



# CONSTITUTION

**Bayswater  
Extended Community Help Organisation  
Incorporated  
(ECHO)**

ABN 44 202 237 906

Approved October 2020

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## PART 1 — PRELIMINARY

### 1. Name

The name of the Association is **Bayswater Extended Community Help Organisation Inc.**

### 2. Terms used

In these rules, unless the contrary intention appears —

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

**ACNC** means the Australian Charities and Not-for-profits Commission the federal body responsible for all charities;

**Association** means the incorporated association referred to in rule 1;

**ATO** means the Australian Taxation Office;

**Board** means the management Board of the Association referred to in rule 24;

**Board meeting** means a meeting of the Board referred to in rule 39;

**Board member** means a member of the Board referred to in rule 25;

**By laws** means by-laws made by the Association under rule 58;

**Chairperson** means the Board member holding office as the Chairperson referred to in rule 27;

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

**Financial Report**, means the Financial Statements prepared for presentation to a Board meeting or members meeting;

**Deputy Chairperson** means the Board member holding office as the Deputy Chairperson referred to in rule 25 and rule 27 with responsibilities of deputising for the Chairperson.

**Financial year**, of the Association, has the meaning given in rule 4;

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

**Member** means a person who is a member with the rights referred to in rule 12;

**Ordinary Board Member** means a Board member who is not an office holder of the Association under rule 25(3);

**Peak body** means the **Aged & Community Services Western Australia Incorporated** or other incorporated body of which the Association is a member;

**Register of members** means the register of members referred to in rule 16;

**Revenue** means income that arises in the course of the ordinary activities of an entity

**Rules** mean these rules, or constitution, of the Association, as in force for the time being;

**Secretary** means the Board member holding office as the Secretary referred to in rule 25 and rule 28;

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**Special General Meeting** means a General Meeting of the Association other than the Annual General Meeting;

**Special resolution** has the meaning given by the Act, that is –

A resolution is a special resolution if it is passed by a majority of not less than three-fourths of the members of the Association who are entitled under the rules of the Association to vote and vote in person at a General Meeting of which notice specifying the intention to propose the resolution as a special resolution was given in accordance with these rules.

At a meeting at which a resolution proposed as a special resolution is submitted, a declaration by the person presiding that the resolution has been passed as a special resolution shall be evidence of the fact unless, during the meeting at which the resolution is submitted, a poll is demanded in accordance with the rules of the Association or, if the rules do not make provision as to the manner in which a poll may be demanded, by at least 3 members of the Association present in person.

If a poll is held, a declaration by the person presiding as to the result of a poll is evidence of the matter so declared;

**Subcommittee** means a subcommittee appointed by the Board under rule 46;

**Tier 1 association** means an incorporated association with revenue of less than \$250,000 per year;

**Tier 2 association** means an incorporated association with revenue between \$250,000 and \$1,000,000 per year;

**Tier 3 association** means an incorporated association with revenue of or exceeding \$1,000,000 per year;

**Treasurer** means the Board member holding office as the Treasurer referred to in rule 25 and rule 29.

## 3. Objects

The Objects of the Association are:-

- a) To provide practical assistance and support to those members of the community who are in need, including the aged, infirm, or disabled to enable them, as far as possible, to live independently and remain integrated within their local community;
- b) To actively promote positive ageing; and
- c) To do such other things that may be conducive to the attainment of these objects.

## 4. Financial Year

- (1) The first financial year of the Association is to be the period, not exceeding 18 months, being a period commencing on the date of incorporation of the Association and ending on the 30 June.
- (2) Each subsequent financial year of the Association is the period of 12 months commencing on 1 July and ending on 30 June in the following year.

## 5. Powers

The powers conferred on the Association are the same as those conferred by the Act, so that subject to the Act and any additions, exclusions or modifications inserted below, the Association may do all things necessary or convenient for carrying out its objects and purposes, and in particular, may -

- a) acquire, hold, deal with, and dispose of any real or personal property;

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- b) open and operate bank accounts;
- c) invest its money in any security in which trust monies may lawfully be invested;
- d) borrow money upon such terms and conditions as the Association thinks fit;
- e) give such security for the discharge of liabilities incurred by the Association as the Association thinks fit;
- f) appoint agents to transact any business of the Association on its behalf;
- g) enter into any other contract it considers necessary or desirable; and
- h) may act as trustee and accept and hold real and personal property upon trust, but does not have power to do any act or thing as a trustee that, if done otherwise than as a trustee, would contravene this Act or the Rules of the Association.

### 6. Patron

The Board may appoint a distinguished person to be the Patron of the Association. The Patron shall be deemed to be a member of the Association ex-officio and shall be entitled to all the rights and privileges of membership

## PART 2 — NOT FOR PROFIT BODY

### 7. Not-for-profit body

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

## PART 3 — MEMBERS

### 8. Eligibility for membership

- (1) A person who, supports the Objects of the Association, has reached the age of 18 years and meets any requirement of the by-laws, is eligible to apply to become an Ordinary Member.
- (2) A person, who is an active volunteer, supports the Objects of the Association, has reached the age of 18 years and meets any requirement of the by-laws, is eligible to apply to become an Associate Member.
- (3) An employee of the Association is eligible to become an Associate Member.

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- (4) An Association must always have at least 6 members with full voting rights.
- (5) A member is only liable for their own outstanding membership fees.

### **9. Applying for membership**

- (1) A person, who wants to become a member, must apply in writing to the Association, in a form prescribed by the Board.
- (2) The application must include a member's nomination of the applicant for membership.
- (3) The application must be signed by the applicant and the member nominating the applicant.
- (4) The applicant must specify in the application the class of membership, if there is more than one, to which the application relates.

