



# Rules

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*Rules as adopted by the committee members on 18 October 2013 and accepted by Consumer Affairs Victoria on 13 January 2014.*

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## 1. PRELIMINARY

### 1.1 Name

The name of the incorporated association is "Cemeteries and Crematoria Association of Victoria Incorporated".<sup>1</sup>

### 1.2 Principal purpose

The Association has been established to represent its members' interests by:

- (a) proactively consulting with the government, media, other industry associations and the community;
- (b) making submissions to government in relation to legislation;
- (c) facilitating training and professional training opportunities;
- (d) facilitating networking opportunities with other members; and
- (e) providing up to date industry related information.

### 1.3 Financial year

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

### 1.4 Definitions

In these Rules:

**"Association"** means the association named in rule 1.1.

**"Cemetery"** means a place where the remains of deceased persons may be interred in accordance with the Cemeteries and Crematoria Act 2003.

**"Chairman"** of a general meeting or committee meeting, means the person chairing the meeting as required under rule 5.5.

**"Class A cemetery trust"** has the same meaning as in the Cemeteries and Crematoria Act 2003.

**"Class B cemetery trust"** has the same meaning as in the Cemeteries and Crematoria Act 2003.

**"Committee"** means the Committee of Management of the Association

**"committee meeting"** means a meeting of the Committee held in accordance with these Rules.

**"committee member"** means a member of the Committee elected or appointed under Division 3 of Part 5.

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<sup>1</sup> Note: Under section 23 of the Act, the name of the association and its registration number must appear on all business documents.

**"Crematorium"** (plural Crematoria) means a place where the remains of deceased persons may be cremated in accordance with the Cemeteries and Crematoria Act 2003.

**"delegate"** means a natural person appointed by a member in accordance with rule 3.9.

**"disciplinary appeal meeting"** means a meeting of the members of the Association convened under rule 3.18(c).

**"disciplinary meeting"** means a meeting of the disciplinary subcommittee convened for the purposes of rule 3.17.

**"disciplinary subcommittee"** means the subcommittee appointed under rule 3.15.

**"financial year"** means the 12 month period specified in rule 1.3.

**"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.

**"member"** means a member of the Association and includes Cemeteries & Crematoria members, Affiliate members, and Associate members.

**"member entitled to vote"** means a member who under rule 3.8 is entitled to vote at a general meeting.

**"memorial garden"** means a place where the cremated remains of deceased persons may be interred.

**"Metropolitan Class A cemetery trust"** has the same meaning as in the Cemeteries and Crematoria Act 2003.

**"Officer"** shall have the same meaning as the term "office holder" in the Act.<sup>2</sup>

**"person"** includes an individual and an organisation (whether incorporated or unincorporated), as context requires.

**"pioneer park"** means a place which was a cemetery where the remains of deceased persons were interred.

**"principal purpose"** means the purpose set out in rule 1.2.

**"Regional Class A cemetery trust"** has the same meaning as in the Cemeteries and Crematoria Act 2003.

**"special resolution"** has the meaning given to that term in the Act.<sup>3</sup>

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<sup>2</sup> **"Office holder"** is defined in the Act as: a member of the committee; the secretary; a person, including an employee of the association, who makes, or participates in making, decisions that affect the whole, or a substantial part, of the operations of the association; a person who has the capacity to significantly affect the association's financial standing; a person in accordance with whose instructions or wishes the committee of the association are accustomed to act (but excluding a person who gives advice to the association in the proper performance of functions attaching to the person's professional capacity or to the person's business relationship with members of the committee or with the association).

"**the Act**" means the Associations Incorporation Reform Act 2012 (Vic) and includes any regulations made under that Act.

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

## **2. POWERS OF ASSOCIATION**

### **2.1 Powers of Association**

Subject to the Act, the Association has the capacity and powers of an individual and may do all things incidental or conducive to achieve its principal purpose.

### **2.2 Not-for-profit organisation<sup>4</sup>**

- (a) The income and property of the Association must be applied solely towards the principal purpose.
- (b) No portion of the profits, income or property of the Association may be paid or transferred directly or indirectly to members by way of dividend, bonus or otherwise in their capacity as members.
- (c) This rule 2.2 does not prohibit indemnification of, or payment of premiums on contracts of insurance for, any committee member to the extent permitted by law and these rules.
- (d) Despite sub-rule 2.2(b) payment may be made in good faith to any member of the Association:
  - (i) in return for any services actually rendered to the Association;
  - (ii) for goods supplied in the ordinary and usual way of business;
  - (iii) by way of interest on money borrowed from any member of the Association at a rate not exceeding the rate for the time being fixed by the Committee; and
  - (iv) of reasonable and proper rent for premises demised or let by any member of the Association.

## **3. MEMBERS, DISCIPLINARY PROCEDURES AND GRIEVANCES**

### **DIVISION 1 - MEMBERSHIP**

#### **3.1 Minimum number of members**

The Association must have at least five members.

<sup>3</sup> A "**special resolution**" is resolution passed with the support of not less than three-quarters of the members voting (in person or by proxy) at a general meeting, of which 21 days' notice has been given.

<sup>4</sup> 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.



### 3.2 Categories of membership

- (a) The Association shall consist of:

The notice must state in full the proposed resolution, state the intention to propose it as a "special resolution", and specify the date, time and place of the general meeting.

- (i) Cemeteries & Crematoria members;
  - (ii) Affiliate members; and
  - (iii) Associate members.
- (b) The Association may recognise a person (whether individual or organisation) belonging to any of the three categories described in sub-rule 3.2(a) as an Honorary member.

