

**Mental Health Legal Centre Inc.**

**Constitution**

**Updated November 2009**

## **CONSTITUTION**

### **Model Rules**

#### **1. NAME**

The name of the incorporated association is MENTAL HEALTH LEGAL CENTRE INCORPORATED (in these rules called "The Association").

#### **2. INTERPRETATION**

1 In these rules, unless the contrary intention appears:

"Committee" means the Committee of Management of the Association

"Financial Year" means the year ending 30 June

"General Meeting" means a general meeting of members convened in accordance

"Member" means a member of the Association

"Ordinary Member of the Committee" means a member of the Committee who is not an officer of the Association under Rule 21

"The Act" means the Association Incorporation Act 1981

"The Regulations" means regulations under the Act.

2 In these Rules, a reference to the secretary of an Association is a reference:

a. where a person holds office under these Rules as secretary of the Association to that person; and

b. in any other case, to the public officer of the Association.

3 Words or expressions contained in these rules shall be interpreted in accordance with the provisions of the **Acts**

**Interpretation Act 1958** and the Act as in force from time to time.

### **3. MEMBERSHIP**

- 1)
  - a. Any organisation which operates in Victoria and supports the purposes of the Association and has a demonstrated interest in the area of mental health is eligible to be a Member Organisation of the Association: and
  - b. Any natural person who resides in Victoria and supports the purposes of the Association and has a demonstrated interest in the area of mental health is eligible to be an Individual Member of the Association
- 2) A person who is not a member of the Association at the time of the incorporation of the Association (or who was such a member at that time but has ceased to be a member) shall not be admitted to membership:
  - a. unless he or she is nominated as provided in sub-clause (3): and
  - b. his or her admission as a member is approved by the Committee.
- 3) A nomination of a person for membership of the Association:
  - a. shall be made in writing in the form set out in Appendix 1; and
  - b. shall be lodged with the secretary of the Association.
- 4) As soon as is practicable after the receipt of a nomination, the secretary shall refer the nomination to the Committee.
- 5) Upon a nomination being referred to the Committee, the Committee shall determine whether to approve or to reject the nomination.
- 6) Upon a nomination being approved by the Committee, the Secretary shall, with as little delay as possible, notify the nominee in writing that he or she is approved for membership of the Association and request payment with the period of 28 days after receipt of the notification of the sum payable under these rules as the entrance fee and the first years annual subscription.

- 7) The secretary shall, upon payment of the amounts referred to in sub-clause (6) within the period referred to in that sub-clause, enter the nominee's name in the register of members kept by him or her and, upon the name being so entered the nominee becomes a member of the Association.
- 8) A right, privilege, or obligation of a person by reason of his membership of the association
  - a. is not capable of being transferred or transmitted to another person;
  - b. terminates upon the cessation of his or her membership whether by death or resignation or otherwise.

#### **4. ENTRANCE FEE AND ANNUAL SUBSCRIPTION**

Entrance fees and annual subscriptions may be determined by the Committee from time to time.

#### **5. REGISTER OF MEMBERS**

The Secretary shall keep and maintain a register of members in which shall be entered the full name, sch. 2, 14 address and date of entry of the name of each member and the register shall be available for inspection by members at the address of the Public Officer.

#### **6. RESIGNATION OF MEMBER**

- 1) A member of the Association who has paid all moneys due and payable by him or her to the Association may resign from the association by first giving one months notice in writing to the secretary of his or her intention to resign and upon the resignation of that period of notice, the member shall cease to be a member.
- 2) Upon the expiration of a notice given under sub-clause (1), the secretary shall make in the register of members recording the date on which the member by whom the notice was given, ceased to be a member

#### **7. DISCIPLINE OF MEMBER**

- 1) Subject to these rules, the Committee may by resolution:

- a) Expel a member from membership of the Association
  - b) Suspend a member from membership of the Association for a specified period; or
  - c) fine a member in accordance with the regulations, if the committee is of the opinions that the member-
    - i) has refused or neglected to comply with these rules; or
    - ii) has been guilty of conduct unbecoming a member or prejudicial to the interests of the Association.
- 2) A resolution of the Committee under sub-clause (1);
- a) does not take effect unless the committee, at a meeting held not earlier than 14 days and not later than 28 days after the service on the member of a notice under sub-clause (3) confirms the resolution in accordance with this clause; and
  - b) where the member exercises a right of appeal to the Association under this clause, a resolution of the Committee under sub-clause (1) does not take effect unless the Association confirms the resolution in accordance with this clause.
- 3) Where the committee passes a resolution under sub-clause (1), the secretary shall, as soon as practicable, cause to be served on the member a notice in writing:
- a) setting out the resolution of the Committee and the grounds on which it is based;
  - b) stating that the member may address the Committee at a meeting to be held not earlier than 14 days and not later than 28 days after service of that notice;
  - c) stating the date, place and time of that meeting;
  - d) informing the member that he or she may do one or more of the following-
    - i) attend that meeting;
    - ii) give to the Committee before the date of that meeting a written statement seeking the revocation of the resolution;

iii) not later than 24 hours before the date of the meeting, lodge with the secretary a notice to the effect that he or she wishes to appeal to the Association in general meeting against the resolution.

- 4) At a meeting of the Committee held in accordance with sub-clause (2), the Committee:
  - a) shall give to the member an opportunity to be heard;
  - b) shall give due consideration to any written statement submitted by the member; and
  - c) shall by resolution determine whether to confirm or to revoke the resolution.
5. Where the secretary receives a notice under sub-clause (3), he shall notify the Committee and the Committee shall convene a general meeting of the Association to be held within 21 days after the date on which the secretary received the notice.
6. At a general meeting of the Association convened under sub-clause (5):
  - a) no business other than the question of the appeal shall be transacted
  - b) the Committee may place before the meeting details of the grounds for the resolution and the reasons for the passing of the resolution
  - c) the member shall be given the opportunity to be heard; and
  - d) the members present shall vote by secret ballot on the question whether the resolution should be confirmed or revoked.
7. If a general meeting:
  - a) two-thirds of the members vote in person or by proxy in favour of the confirmation of the resolution, the resolution is confirmed; and
  - b) in any other case, the resolution is revoked.

## **8. ANNUAL GENERAL MEETING**

1. The Association shall in each calendar year convene an annual general meeting of its members.
2. The annual general meeting shall be held on such a day as the Committee determines.
3. The annual general meeting shall be specified as such in the notice convening it.
4. The ordinary business of the annual general meeting shall be:
  - a) to confirm the minutes of the preceding annual meeting and of any general meeting held since that meeting;
  - b) to receive from the Committee reports upon the transactions of the association during last preceding financial year;
  - c) to elect ordinary members of the committee three of whom shall then be elected as Officers of the Association at that annual general meeting;
  - d) to receive and consider the statement submitted by the Association in accordance with section 30(3) if the Act.
5. The annual general meeting may transact special business of which notice is given in accordance with these rules.
6. The annual general meeting shall be in addition to any other general meetings that may be held in the same year.

## **9 SPECIAL GENERAL MEETINGS**

All general meetings other than the annual general meeting shall be called special general meetings.

Sch .10

10.

- 1) The Committee may, whenever it thinks fit, convene a special general meeting of the Association and, where, but for this sub-clause, more than 15 months would lapse between annual general meetings shall convene a special general meeting before the expiration of that period.
- 2) The Committee shall, on the requisition in writing of members representing not less than 5% of the total number of members, convene a special general meeting of the Association.

- 3) The requisition for a special general meeting shall state the objects of the meeting and shall be signed by the members making the requisition and be sent to the address of the Secretary and may consist of several documents in a like form, each signed by one or more of the members making the requisition.
- 4) If the Committee does not cause a special general meeting to be held within one month after the date on which the requisition is sent to the address of the Secretary, the members making the requisition, or any of them, may convene a special general meeting to be held not later than 3 months after that date.
- 5) A special general meeting convened by members in pursuance of these rules shall be convened in the same manner as nearly as possible as that in which those meetings are convened by the Committee and all reasonable expenses incurred in convening the meeting shall be refunded by the Association to the persons incurring the expenses.

#### **CONVENING OF GENERAL MEETINGS.**

11.