### **10. Dealing with membership applications**

- (1) The Board must consider each application for membership of the Association and decide whether to accept or reject the application.
- (2) The Board must not accept an application unless the applicant —
  - (a) is eligible under rule 8; and
  - (b) has applied under rule 9.
- (3) The Board must notify the applicant of the Board's decision to accept or reject the application as soon as practicable after making the decision.
- (4) If the Board rejects the application, the Board is not required to give the applicant its reasons for doing so.

### **11. Becoming a member**

An applicant for membership of the Association becomes a member when —

- (a) the Board accepts the application; and
- (b) the applicant pays any membership fees (if any) payable to the Association under rule 15.
- (c) the Association must give each person who becomes a member of the Association a copy of the Rules in force at the time their membership commences. This may be by electronic transmission or providing the details for the website where the rules may be downloaded.

### **12. Classes of membership**

- (1) The Association consists of one class of Members with sub-classes known as Ordinary Member or Associate Member or Honorary Life Member.
- (2) The Board may award a person Honorary Life Membership for long and or distinguished or meritorious work on behalf of the Association.
- (3) A person can only belong to one sub-class of membership.
- (4) Only Ordinary Members and Honorary Life Members, have full voting rights and any other rights conferred on members by these rules or approved by resolution at a General Meeting or determined by the Board.



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- (5) Associate Members are entitled to attend and participate in a General Meeting but do not have voting rights.
- (6) The number of members of any class is not limited unless otherwise approved by resolution at a General Meeting.
- (7) Each Ordinary and each Honorary Life Member has one vote at a General Meeting of the Association when voting on a resolution, whether the resolution is an ordinary or special resolution.

### 13. When membership ceases

- (1) A person ceases to be a member when any of the following takes place —
  - (a) the individual dies;
  - (b) the person resigns from the Association under rule 14;
  - (c) the person fails to pay the membership fees under rule 15;
  - (d) the person is expelled from the Association under rule 17; or
  - (e) The person fails to meet the requirement set by the Board to be an Associate Member.
- (2) The Secretary must keep a record, for at least one year after a person ceases to be a member, of —
  - (a) the date on which the person ceased to be a member; and
  - (b) the reason why the person ceased to be a member.

### 14. Resignation

- (1) A member may resign from membership of the Association by giving written notice of the resignation to the Secretary.
- (2) The resignation takes effect —
  - (a) when the Secretary receives the notice and brings it to the Board; or
  - (b) if a later time is stated in the notice, at that later time.

### 15. Membership fees

- (1) The Board must determine the entrance fee (if any) and the annual membership fee (if any) to be paid for membership of the Association.
- (2) The Associate Members and the Honorary Life Members are exempt from any fees determined under sub rule (1).
- (3) If a member has not paid the annual membership fee within the period of 3 months after the due date, the member ceases to be a member on the expiry of that period.

### 16. Register of members

- (1) The Secretary, or another person authorised by the Board, is responsible to maintain the register of members and record in that register any change in the membership of the Association.
- (2) The register of members must include each member's name and a residential, or postal, or email address. Also the class of membership to which each member belongs, the date on which each member becomes a member and the date they changed class of membership.
- (3) The members must advise the Secretary of any change to their residential, or postal, or email address.

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- (4) The register of members must be kept at the Secretary's place of residence, or at another place determined by the Board.
- (5) A member who wishes to inspect the register of members must contact the Secretary to make the necessary arrangements at a mutually convenient time.
- (6) If —
  - (a) a member inspecting the register of members wishes to make a copy of, or take an extract from, the register under the Act; or
  - (b) a member makes a written request under the Act to be provided with a copy of the register of members,

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

## PART 4 — DISCIPLINARY ACTION, DISPUTES AND MEDIATION

### 17. Suspension or expulsion

- (1) The Board may decide to suspend a member's membership or to expel a member from the Association if —
  - (a) the member contravenes any of these rules; or
  - (b) the member acts detrimentally to the interests of the Association.
- (2) The Secretary must give the member written notice of the proposed suspension or expulsion at least 21 days before the Board meeting at which the proposal is to be considered by the Board.
- (3) The notice given to the member must state —
  - (a) when and where the Board meeting is to be held; and
  - (b) the grounds on which the proposed suspension or expulsion is based; and
  - (c) that the member, or the member's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the proposed suspension or expulsion;
- (4) At the Board meeting, the Board must —
  - (a) give the member, or the member's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the proposed suspension or expulsion; and
  - (b) give due consideration to any submissions so made; and
  - (c) decide —
    - (i) whether or not to suspend the member's membership and, if the decision is to suspend the membership, the period of suspension; or
    - (ii) whether or not to expel the member from the Association.
- (5) A decision of the Board to suspend the member's membership or to expel the member from the Association takes immediate effect.
- (6) The Board must give the member written notice of the Board's decision, and the reasons for the decision, within 7 days after the Board meeting at which the decision is made.
- (7) A member whose membership is suspended or who is expelled from the Association may, within 14 days after receiving notice of the Board's decision under sub rule (6), give written notice to the Secretary requesting the appointment of a mediator under rule 20.
- (8) If notice is given under sub rule (7), the member who gives the notice and the Board are the parties to the mediation.