### 3.3 Who is eligible to be a member

- (a) A person is eligible to be a Cemetery & Crematoria member if the person is an organisation that:
- (i) administers the affairs of one or more Cemeteries and/or Crematoria in the State of Victoria; and
  - (ii) is committed to upholding and furthering the purposes of the Association.
- (b) A person is eligible to be an Affiliate member if the person is an individual or organisation:
- (i) associated with the cemeteries and crematoria industry (including without limitation memorial gardens, pioneer parks, monumental masons, funeral directors, and industry related trading enterprises); and
  - (ii) is committed to upholding and furthering the purposes of the Association.
- (c) A person is eligible to be an Associate member if the person is an individual that:
- (i) has actively engaged in the cemeteries and crematoria industry, or has made a significant contribution to the industry; and
  - (ii) is committed to upholding and furthering the purposes of the Association.
- (d) A person (individual or organisation) may be offered Honorary membership if the person has been nominated by the Committee and has had their nomination approved at a general meeting.
- (e) The Committee shall determine the applicable category for each applicant for membership.

### **3.4 Application for membership**

- (a) To apply to become a member of the Association a person (whether individual or organisation) must lodge with the Secretary a nomination for membership of the Association in the form determined by the Committee.
- (b) The nomination:
  - (i) must be signed by the nominee; and
  - (ii) may be accompanied by the entrance fee and the first year's annual subscription.

### **3.5 Consideration of application**

- (a) As soon as is practicable after the receipt of a nomination, the Secretary shall refer the nomination to the Committee.
- (b) As soon as practicable after an application for membership is referred to the Committee, the Committee must decide by resolution whether to accept or reject the application.
- (c) The Secretary must notify the applicant in writing of the Committee's decision to accept or reject the application as soon as practicable after the decision is made.
- (d) If the Committee rejects the application, the Secretary must return any money accompanying the application to the applicant.
- (e) No reason need be given for the rejection of an application. No appeal shall be available to the rejected applicant.

### **3.6 New membership**

- (a) If a nomination for membership of the Association is approved by the Committee:
  - (i) the resolution to accept the membership must be recorded in the minutes of the committee meeting; and
  - (ii) the Secretary must, as soon as practicable, enter the name and address of the new member, and the date of becoming a member, in the register of members; and
  - (iii) the Secretary must request payment of entrance fee and the first year's annual subscription if such payment has not already been received.
- (b) A person becomes a member of the Association and, subject to rule 3.7(d), is entitled to exercise his or her rights of membership from the date, whichever is the later, on which:
  - (i) the Committee approves the person's membership; or
  - (ii) the person pays the entrance fee and the first year's annual subscription (if any).

### **3.7 Annual subscription and entrance fee**

- (a) The entrance fee shall be as determined from year to year by the Committee.
- (b) The annual subscription payable for the year commencing 1 July and ending 30 June shall be determined by the Committee prior to the commencement of the year.
- (c) The annual subscription must be paid by each member within 30 days of notice of subscription being given.
- (d) The annual subscription shall be subject to a pro-rata adjustment for any new member who joins after the start of a financial year.
- (e) The annual subscription is not refundable on termination of membership.
- (f) The rights of a member (including the right to vote) who has not paid the annual subscription or any other payment due to the Association by the due date are suspended until the subscription is paid.
- (g) The liability of a member 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 sub-rules 3.7(a) and 3.7(b).

### **3.8 General rights of members**

- (a) A member of the Association has the right:
  - (i) to receive notice of general meetings and of proposed special resolutions in the manner and time prescribed by these Rules; and
  - (ii) to submit items of business for consideration at a general meeting; and
  - (iii) to attend and be heard at general meetings; and
  - (iv) to have access to the minutes of general meetings and other documents of the Association as provided under rule 7.4; and
  - (v) to inspect the register of members as provided in rule 7.4.
- (b) In addition to the rights granted in sub-rule 3.8(a) Cemeteries and Crematoria members of the Association:
  - (i) have the right to vote, provided that their membership rights are not suspended for any reason; and
  - (ii) have the right to representation under rule 3.9.
- (c) Affiliate members shall not be entitled to vote at any meeting or hold any position on the Committee.

- (d) Associate Members shall not be entitled to vote at any meeting of the Association or hold any position on the Committee.
- (e) A person (whether individual or organisation) that has been nominated and approved an Honorary member in accordance with rule 3.3(d) shall be entitled to enjoy and exercise the rights and obligations applicable to the membership category to which such organisation or person is admitted and shall not be required to pay any annual subscription under rule 3.7.

### **3.9 Representation**

- (a) Each Cemeteries & Crematoria member which is a Class A cemetery trust shall from time to time appoint by means of written notification delivered to the Secretary of the Association up to four natural persons to be its delegates and to vote on its behalf at general meetings of the Association provided that:
  - (i) any committee members who were delegates of a member at the time of their appointment or election to the Committee are to be included in that member's list of delegates; and
  - (ii) if a delegate is accompanied to a general meeting of the Association by another person from the same Cemetery or Crematorium who is not a delegate, such accompanying person shall not have voting rights at that meeting; and
  - (iii) only one of the delegates may exercise the right of the member to vote at any given point in time.
- (b) Each Cemeteries & Crematoria member which is a Class B cemetery trust shall from time to time appoint by means of written notification delivered to the Secretary of the Association two natural persons to be its delegates and to vote on its behalf at general meetings of the Association provided that:
  - (i) any committee members who were delegates of a member at the time of their appointment or election to the Committee are to be included in that member's list of delegates; and
  - (ii) if a delegate is accompanied to a general meeting of the Association by another person from the same Cemetery or Crematorium who is not a delegate, such accompanying person shall not have voting rights at that meeting; and
  - (iii) only one of the delegates may exercise the right of the member to vote at any given point in time.

