

# **MEDICAL SOCIETY OF VICTORIA INC**

## **CONSTITUTION**

*Amended & Adopted: 15 May 2012*  
*Adopted: 30 April 2009*

### **1. Name of the Society**

The name of the Association is Medical Society of Victoria Incorporated ("the Society").

### **2. Interpretation**

In this Constitution, unless the contrary intention appears:

"Annual ballot" means the ballot of Ordinary members of the Society

- (a) to determine certain voting rights in the election of directors; and
- (b) to elect Independent members of the Council;

"Board" means the Board of directors of the Society;

"Council" means the Council of the Society;

"Federal Council" means the Council of the National AMA;

"Fellow" means a person who has been appointed a Fellow of the National AMA;

"Medical student" means a person who is studying for the initial academic qualification for registration as a medical practitioner;

"National AMA" means the Australian Medical Association Limited;

"Registration Legislation" means the Act, Law or Code regulating the registration of medical practitioners in Victoria from time to time;

"Registration Authority" means a body empowered under the Registration Legislation to register, suspend or deregister medical practitioners;

"Society" means Medical Society of Victoria Incorporated.

### **3. Objects of the Society**

The purposes of the Society are:

- (a) To promote, maintain, protect, advance and extend the honour, interests and standing of the medical profession and of the Medical Society of Victoria Incorporated and to promote the science of medicine.
- (b) To protect and preserve the standing of the profession and the professional and academic independence of members of the Society, and to preserve, maintain, promote and advance their intellectual, philosophical, social, political and legal interests.
- (c) To act as the principal coordinating body for the medical profession in the State of Victoria and a forum for the medical profession at which consultation and communication takes place.
- (d) To become a member of or subscribe to or affiliate with any other organisation, whether incorporated or not, having objects altogether or in part similar to those of the Society.
- (e) To circulate such information as may be thought desirable through or by means of a periodical journal which shall be the official journal of the Society and by the occasional publication of transactions or other papers.

- (f) To advance exemplary professional conduct and efficiency, to promote fair and honourable practice, to discourage or prevent malpractice or professional misconduct and to ensure the highest clinical, ethical and scientific standards in the delivery of health care to the community.
- (g) To collect and circulate statistics and other information relating to the medical profession.
- (h) To take an active part in the promotion of health care programs for the benefit of the people and to participate in the resolution of major social and community health issues.
- (i) To consider, originate and promote improvements or alterations in the law relating to the medical profession, to petition the Parliament of the State of Victoria and take such other steps and proceedings as may be deemed expedient for carrying out this object.
- (j) To consider, advise, and, if necessary, make recommendations on any subject connected with the appointments of legally qualified medical practitioners to public institutions positions and services.
- (k) To consider and advise on any issue of medical policy.
- (l) To consider and advise on any issue of health policy.
- (m) To promote the unity of the medical profession between the various States and Territories of the Commonwealth of Australia and to enter into all such agreements and generally take, adopt and carry into effect all such steps as are by law authorised or required for such purposes.
- (n) To assist either by donations or otherwise:
  - (i) necessitous members of the medical profession and their wives or husbands and all or any of their children;
  - (ii) organisations providing such assistance to any such persons mentioned in (i) above.
- (o) To provide courses of training, advice, welfare and support services and other benefits to members of the Society to support them in their professional life.

#### **4. Powers**

The Society has the legal capacity and the powers of an individual and a body corporate except the power

- (a) to issue shares;
- (b) to distribute any of the Society's property among the members in kind or otherwise;
- (c) to do any act that is prohibited by a law of a State or Territory.

## **5. Restriction on use of income and assets**

- (1) The income and property of the Society must only be used in promoting its objects.
- (2) No portion of its income or property may be distributed directly or indirectly among its members.

## **MEMBERS**

### **6. Members**

- (1) The members of the Society are divided into the following classes:
  - (a) Ordinary members;
  - (b) Honorary members;
  - (c) Student associate members.
  - (d) Such classes of non-voting members as may be prescribed by Regulations.
- (2) No person may be a member unless that person
  - (i) resides in Victoria; or
  - (ii) is principally engaged in practice in Victoria; or
  - (iii) if a student or doctor in training, is principally associated for that year with a Victorian campus of a university, or with a hospital situated in Victoria.

### **7. Ordinary members**

#### **A. Registered Practitioners**

Every person who is registered as

- (a) a medical practitioner; or
  - (b) a non-practising medical practitioner
- under the Registration Legislation is eligible for admission as an ordinary member of the Society.

#### **B. Retired Practitioners**

Every person who

- (a) has retired from medical practice; and
  - (b) was at the time of retirement registered as a medical practitioner under the Registration Legislation; and
  - (c) has not subsequently been prohibited from reregistering
- is eligible for admission as an ordinary member of the Society.

### **8. Honorary Members**

The Board may elect honorary members.

## **9. Associate Members**

- (a) Student Associate Members  
Every medical student who is registered as a student under the Registration Legislation is eligible for admission as a student associate member of the Society.
- (b) Additional class or classes of membership
  - (1) Additional classes of membership (non-voting) may be prescribed by regulation.
  - (2) The regulation shall also set out:
    - (i) who is eligible;
    - (ii) the rights of members of that class; and
    - (iii) whether a separate subscription is payable.

## **10. Rights of Ordinary Members**

Ordinary members are entitled to all the privileges of membership. These include the right:

- (a) to attend, speak and vote at all general meetings of the Society;
- (b) to vote for members of the Council and to stand for election to the Council;
- (c) if elected a member of the Council, to vote for and stand for election to the Board of Directors;
- (c) to receive the official journal of the Society.

However this Constitution imposes some limitations on those rights in specific circumstances.

## **11. Joint membership**

On becoming an ordinary member, a person also becomes a member of the Australian Medical Association (Victoria) Limited.

## **12. Rights of Honorary Members**

Honorary members are considered as ordinary members but are not required to pay a subscription. A reference to ordinary members elsewhere in this Constitution includes honorary members.

## **13. Rights of Student Associate Members**

Student associate members are entitled to:

- (a) attend and speak, but not vote, at general meetings of the Society;
- (b) be nominated, through the relevant Affiliated Medical Students Society, for membership of the Council;
- (c) receive the official journal of the Society;  
but cannot be elected or appointed as a director of the Society.

However this Constitution imposes some limitations on those rights in specific circumstances.

#### **14. Applications for Membership**

- (a) An eligible person may apply for membership.
- (b) The Chief Executive Officer may admit an eligible person to membership.
- (c) If the Chief Executive Officer does not admit an eligible person to membership, the application must be referred to the Board.
- (d) The Board, if three quarters of the directors present and voting agree, may refuse an application if it reasonably forms the opinion that the applicant has engaged in conduct which:
  - (i) is derogatory to the medical profession; or
  - (ii) is not in the best interests of the Society; or
  - (iii) has caused damage to the Society.
- (e) The Board is not required to advise the applicant of the reasons for refusal of an application.

#### **15. Subscription**

The Board determines the annual subscription.

#### **16. Separate categories of subscription**

The Board may determine separate categories of subscriptions.

#### **17. Combined subscription**

Every Ordinary membership subscription is a combined subscription consisting of:

- (a) the subscription determined by the Australian Medical Association (Victoria) Limited for its members; and
- (b) the subscription determined by the Board.