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### 18. Consequences of suspension

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

### 19. Disputes

- (1) The procedure set out in these rules applies to disputes —
  - (a) between members (or former members); or
  - (b) between one or more members and the Association
- (2) The parties to a dispute must meet and discuss the matter in dispute and attempt to resolve the dispute between themselves within 14 days after the dispute has come to the attention of each party.
- (3) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by sub-rule 2, any party to the dispute may start the dispute procedure by giving written notice to the Secretary of —
  - (a) the parties to the dispute; and
  - (b) the matters that are the subject of the dispute.
- (4) Within 21 days after the Secretary is given the notice, a Board meeting must be convened to consider and determine the dispute.
- (5) The Secretary must give each party to the dispute written notice of the Board meeting at which the dispute is to be considered and determined at least 7 days before the meeting is held.
- (6) The notice given to each party to the dispute must state —
  - (a) when and where the Board meeting is to be held; and
  - (b) that the party, or the party's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the dispute.
- (7) If —
  - (a) the dispute is between one or more members and the Association; and
  - (b) any party to the dispute gives written notice to the Secretary stating that the party —
    - (i) does not agree to the dispute being determined by the Board; and
    - (ii) requests the appointment of a mediator under rule 21,

the Board must not determine the dispute.

### 20. Determination of dispute by Board

- (1) At the Board meeting at which a dispute is to be considered and determined, the Board must —
  - (a) give each party to the dispute, or the party's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the dispute; and
  - (b) give due consideration to any submissions so made; and

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- (c) determine the dispute.
- (2) The Board must give each party to the dispute written notice of the Board's determination, and the reasons for the determination, within 7 days after the Board meeting at which the determination is made.
- (3) A party to the dispute may, within 14 days after receiving notice of the Board's determination under sub rule (1)(c), give written notice to the Secretary requesting the appointment of a mediator under rule 21.
- (4) If notice is given under sub rule (3), each party to the dispute is a party to the mediation.

### 21. Mediation

- (1) Mediation applies if a written notice has been given to the Secretary requesting the appointment of a mediator —
  - (a) by a member under rule 17(7); or
  - (b) by a party to a dispute under rule 19(7) or rule 20(3).
- (2) The mediator must be a person chosen —
  - (a) if the appointment of a mediator was requested by a member under rule 17(7) — by agreement between the Member and the Board; or
  - (b) if the appointment of a mediator was requested by a party to a dispute under rule 19(7) or 20(3) — by agreement between the parties to the dispute.
- (3) If there is no agreement for the purposes of sub rule (2)(a) or (b), then, subject to sub rules (4) and (5), the Board must appoint the mediator.
- (4) The person appointed as mediator by the Board may be a person nominated by the peak body of the organisation or a person who acts as a mediator for another not-for-profit body, such as a community legal centre, if the appointment of a mediator was requested by—
  - (a) a member under rule 17(7); or
  - (b) a party to a dispute under rule 19(7) or rule 20(3) and the dispute is between one or more members and the Association.
- (5) The person appointed as mediator by the Board may be a member or former member of the Association but must not —
  - (a) have a personal interest in the matter that is the subject of the mediation; or
  - (b) be biased in favour of or against any party to the mediation.

### 22. Mediation process

- (1) The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.
- (2) Each party to the mediation must give the mediator a written statement of the issues that need to be considered at the mediation at least 5 days before the mediation takes place.
- (3) In conducting the mediation, the mediator must —
  - (a) give each party to the mediation every opportunity to be heard; and
  - (b) allow each party to the mediation to give due consideration to any written statement given by another party; and
  - (c) ensure that natural justice is given to the parties to the mediation throughout the mediation process.
- (4) The mediator cannot determine the matter that is the subject of the mediation.

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- (5) The mediation must be confidential, and any information given at the mediation cannot be used in any other proceedings that take place in relation to the matter that is the subject of the mediation.
- (6) The costs of the mediation are to be paid by the party or parties to the mediation that requested the appointment of the mediator.
- (7) In the event that the dispute is not resolved the matter may, at the request of one of the parties, be referred to the peak body of which the Association is a member for resolution.

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

If —

- (a) mediation takes place because a member whose membership is suspended or who is expelled from the Association gives notice under rule 17(7); and
- (b) as the result of the mediation, the decision to suspend the member's membership or expel the member is revoked,

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

## **PART 5 — BOARD**

### **24. Board**

- (1) The Board members are the persons who, as the management Board of the Association, have the power to manage the affairs of the Association.
- (2) Subject to the Act, these rules, the by-laws (if any) and any resolution passed at a General Meeting, the Board has power to do all things necessary or convenient to be done for the proper management of the affairs of the Association.
- (3) The Board must take all reasonable steps to ensure that the Association complies with the Act, these rules and the by-laws (if any).
- (4) A member of the management Board is not liable in respect of the liabilities of the Association.

### **25. Board members**

- (1) The Board is to consist of the office holders, the Chief Executive Officer, ex-officio, and not less than one other member;
- (2) The Board must determine the maximum number of Board members.
- (3) The following are the office holders of the Association —
  - (a) the Chairperson;
  - (b) the Deputy Chairperson;
  - (c) the Secretary;
  - (d) the Treasurer.
- (4) A person may be a Board member only if the person is an Ordinary Member.
- (5) The Board will appoint the office holders of the Association from within its members

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## 26. Chief Executive Officer

- (1) The Chief Executive Officer is the senior administrator of the Association. He or she is ultimately responsible for all day-to-day administrative decisions of the Board.
- (2) The Chief Executive Officer is ex-officio a Board member with no voting rights.
- (3) The Chief Executive Officer is empowered to hire, direct and, if considered appropriate, to suspend staff to fulfil the objects of the Association.
- (4) The Chief Executive Officer will report to each Board Meeting on the activities, as appropriate, and the finances of the Association. All major changes to policies and major capital acquisitions will require Board approval.