### **3.10 Rights not transferable**

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

### **3.11 Ceasing membership**

- (a) The membership of a person ceases on resignation, expulsion or death.

- (b) If a person ceases to be a member of the Association, the Secretary must, as soon as practicable, enter the date the person ceased to be a member in the register of members.
- (c) Honorary membership may be revoked by a resolution of the Committee.

### **3.12 Resigning as a member**

- (a) A member may resign by notice in writing given to the Association.
- (b) A member is taken to have resigned if:
  - (i) the member's annual subscription is more than 12 months in arrears; or
  - (ii) where no annual subscription is payable:
    - (A) the Secretary has made a written request to the member to confirm that the member wishes to remain a member; and
    - (B) the member has not, within three months after the sending of that request, confirmed in writing that he or she wishes to remain a member.

### **3.13 Register of members**

- (a) The Secretary must keep and maintain a register of members that includes:
  - (i) for each current member:
    - (A) the member's full name;
    - (B) the address for notice last given by the member;
    - (C) the date of becoming a member;
    - (D) the category of membership to which the person belongs;
    - (E) any other information determined by the Committee; and
  - (ii) for each former member, the date of ceasing to be a member.
- (b) Any member may, at a reasonable time and free of charge, inspect the register of members, subject to rule 7.4.

## **DIVISION 2 - DISCIPLINARY ACTION**

### **3.14 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:

- (i) has failed to comply with these Rules; or
- (ii) refuses to support the principal purpose of the Association; or
- (iii) has engaged in conduct prejudicial to the Association.

### **3.15 Disciplinary subcommittee**

- (a) If the Committee is satisfied that there are sufficient grounds for taking disciplinary action against a member, the Committee must appoint a disciplinary subcommittee to hear the matter and determine what action, if any, to take against the member.
- (b) The members of the disciplinary subcommittee:
  - (i) may be committee members, members of the Association or anyone else; but
  - (ii) must not be biased against, or in favour of, the member concerned.

### **3.16 Notice to member**

- (a) Before disciplinary action is taken against a member, the Secretary must give written notice to the member:
  - (i) stating that the Association proposes to take disciplinary action against the member; and
  - (ii) stating the grounds for the proposed disciplinary action; and
  - (iii) specifying the date, place and time of the meeting at which the disciplinary subcommittee intends to consider the disciplinary action ("the disciplinary meeting"); and
  - (iv) 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
  - (v) setting out the member's appeal rights under rule 3.18.
- (b) The notice must be given no earlier than 28 days, and no later than 14 days, before the disciplinary meeting is held.

### **3.17 Decision of subcommittee**

- (a) At the disciplinary meeting, the disciplinary subcommittee must:
  - (i) give the member an opportunity to be heard; and
  - (ii) consider any written statement submitted by the member.

- (b) After complying with sub-rule 3.17(a), the disciplinary subcommittee may:
  - (i) take no further action against the member; or
  - (ii) subject to sub-rule 3.17(c):
    - (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.
- (c) The disciplinary subcommittee may not fine the member.
- (d) 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.

### **3.18 Appeal rights**

- (a) A person whose membership rights have been suspended or who has been expelled from the Association or reprimanded under rule 3.17 may give notice to the effect that he or she wishes to appeal against the suspension or expulsion or reprimand.
- (b) The notice must be in writing and given:
  - (i) to the disciplinary subcommittee immediately after the vote to suspend or expel or reprimand the person is taken; or
  - (ii) to the Secretary not later than 48 hours after the vote.
- (c) If a person has given notice under sub-rule 3.18(b), a disciplinary appeal meeting must be convened by the Committee as soon as practicable, but in any event not later than 21 days, after the notice is received.
- (d) 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:
  - (i) specify the date, time and place of the meeting; and
  - (ii) 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 or reprimand the person should be upheld or revoked.

### **3.19 Conduct of disciplinary appeal meeting**

- (a) At a disciplinary appeal meeting:
  - (i) no business other than the question of the appeal may be conducted; and
  - (ii) the Committee must state the grounds for suspending or expelling or reprimanding the member and the reasons for taking that action; and
  - (iii) the person whose membership has been suspended or who has been expelled or reprimanded must be given an opportunity to be heard.
- (b) After complying with sub-rule 3.19(a), the members present and entitled to vote at the meeting must vote by secret ballot on the question of whether the decision to suspend, expel or reprimand the person should be upheld or revoked.
- (c) A member may not vote by proxy at the meeting.
- (d) The decision is upheld if not less than three quarters of the members voting at the meeting vote in favour of the decision.

## **DIVISION 3 - GRIEVANCE PROCEDURE**

### **3.20 Application**

- (a) The grievance procedure set out in this Division applies to disputes under these Rules between:
  - (i) a member and another member;
  - (ii) a member and the Committee;
  - (iii) a member and the Association.
- (b) 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.

### **3.21 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.

### **3.22 Appointment of mediator**

- (a) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 3.21, the parties must within 10 days:
  - (i) notify the Committee of the dispute; and
  - (ii) agree to or request the appointment of a mediator; and



- (iii) attempt in good faith to settle the dispute by mediation.
- (b) The mediator must be:
  - (i) a person chosen by agreement between the parties; or
  - (ii) in the absence of agreement:
    - (A) if the dispute is between a member and another member - a person appointed by the Committee; or
    - (B) if the dispute is between a member and the Committee or the Association - a person appointed or employed by the Dispute Settlement Centre of Victoria.
- (c) A mediator appointed by the Committee may be a member or former member of the Association but in any case must not be a person who:
  - (i) has a personal interest in the dispute; or
  - (ii) is biased in favour of or against any party.