#### **18. Date for payment of subscription**

The subscription is payable on 1 January, but the Board may determine that the subscription may be payable in instalments on dates fixed by the Board.

#### **19. Joining fee.**

There is no joining fee.

#### **20. Levies**

The Board may impose a levy on ordinary members for a specific purpose.

#### **21. Council consent required**

A levy cannot be imposed without the consent of the Council.

## **22. When payable**

A levy is due and payable on the date set out in the resolution which imposed it.

## **23. Grievances**

- (1) The grievance procedure set out in this rule applies to disputes under these Rules between:
  - (a) a member and another member; or
  - (b) a member and the Society.
- (2) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all of the parties.
- (3) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within 10 days, hold a meeting in the presence of a mediator.
- (4) The mediator must be:
  - (a) a person chosen by agreement between the parties; or
  - (b) in the absence of agreement:
    - (i) in the case of a dispute between a member and another member, person appointed by the committee of the Society; or
    - (ii) in the case of a dispute between a member and the Society, a person who is a mediator appointed or employed by the Dispute Settlement Centre of Victoria (Department of Justice).
- (5) A member of the Society can be a mediator.
- (6) The mediator cannot be a member who is a party to the dispute.
- (7) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (8) The mediator, in conducting the mediation, must:
  - (a) give the parties to the mediation process every opportunity to be heard; and
  - (b) allow due consideration by all parties of any written statement submitted by any party; and
  - (c) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- (9) The mediator must not determine the dispute.
- (10) If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Associations Incorporation Act or otherwise at law.

#### **24. Cessation of membership**

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

- (a) the member ceases to satisfy any requirement for membership set out in Clause 6(2) of this Constitution;
- (b) the member resigns in writing;
- (c) the member's registration as a medical practitioner or as a student is cancelled;
- (d) the member, if a student, ceases to be registered as a student medical practitioner;
- (e) the member's membership is terminated under the provisions of this Constitution;
- (f) the member has failed to pay the annual subscription required by the date specified in a notice to the member that the subscription is overdue.

#### **25. Suspension of membership**

If a member's registration as a Medical Practitioner or student is suspended by the Registration Authority, that person's membership of the Society is suspended for the period of suspension of registration.

#### **26. Discipline**

If three quarters of the directors present at a meeting of the Board form the opinion that a member has engaged in conduct which:

- (i) is derogatory to the medical profession; or
- (ii) is not in the best interests of the Society; or
- (iii) has caused damage to the Society

the Board shall refer the matter to a Disciplinary Committee and advise the member.

#### **27. Membership of Disciplinary Committee**

- (1) The Disciplinary Committee will consist of:
  - (a) three past Presidents of the Company; or
  - (b) if three past Presidents are not available, as many past Presidents as are available and the remainder who are Fellows of the National AMA.
- (2) Director cannot be a member of the Disciplinary Committee.
- (3) The members of the Disciplinary Committee are chosen by the most recent past president available, who cannot be a member of the Committee.

#### **28. Secretary**

The Secretary of the Disciplinary Committee must be a registered legal practitioner.

### **29. Quorum at a Meeting of the Disciplinary Committee**

All three members must be present at a meeting of the Disciplinary Committee.

### **30. Procedure**

The procedure to be followed by the Disciplinary Committee is set out in Regulations.

### **31. Penalties**

- (1) The Disciplinary Committee must, at the conclusion of the procedure, if the members of the Disciplinary Committee unanimously believe that the allegations are proved on the balance of probabilities, report that decision to the Board and recommend:
  - (a) that the member be expelled; or
  - (b) that the member's membership be suspended for a specified period; or
  - (c) that no action be taken against the member.
- (2) The Board may accept the recommendation or impose a different penalty.

### **32. Readmission**

The Board may require, as a condition of readmission of a person who was a member that the applicant pay any arrears of subscription due when membership ceased.

## **INTERNAL ORGANS AND RECOGNISED ORGANISATIONS AND SOCIETIES**

### **33. Internal organs**

The internal organs of the Society are:

- (a) The Board of directors
- (b) The Council
- (c) The Chief Executive Officer and the salaried staff of the Society
- (d) Committees and Working Groups of the Board and the Council
- (e) The Disciplinary Committee (ad hoc)
- (f) The Subdivisions
- (g) The Section

### **34. Affiliated bodies**

The Society also recognises:

- (a) Affiliated Academic Organisations;
- (b) Affiliated Professional Organisations;
- (c) Affiliated Medical Students Societies.

## **SUBDIVISIONS**

### **35. Purpose**

The purpose of a Subdivision is:

- (a) to provide an opportunity for members within a specific locality or professional employment group to interact; and
- (b) to provide a mechanism for direct representation of members on the Council.

### **36. Members allocated**

Every Ordinary Member, on admission, is allocated to a Subdivision.

### **37. Membership**

Subdivisions comprise all Ordinary Members practising within a geographical area, except in the case of:

- (a) doctors in training (interns, residents and registrars);
- (b) senior medical staff (salaried); and
- (c) any other employment-based grouping determined by the Board with the consent of the Council.

### **38. Participation in other subdivisions' activities**

A member may only be a member of one subdivision, but may request the opportunity to participate in activities organised by another subdivision.

### **39. Nomination of subdivision**

If a member qualifies for membership of several subdivisions, the member may:

- (a) on admission; or
  - (b) on payment of the annual subscription in any year; or
  - (c) on change in status or place of practice,
- nominate a relevant subdivision.

### **40. Boundaries of Subdivisions**

The Board, after consulting the Council, may determine the boundaries of geographical Subdivisions.

### **41. Formula for boundary determination**

The determination of boundaries must be based on a formula:

- (a) determined by the Board; and
- (b) consented to by the Council.

#### **42. Review of Subdivision Boundaries**

The Board must:

- (a) on the coming into operation of this Constitution, and
  - (b) at least every ten years after that,
- determine the formula, and review the boundaries of the geographical subdivisions.

#### **43. Constitution of Subdivisions in the regulations**

The structure, procedure, rights and responsibilities of Subdivisions are set out in Regulations.

#### **44. Financing Subdivisions**

The Board may approve the expenditure of the funds of the Society on the activities of subdivisions.

### **SECTIONS**

#### **45. Purpose**

The purpose of a section is to provide an opportunity for members with a particular or distinctive professional or other interest to interact.

#### **46. Membership**

A member may at any time after admission apply for membership of a Section.

#### **47. Adding and removing Sections**

The Board may, after consulting the Council:

- (a) approve additional Sections; and
- (b) determine that any Section shall cease to be a Section of the Society.

#### **48. Constitution in Regulations**

The structure, procedure, rights and responsibilities of Sections are set out in Regulations.

#### **49. Board may fund**

The Board may approve the expenditure of the funds of the Society on activities of Sections.

#### **50. Section may apply for recognition as an Affiliated Organisation**

A Section may at any time apply for recognition as an Affiliated Organisation provided it satisfies the eligibility criteria.