## 27. Chairperson

- (1) The Chairperson has the powers and duties relating to convening and presiding at Board meetings and presiding at General Meetings provided for in these rules.
- (2) The Chairperson is to consult with the Chief Executive Officer regarding the decisions of the Board and discuss possible changes to policies or other matters that may come before the Board.
- (3) It is the duty of the Chairperson to consult with the Secretary regarding the business to be conducted at each Board meeting and General Meeting.

## 28. Secretary

The Secretary is responsible for ensuring the following duties are carried out unless they are delegated to the Chief Executive Officer by the Board —

- (a) dealing with the Association's correspondence;
- (b) consulting with the Chairperson regarding the business to be conducted at each Board meeting and General Meeting;
- (c) preparing the notices required for meetings and for the business to be conducted at meetings;
- (d) unless another member is authorised by the Board to do so, maintaining on behalf of the Association the register of members as required under rule 16;
- (e) maintaining on behalf of the Association an up-to-date copy of these rules, as required by the Act;
- (f) unless another member is authorised by the Board to do so, maintaining on behalf of the Association a record of Board members and other persons authorised to act on behalf of the Association, as required under rule 62;
- (g) ensuring the safe custody of the books of the Association, other than the financial records, Financial Statements and Financial Reports, as applicable to the Association;
- (h) maintaining full and accurate minutes of Board meetings and General Meetings;
- (i) Carrying out any other duty given to the Secretary under these rules or by the Board.

## 29. Treasurer

The Treasurer is responsible for ensuring the following duties are carried out unless they are delegated to the Chief Executive Officer by the Board —

- (a) ensuring that any amounts payable to the Association are collected and issuing receipts (if required) for those amounts in the Association's name;
- (b) ensuring that any amounts paid to the Association are credited to the appropriate account of the Association as required under rule 56 and as directed by the Board;
- (c) ensuring that any payments to be made by the Association that have been authorised by the Board or at a General Meeting are made on time;

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- (d) ensuring that the Association complies with the relevant requirements of Part 5 of the Act as set out in rule 57;
- (e) ensuring the safe custody of the Association's financial records, Financial Statements and Financial Reports, as applicable to the Association;
- (f) coordinating the preparation of the Association's Financial Statements or Financial Reports before its submission to the Association's annual General Meeting;
- (g) providing any assistance required by an auditor or reviewer conducting an audit or review of the Association's Financial Statements or Financial Report under Part 5 Division 5 of the Act;
- (h) Carrying out any other duty given to the Treasurer under these rules or by the Board.

### **30. How members become Board members**

A member becomes a Board member if the member —

- (a) is elected to the Board at a General Meeting; or
- (b) is appointed to the Board by the Board to fill a casual vacancy under rule 36.

### **31. Nomination of Board members**

- (1) At least 21 days before an Annual General Meeting, the Secretary must send a written notice to all the members —
  - (a) calling for nominations for election to the Board; and
  - (b) stating the date by which nominations must be received by the Secretary to comply with sub rule (2).
- (2) A member who wishes to be considered for election to the Board at the Annual General Meeting must nominate for election by sending written notice of the nomination to the Secretary at least 14 days before the Annual General Meeting.
- (3) The written notice must include a statement by another member in support of the nomination.
- (4) A member whose nomination does not comply with this rule is not eligible for election to the Board.

### **32. Election of Board**

- (1) At the Annual General Meeting, a separate election must be held for each vacancy in the Board.
- (2) The Members at the meeting must vote in accordance with procedures that have been determined by the Board to decide who is to be elected to the position.
- (3) Each Member present at the meeting may vote for one member who has nominated for each vacancy.
- (4) A member who has nominated for the vacancy may vote for himself or herself.
- (5) The new members of the Board, elected at the Annual General Meeting, take office at the close of the meeting.

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

- (1) The term of office of a Board member begins when the member —
  - (a) is elected at an Annual General Meeting (close of the meeting); or
  - (b) is appointed to fill a casual vacancy under rule 36.
- (2) Subject to rule 34, a Board member holds office for a period not exceeding three years, with one third retiring each year in rotation.

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- (3) A member appointed to fill a casual vacancy under sub-rule (1)(b) will complete the term of office of the Board member they replace.
- (4) A Board member is eligible for re-election.

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

- (1) A Board member may resign from the Board by written notice given to the Secretary or, if the resigning member is the Secretary, given to the Chairperson.
- (2) The resignation takes effect —
  - (a) when the notice is received by the Secretary or Chairperson; or
  - (b) if a later time is stated in the notice, at the later time.
- (3) The Board may remove a Board member from office if the Board considers the member's conduct is or has been detrimental to the interests of the Association, or the Board considers the member is not performing adequately the duties of the office he or she holds.
- (4) A Board member who is the subject to the removal under sub rule (3), must be given seven days' notice of the motion, the notice must state the grounds of the motion, and invite the Board member to make written representations (of a reasonable length) to the Board.
- (5) The Board Member will be required to leave the meeting while the Board considers the motion to expel
- (6) The Board must advise the member in writing of its decision on the motion
- (7) Any expulsion of a Board member will take effect immediately.

### **35. When membership of Board ceases**

- (1) A person ceases to be a Board member if the person —
  - (a) dies or otherwise ceases to be a member; or
  - (b) resigns from the Board or is removed from office under rule 34; or
  - (c) becomes ineligible to accept an appointment or act as a Board member under section 39 of the Act;
  - (d) becomes permanently unable to act as a Board member because of a mental or physical disability; or
  - (e) fails to attend 3 consecutive Board meetings, of which the person has been given notice, without having notified the Board that the person will be unable to attend.
- (2) When a person ceases to be a member of the Board the Act requires the person to, as soon as practicable after their membership ceases, deliver to a member of the Board all of the relevant documents and records they hold pertaining to the management of the Association's affairs.