### **3.23 Mediation process**

- (a) The mediator to the dispute, in conducting the mediation, must:
  - (i) give each party every opportunity to be heard; and
  - (ii) allow due consideration by all parties of any written statement submitted by any party; and
  - (iii) ensure that natural justice is accorded to the parties throughout the mediation process.
- (b) The mediator must not determine the dispute.

### **3.24 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.

## **4. GENERAL MEETINGS OF THE ASSOCIATION**

### **4.1 Annual general meetings**

- (a) The Committee must convene an annual general meeting of the Association to be held in July or August of each year.
- (b) Subject to sub rule 4.1(a), the Committee may determine the date, time and place of the annual general meeting.
- (c) The notice convening the annual general meeting must specify that the meeting is an annual general meeting.
- (d) The ordinary business of the annual general meeting is as follows:

- (i) to confirm the minutes of the previous annual general meeting and of any special general meeting held since then;
  - (ii) to receive and consider:
    - (A) the annual report of the Committee 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 Committee in accordance with Part 7 of the Act;
  - (iii) to elect the members of the Committee in accordance with Part 5 of these Rules; and
  - (iv) to elect members of the Committee to office bearer roles in accordance with Part 5 of these Rules.
- (e) The annual general meeting may also conduct any other business of which notice has been given in accordance with these Rules.

#### **4.2 Special general meetings**

- (a) Any general meeting of the Association, other than an annual general meeting or a disciplinary appeal meeting, is a special general meeting.
- (b) The Committee may convene a special general meeting whenever it thinks fit.
- (c) No business other than that set out in the notice under rule 4.4 may be conducted at the meeting.

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

- (a) The Committee must convene a special general meeting if a request to do so is made in accordance with sub-rule 4.3(b) by at least five per cent of the total number of members.
- (b) A request for a special general meeting must:
  - (i) be in writing; and
  - (ii) state the business to be considered at the meeting and any resolutions to be proposed; and
  - (iii) include the names and signatures of the members requesting the meeting; and
  - (iv) be given to the Secretary.
- (c) If the Committee 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.
- (d) A special general meeting convened by members under sub-rule 4.3(c):

- (i) must be held within three months after the date on which the original request was made; and
  - (ii) may only consider the business stated in that request.
- (e) The Association must reimburse all reasonable expenses incurred by the members convening a special general meeting under sub-rule 4.3(c).

#### **4.4 Notice of general meetings**

- (a) The Secretary (or, in the case of a special general meeting convened under rule 4.3(c), the members convening the meeting) must give to each member of the Association:
- (i) at least 21 days' notice of a general meeting if a special resolution is to be proposed at the meeting; or
  - (ii) at least 14 days' notice of a general meeting in any other case.
- (b) The notice must:
- (i) specify the date, time and place of the meeting; and
  - (ii) indicate the general nature of each item of business to be considered at the meeting; and
  - (iii) 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; and
  - (iv) comply with rule 4.5(e).
- (c) A member desiring to bring any business before a general meeting may give notice of that business in writing, or by electronic transmission, to the Secretary, who must include that business in the notice calling the next general meeting after the receipt of the notice.
- (d) This rule does not apply to a disciplinary appeal meeting.

#### **4.5 Proxies**

- (a) A delegate may appoint another person as his or her proxy to vote and speak on his or her behalf at a general meeting other than at a disciplinary appeal meeting. The person appointed as proxy must be a member, or a delegate of a member.
- (b) The appointment of a proxy must be in writing and signed by the delegate making the appointment.
- (c) The delegate appointing the proxy may give specific directions as to how the proxy is to vote on his or her behalf, otherwise the proxy may vote on behalf of the delegate in any matter as he or she sees fit.

- (d) If the Committee has approved a form for the appointment of a proxy, the delegate may use any other form that clearly identifies the person appointed as the delegate's proxy and that has been signed by the member.
- (e) Notice of a general meeting given to a member under rule 4.4 must:
  - (i) state that a delegate may appoint a proxy for the meeting in accordance with this clause where applicable; and
  - (ii) include a copy of any form that the Committee has approved for the appointment of a proxy.
- (f) A form appointing a proxy may be given personally to the Chairman of the meeting immediately before or at the commencement of the meeting.
- (g) A form appointing a proxy sent by post or electronically is of no effect unless it is received by the Association no later than 24 hours before the commencement of the meeting.

#### **4.6 Use of technology**

- (a) A member or delegate not physically present at a general meeting may be permitted to participate in the meeting by the use of technology that allows that member (or delegate as the case may be) and the members present at the meeting to clearly and simultaneously communicate with each other.
- (b) For the purposes of this Part, a member or delegate participating in a general meeting as permitted under sub-rule 4.6(a) is taken to be present at the meeting and, if the member or delegate votes at the meeting, is taken to have voted in person.

#### **4.7 Quorum at general meetings**

- (a) No business may be conducted at a general meeting unless a quorum of members is present.
- (b) For the transaction of the business of a general meeting, a quorum is achieved if at least five per cent of members are represented in person at the meeting by at least one delegate each.
- (c) If a quorum is not present within 30 minutes after the notified commencement time of a general meeting:
  - (i) in the case of a meeting convened by, or at the request of, members under rule 4.3 - the meeting must be dissolved;
  - (ii) 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.

- (d) If a quorum is not present within 30 minutes after the time to which a general meeting has been adjourned under sub-rule 4.7(c)(ii), the delegates present at the meeting (representing not less than five per cent of members) shall be a quorum and may proceed with the business of the meeting as if a quorum were present.