## **AFFILIATED ORGANISATIONS**

### **51. Affiliated Organisations**

- (a) Any medical body drawn from medical practitioners resident in Victoria may apply for recognition as an affiliated organisation.
- (b) The body need not be incorporated.
- (c) The body may be a chapter, faculty or other local branch of a national medical body.
- (d) The body must have a quota of members.

### **52. Quota for recognition**

For the purposes of this part, a quota is the greater of:

- (a) 50 ordinary members of the Society; or
- (b) such number above 50 which is equal to 0.5 percent of the number of ordinary members of the Society.

### **53. Recognition of affiliated organisations**

The Board after consulting the Council may recognise an applicant as an affiliated organisation.

### **54. Affiliated Academic Organisation**

If the applicant is established as a University medical faculty, a Medical College or learned Society or like body, it shall be designated on recognition as an Affiliated Academic Organisation.

### **55. Affiliated Professional Organisation**

If the applicant is generally established for medico-political purposes, it shall be designated on recognition as an Affiliated Professional Organisation.

### **56. Cessation of affiliation**

A body ceases to be an Affiliated Organisation if:

- (a) no nominee of the organisation attends any Council meeting held during a period of two consecutive years; or
- (b) the organisation, on request, fails to provide evidence that it has a quota of members (as set out above); and
- (c) the Board, after consulting the Council, determines to withdraw recognition.

### **57. Affiliated Medical Students Societies**

- (a) Any Society of medical students may apply for recognition.
- (b) The Society need not be incorporated.

- (c) The Society must be recognised by an Australian university conducting a medical course in Victoria as the body representing the Victorian medical student body at that University.
- (d) The Board after consulting the Council may recognise the Society as an Affiliated Medical Students Society.

#### **58. Cessation of recognition of Affiliated Medical Students Society**

An Affiliated Medical Students Society ceases to be recognised if:

- (a) no nominee of the organisation attends any Council meeting held during a period of two consecutive years; or
- (b) the Society, on request, fails to provide evidence that it is recognised by the relevant university as the body representing undergraduate medical students; and
- (c) the Board after consulting the Council determines to withdraw recognition.

### **GENERAL MEETINGS**

#### **59. Kinds of General Meetings**

There are two kinds of general meetings:

- (a) The Annual General Meeting; and
- (b) Special General Meetings.

#### **60. Annual General Meeting**

The Annual General Meeting shall be held within five months of the end of the financial year of the Society.

#### **61. Power to call General Meetings**

The Board may call a general meeting of the Society at any time.

#### **62. Meeting at request of member**

The directors of the Society must call and arrange to hold a general meeting on the request of:

- (a) members with at least 5% of the votes that may be cast at the general meeting; or
- (b) at least 100 members who are entitled to vote at the general meeting.

#### **62A Form of request**

The request must:

- (a) be in writing; and
- (b) state any resolution to be proposed at the meeting; and
- (c) be signed by the members making the request; and

(d) be given to the Society.

**62B Request may consist of separate copies**

Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.

**62C Time at which percentage calculated**

The percentage of votes that members have is to be worked out as at the midnight before the request is given to the Society.

**62D Time within which meeting to be called**

The directors must call the meeting within 21 days after the request is given to the Society.

**62E Time within which meeting to be held**

The meeting is to be held not later than 2 months after the request is given to the Society.

**63. Consequence of failure to call**

If the directors do not call a meeting, the meeting may be called by at least one half of the members who have requested a meeting. The meeting may be called at the expense of the Society.

**64. Meeting called by members**

Five per cent of the ordinary members may also call a general meeting at their own expense.

**65. Members' right to list resolution**

If at least 100 members give notice in writing that they propose to move a motion at the next general meeting (other than a general meeting which has already been called), the motion must be included on the agenda of the next general meeting.

**66. Notice of general meetings**

The period of notice for a general meeting of this Society is 42 days.

**67. Notice to members and directors individually**

Written notice of a meeting of the Society's members must be given individually to each member entitled to vote at the meeting and to each director.

### **67A How notice is given**

A Society may give the notice of meeting to a member:

- (a) personally; or
- (b) by sending it by post to the address for the member in the register of members or the alternative address (if any) nominated by the member; or
- (c) by sending it to the fax number or electronic address (if any) nominated by the member; or
- (d) by sending it to the member by other electronic means (if any) nominated by the member; or
- (e) by notifying the member in accordance with the next clause.

### **67B What has to be notified if member nominated electronic means**

If the member nominates:

- (a) an electronic means (the ***nominated notification means***) by which the member may be notified that notices of meeting are available; and
- (b) an electronic means (the ***nominated access means***) the member may use to access notices of meeting;  
the Society may give the member notice of the meeting by notifying the member (using the nominated notification means);
- (c) that the notice of meeting is available; and
- (d) how the member may use the nominated access means to access the notice of meeting.

This clause does not limit clause 67A.

### **68. Contents of notice of meeting of members**

A notice of a meeting of the Society's members must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);  
and
- (b) state the general nature of the meeting's business; and
- (c) if a special resolution is to be proposed at the meeting set out an intention to propose the special resolution and state the resolution; and
- (d) contain a statement that the member has a right to appoint a proxy;
- (e) set out the information relating to proxies specified in Clause 81.

### **68A Wording of notice must be clear**

The information included in the notice of meeting must be worded and presented in a clear, concise and effective manner.

**69. Deemed date of receipt of notice of meeting**

- (a) A notice of meeting sent by post is taken to be given 3 days after it is posted.
- (b) A notice of meeting sent by fax, or other electronic means, is taken to be given on the business day after it is sent.
- (c) A notice of meeting given to a member who has nominated an electronic means is taken to be given on the business day after the day on which the member is notified that the notice of meeting is available.

**70. Auditor to be given notice and other communications**

The Society must give its auditor:

- (a) notice of a general meeting in the same way that a member of the Society is entitled to receive notice; and
- (b) any other communications relating to the general meeting that a member of the Society is entitled to receive.

**71. Notice if meeting adjourned**

New notice is required if a meeting is adjourned for one month or more.

**72. Place for meetings**

A meeting may be held at more than one venue.

**73. Quorum**

The quorum for a general meeting is 25 ordinary members personally present within 30 minutes after the time set out in the notice of the meeting.

**74. Adjournment if no quorum**

If a quorum is not achieved, the meeting is adjourned to a date, time and place specified by the Chair of the meeting, but if this is not done, the meeting is adjourned to the same place and time on the same day in the next week.

**75. No quorum at adjourned meeting**

If a quorum is not achieved at the adjourned meeting, the meeting is dissolved.

**76. Presiding at General Meetings**

The President may preside at a General Meeting, but if the President is not available or declines to act (for the meeting or part of the meeting), the members present must elect a person to preside.

**77. Adjournment of a meeting after commencement.**

The person presiding may adjourn the general meeting, and must do so if the members present vote to adjourn.

## **78. Business at adjourned meeting**

- (1) Only unfinished business is to be transacted at a meeting resumed after an adjournment.
- (2) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

## **VOTING AT GENERAL MEETINGS**

### **79. Objections to right to vote**

A challenge to a right to vote at a meeting of a company's members:

- (a) may only be made at the meeting; and
- (b) must be determined by the chair, whose decision is final.

### **79A How voting is carried out**

A resolution put to the vote at a meeting of a company's members must be decided on a show of hands unless a poll is demanded.