### **36. Filling casual vacancies**

- (1) The Board may appoint a member who is eligible under rule 25(4) to fill a position on the Board that —
  - (a) has become vacant under rule 34; or
  - (b) was not filled by election at the most recent Annual General Meeting.
- (2) If the position of Secretary becomes vacant, the Board must appoint a member who is eligible under rule 25(4) to fill the position within 14 days after the vacancy arises.
- (3) Subject to the requirement for a quorum under rule 43, the Board may continue to act despite any vacancy in its membership.



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- (4) If there are fewer Board members than required for a quorum under rule 43, the Board may act only for the purpose of —
  - (a) appointing Board members under this rule; or
  - (b) convening a General Meeting.

### **37. Validity of acts**

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

### **38. Payments to Board members**

A Board member is entitled to be paid out of the funds of the Association for any out-of-pocket expenses for travel and accommodation properly incurred —

- (a) in attending a Board meeting or
- (b) in attending a General Meeting; or
- (c) otherwise in connection with the Association's business.

### **39. Board meetings**

- (1) The Board must meet at least 4 times in each year on the dates and at the times and places determined by the Board.
- (2) The date, time and place of the first Board meeting must be determined by the Board members as soon as practicable after the Annual General Meeting at which the Board members are elected.
- (3) Special Board meetings may be convened by the Chairperson or any two Board members.

### **40. Notice of Board meetings**

- (1) Notice of each Board meeting must be given to each Board member at least 48 hours before the time of the meeting.
- (2) The notice must state the date, time and place of the meeting and must describe the general nature of the business to be conducted at the meeting. The first meeting after the Annual General Meeting must include the election or confirmation of the officers of the Association.
- (3) Unless sub rule (4) applies, the only business that may be conducted at the meeting is the business described in the notice.
- (4) Urgent business that has not been described in the notice may be conducted at the meeting if the Board members at the meeting unanimously agree to treat that business as urgent.

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

- (1) The Chairperson or, in the Chairperson's absence, the Deputy Chairperson must preside as chairperson of each Board meeting.
- (2) If the Chairperson and Deputy Chairperson are absent or are unwilling to act as chairperson of a meeting, the Board members at the meeting must choose one of them to act as chairperson of the meeting.
- (3) The procedure to be followed at a Board meeting must be determined from time to time by the Board.

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- (4) The order of business at a Board meeting may be determined by the Board members at the meeting.
- (5) A member or other person who is not a Board member may attend a Board meeting if invited to do so by the Board.
- (6) A person invited under sub rule (5) to attend a Board meeting —
  - (a) has no right to any agenda, minutes or other document circulated at the meeting; and
  - (b) must not comment about any matter discussed at the meeting unless invited by the Board to do so; and
  - (c) cannot vote on any matter that is to be decided at the meeting.
- (7) A member of the Board who has a material personal interest in a matter being considered at a Board meeting must:
  - (a) as soon as he or she becomes aware of that interest, disclose the nature and extent of his or her interest to the Board; and
  - (b) disclose the nature and extent of the interest at the next General Meeting of the Association
- (8) The sub rule 7 does not apply in respect of a material personal interest that exists only because the member-
  - (a) is an employee of the incorporated Association; or
  - (b) is a member of a class of persons for whose benefit the Association is established; or
  - (c) that the member has in common with all, or a substantial proportion of, the members of the Association.
- (9) A member of the Board who has a material personal interest in a matter being considered at a meeting of the Board must not be present while the matter is being considered at the meeting or vote on the matter
- (10) Every disclosure made by a Board member of a material personal interest must be recorded in the minutes of the Board meeting at which the disclosure is made.

### **42. Use of technology to be present at Board meetings**

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

### **43. Quorum for Board meetings**

- (1) Subject to rule 36(4), no business is to be conducted at a Board meeting unless a quorum is present.
- (2) Fifty (50) percent of Board members will constitute a quorum.
- (3) If a quorum is not present within 30 minutes after the notified commencement time of a Board meeting —
  - (a) in the case of a special meeting — the meeting lapses; or
  - (b) otherwise, the meeting is adjourned to the same time, day and place in the following week.

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- (4) If a quorum is not present within 30 minutes after the commencement time of a Board meeting held under sub rule (3)(b), and at least 2 Board members are present at the meeting, those members present are taken to constitute a quorum.

### 44. Voting at Board meetings

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

### 45. Minutes of Board meetings

- (1) The Board must ensure that minutes are taken and kept of each Board meeting.
- (2) The minutes must record the following —
  - (a) the names of the Board members present at the meeting;
  - (b) the name of any person attending the meeting under rule 41(5);
  - (c) the business considered at the meeting;
  - (d) any motion on which a vote is taken at the meeting and the result of the vote;
  - (e) any disclosure of a member's material personal interest.
- (3) The minutes of a Board meeting must be entered in the Association's minute book within 30 days after the meeting is held. The minute book may be a physical or electronic repository of the signed minutes of a meeting
- (4) The Chairperson must ensure that the minutes of a Board meeting are reviewed and signed as correct by —
  - (a) the Chairperson of the meeting; or
  - (b) the Chairperson of the next Board meeting.
- (5) When the minutes of a Board meeting have been signed as correct they are, until the contrary is proved, evidence that —
  - (a) the meeting to which the minutes relate was duly convened and held; and
  - (b) the matters recorded as having taken place at the meeting took place as recorded; and
  - (c) any appointment purportedly made at the meeting was validly made.