#### **4.8 Adjournment of general meeting**

- (a) The Chairman 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.
- (b) Without limiting sub-rule 4.8(a), a meeting may be adjourned:
- (i) if there is insufficient time to deal with the business at hand; or
- (ii) to give the members more time to consider an item of business.
- (c) No business may be conducted on the resumption of an adjourned meeting other than the business that remained unfinished when the meeting was adjourned.
- (d) 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 4.4.

#### **4.9 Voting at general meeting**

- (a) On any question arising at a general meeting of the Association:
- (i) subject to sub-rule 4.9(c), one delegate per member is entitled to vote and can cast the following number of votes personally or by proxy:

Number of burial and cremation services conducted in the most recent financial year (per annum)	Number of votes
1 - 50	1
51 - 200	2
201 - 500	3
501- 1000	4
1001 - 2000	5

2001 - 4500	6
4501 - 8000	7
8001 - 12500	8
12501 - 18000	9
18001 - 24500	10
24501 or more	11

- (ii) and except in the case of a special resolution, the question must be decided on a majority of votes.
- (b) If votes are divided equally on a question, the Chairman of the meeting has a second or casting vote.
- (c) If the question is whether or not to confirm the minutes of a previous meeting, only persons who were present at that meeting may vote.
- (d) This rule does not apply to a vote at a disciplinary appeal meeting conducted under rule 3.19.

#### **4.10 Special resolutions**

A special resolution is passed if not less than three quarters of the delegates present at a general meeting (whether in person or by proxy) are in favour of the resolution.

#### **4.11 Determining whether resolution carried**

- (a) Subject to sub-rule 4.11(b), the Chairman of a general meeting may, on the basis of a show of hands, declare that a resolution has been:
  - (i) carried; or
  - (ii) carried unanimously; or
  - (iii) carried by a particular majority; or
  - (iv) lost and an entry to that effect in the minutes of the meeting is conclusive proof of that fact.
- (b) If a poll (where votes are cast in writing) is demanded by three or more delegates on any question:
  - (i) the poll must be taken at the meeting in the manner determined by the Chairman of the meeting; and
  - (ii) the Chairman must declare the result of the resolution on the basis of the poll.
- (c) A poll demanded on the election of the Chairman or on a question of an adjournment must be taken immediately.

- (d) A poll demanded on any other question must be taken before the close of the meeting at a time determined by the Chairman.

#### **4.12 Minutes of general meeting**

- (a) The Committee must ensure that minutes are taken and kept of each general meeting.
- (b) The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.
- (c) In addition, the minutes of each annual general meeting must include:
  - (i) the financial statements submitted to the members in accordance with rule 4.1(d)(ii)(B); and
  - (ii) the certificate signed by two committee members certifying that the financial statements give a true and fair view of the financial position and performance of the Association; and
  - (iii) any audited accounts and auditor's report or report of a review accompanying the financial statements that are required under the Act.

## **5. COMMITTEE**

### **DIVISION 1 - POWERS OF COMMITTEE**

#### **5.1 Role and powers**

The Committee:

- (a) shall control and manage the business and affairs of the Association;
- (b) may, subject to these Rules, the regulations and the Act, exercise all such powers and functions as may be exercised by the Association other than those powers and functions that are required by these Rules to be exercised by the members at a general meeting; and
- (c) subject to these Rules, the regulations and the Act, has power to perform all such acts and things as appear to the Committee to be essential for the proper management of the business and affairs of the Association.

#### **5.2 Delegation**

- (a) The Committee may establish subcommittees consisting of such persons with terms of reference it considers appropriate.
- (b) The Committee may delegate to a member of the Committee, a subcommittee or staff, any of its powers and functions other than:
  - (i) this power of delegation; or
  - (ii) a duty imposed on the Committee by the Act or any other law.

- (c) The delegation must be in writing and may be subject to the conditions and limitations the Committee considers appropriate.
- (d) The Committee may, in writing, revoke a delegation wholly or in part.

## **DIVISION 2 - COMPOSITION OF COMMITTEE AND DUTIES OF MEMBERS**

### **5.3 5.3 Composition of Committee**

- (a) The Committee shall consist of seven positions:
  - (i) Up to two Metropolitan Class A cemetery trust delegate positions;
  - (ii) Up to two Regional Class A cemetery trust delegate positions;
  - (iii) Up to two Class B cemetery trust delegate positions;
  - (iv) One position that may be filled by a delegate of any member.
- (b) The seven positions described in rule 5.3(a) shall be filled by election pursuant to Division 3 of Part 5 of these Rules.
- (c) There shall be four office bearer roles, to be filled from among the persons elected to the positions described in rule 5.3(a). The four office bearer roles are:
  - (i) President;
  - (ii) Vice-President;
  - (iii) Secretary;
  - (iv) Treasurer.

In addition to the seven positions described in rule 5.3(a) the Committee may co-opt other interested persons to the Committee in an advisory capacity but such persons shall not have voting rights.

### **5.4 General Duties**

- (a) As soon as practicable after being elected or appointed to the Committee, each committee member should become familiar with these Rules and the requirements of the Act.
- (b) Committee members must exercise their powers and discharge their duties with reasonable care and diligence.
- (c) Committee members must exercise their powers and discharge their duties:
  - (i) in good faith in the best interests of the Association; and
  - (ii) for a proper purpose.
- (d) Committee members and former committee members must not make improper use of:



- (i) their position; or
- (ii) 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.