### **79B Proxy votes to be identified**

Before a vote is taken the chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.

### **79C Declaration by chair of result of show of hands**

On a show of hands, a declaration by the chair is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

*Note:*

*Even though the chair's declaration is conclusive of the voting results, the members present may demand a poll (see Clause 79F).*

### **79D Matters on which a poll may be demanded**

A poll may be demanded on any resolution.

### **79E Withdrawal of demand**

A demand for a poll may be withdrawn.

### **79F When a poll is effectively demanded**

At a meeting of a company's members, a poll may be demanded by:

- (a) at least 5 members entitled to vote on the resolution; or
- (b) members with at least 5% of the votes that may be cast on the resolution on a poll; or

- (c) the chair.

*Note: A proxy may join in the demand for a poll (see Clause 80B).*

#### **79G When poll may be demanded**

The poll may be demanded:

- (a) before a vote is taken; or
- (b) before the voting results on a show of hands are declared; or
- (c) immediately after the voting results on a show of hands are declared.

#### **79H When and how polls must be taken**

A poll demanded on a matter other than:

- (a) the election of a chair or
  - (b) the question of an adjournment
- must be taken when, and in the manner, the chair directs.

#### **79I Poll on chair election and adjournment**

A poll on the election of a chair or on the question of an adjournment must be taken immediately.

### **PROXIES**

#### **80. A member may appoint any person as the member's proxy**

- (a) A member of the Society who is entitled to attend and cast a vote at a meeting of the Society's members may appoint a person as the member's proxy to attend and vote for the member at the meeting.
- (b) The person appointed as the member's proxy may be an individual or a body corporate.

#### **80A Rights of proxies**

A proxy appointed to attend and vote for a member has the same rights as the member:

- (a) to speak at the meeting; and
- (b) to vote (but only to the extent allowed by the appointment); and
- (c) join in a demand for a poll.

#### **80B Proxy's right to demand poll**

Even if the proxy is not entitled to vote on a show of hands, they may make or join in the demand for a poll.

**80C Effect of member's presence on proxy's authority**

A proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting.

**80D Society sending appointment forms or lists of proxies must send to all members**

If the Society sends a member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

- (a) if the member requested the form or list--the Society must send the form or list to all members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- (b) otherwise the Society must send the form or list to all its members entitled to appoint a proxy to attend and vote at the meeting.

**80E Appointing a proxy**

An appointment of a proxy is valid if it is signed by the member of the Society making the appointment and contains the following information:

- (a) the member's name and address;
- (b) the Society's name;
- (c) the proxy's name or the name of the office held by the proxy;
- (d) the meetings at which the appointment may be used.

**80F Standing appointment of proxy**

An appointment may be a standing one.

**80G Deemed date of appointment of proxy**

An undated appointment is taken to have been dated on the day it is given to the Society.

**80H Appointment of proxy may specify direction of vote**

An appointment may specify the way the proxy is to vote on a particular resolution.

If it does:

- (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way; and
- (b) if the proxy is the chair, the proxy must vote on a poll, and must vote that way; and
- (c) if the proxy is not the chair, the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

**80I Specification does not affect personal vote**

If a proxy is also a member, the previous clause does not affect the way that the person can cast any vote they hold as a member.

**80J Witness not necessary**

An appointment does not have to be witnessed.

**80K Revocation by subsequent appointment**

A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

**80L Proxy Documents to be received by Society before meeting**

For an appointment of a proxy for a meeting of the Society's members to be effective, the following documents must be received by the Society at least 48 hours before the meeting:

- (a) the proxy's appointment;
- (b) if the appointment is signed by the appointor's attorney--the authority under which the appointment was signed or authenticated or a certified copy of the authority.

**80M Proxy documents received following adjournment of meeting**

If a meeting of the Society's members has been adjourned, an appointment and any authority received by the Society at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

**80N When proxy documents deemed received**

The Society receives a document referred to in Clause 80L:

- (a) when the document is received at any of the following:
  - (i) the Society's registered address;
  - (ii) a fax number at the Society's registered address;
  - (iii) a place, fax number or electronic address specified for the purpose in the notice of meeting; and
- (b) if the notice of meeting specifies other electronic means by which a member may give the document - when the document given by those means is received by the Society.

**80O Proxy vote valid even if proxy cannot vote as member**

A proxy, who is not entitled to vote on a resolution as a member, may vote as a proxy for another member who can vote, if their appointment specifies the way they are to vote on the resolution and they vote that way.

### **80P Proxy vote valid even if member dies, revokes appointment etc**

Unless the Society has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:

- (a) the appointing member dies; or
- (b) the member is mentally incapacitated; or
- (c) the member revokes the proxy's appointment; or
- (d) the member revokes the authority under which the proxy was appointed by a third party.

### **81. Fax and email addresses for receipt of proxies must be on notice of meeting**

The notice of meeting must specify a place and a fax number for the purpose of the receipt of proxy appointments and proxy appointment authorities; and may specify:

- (a) An electronic address for the purpose of receipt of proxy appointments; and
- (b) other electronic means by which a member may give a proxy appointment.

## **COUNCIL**

### **82. Role of the Council**

- (1) The role of the Council is
  - (a) to ensure that, in the formulation of policy and in making decisions, the Board has the opportunity to receive the widest possible range of views of Members,
  - (b) to elect the directors,
  - (c) To consider and approve or advise on regulations prior to their being made by the Board.
- (2) The Council may establish committees and working groups which shall report to the Council.

### **83 Council membership**

The Council consists of:

- (a) Those of the directors, namely
  - The President
  - The Chair of the Council
  - The Treasurer
  - The Vice President
  - The seven directors without portfolio who are not members of the Council in one of the categories set out below.
- (b) One nominee of each Subdivision,

- (c) One nominee of each Affiliated Organisation,
- (d) The elected Independent Members,
- (e) Two nominees of each Affiliated Medical Students Society,
- (f) Five members elected by and from the Fellows of the National AMA resident in Victoria,
- (g) Any member who is a member of the Council of the National AMA but who is not otherwise a member of the Council,
- (h) Any person who was a director in the previous election year, but who is not now a director.

#### **84. Maximum number of consecutive years as a member of Council**

A member cannot serve more than eight consecutive years as a member of the Council. This does not apply to:

- (a) Independent Members;
- (b) Members of the Federal Council for so long as they remain on the Federal Council;
- (c) Members who are, or have been, directors of the Society, whose years of service as a director are to be disregarded in calculating the maximum number of consecutive years on Council.

#### **85. Calculating consecutive years**

In calculating consecutive years of service as a Councillor, periods as a Councillor but not as an Independent Member, a Federal Councillor or a director, shall be taken to be consecutive, even if broken by a period or periods in any of those capacities.

#### **86. Years as a Councillor prior to 2010 not to be counted**

In calculating the maximum number of consecutive years as a Councillor, any period as a Councillor prior to the Annual Ballot in 2010 is to be disregarded.

#### **87. Annual ballot:**

- (1) An Annual Ballot of ordinary members of the Society must be held each year, before the election of directors:
  - (a) to determine how many votes each nominee of an Affiliated Organisation has in the election of the directors;
  - (b) to elect Independent Members of Council and to determine how many votes each elected Independent Member has in the election of the directors.
- (2) The ballot may be conducted:
  - (a) by post; or
  - (b) by any electronic means consented to by the Council.