### 46. Subcommittees

- (1) To help the Board in the conduct of the Association's business, the Board may, in writing, appoint one or more subcommittees.
- (2) A subcommittee may consist of the number of people, whether or not members, that the Board considers appropriate.
- (3) Subject to any directions given by the Board a subcommittee may meet and conduct business as it considers appropriate.

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### 47. Delegation to subcommittees

- (1) The Board may, in writing, delegate to a subcommittee the exercise of any power or the performance of any duty of the Board other than —
  - (a) the power to delegate; and
  - (b) a non-delegable duty.
- (2) The delegation may be made subject to any conditions, qualifications, limitations or exceptions that the Board specifies in the document by which the delegation is made.
- (3) The delegation does not prevent the Board from exercising or performing at any time the power or duty delegated.
- (4) The Board may, in writing, amend or revoke the delegation.

## PART 6 — GENERAL MEETINGS

### 48. Annual General Meeting

- (1) The Board must determine the date, time and place of the Annual General Meeting.
- (2) If it is proposed to hold the Annual General Meeting more than 6 months after the end of the Association's financial year, the Secretary must apply to the Commissioner for permission within 4 months after the end of the financial year.
- (3) The ordinary business of the Annual General Meeting is as follows —
  - (a) to confirm the minutes of the previous Annual General Meeting and of any Special General Meeting held since then if the minutes of that meeting have not yet been confirmed;
  - (b) to receive and consider —
    - (i) the Board's annual report on the Association's activities during the preceding financial year; or
    - (ii) the Financial Report, prepared in compliance with rule 56, of the Association for the preceding financial year; and
    - (iii) a copy of the auditor's report on the Financial Report; (if applicable).
  - (c) to elect the Board members of the Association;
  - (d) if applicable, to appoint or remove auditor of the Association;
  - (e) to confirm or vary the entrance fees and/or, subscriptions (if any) to be paid by members;
  - (f) any other business of which notice has been given in accordance with these rules.

### 49. Special General Meetings

- (1) The Board may convene a Special General Meeting.
- (2) The Board must convene a Special General Meeting if, 10 members or 10 per cent of the members, whichever is the lower, require a Special General Meeting to be convened.
- (3) The members requiring a Special General Meeting to be convened must —
  - (a) make the requirement by written notice given to the Secretary; and
  - (b) state in the notice the business to be considered at the meeting; and
  - (c) each sign the notice.
- (4) The Special General Meeting must be convened within 21 days after notice is given under sub rule (3)(a).

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- (5) If the Board does not convene a Special General Meeting within that 21 day period, the members making the requirement (or any of them) may convene the Special General Meeting.
- (6) A Special General Meeting convened by members under sub rule (5) —
  - (a) must be held within 3 months after the date the original requirement was made; and
  - (b) may only consider the business stated in the notice by which the requirement was made.
- (7) The Association must reimburse any reasonable expenses incurred by the members convening a Special General Meeting under sub rule (5).

### 50. Notice of General Meetings

- (1) The Secretary or, in the case of a Special General Meeting convened under rule 49(5), the members convening the meeting, must give to each member notice of a General Meeting.
- (2) The notice must —
  - (a) specify the date, time and place of the meeting; and
  - (b) indicate the general nature of each item of business to be considered at the meeting; and
  - (c) if the meeting is the annual General Meeting, include the names of the members who have nominated for election to the Board under rule 31(2); and
  - (d) if a special resolution is proposed —
    - (i) set out the wording of the proposed resolution; and
    - (ii) state that the resolution is intended to be proposed as a special resolution; rule
- (3) The auditor of an Association (where appointed) is entitled to receive all notices of and other communications relating to any General Meetings of the Association that a member is entitled to receive.

### 51. Presiding member and quorum for General Meetings

- (1) The Chairperson or, in the Chairperson's absence, the Deputy Chairperson must preside as chairperson of each General Meeting.
- (2) If the Chairperson and Deputy Chairperson are absent or are unwilling to act as Chairperson of a General Meeting, the members at the meeting must appoint a chairperson of the meeting.
- (3) No business is to be conducted at a General Meeting unless a quorum is present.
- (4) Twenty (20) percent of members, being members entitled to vote under these rules at a General Meeting, personally present, will constitute a quorum.
- (5) If a quorum is not present within 30 minutes after the notified commencement time of a General Meeting —
  - (a) in the case of a Special General Meeting — the meeting lapses; or
  - (b) in the case of the Annual General Meeting — the meeting is adjourned to —
    - (i) the same time and day in the following week; and
    - (ii) the same place, unless the Chairperson specifies another place at the time of the adjournment or written notice of another place is given to the members before the day to which the meeting is adjourned.
- (6) If —
  - (a) a quorum is not present within 30 minutes after the commencement time of an Annual General Meeting held under sub rule (5)(b); and
  - (b) at least 2 Members are present at the meeting,those members present are taken to constitute a quorum.

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### 52. Adjournment of General Meeting

- (1) The Chairperson of a General Meeting at which a quorum is present may, with the consent of a majority of the Members present at the meeting, adjourn the meeting to another time at the same place or at another place.
- (2) Without limiting sub rule (1), a meeting may be adjourned —
  - (a) if there is insufficient time to deal with the business at hand; or
  - (b) to give the members more time to consider an item of business.
- (3) No business may be conducted on the resumption of an adjourned meeting other than the business that remained unfinished when the meeting was adjourned.
- (4) Notice of the adjournment of a meeting under this rule is not required unless the meeting is adjourned for 14 days or more, in which case notice of the meeting must be given in accordance with rule 50.

