chairperson at the meeting.

### **33 Adjournment**

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

## 34 Making of decisions

- (1) A question arising at a general meeting of the association is to be determined by:
  - (a) a show of hands or, if the meeting is one to which clause 39 applies, any appropriate corresponding method that the committee may determine; or
  - (b) if on the motion of the chairperson or if 5 or more members present at the meeting decide that the question should be determined by a written ballot—a written ballot.
- (2) If the question is to be determined by a show of hands, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book of the association, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- (3) Subclause (2) applies to a method determined by the committee under subclause (1) (a) in the same way as it applies to a show of hands.
- (4) If the question is to be determined by a written ballot, the ballot is to be conducted in accordance with the directions of the chairperson.

## 35 Special resolutions

A special resolution may only be passed by the association in accordance with section 39 of the Act.

## 36 Voting

- (1) On any question arising at a general meeting of the association a member has one vote only.
- (2) In the case of an equality of votes on a question at a general meeting, the chairperson of the meeting is entitled to exercise a second or casting vote.
- (3) A member is not entitled to vote at any general meeting of the association unless all money due and payable by the member to the association has been paid.
- (4) A member is not entitled to vote at any general meeting of the association if the member is under 18 years of age.
- (5) All votes shall be given personally or by proxy but no member may hold more than 3 proxies.

## 37 Proxy votes not permitted

Proxy voting may be undertaken at or in respect of a general meeting.

**Note.** Schedule 1 to the Act provides that an association's constitution is to address whether members of the association are entitled to vote by proxy at general meetings.

- (1) Each member shall be entitled to appoint another member as proxy by notice given to the Secretary no later than 24 hours before the time of the meeting in respect of which the proxy is appointed.

The notice appointing the proxy shall be in the form set out in Appendix 2 of these rules.

### **38 Postal or electronic ballots**

- (1) The association may hold a postal or electronic ballot (as the committee determines) to determine any issue or proposal (other than an appeal under clause 12).
- (2) A postal or electronic ballot is to be conducted in accordance with Schedule 3 to the Regulation.

### **39 Use of technology at general meetings**

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

## Part 5 Miscellaneous

### 40 Insurance

The association may effect and maintain insurance.

- (1) The association shall effect and maintain insurance pursuant to section 44 of the Act.

In addition to the insurance required under clauses (1), the association may effect and maintain other insurances.

### 41 Funds - source

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

### 42 Funds - management

- (1) Subject to any resolution passed by the association in general meeting, the funds of the association are to be used solely in pursuance of the objects of the association in the manner that the committee determines.
- (2) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by 2 authorised signatories.

### 43 Association is non-profit

Subject to the Act and the Regulation, the association must apply its funds and assets solely in pursuance of the objects of the association and must not conduct its affairs so as to provide a pecuniary gain for any of its members.

**Note.** Section 5 of the Act defines **pecuniary gain** for the purpose of this clause.

### 44 Distribution of property on winding up of association

- (1) Subject to the Act and the Regulations, in a winding up of the association, any surplus property of the association is to be transferred to another organisation with similar objects and which is not carried on for the profit or gain of its individual members.
- (2) In this clause, a reference to the surplus property of an association is a reference to that property of the association remaining after satisfaction of the debts and liabilities of the association and the costs, charges and expenses of the winding up of the association.

**Note.** Section 65 of the Act provides for distribution of surplus property on the winding up of an association.

## 45 Change of name, objects and constitution

An application for registration of a change in the association's name, objects or constitution in accordance with section 10 of the Act is to be made by the Public Officer or a committee member.

### Alternation of objects and rules

The statement of objects and these rules may be altered, rescinded or added to only by a special resolution of the association.

### Common Seal

- (1) The common seal of the association shall be kept in the custody of the Public Officer.
- (2) The common seal shall not be affixed to any instrument except by the authority of the committee and the affixing of the common seal shall be attested by the signatures either of 2 members of the committee or of 1 member of the committee and of the Public Officer or Secretary.

## 46 Custody of books etc

Except as otherwise provided by this constitution, all records, books and other documents relating to the association must be kept in New South Wales:

- (a) at the main premises of the association, in the custody of the Public Officer or a member of the association (as the committee determines); or
- (b) if the association has no premises, at the association's official address, in the custody of the Public Officer.

## 47 Inspection of books etc

- (1) The following documents must be open to inspection, free of charge, by a member of the association at any reasonable hour:
  - (a) records, books and other financial documents of the association;
  - (b) this constitution;
  - (c) minutes of all committee meetings and general meetings of the association.
- (2) Despite subclauses (1) the committee may refuse to permit a member of the association to inspect or obtain a copy of records of the association that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the association.