- 1) The Secretary of the Association shall, at least 14 days before the date fixed for holding a general meeting of the Association, cause to be sent to each member of the Association at his or her address appearing in the register of members, a notice by prepaid post stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- 2) No business other than that set out in the notice convening the meeting shall be transacted at the meeting.
- 3) A member desiring to bring any business before a meeting may give notice of that business in writing to the secretary, who shall include that business in the notice calling the next general meeting after the receipt of the notice.

#### **Procedure of General Meetings.**

#### **Proceedings at Meetings.**

12.

- 1) All business that is transacted at a special general meeting and all business that is transacted at the annual general meeting with the exception of that specially referred to in these rules as

being the ordinary business of the annual general meeting shall be deemed to be special business.

- 2) No item of business shall be transacted at a general meeting unless a quorum of members entitled under these rules to vote is present during the time when the meeting is considering that item.
- 3) 5 members personally present (being members entitled under these rules to vote at a general meeting) constitute a quorum for the transaction of the business of a general meeting.
- 4) If within half an hour after the appointed time for the commencement of a general meeting, a quorum is not present, the meeting if convened upon the requisition of members shall be dissolved and in any case shall stand adjourned to the same day in the next week at the same time and (unless another place is specified by the Chairperson at the time of the adjournment or by written notice to members given before the day to which the meeting is adjourned) at the same place and if at the adjourned meeting the quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members ( not being less than 3) shall be a quorum.

13.

- 1) The Chairperson, or in his or her absence, the Secretary, shall preside as Chairperson at each general meeting of the Association. *Sch .5*
- 2) If the Chairperson and the Secretary are absent from a general meeting, the members present shall elect one of their number to preside as Chairperson at the meeting.

14.

- 1) The Chairperson of a general meeting at which a quorum is present may, with the consent of the meeting, adjourn the meeting from time to time and place to place, but no business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- 2) Where a meeting is adjourned for 14 days or more, a notice of the adjourned meeting shall be given as in the case of the general meeting.
- 3) Except as provided in sub-clauses (1) and (2), it is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.

15. A question arising at a general meeting of the Association shall be determined on a show of hands and unless before or on the declaration of the show of hands a poll is demanded, a declaration by the Chairperson that a resolution has, on a show of hands, been carried unanimously or carried by a particular majority or lost, and an entry to that effect in the Minute Book of the Association is evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

*Sch.5*

16.

- 1) Upon any question arising at a general meeting of the Association, a member has one vote only.
- 2) All votes shall be given personally or by proxy.
- 3) In the event of an equality of voting on a question, the Chairperson of the meeting shall not be entitled to exercise a second or casting vote and the question shall lapse.

*Sch 5*

17.

- 1) If at a meeting a poll on any question is demanded by not less than three members, it shall be taken at that meeting in such manner as the Chairperson may direct and the resolution of the poll shall be deemed to be a resolution of the meeting on that question.
- 2) A poll that is demanded on the election of a Chairperson or on a question of an adjournment shall be taken forthwith and a poll that is demanded on any other question shall be taken at such time before the close of the meeting as the Chairperson may direct.

*Sch. 5*

18 A member is not entitled to vote at any general meeting unless all moneys due and payable by him or her to the Association have been paid, other than the amount of the annual subscription payable in respect of the current financial year.

*Sch 5*

19.

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

- 2) The notice appointing the proxy shall be in the form set out in Appendix 2.
- 3) No one member shall hold more than one proxy at any meeting.

## **COMMITTEE OF MANAGEMENT**

20.

- 1) The affairs of the Association shall be managed by a Committee of Management constituted as provided in Rule 21.
- 2) The Committee:
  - a) shall control and manage the business and affairs of the Association; sch:4
  - b) May, subject to these rules, the regulations and the Act, exercise all such powers and functions that are required by these rules to be exercised by general meetings of the members of the members of the Association; and
  - c) subject to these rules, the regulations and the Act, has power to perform all such acts and things as appear to the Committee to be essential for the proper management of the business and affairs of the Association.

21.