### **5.5 President and Vice-President**

- (a) Subject to sub-rule 5.5(b), the President or, in the President's absence, the Vice-President is the Chairman for any general meetings and for any committee meetings.
- (b) If the President and the Vice-President are both absent, or are unable to preside, the Chairman of the meeting must be:
  - (i) in the case of a general meeting - a member elected by the other members present; or
  - (ii) in the case of a committee meeting - a committee member elected by the other committee members present.

### **5.6 Secretary**

- (a) The Secretary must ensure that any duty or function required under the Act to be performed by the secretary of an incorporated association is performed.
- (b) The Secretary must:
  - (i) maintain the register of members in accordance with rule 3.13; and
  - (ii) keep custody of the common seal (if any) of the Association and, except for the financial records referred to in rule 6.3(c), all books, documents and securities of the Association in accordance with rules 7.1 and 7.4; and
  - (iii) subject to the Act and these Rules, provide members with access to the register of members, the minutes of general meetings and other books and documents; and
  - (iv) perform any other duty or function imposed on the Secretary by these Rules.
- (c) The Secretary must give to the Registrar notice of his or her appointment within 14 days after the appointment.

### **5.7 Treasurer**

- (a) The Treasurer must:
  - (i) arrange for the collection and receipt of all moneys due to the Association and arrange for all payments authorised by the Association to be made; and

- (ii) subject to these Rules, make any payments authorised by the Committee or by a general meeting of the Association from the Association's funds.
- (b) The Treasurer must:
  - (i) ensure that the financial records of the Association are kept in accordance with the Act; and
  - (ii) coordinate the preparation of the financial statements of the Association and their certification by the Committee prior to their submission to the annual general meeting of the Association.
- (c) The Treasurer should ensure that at least one other committee member has access to the accounts and financial records of the Association.

### **DIVISION 3 - ELECTION OF COMMITTEE MEMBERS AND TENURE OF OFFICE**

#### **5.8 Who is eligible to be a committee member**

A person may not be elected or appointed as a committee member unless:

- (i) the person is 18 years of age or over; and
- (ii) in the case of the Metropolitan Class A cemetery trust delegate positions described in rule 5.3(a)(i), the person is a delegate of a member that is a Metropolitan Class A cemetery trust;
- (iii) in the case of the Regional Class A cemetery trust delegate positions described in rule 5.3(a)(ii), the person is a delegate of a member that is a Regional Class A cemetery trust; and
- (iv) in the case of the Class B cemetery trust delegate positions described in rule 5.3(a)(iii), the person is a delegate of a member that is a Class B cemetery trust.

#### **5.9 Positions to be declared vacant**

- (a) This rule applies to:
  - (i) the first annual general meeting of the Association after its incorporation; or
  - (ii) any subsequent annual general meeting of the Association, after the annual report and financial statements of the Association have been received.
- (b) The Chairman of the meeting must declare which positions on the Committee are vacant pursuant to these Rules (if any) and hold elections for those positions in accordance with these Rules where necessary.

## 5.10 Nominations

- (a) A person will not be eligible for election to the Committee under rule 5.11 unless they have been nominated in accordance with this rule 5.10 (subject to the exception contained in rule 5.11(c)).
- (b) A person will be nominated in accordance with this rule if:
  - (i) the person is a delegate;
  - (ii) the person gives their written consent to be nominated for the position of a member of the Committee;
  - (iii) the person's nomination has been supported by another delegate and that support is given in writing and signed by that other delegate; and
  - (iv) documents evidencing the requirements in sub-rules 5.10(b)(ii) and 5.10(b)(iii) have been delivered to the Secretary not less than seven days before the date fixed for the holding of the annual general meeting.
- (c) If a person wishes to be considered for election to a specific office bearer role, the person must specify this when notifying the Secretary of the person's nomination for election to the Committee.

## 5.11 Elections

- (a) The Chairman may determine the order in which elections are held for each position on the Committee and each office bearer role, subject to these Rules.
- (b) If more than one person is nominated for a position described in rule 5.3(a), a ballot must be held in accordance with rule 5.12.
- (c) If the nominations received in accordance with rule 5.10 are insufficient to fill any one or more vacancies on the Committee then:
  - (i) if only one person is nominated for the position, the Chairman of the meeting must declare the person elected to the position; and
  - (ii) further nominations by delegates may be received at the annual general meeting, and the position may be filled by any delegate nominated by another delegate and elected at the meeting. To avoid any ambiguity, the requirements of rule 5.10 shall not apply to nominations made in these circumstances.
- (d) The election of Committee members to specific office bearer roles shall take place after the election of persons to the Committee has been completed under this Division.
- (e) The following provisions shall apply to the election of members of the Committee to office bearer roles:

- (i) If more than one committee member is nominated for a specific office bearer role, a ballot must be held in accordance with rule 5.12.
- (ii) A person who nominated for a specific office bearer role under rule 5.10 and fails to be elected to that role shall, if the person consents, be deemed to have been nominated for any other office bearer role for which an election is yet to be held and for which the person wishes to stand as a candidate.
- (iii) If only one committee member is nominated for a particular office bearer role under the provisions of this rule and rule 5.10, the Chairman of the meeting must declare the committee member elected to the role.
- (iv) If there are insufficient nominations to fill any one or more of the office bearer roles then any Committee member may be nominated and elected at the meeting to one or more office bearer roles.

On his or her election, the new President may take over as Chairman of the meeting.