### 53. Voting at General Meeting

- (1) On any question arising at a General Meeting —
  - (a) subject to sub rule (4), each Ordinary and each Honorary Life Member (“Eligible Member”) has one vote on each resolution put to the meeting; and
  - (b) Eligible Members shall vote in person.
- (2) Except in the case of a special resolution, a motion is carried if a majority of the Eligible Members present at a General Meeting vote in favour of the motion.
- (3) If votes are divided equally on a question, the Chairperson of the meeting has a second or casting vote.
- (4) For a person to be eligible to vote at a General Meeting as an Eligible Member, the Member —
  - (a) must have been a Member at the time notice of the meeting was given under rule 50; and
  - (b) must have paid any fee or other money payable to the Association by the member.

### 54. Determining whether resolution carried

- (1) Subject to sub rule (3), the Chairperson of a General Meeting may, by a show of hands, declare that a resolution has been carried; or lost.
- (2) If the resolution is a special resolution, the declaration under sub rule (1) must identify the resolution as a special resolution.
- (3) If a poll is demanded on any question by the Chairperson of the meeting or by at least 3 other Members present in person —
  - (a) the poll must be taken at the meeting in the manner determined by the Chairperson; and
  - (b) the Chairperson must declare the determination of the resolution on the basis of the poll.
- (4) If a poll is demanded on the election of the Chairperson or on a question of an adjournment, the poll must be taken immediately.
- (5) If a poll is demanded on any other question, the poll must be taken before the close of the meeting at a time determined by the Chairperson.

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- (6) A declaration under sub rule (1) or (3) must be entered in the minutes of the meeting, and the entry is, without proof of the voting in relation to the resolution, evidence of how the resolution was determined.

### 55. Minutes of General Meeting

- (1) The Secretary, or a person authorised by the Board from time to time, must take and keep minutes of each General Meeting.
- (2) The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.
- (3) In addition, the minutes of each Annual General Meeting must record —
  - (a) the names of the Members attending the meeting; and
  - (b) the Financial Report presented at the meeting; and
  - (c) any auditor's report on the Financial Report presented at the meeting.
- (4) The minutes of a General Meeting must be entered in the Association's minute book within 30 days after the meeting is held. The minute book may be a physical or electronic repository of the signed minutes of a meeting.
- (5) The Chairperson must ensure that the minutes of a General Meeting are reviewed and signed as correct by —
  - (a) the chairperson of the meeting; or
  - (b) the chairperson of the next General Meeting; or
  - (c) authority is given to the Board to review and approve.
- (6) When the minutes of a General Meeting have been signed as correct they are, in the absence of evidence to the contrary, taken to be proof that —
  - (a) the meeting to which the minutes relate was duly convened and held; and
  - (b) the matters recorded as having taken place at the meeting took place as recorded; and
  - (c) any election or appointment purportedly made at the meeting was validly made.

## PART 7 — FINANCIAL MATTERS

### 56. Control of funds

- (1) The Association must open an account in the name of the Association with a financial institution from which all expenditure of the Association is made and into which all funds received by the Association are deposited.
- (2) The Board shall authorise the Treasurer and other appropriate persons as signatories for the Association's bank accounts. Not less than two (2) people are to authorise any bank transaction.
- (3) Subject to any restrictions imposed at a General Meeting, the Board may approve expenditure on behalf of the Association.
- (4) The Board may authorise the Chief Executive Officer to expend funds on behalf of the Association within budgetary limits without requiring approval from the Board for each item on which the funds are expended.
- (5) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments of the Association must be signed by two persons, where practicable at least one of them being a Board member.
- (6) All funds of the Association must be deposited into the Association's account promptly after their receipt.

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- (7) The Association must keep financial records that;
  - (a) correctly record and explain its transactions and financial position and performance; and
  - (b) enable true and fair Financial Statements to be prepared in accordance with Part 5 of the Act.
- (8) The Association must retain its financial records for at least 7 years after the transactions covered by the records are completed.

### 57. Financial Statements and Financial Reports

- (1) For each financial year, the Board must ensure that the requirements imposed on the Association under Part 5 of the Act relating to the Financial Statements or Financial Reports of the Association are met.
- (2) Without limiting sub rule (1), those requirements include —
  - (a) if the Association is a tier 1 association, the preparation of the Financial Statements; and
  - (b) if the Association is a tier 2 association or tier 3 association, the preparation of the Financial Report; and
  - (c) if required, the review or auditing of the Financial Statements or Financial Report, as applicable; and
  - (d) the presentation to the Annual General Meeting of the Financial Statements or Financial Report, as applicable; and
  - (e) if required, the presentation to the Annual General Meeting of the copy of the report of the review or auditor's report, as applicable, on the Financial Statements or Financial Report.

## PART 8 — GENERAL MATTERS

### 58. By-laws

- (1) The Association may, by resolution at a General Meeting, make, amend or revoke by-laws.
- (2) By-laws may —
  - (a) provide for the rights and obligations that apply to membership approved under rule 12; and
  - (b) impose restrictions on the Board's powers, including the power to dispose of the Association's assets; and
  - (c) provide for any other matter the Association considers necessary or convenient to be dealt with in the by-laws.
- (3) A by-law is of no effect to the extent that it is inconsistent with the Act, the regulations or these rules.
- (4) At the request of a member, the Association must make a copy of the by-laws available for inspection by the member.

### 59. Executing documents and common seal

- (1) The Association may execute a document without using a common seal if the document is signed by —
  - (a) two (2) Board members; or
  - (b) one Board member and a person authorised by the Board.
- (2) If the Association has a common seal —
  - (a) the name of the Association must appear in legible characters on the common seal; and



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- (b) a document may only be sealed with the common seal by the authority of the Board and in the presence of —
  - (i) two (2) Board members; or
  - (ii) one Board Member and a person authorised by the Board,and each of them is to sign the document to attest that the document was sealed in their presence.