- 1) The Committee shall consist of nine members comprising;
  - a) Eight individual members each of whom have a demonstrated interest in the rights of mental health consumers and no less than three of whom are or have been consumers of mental health services; and
  - b) One member nominated by the employees of the Mental Health Legal Centre as representative.
- 2) The Officers of the Association shall be:
  - a) Chairperson;
  - b) a Treasurer; and
  - c) a Secretary.

- 3) At each annual general meeting the Association shall decide by majority whether each proposed nominee for election under sub-clause 1(d) is accepted as a person with demonstrated interest in the provision of mental health services.
- 4) The provisions of Rule 22 so far as they are applicable and with the necessary modifications, apply to and in relation to the election of persons to any of the offices mentioned in sub Clauses (1) and (2).
- 5) Subject to Rule 22 each member and officer of the Association shall hold office until the annual general meeting next after the date of his or her election to office but is eligible for re-election.
- 6) In the event of a casual vacancy in any office referred to in sub-clause (1) and (2), the committee may appoint one of its members to the vacant office and the member so appointed may continue in office up to and including the conclusion of the annual general meeting next following the date of his/her appointment.
- 7) Subject to section 23 of the Act, the committee shall consist of 9 ordinary members, three of whom shall be the officers of the Association , each of whom shall hold office on the Committee until the annual general meeting next after the date of his or her appointment.
- 8) In the event of a casual vacancy occurring in the office of a member of the Committee, the Committee may appoint a member of the Association to fill the vacancy and the member so appointed shall hold office, subject to these rules, until the conclusion of the annual general meeting next following the date of his/her appointment.

## **ELECTION OF COMMITTEE**

22.

- 1) Nominations of candidates for election as officers of the Association or as ordinary members of the Committee:
  - Sch.4 (a)
  - a) shall be made in writing, signed by two members of the Association and accompanied by the written consent of the candidate (which may be endorsed on the form of nomination); and
  - b) shall be delivered to the secretary of the Association not

less than 7 days before the date fixed for the holding of the annual general meeting.

- 2) If insufficient nominations are received to fill all vacancies on the Committee, the candidates nominated shall be deemed to be elected and further nominations shall be received at the annual general meeting.
- 3) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated shall be deemed to be elected.
- 4) If the number of nominations exceeds the number of vacancies to be filled, a ballot shall be held.
- 5) The ballot for the election of officers and ordinary members of the Committee shall be conducted at the annual general meeting in such usual and proper manner as the Committee may direct.
- 6) A nomination of a candidate for election under this clause is not valid if that candidate has been nominated for another office for election at the same election.

## **VACANCY OF COMMITTEE MEMBERSHIP**

23

For the purposes of these rules, the office of an officer of the Association or of an ordinary member of the Committee becomes vacant if the officer or member:

Sch. 4 ( c)

- a) ceases to be a member of the Association;
- b) becomes an insolvent under administration within the meaning of the Companies (Victoria ) code;
- c) resigns his or her office by notice in writing given to the Secretary;
- d) is absent without apology or explanation to the satisfaction of the majority of the Committee for more than three consecutive Committee meetings.

## **PROCEDURE OF COMMITTEE**

24

- 1) The Committee shall meet at least 5 times in each year at such place and such times as the Committee may determine. It may meet in person, via telephone conference, teleconferencing (for future) or through the use of email as it sees fit.

Sch. 4 (e)
- 2) Special meetings of the Committee may be convened by the Chairperson by any 4 of the members of the Committee.
- 3) Notice shall be given to members of the Committee of any special meeting specifying the general nature of the business to be transacted and no other business shall be transacted at such a meeting.
- 4) Any 5 members of the Committee constitute a quorum for the transaction of the business of a meeting of the Committee.
- 5) No business shall be transacted unless a quorum is present and if within half an hour of the time appointed for the meeting a quorum is not present the meeting shall stand adjourned to the same place and at the same hour of the same day in the following week unless the meeting was a special meeting in which case it lapses.
- 6) At meetings of the Committee:
  - a) the Chairperson or in his or her absence the Secretary shall preside; or
  - b) if the Chairperson and the Secretary are absent, such one of the remaining members of the Committee as may be chosen by the members present shall preside.
- 7) Questions arising at a meeting of the Committee or of any sub-committee appointed by the Committee shall be determined on a show of hands or, if demanded by a member, by a poll taken in such manner as the person presiding at the meeting may determine.
- 8) Each member present at a meeting of the Committee or of any sub-committee appointed by the Committee (including the person presiding at the meeting) is entitled to one vote and, in the event of an equality of votes on any question, the person presiding shall not be entitled to a second or casting vote and the question shall lapse.
- 9) Written notice of each Committee meeting shall be serviced on each member of the Committee meeting shall be serviced on each member of the Committee by delivering it to him at a