#### **5.12 Ballot**

- (a) If a ballot is required for the election for a position or office bearer role, the Chairman of the meeting must appoint a person to act as returning officer to conduct the ballot.
- (b) The returning officer must not be a person nominated for the position or role.
- (c) Before the ballot is taken, each candidate may make a short speech in support of his or her election.
- (d) The election must be by secret ballot.
- (e) The returning officer must give a blank piece of paper to:
  - (i) each member present in person whether by delegate/s or not; and
  - (ii) each proxy.
- (f) If the ballot is for a single position or role, the voter must write on the ballot paper the name of the candidate for whom they wish to vote.
- (g) Ballot papers that do not comply with sub-rule 5.12(f) are not to be counted.
- (h) The returning officer must declare elected the candidate who received the most votes.
- (i) If the returning officer is unable to declare the result of an election under sub-rule 5.12(h) because two or more candidates received the same number of votes, the returning officer must:

- (i) conduct a further election for the position or role in accordance with sub-rules 5.12(d) to 5.12(h) to decide which of those candidates is to be elected; or
- (ii) with the agreement of those candidates, decide by lot which of them is to be elected.

### **5.13 Term of office**

- (a) Subject to sub-rule 5.13(c) and rule 5.14, a committee member holds office until the next annual general meeting after the date of the committee member's election.
- (b) A committee member may be re-elected or re-appointed. The position of President may not be held for more than two consecutive years.
- (c) A general meeting of the Association may:
  - (i) by special resolution remove a committee member from office; and
  - (ii) elect a person to fill the vacant position in accordance with this Division.
  - (iii) A member who is the subject of a proposed special resolution under sub-rule 5.13(c)(i) may make representations in writing to the Secretary or President of the Association (not exceeding a reasonable length) and may request that the representations be provided to the members of the Association.
  - (iv) The Secretary or the President may give a copy of the representations to each member of the Association or, if they are not so given, the committee member may require that they be read out at the meeting at which the special resolution is to be proposed.

### **5.14 Vacation of office**

- (a) A committee member may resign from the Committee by written notice addressed to the Committee.
- (b) A person ceases to be a committee member if he or she:
  - (i) resigns;
  - (ii) is removed from office by special resolution;
  - (iii) ceases to be a member of the Association; or
  - (iv) ceases to be a delegate of a member of the Association; or
  - (v) is the delegate of a cemetery or crematorium which ceases to be a Cemetery & Crematoria member of the Association; or
  - (vi) fails to attend three consecutive committee meetings (other than special or urgent committee meetings) without leave of absence under rule 5.24; or

- (vii) is convicted of an indictable offence; or
- (viii) otherwise ceases to be a committee member by operation of section 78 of the Act.

### **5.15 Filling casual vacancies**

- (a) The Committee may appoint one of its members to fill an office bearer role on the Committee that has become vacant under rule 5.14 or was not filled by election at the last annual general meeting.
- (b) The Committee may appoint a delegate to fill a position of a committee member that:
  - (i) has become vacant under rule 5.14; or
  - (ii) was not filled by election at the last annual general meeting.
- (c) If the position of Secretary becomes vacant, the Committee must appoint a person to the position within 14 days after the vacancy arises.
- (d) A person appointed by the Committee under this rule shall hold office, subject to these Rules, until the conclusion of the next annual general meeting following the date of the appointment.
- (e) The Committee may continue to act despite any vacancy in its membership.

## **DIVISION 4 - MEETINGS OF COMMITTEE**

### **5.16 Meetings of Committee**

The Committee must meet at least three times in each year at the dates, times and places determined by the Committee.

### **5.17 Notice of meetings**

- (a) Notice of each committee meeting must be given to each committee member.
- (b) Notice may be given of more than one committee meeting at the same time.
- (c) The notice may be given verbally and must state the date, time and place of the meeting.
- (d) The only business that may be conducted at the meeting is the business for which the meeting is convened except business which the Committee members present at the meeting unanimously agree to treat as urgent business.

### **5.18 Procedure and order of business**

- (a) The procedure to be followed at a meeting of a Committee must be determined from time to time by the Committee.

- (b) The order of business may be determined by the members present at the meeting.

### **5.19 Use of technology**

- (a) A committee member who is not physically present at a committee meeting may participate in the meeting by the use of technology that allows that committee member and the committee members present at the meeting to clearly and simultaneously communicate with each other.
- (b) For the purposes of this Part, a committee member participating in a committee meeting as permitted under sub-rule 5.19(a) is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

### **5.20 Quorum**

- (a) No business may be conducted at a committee meeting unless a quorum is present.
- (b) The quorum for a committee meeting is the presence (in person or as allowed under rule 5.19) of four committee members holding office.

### **5.21 Voting**

- (a) On any question arising at a committee meeting, each committee member present at the meeting has one vote. However, a committee member that is a delegate is not entitled to vote unless all moneys due and payable to the Association by the member whom the delegate represents have been paid, other than the amount of the annual subscription payable (and not overdue) in respect of the current financial year.
- (b) A motion is carried if a majority of committee members present at the meeting vote in favour of the motion.
- (c) If votes are divided equally on a question, the Chairman of the meeting has a second or casting vote.
- (d) Voting by proxy is not permitted.
- (e) The Committee may pass a resolution without a meeting if a majority of committee members consent to the resolution in writing. Such a resolution is valid and effectual as if it had been passed at a board meeting that was properly convened and held.

### **5.22 Conflict of interest**

- (a) A committee member who has a material personal interest in a matter being considered at a committee meeting must disclose the nature and extent of that interest to the Committee.
- (b) The member:
  - (i) must not be present while the matter is being considered at the meeting; and

- (ii) must not vote on the matter. (c) This rule does not apply to a material personal interest:
- (iii) that exists only because the member belongs to a class of persons for whose benefit the Association is established; or
- (iv) that the member has in common with all, or a substantial proportion of, the members of the Association.