**88. Election of Fellows representatives**

A separate ballot may be held at the same time to elect five representatives of the Victorian Fellows of the National AMA.

**89. Qualification for Fellows election**

Only Fellows resident in Victoria may vote or stand for election in that ballot.

**90. Number of votes exercisable in Fellows election**

Each Victorian Fellow may exercise one vote in the ballot for election of Fellows.

**91. Number of Votes in Annual Ballot**

Each ordinary member of the Society has two votes at the Annual Ballot.

**92. Lists**

There shall be three lists:

- (a) Affiliated Academic Organisations
- (b) Affiliated Professional Organisations
- (c) Candidates for election as Independent Members.

**93. First Vote**

A member may cast the first vote for:

- (a) an Affiliated Academic Organisation; or
- (b) a candidate for an Independent Member position.

**94. Second Vote**

A member may cast the second vote for:

- (a) an Affiliated Professional Organisation or
- (b) a candidate for an independent member position.

A member may not cast both votes for the same candidate for an Independent Member position.

**95. Independent Member**

A person is elected as an Independent Member if that person receives a quota of votes.

**96. Quota for Independent Members**

A quota for this election is the greater of:

- (a) one hundred votes; or
- (b) such number above 100 which is equal to one percent of the number of ordinary members of the Society.

### **97. Declaration of result**

On the completion of the Annual Ballot the Returning Officer must advise all Councillors of:

- (a) The names of the Fellows elected;
- (b) The names of the Independent Members elected to Council; and
- (c) How many votes each Councillor who is a
  - (i) a nominee of an Affiliated Organisation; or
  - (ii) an Independent Membermay exercise in any ballot for election of a director during that year.

## **COUNCIL MEETINGS**

### **98. Minimum number of meetings**

At least four Council meetings must be called each year.

### **99. Regular meeting dates**

The dates and time for the regular meetings of the Council are determined in advance by the Council.

### **100. Meeting to Elect Directors**

A Council meeting is held each year prior to the Annual General Meeting, to elect directors.

### **101. Special Council meetings**

A special Council meeting must be called if at least 25 per cent of the Councillors:

- (a) request in writing that one be held; and
- (b) specify the purpose.

### **102. Period of notice required**

At least seven days notice must be given for any Council meeting.

### **103. Dispensing with notice**

But if the Board determines that the immediate urgency of the matter for which a special council meeting is called necessitates shorter notice, the meeting may be called with shorter notice. An election cannot be held under this provision.

### **104. Special Notice if election**

But if an election of a director or directors is to take place at that meeting:

- (a) at least twenty one days notice must be given; and
- (b) the notice must state that an election is to take place and that the special voting entitlements will apply to that election.

### **105. Business at special Council meetings**

The only business which can be transacted at a Special Council meeting is the business for which it was called.

### **106. Urgent business**

But if three quarters of the Councillors present decide that any other business is sufficiently urgent to require immediate consideration, that business may be considered. An election cannot take place under this provision.

## **PROCEDURE AT COUNCIL MEETINGS**

### **107. Presiding at Council Meetings**

The Chair of the Council shall normally preside at meetings of the Council.

### **108. Meeting may elect person to preside**

If the Chair is not present, or is unwilling to chair a meeting or part of a meeting,

- (a) the Immediate Past Chair of Council, if present, shall preside;
- (b) if the Immediate Past Chair is not present, or is unwilling to take the chair, the member of Council present who most recently held the office of Chair of Council before that person shall preside.
- (c) in any other case, the Council may elect a Councillor to preside.

### **109. Quorum for Council Meeting**

The quorum for a Council meeting is 25 per cent of the Councillors then in office personally present.

### **110. Alternates and proxies.**

If a Councillor who is a nominee is unable to attend a Council meeting, the nominating organisation or Society may appoint an Alternate.

### **111. Nominee may appoint in default**

If the nominating organisation or Society does not do so, the nominee who is unable to attend may appoint an Alternate.

### **112. Qualifications of alternate**

- (a) An Alternate must be a member of the Society and of the nominating organisation or Society.
- (b) In the case of a nominee of an Affiliated Medical Students Society, the Alternate must be a student associate member and a member of the Affiliated Medical Students Society.

### **113. Proxy for Council meeting**

A Councillor who is unable to attend a Council meeting may appoint another Councillor as Proxy.

### **114. Rights of Council Alternates and Proxies**

An Alternate or Proxy may exercise at that meeting all the powers of the Councillor who is unable to attend.

### **115. Appointment may limit powers**

But the instrument of appointment of an Alternate or Proxy may:

- (a) require the person appointed to vote as directed, or
- (b) restrict the matters on which the person appointed may vote.

### **116. Minimum notice of appointment of alternate or proxy**

An appointment of an Alternate or Proxy must be notified to the Chief Executive Officer not less than one hour before the commencement of the relevant Council meeting.

## **VOTING AT COUNCIL**

### **117. Two kinds of voting**

Voting at Council meetings is of two kinds.

### **118. Voting in Elections**

- (1) For the election of a director or directors:
  - (a) the vote is by secret ballot; and
  - (b) councillors may exercise the number of votes referred to in Clause 121.
- (2) This applies both:
  - (a) at the special annual election Council meeting; and
  - (b) on a vote at any other Council meeting to fill a casual vacancy.

### **119. Other voting**

For all other votes, each Councillor has one vote.

### **120. Secret ballot at other Council meetings**

A secret ballot, other than for an election, may be held if five Councillors request it, but each Councillor may still only exercise one vote.

### **121. Voting in the election of the directors**

In any ballot for the election of a director:

- (a) Each nominee of a Subdivision has as many votes as there are members of that Subdivision on that date;
- (b) Each nominee of an Affiliated Organisation has as many votes as that organisation received in the Annual Ballot;
- (c) Each Independent Councillor has as many votes as that person received in the Annual Ballot;
- (d) Each other Councillor has one vote;
- (e) Each Alternate has as many votes as the original nominee;
- (f) Each Proxy has as many votes as the person who gave the proxy.

### **122. Voting conditional on payment of subscription**

- (1) A person cannot vote at a Council meeting except as an alternate or proxy if that person:
  - (a) has not paid the annual subscription; or
  - (b) has not paid the agreed instalments due by the relevant date in accordance with an agreement with the Society.
- (2) But a person who cannot vote personally under this Clause may vote as an alternate or proxy for a person who can vote.

## **BOARD OF DIRECTORS**

### **123. Role of Board**

The Board is responsible for the management and control of the Society and, unless restricted by a provision of this Constitution or the Associations Incorporation Act, may exercise all the powers of the Society to achieve its objects.

### **124. Board may delegate**

The Board may by resolution delegate any of its functions to a person, working group or committee. But a responsibility specifically given to the Board by this Constitution cannot be delegated.

### **125. Board may make regulations**

The Board may, by resolution approved by at least half of the directors in office, make regulations to give effect to this Constitution.

### **126. Remuneration of directors**

- (1) Each director may be paid for service as a director. The Board shall determine the amount for each specific position, subject to a maximum fee payable to

each director set by a Remuneration Committee established as a standing committee of Council, elected annually by Council.