(3) The Secretary must make a written record of each use of the common seal.

(4) The common seal must be kept in the custody of the Secretary or another Board Member authorised by the Board.

### **60. Giving notices to members**

A notice or other document that is to be given to a member under these rules is taken not to have been given to the member unless it is in writing and —

- (a) delivered by hand to the recorded address of the member; or
- (b) sent by prepaid post to the recorded postal address of the member; or
- (c) sent by electronic transmission to an appropriate recorded electronic address of the member.

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

(1) Subject to sub rule (2), the books and any securities of the Association must be kept in the Secretary's custody or under the Secretary's control.

(2) The financial records and, as applicable, the Financial Statements or Financial Reports of the Association must be kept in the Treasurer's custody or under the Treasurer's control.

(3) Sub rules (1) and (2) have effect except as otherwise decided by the Board.

(4) The books of the Association other than the Minute Book must be retained for at least 7 years. The Minute Books should as far as is possible, be retained as a permanent record.

### **62. Record of office holders**

The record of Board members, Seal holders and other persons authorised to act on behalf of the Association is required to be maintained by the Act. This register must include the names and address of all these persons and must be kept in the Secretary's custody or under the Secretary's control.

### **63. Inspection of records and documents**

(1) A member may, at any reasonable time, inspect without charge the minutes of any General Meeting, the membership register, the register of office holders, the Rules and any reports presented at any General Meeting.

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

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

(4) The member must not use or disclose information in a record or document referred to in sub rule (1) except for a purpose —

- (a) that is directly connected with the affairs of the Association; or
- (b) that is related to complying with a requirement of the Act.

#### 64. Publication by Board members prohibited

A Board member must not publish, or cause to be published, any statement about the business conducted by the Association at a General Meeting or Board meeting unless —

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

#### 65. Distribution of surplus property on cancellation or winding up

- (1) On the cancellation of the incorporation or the winding up of the Association, its surplus property must be distributed as determined by special resolution of the members to another incorporated association or associations, having objects wholly or substantially similar to the Association, and which has been endorsed by the ACNC as a Charity.
- (2) A meeting convened under this rule requires 28 days written notice
- (3) In this rule surplus property, in relation to the Association, means property remaining after satisfaction of —
  - (a) the debts and liabilities of the Association; and
  - (b) the costs, charges and expenses of winding up or cancelling the incorporation of the Association,but does not include books relating to the management of the Association.
- (4) The Board shall continue in office subsequent to the decision to cancel or wind up the Association for the purpose of giving effect to the efficient realisation of assets and the winding up in accordance with the provisions of the Act

#### 66. Alteration of Rules

- (1) If the Association wants to alter or rescind any of these rules, or to make additional rules, the Association may do so only by special resolution approved at a General Meeting of which 21 days written notice has been given.
- (2) The Association must lodge with the Commissioner, within one month, the notice of the special resolution setting out the particulars of the alteration together with a certificate given by a member of the Board certifying that the resolution was duly passed as a special resolution and that the rules so altered conform to the requirements of the Act.
- (3) The alteration to the rules of the Association, take effect from the date of approval by the Commissioner.

### RULES FOR A GIFT FUND

#### 67. Maintaining a Gift Fund

The Association will maintain for the principal purpose of the Association a **Gift Fund** -

- a) To which gifts of money or property for that purpose are to be made;
- b) To which any money received by the entity because of those gifts is to be credited;
- c) That does not receive any other money or property; and,
- d) To which the public are invited to contribute.

(Note: -“gifts” includes all gifts, whether tax deductible or not).

#### 68. Limits on Use of Gift Fund

The entity will use the following only for the principal purpose of the fund:

- (a) Gifts made to the Gift Fund;
- (b) Any money received because of those gifts.

Certain kinds of money or property will not go to the Gift Fund. This includes:

- (a) Income from sponsorship;

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- (b) Income from commercial activities; and
- (c) Proceeds from raffles, auctions or fundraising dinners.

### **69. Bank Account and Accounting Procedures**

As a Type A Gift Fund, no separate bank account is essential. Clear segregation of gifts received from other revenue is required.

### **70. Receipts**

Receipts must be issued in the name of the Gift Fund.

### **71. Gift Fund Committee**

The Gift Fund must be administered by a Committee, the majority of whom must be persons who are experienced in the administration of public monies as defined in Tax Ruling TR95/27. The Committee should maintain a permanent record of its decisions. Gift Fund money may be utilised to cover expenses of administering the Fund. Other payments from the Fund must be consistent with its Objects.

### **72. Winding Up**

At the first occurrence of:

- (a) The winding up of the **Gift Fund**; or
- (b) The entity ceasing to be a Deductible Gift Recipient as defined in the ITAA97 for the operation of the **Gift Fund**,  
any surplus assets of the Gift Fund will be transferred to one or more Associations with similar objects, which is charitable at law, to which income tax deductible gifts can be made under Division 30 of the ITAA 1997, as the entity decides.

### **73. Annual Review**

The Gift Fund, once endorsed by ATO, is subject to an annual review under self-assessment principles. (ATO publication "Gift Pack" (NAT 3132) provides self-assessment worksheets.) A copy of the review should be maintained with the Gift Fund Committee Minutes.

### **74. Not for Profit**

The assets and income of the Fund shall be applied solely towards the promotion of the charitable objects of the Association and no part of the assets and income shall be paid directly or indirectly to the Committee or members of the Association PROVIDED THAT nothing contained in these Rules shall prevent the payment in good faith of remuneration for services actually rendered for fair value.