### **5.23 Minutes of meeting**

- (a) The Committee must ensure that minutes are taken and kept of each committee meeting.
- (b) The minutes must record the following:
  - (i) the names of the members in attendance at the meeting;
  - (ii) the business considered at the meeting;
  - (iii) any resolution on which a vote is taken and the result of the vote; and
  - (iv) any material personal interest disclosed under rule 5.22.
- (c) 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.

### **5.24 Leave of absence**

The Committee may grant a committee member leave of absence from committee meetings for a period not exceeding three months.

## **6. FINANCIAL MATTERS**

### **6.1 Source of funds**

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

### **6.2 Management of funds**

- (a) The Committee may approve expenditure on behalf of the Association.
- (b) The Committee may authorise the expenditure of funds with a specified limit by a member of the Committee or staff member on behalf of the Association without requiring approval from the Committee for each item on which the funds are expended.
- (c) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by two committee members or



otherwise authorised in accordance with any means determined by the Committee.

### **6.3 Financial records**

- (a) The Association must keep financial records that:
  - (i) correctly record and explain its transactions, financial position and performance; and
  - (ii) enable financial statements to be prepared as required by the Act.
- (b) The Association must retain the financial records for 7 years after the transactions covered by the records are completed.
- (c) The Treasurer must keep in his or her custody, or under his or her control:
  - (i) the financial records for the current financial year; and
  - (ii) any other financial records as authorised by the Committee.

### **6.4 Financial statements**

- (a) For each financial year, the Committee must ensure that the requirements under the Act relating to the financial statements of the Association are met.
- (b) Without limiting sub-rule 6.4(a), those requirements include:
  - (i) the preparation of the financial statements;
  - (ii) if required, the review or auditing of the financial statements;
  - (iii) the certification of the financial statements by the Committee;
  - (iv) the submission of the financial statements to the annual general meeting of the Association;
  - (v) the lodgement with the Registrar of the financial statements and accompanying reports, certificates, statements and fee.

## **7. GENERAL MATTERS**

### **7.1 Common seal**

- (a) The Association may have a common seal.
- (b) If the Association has a common seal:
  - (i) the name of the Association must appear in legible characters on the common seal;
  - (ii) a document may only be sealed with the common seal by the authority of the Committee and the sealing must be witnessed by the signatures of two committee members;

- (iii) the common seal must be kept in the custody of the Secretary.

## **7.2 Registered address**

The registered address of the Association may be determined from time to time by resolution of the Committee.

## **7.3 Notice requirements**

- (a) Any notice required to be given to a member or a committee member under these Rules may be given:
  - (i) by handing the notice to the member personally; or
  - (ii) by sending it by post to the member at the address recorded for the member on the register of members; or
  - (iii) by electronic mail or facsimile transmission.
- (b) Any notice required to be given to the Association or the Committee may be given:
  - (i) by handing the notice to a member of the Committee; or
  - (ii) by sending the notice by post to the registered address; or
  - (iii) by leaving the notice at the registered address; or
  - (iv) if the Committee determines that it is appropriate in the circumstances:
    - (A) by email to the email address of the Association or the Secretary; or
    - (B) by facsimile transmission to the facsimile number of the Association.

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

- (a) Members may on request inspect free of charge:
  - (i) the register of members;
  - (ii) the minutes of general meetings; and
  - (iii) subject to sub-rule 7.4(b), the financial records, books, securities and any other relevant document of the Association, including minutes of Committee meetings.
- (b) The Committee may refuse to permit a member to inspect 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.
- (c) The Committee must on request make copies of these Rules available to members and applicants for membership free of charge.

- (d) Subject to sub-rule 7.4(b), 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.
- (e) 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:
  - (i) its membership records;
  - (ii) its financial statements;
  - (iii) its financial records;
  - (iv) records and documents relating to transactions, dealings, business or property of the Association.
- (f) Members must not:
  - (i) use information about another person obtained from the register of members to contact or send materials to the other person; or
  - (ii) disclose information obtained about another person from the register of members knowing that the information is likely to be used to contact or send materials to the other person.;

unless the purpose for which the information is used or disclosed is otherwise expressly permitted by these Rules or otherwise by law.

- (g) A member must be given a copy of these Rules and minutes of general meetings within 14 days of the Association receiving a request by the member and the member paying any fee prescribed by the Committee.
- (h) If the Association provides access to these Rules on the Associations website, the Committee shall be deemed to have allowed a member to inspect and copy these Rules unless the member informs the Association that he or she is unable to access the Rules on the website.

## **7.5 Winding up and cancellation**

- (a) The Association may be wound up voluntarily by special resolution.
- (b) Where on the winding up or cancellation of the incorporation of the Association, there is a surplus of assets after satisfying all the Associations liabilities and expenses, the surplus:
  - (i) must not be paid or distributed to the members; and
  - (ii) will be given or transferred to such other fund, authority, institution or company which:

- (A) has similar objects to those of the Association as described in these rules; and
  - (B) prohibits the distribution of profit or gain to its individual members in their capacity as members.
- (c) The body to which the surplus assets are to be given must be decided by special resolution. If the members fail to decide, the fund, authority, institution or company shall be determined by application to the Supreme Court in Victoria.

## **7.6 Indemnity**

Every and all Officers of the Association shall be indemnified by the funds of the Association in respect of any claims made upon such an Officer which arise as a result of that Officer exercising the responsibility of his or her Office in good faith and with due diligence.

## **7.7 Alteration of Rules**

These Rules must not be altered except in accordance with the Act.

## **7.8 7.8 By-laws**

- (a) The Committee may make, amend or repeal by-laws, not inconsistent with these Rules, for the internal management of the Association.
- (b) A by-law may be set aside by a vote of the members at a general meeting of the Association.