- (2) There shall be three members of the Remuneration Committee who:
  - (a) have been directors of the Company;
  - (b) cannot, whilst on the Committee, be directors of the Company; and
  - (c) need not be members of the Council.

### **127. Number**

There are eleven directors, namely:

- (a) Chair of Council,
- (b) Treasurer,
- (c) President (and AMA Victoria Nominee to Federal Council),
- (d) Vice President,
- (e) Seven directors without portfolio.

### **128. Directors all elected**

All directors are elected by the Councillors.

### **129. Election of the Board of Directors**

The annual election of directors is held at the meeting of the Council before the Annual General Meeting of the Society.

### **130. Election procedure**

- (a) The procedure for the election of directors is set out in Regulations.
- (b) The election for each position is a separate election (except that the election for all directors without portfolio is one election).

### **131. Term**

- (a) All directors are elected for a two year term, but the office of Vice President is held by an elected director for one year.
- (b) A term expires by effluxion of time at the commencement of the annual election Council meeting in the relevant year.

### **132. Term of person filling casual vacancy**

The person elected to fill a casual vacancy holds office for the remainder of the term for which the director's predecessor was elected.

### **133. Assumption of office**

Directors take office immediately on election.

#### **134. Sequence of elections**

Elections for vacancies arising in any year must be conducted in accordance with the following sequence (not all positions will be open):

- (a) Chair of Council,
- (b) Treasurer,
- (c) President,
- (d) Directors without portfolio,
- (e) Vice President.

#### **135. Eligibility for election as a Director**

- (a) Eligibility for election for a particular position is determined on the day before the date of the election. This does not apply to the position of Vice President.
- (b) All Councillors are eligible for election as a director or to a specific office on the Board except as set out in the following clauses.

#### **136. Affiliated Medical Students Society nominees ineligible**

A Councillor is ineligible to be elected as a director if that Councillor is a nominee of an Affiliated Medical Students Society.

#### **137. Ineligible if previously elected in special circumstances**

A Councillor is ineligible to be elected as a director if:

- (a) that person is a Councillor solely because that person was a director in the previous election year, but is not now a director; and
- (b) that person has previously been elected a director whilst a Councillor in the same category of membership of the Council.

#### **138. Currently Chair**

The Chair of Council, once elected, is ineligible for election, during the term of office, to any other position on the Board.

#### **139. Total permissible term would be exceeded**

A Councillor is ineligible to be elected as a director or to a specific office on the Board if at any time during the term for which that person would be elected, the Councillor would exceed the maximum number of consecutive years in office as follows:

- (a) President: 2 years
- (b) Vice President: 2 one year terms
- (c) Combination of President and Vice President: 4 years
- (d) All directors: 8 years in any capacity

#### **140. Years in office prior to 2010 not to be counted**

In calculating the maximum number of consecutive years in office, any period in office prior to the annual election of directors in 2010 is to be disregarded.

#### **141. Partial term after election to casual vacancy excluded**

If a Councillor is elected to fill a casual vacancy in the position of President or Vice President, the period for which that person is elected at that election is disregarded in calculating maximum terms of office in those positions.

#### **142. Eligibility to stand for President**

The President is elected from those eligible directors who were in office immediately before the day of the elections.

#### **143. Eligibility to stand for Vice President**

The Vice-President is elected from those eligible directors who have been elected (at the current election or the election in the previous year) to hold office for the coming year.

#### **144. Retiring Vice President**

If the retiring Vice-President is not elected President, and has only served one year of the two-year term for which originally elected as director without portfolio, the Vice-President reverts to director without portfolio for the coming year.

#### **145. Years of election**

- (a) The Chair of Council and the Treasurer are normally elected in the same year.
- (b) The President is normally elected in the alternate year.
- (c) Four directors without portfolio are normally elected each year but if the election of four directors without portfolio would result in there being fewer than eleven directors, then an additional director or directors will be elected for a one year term, so that the total number of directors will be eleven.

#### **146. Casual vacancies**

The circumstances in which a person ceases to be a director are set out in the following clauses.

#### **146A Resignation**

A director of the Society may resign as a director by giving a written notice of resignation to the Society at its registered address.

#### **146B Disqualification from managing corporations**

A person ceases to be a director of the Society if the person becomes disqualified from managing corporations under Part 2D.6 of the Corporations Act 2001.

#### **146C Automatic disqualification for certain convictions**

A person becomes disqualified from managing the Society if the person:

- (a) is convicted on indictment of an offence that:
  - (i) concerns the making, or participation in making, of decisions that affect the whole or a substantial part of the business of the Society; or
  - (ii) concerns an act that has the capacity to affect significantly the Society's financial standing; or
- (b) is convicted of an offence that:
  - (i) is a contravention of the Corporations Act 2001 and is punishable by imprisonment for a period greater than 12 months; or
  - (ii) involves dishonesty and is punishable by imprisonment for at least 3 months; or
- (c) is convicted of an offence against the law of a foreign country that is punishable by imprisonment for a period greater than 12 months.

The offences covered by paragraph (a) and subparagraph (b) (ii) include offences against the law of a foreign country.

#### **146D Period of disqualification**

The period of disqualification under the previous clause starts on the day the person is convicted and lasts for:

- (a) if the person does not serve a term of imprisonment 5 years after the day on which they are convicted; or
- (b) if the person serves a term of imprisonment 5 years after the day on which they are released from prison.

#### **146E Disqualification on Bankruptcy**

A person is disqualified from managing the Society if the person is an undischarged bankrupt under the law of Australia, its external territories or another country.

#### **146F Disqualification if extant personal insolvency agreement**

A person is disqualified from managing the Society if:

- (a) the person has executed a personal insolvency agreement under:
  - (i) Part X of the *Bankruptcy Act 1966*; or
  - (ii) a similar law of an external Territory or a foreign country; and
- (b) the terms of the agreement have not been fully complied with.

#### **146G Disqualification if disqualified under CATSI Act**

A person is disqualified from managing the Society at a particular time if the person is, at that time, disqualified from managing Aboriginal and Torres Strait Islander corporations under Part 6-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

#### **146H Disqualification if disqualified under foreign court orders**

A person is disqualified from managing the Society if the person is disqualified, under an order made by a court of a foreign jurisdiction that is in force, from:

- (a) being a director of a foreign company; or
- (b) being concerned in the management of a foreign company.

In this clause "**foreign jurisdiction**" means a foreign country, or part of a foreign country, prescribed by the Corporations Regulations as a foreign jurisdiction for the purposes of section 206B of the Corporations Act 2001.

#### **147. Removal of director by Society**

A resolution, request or notice of any or all of the directors of the Society is void to the extent that it purports to:

- (a) remove a director from their office; or
- (b) require a director to vacate their office.

#### **147A Removal by members**

The Society may by resolution remove a director from office despite anything in:

- (a) an agreement between the Society and the director; or
- (b) an agreement between any or all members of the Society and the director.

#### **147B Notice of intention to move resolution for removal of director**

Notice of intention to move the resolution must be given to the Society at least 2 months before the meeting is to be held. However, if the Society calls a meeting after the notice of intention is given under this clause, the meeting may pass the resolution even though the meeting is held less than 2 months after the notice of intention is given.