## 48 Service of notices

- (1) For the purpose of this constitution, a notice may be served on or given to a person:
  - (a) by delivering it to the person personally; or
  - (b) by sending it by pre-paid post to the address of the person; or
  - (c) by sending it by facsimile transmission or some other form of electronic transmission to an address specified by the person for giving or serving the notice.
- (2) For the purpose of this constitution, a notice is taken, unless the contrary is proved, to have been given or served:
  - (a) in the case of a notice given or served personally, on the date on which it is received by the addressee; and
  - (b) in the case of a notice sent by pre-paid post, on the date when it would have been delivered in the ordinary course of post; and
  - (c) in the case of a notice sent by facsimile transmission or some other form of electronic transmission, on the date it was sent or, if the machine from which the transmission was sent produces a report indicating that the notice was sent on a later date, on that date.

## 49 Financial year

The financial year of the association is:

- (a) the period of time commencing on the date of incorporation of the association and ending on the following 30 June; and
- (b) each period of 12 months after the expiration of the previous financial year of the association, commencing on 1 July and ending on the following 30 June.

**Notes.**

1. Schedule 1 to the Act provides that an association's constitution is to address the association's financial year.
2. Clause 19 of the Regulation contains a substitute clause 47 for certain associations incorporated under the *Associations Incorporation Act 1984*.

## **SURPLUS PROPERTY**

*Omitted by amendment to the Associations Incorporation Act, 1984.*

**NOTE: FOR TAXATION PURPOSES i.e. EXEMPTION OF PAYMENT OF TAX ON INTEREST RECEIVED ON BANK ACCOUNTS THE FOLLOWING NEEDS TO BE INCLUDED**

- (1) If upon the winding up or dissolution of the Association there remains, after satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Association, but shall be given or transferred to some other institution or institution having objects similar to the objects of the Association, and whose Memorandum of Association or Constitution shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under or by virtue of Section 53[2] of the Act.
  
- (2) The incorporated association so nominated shall be one which fulfils the requirements specified in section 53[2] (a)-(c) of the Act.

**IF THE ASSOCIATION WISHES TO APPLY TO BECOME A CHARITY THE FOLLOWING NEEDS TO BE INCLUDED.**

## **PART 6 Additional Rules applicable to charities**

(COMPLIANCE WITH CHARITABLE COLLECTIONS ACT, 1934

IF THE ASSOCIATION WISHES TO APPLY TO BECOME A CHARITY THE FOLLOWING NEED TO BE INCLUDED. )

### **Application of Part**

**41.5** This part applies where the association is registered under or is exempted from registration by or under the Charitable Collections Act, 1934.

### **43. Payment etc. of office-bearers and members**

A member of the committee shall not be appointed to any salaried office of the association or any office of the association paid by fees, and no remuneration or other benefit in money or money's worth shall be given by the association to any member of the committee except:

- (a) repayment of out-of pocket expenses;
- (b) interest at a rate not exceeding interest at the rate for the time being which is or would be charged by the association's bankers for money lent to the association;
- (c) reasonable and proper rent for premises let to the association;
- (d) payment of registration fees to DEPA NSW professional learning events by working committee members at that conference;
- (e) if a member acts as a tutor at a conference or DEPA NSW event they may be paid.

### **45. Vacation of office**

Without limiting the operation of rule 17, the office of a member of the committee shall become vacant if:

- (a) the member holds an office of profit in the association;
- (b) the member is directly or indirectly interested in any contract or proposed contract with the

association.

#### **49. Notification of proposed alteration of rules**

A proposed alteration of the rules or of the statement of objects of the association shall be notified to the Minister administering the Charitable Collections Act, 1934, in the manner required by the regulations under that Act.

Appendix I  
(Rule 3(1))

APPLICATION FOR MEMBERSHIP OF ASSOCIATION

..... Incorporated (incorporated under the Associations Incorporation Act, 2009)

I, .....  
(full name of applicant)

of, .....  
(address)

..... (occupation)

hereby apply to become a member of the above named incorporated association. In the event of my admission as a member, I agree to be bound by the rules of the association for the time being in force.

.....  
Signature of applicant

Date .....

I, ....., a member of the association,  
(full name)

nominate the applicant, who is personally known to me, for membership of the association.

.....  
Signature of proposer

Date .....

I, ....., a member of the association,  
(full name)

second the nomination of the applicant, who is personally known to me, for membership of the association.

.....  
Signature of Seconder

Date .....

**APPENDIX 2  
(Rule 37)**

**FORM OF APPOINTMENT OF PROXY**

I, .....  
(full name)

of .....  
(address)

being a member of .....  
(name of incorporated association)

hereby appoint .....  
(full name of proxy)

of .....  
(address)

being a member of that incorporated association, as my proxy to vote for me on my behalf at the general meeting of the association

(annual general meeting or special general meeting, as the case may be) to be

held on the .....day of ..... 19 .... and at any adjournment of that meeting.

\* My proxy is authorised to vote in favour of /against (delete as appropriate) the resolution (insert details).

\* *To be inserted if desired.*

.....  
Signature of member appointing proxy

Date .....

NOTE: A proxy vote may not be given to a person who is not a financial member of the association.