#### **147C Director to be informed**

The Society must give the director a copy of the notice as soon as practicable after it is received.

#### **147D Director's right to put case to members**

The director is entitled to put their case to members by:

- (a) giving the Society a written statement for circulation to members; and
- (b) speaking to the motion at the meeting.

#### **147E Circulation of statement**

The written statement is to be circulated by the Society to members by:

- (a) sending a copy to everyone to whom notice of the meeting is sent if there is time to do so; or
- (b) if there is not time to comply with paragraph (a) having the statement distributed to members attending the meeting and read out at the meeting before the resolution is voted on.

#### **147F When statement need not be circulated**

The director's statement does not have to be circulated to members if it is more than 1,000 words long or defamatory.

#### **148. Directorship ceases on cessation of membership**

In addition, a person ceases to be a director if the person ceases to be an Ordinary member of the Society.

#### **149. Director not affected by actions of nominating body**

A director who is a nominee of an Affiliated Organisation does not cease to be a director if:

- (a) the Affiliated Organisation ceases to be recognised; or
- (b) the Affiliated Organisation changes its nominee.

#### **150. Director not affected by actions of Subdivision**

A director who is a nominee of a Subdivision does not cease to be a director if:

- (a) the Subdivision ceases to exist; or
- (b) the Subdivision changes its nominee.

#### **151. Incapacity of President**

- (1) If the Board believes that the President is incapable of performing the functions of the office, it shall refer the matter to a committee constituted in the same manner and with the same membership as the Disciplinary Committee.
- (2) If that Committee confirms the incapacity of the President to perform the functions of the office, the Vice President shall assume the functions of the President and shall be known as the Acting President.
- (3) The Vice President shall then be Acting President until such time as the Committee certifies that the President is capable of resuming the functions of the office or the President ceases to be a director.

## **FILLING CASUAL VACANCIES**

### **152. Filling casual vacancies - general rule**

If a person ceases to be a director before the end of the period for which that person was elected, an election must be held at the next Council meeting to fill the vacancy.

### **153. Filling casual vacancies – if existing director intends to stand**

If the office in which the vacancy arose is filled by an existing director:

- (a) the vacancy in the position previously held by that director must also be filled at that Council meeting; and
- (b) notice of the possible contingent vacancies must be notified with the primary vacancy.

### **154. Filling casual vacancy arising close to Council meeting**

But if the vacancy occurs less than six weeks before the next Council meeting, the election must take place at the following Council meeting.

### **155. Filling casual vacancy arising close to annual elections – general rule**

- (a) If a vacancy in any position occurs within three months of the annual Council meeting at which the elections take place, the vacancy remains unfilled.
- (b) This does not apply to the position of President.

### **156. Filling casual vacancy close to annual election - position of President**

A vacancy within three months of the election in the position of President is filled by the Vice President, and the Board elects one of the members without portfolio to fill the vacancy in the position of Vice President.

## **MEETINGS OF THE BOARD**

### **157. Who may call**

A meeting of the Board shall be called by the Chief Executive Officer if:

- (a) decided by the Board; or
- (b) directed by the President; or
- (c) requested by any director.

### **158. Period of notice for Board meeting**

At least 7 days notice shall be given of a Board meeting.

### **159. Dispensing with notice**

A Board meeting may be held with less notice if the President considers that the business of the meeting is urgent.

### **160. Electronic meetings**

Meetings of the Board may be held electronically, if each director participating can communicate with every other participant.

### **161. Board resolution without a meeting**

A document:

- (a) setting out a resolution,
  - (b) signed by all the directors entitled to vote,
  - (c) stating that they all agree with the resolution
- is as effective as a resolution passed at a Board meeting.

### **162. Voting**

Every director entitled to vote on a resolution has one vote. The person presiding does not have a casting vote.

### **163. Quorum**

The quorum at a Board meeting is one half of the number of directors in office at the time. But if the number of directors is not a whole number, the quorum is the first whole number above that number.

### **164. Effect of vacancy on right to make decisions**

The right of the Board to make decisions is not affected by a vacancy in the number of directors in office.

### **165. Effect of defect in appointment.**

A Board decision is not affected by the later discovery that:

- (a) there was a defect in the appointment of a director participating; or
- (b) that a person participating was disqualified from being a director.

### **166. Directors with personal interests in matters**

The Associations Incorporation Act sets out the responsibilities of a director who has a material person interest in a matter.

### **167. Person presiding**

- (1) The President is entitled to preside at a Board meeting.
- (2) If the President:
  - (a) is unable or unwilling to preside; or

- (b) is absent from the meeting  
the person to preside shall be the Vice President.
- (3) If the Vice President:
  - (a) is unable or unwilling to preside; or
  - (b) is absent from the meetingthen a director elected by the Board for that meeting shall preside.

#### **168. Chief Executive Officer**

The Board shall appoint a Chief Executive Officer on such terms as it thinks fit.

#### **169. Society Secretary**

The Chief Executive Officer shall be the Society Secretary and Public Officer.

#### **170. Attendance at Board meetings**

The Chief Executive Officer is entitled to attend all Board meetings, except that part of a Board meeting considering matters relating to the position of the Chief Executive Officer.

#### **171. Delegation to the Chief Executive Officer**

The Board may by resolution delegate to the Chief Executive Officer such of the powers of the directors as are not required by the Act or this Constitution to be dealt with by the directors.

### **FINANCIAL AND LEGAL MATTERS**

#### **172. Financial records**

The Society must keep written financial records that:

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited.

The obligation to keep financial records of transactions extends to transactions undertaken as trustee.

#### **172A Period for which records must be retained**

The financial records must be retained for 7 years after the transactions covered by the records are completed.

#### **172B Physical format**

If financial records are kept in electronic form, they must be convertible into hard copy. Hard copy must be made available within a reasonable time to a person who is entitled to inspect the records.

### **172C Place where records are kept**

The Society may decide where to keep the financial records.

### **172D Signing cheques**

The Board must determine by resolution:

- (i) the procedure for signing cheques; and
- (ii) which officers (which includes employees) of the Society have the authority to sign cheques.

### **172E Derivation of funds**

The funds of the Society may be derived from subscriptions, investments and such other sources as the Board approves.

### **173. Audit**

The Society must have the financial report for a financial year audited in accordance with the Act and obtain an auditor's report.

### **173A Appointments at AGMs to fill vacancies**

The Society must appoint an auditor of the Society to fill any vacancy in the office of auditor at each AGM.

### **173B Term of office of auditor so appointed**

An auditor appointed at an Annual General Meeting holds office until the auditor:

- (a) dies; or
- (b) is removed, or resigns, from office; or
- (c) ceases to be capable of acting as auditor; or
- (d) ceases to be auditor.

### **173C Cessation of members of audit firm**

If an audit firm ceases under the previous clause to be the auditor of the Society at a particular time, each member of the firm who:

- (a) is taken to have been appointed as an auditor of the Society; and
  - (b) is an auditor of the Society immediately before that time;
- ceases to be an auditor of the Society at that time.

### **173D Auditor (appointment to fill casual vacancy)**

If:

- (a) a vacancy occurs in the office of auditor of the Society; and
- (b) the vacancy is not caused by the removal of an auditor from office; and
- (c) there is no surviving or continuing auditor of the Society;

the directors must, within 1 month after the vacancy occurs, appoint an auditor to fill the vacancy unless the Society at a general meeting has appointed an auditor to fill the vacancy.

**173E Term of office of auditor appointed by directors**

An auditor appointed under the previous clause holds office until the Society's next AGM.

**173F Appointment to replace auditor removed from office**

- (1) This clause deals with the situation in which an auditor of the Society is removed from office at a general meeting.
- (2) The Society may at that general meeting (without adjournment), by special resolution immediately appoint an individual, firm or Society as auditor of the Society if a copy of the notice of nomination has been sent to the individual, firm or Society.
- (3) If a special resolution under subclause (2):
  - (a) is not passed; or
  - (b) could not be passed merely because a copy of the notice of nomination has not been sent to an individual, firm or Societythe general meeting may be adjourned and the Society may, at the adjourned meeting, by ordinary resolution appoint an individual, firm or Society as auditor of the Society if:
  - (c) a member of the Society gives the Society notice of the nomination of the individual, firm or Society for appointment as auditor; and
  - (d) the Society receives the notice at least 14 clear days before the day to which the meeting is adjourned.
- (4) The day to which the meeting is adjourned must be:
  - (a) not earlier than 20 days after the day of the meeting; and
  - (b) not later than 30 days after the day of the meeting.
- (5) Subject to other provisions of this Constitution, an auditor appointed under subclauses (2) or (3) holds office until the Society's next AGM.

**174. Common Seal**

- (a) The Common Seal of the Society shall only be affixed to a document in accordance with a resolution of the Board.
- (b) Each resolution shall be recorded in a register kept for that purpose.
- (c) The Chief Executive Officer is responsible for the custody of the Common Seal.

### **175. Witnessing affixing of the seal**

The sealing must be witnessed by:

- (a) a director; and
- (b) one of:
  - (i) another director,
  - (ii) the Chief Executive Officer, or
  - (iii) some other person appointed by resolution of the Board for that purpose.

Each witness must sign the document to which the Common Seal is affixed.

### **176. Minutes**

The Board must ensure that minutes are taken, authenticated and kept of all:

- (a) general meetings;
- (b) Board meetings; and
- (c) resolutions without a meeting.

## **INDEMNITIES**

### **177. Exemptions not allowed**

The Society must not exempt a person (whether directly or through an interposed entity) from a liability to the Society incurred as an officer or auditor of the Society.

### **177A When indemnity for liability (other than for legal costs) not allowed**

The Society must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against any of the following liabilities incurred as an officer or auditor of the Society:

- (a) a liability owed to the Society or a related body corporate;
- (b) a liability for a pecuniary penalty under the Act;
- (c) a liability that is owed to someone other than the Society or a related body corporate and did not arise out of conduct in good faith.

This clause does not apply to a liability for legal costs.

### **177B When indemnity for legal costs not allowed**

The Society must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against legal costs incurred in defending an action for a liability incurred as an officer or auditor of the Society if the costs are incurred:

- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under the previous Clause;
- or

- (b) in defending or resisting criminal proceedings in which the person is found guilty; or
- (c) in defending or resisting proceedings brought by the Registrar or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
- (d) in connection with proceedings for relief to the person in which the Court denies the relief.

Paragraph (c) does not apply to costs incurred in responding to actions taken by the Registrar or a liquidator as part of an investigation before commencing proceedings for the court order.

The Society may be able to give the person a loan or advance in respect of the legal costs.

#### **177C Outcome of proceedings includes outcome on appeal**

For the purposes of the previous Clause, the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

#### **177D Insurance premiums for certain liabilities of director, secretary, other officer or auditor**

The Society must not pay, or agree to pay, a premium for a contract insuring a person who is or has been an officer or auditor of the Society against a liability (other than one for legal costs) arising out of conduct involving a willful breach of duty in relation to the Society.

This clause applies to a premium whether it is paid directly or through an interposed entity.

#### **177E Certain indemnities, exemptions, payments and agreements not authorised and certain documents void**

- (1) Clauses 177A – 177D do not authorise anything that would otherwise be unlawful.
- (2) Anything that purports to indemnify or insure a person against a liability, or exempt them from a liability, is void to the extent that it contravenes the previous clauses.

#### **178. Liability of members**

As set out in Section 15 of the Associations Incorporation Act, except as otherwise provided by that Act, a member of the committee, the public officer or a member of the Society shall not by reason only of being such a member or officer, be liable to contribute towards the payment of the debts and liabilities of the Society, or the costs, charges and expenses of the winding up of the Society.

### **179. Disposal of assets on winding up**

- (1) If the Society is wound up, its remaining assets must not be distributed to its members.
- (2) Any assets remaining on winding up must be given to an entity or entities which:
  - (a) have similar objects to those of the Society; and
  - (b) which also prohibit distribution of profit, income or assets to their members.
- (3) The entity or entities must be determined:
  - (a) by the members in general meeting, or, if that is not done,
  - (b) by resolution of the Board approved by more than half of all the directors in office.

### **180. Custody and inspection of documents**

- (a) The Chief Executive Officer is responsible for the custody and control of the documents of the Society.
- (b) A member may inspect the minutes of a general meeting of the Society or a meeting of the Council at the office of the Society on reasonable notice to the Chief Executive Officer.
- (c) The Regulations may set out the rights of members to inspect any other documents of the Society.

## **TRANSITIONAL PROVISIONS**

### **181. This Clause overrules any other provision of this Constitution**

- (1) The persons holding office as Councillors and directors during the election year 2009-2010, hold office despite any changes made by the adoption of this Constitution.
- (2) At the Council meeting to elect directors held in 2010:
  - (a) No election will be held for the AMA Victoria nominee to Federal Council;
  - (b) The Three Vice presidents whose term did not expire at that election continue in office as Directors without portfolio.
  - (c) The President will be elected for a two year term.
  - (d) The Chair of Council will be elected for a one year term.
  - (e) The Treasurer will be elected for a one year term.
  - (f) Four directors without portfolio will be elected for a two year term.
  - (g) One director without portfolio will be elected for a one year term, but if the election of that one director without portfolio would result in there being fewer than eleven directors, then an additional director or directors will be elected for a one year term, so that the total number of directors will be eleven.

- (h) The Vice President will be elected for a one year term from the directors without portfolio elected at the current election or at the election (of Vice Presidents) in the previous year
- (3) At the Special Council Meeting held in 2011:
  - (a) The Chair of Council will be elected for a two year term;
  - (b) The Treasurer will be elected or a two year term; and
  - (c) Four directors without portfolio will be elected for a two year term;
  - (d) If the election of four directors without portfolio would result in there being fewer than eleven directors, then an additional director or directors will be elected for a one year term, so that the total number of directors will be eleven;
  - (e) The Vice-President will be elected for a one year term from the directors without portfolio.

**182. Deletion of transitional provisions**

Clause 181 and this clause are deleted one month after the Special Council Meeting in 2011.

**CONSTITUTION  
of  
THE MEDICAL SOCIETY OF VICTORIA INC**

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