reasonable time before the meeting or by sending it by pre-paid post addressed to him at his usual or last known place of abode at least two business days before the date of the meeting.

- 10) Subject to sub-clause (4) the Committee may act notwithstanding any vacancy on the Committee.

### **DUTIES OF SECRETARY**

25. The secretary of the Association shall keep minutes of the resolutions and proceedings of each general meeting and each committee meeting in books provided for that purpose together with a record of the names of persons present at committee meetings.

### **DUTIES OF TREASURER**

26.

- 1) The Treasurer of the Association:
  - a) shall collect and receive all moneys due to the Association and make all payments authorised by the Association; and
  - b) shall keep correct accounts and books showing the financial affairs of the Association with full details of all receipts and expenditure connected with the activities of the Association.
- 2) The accounts and books referred to in sub-clause shall be available for inspection by members.

### **REMOVAL OF COMMITTEE MEMBER**

27.

- 1) The Association in general meeting may by resolution remove any member of the Committee before the expiration of his term of office and appoint another member in his stead to hold office until the expiration of the term of the first mentioned member.
- 2) Where the member to whom the proposed resolution to in sub – clause (1) makes representations in writing to the secretary or president of the Association (not exceeding a reasonable length) and requests that they be notified to the members of the Association, the secretary or the President may send a copy of

the representations to each member of the Association or, if they are not so sent, the member may require that they be read out at the meeting.

### **CHEQUES ETC.**

- 28 All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments shall be signed by two members of the Committee or one member of the Committee and a nominated member of staff.

*Sch .8*

### **COMMON SEAL**

- 29.
- 1) The Common Seal of the Association shall be kept in the custody of the Secretary.
  - 2) The Common Seal shall be affixed to any instrument except by the authority of the Committee and the affixing of the Common Seal shall be attested by the signatures either or two members of the Committee or of one member of the Committee and of the Public Officer of the Association.

*Sch. 12*

### **ALTERATION OF RULES AND STATEMENT OF PURPOSES**

30. These rules and the statement of purposes of the Association shall not be altered except in accordance with the Act.

*Sch. 11*

### **NOTICES**

- 31.
- 1) A notice may be served by or on behalf of the Association upon any member either personally or by sending it by post to the member at his or her address shown in the Register of Members.
  - 2) Where a document is properly addressed pre-paid and posted to a person as a letter, the document shall, unless the contrary is proved, be deemed to have been given to the person at the time at which the letter would have been delivered in the ordinary course of post.

## DISPOSAL OF ASSETS

32.

- 1) In the event of the winding up or the cancellation of the incorporation of the Association, the assets of the Association shall be disposed of in accordance with the provisions of the act.  
*Sch.15*
- 2) The income and property of the Association shall be used and applied solely in promotion of its purposes and the exercise of its powers as set out herein and no proportion thereof shall be distributed paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to or amongst the members of the Association provided that nothing herein contained shall prevent the payment in good faith of interest to any such members in respect of moneys advanced by him to the Association to him or of remuneration to any officers or servants of the Association or to any member of the Association or other person in return for any services actually rendered to the Association provided further that nothing herein contained shall be construed so as to prevent the payment or repayment to any member of out of pocket expenses, money lent, reasonable and proper charges for goods hired by the Association or reasonable and proper rent for premises demised or let to the Association or the provision of services to a member to which he would be entitled in accordance with the purposes if he were not a member.
- 3)
  - (a) If, on the winding up or dissolution of the Association, any property remains after satisfaction of all its debts and liabilities, this property must only be given or transferred to a fund, authority or institution:
    - i. which is charitable at law; and
    - ii. whose constitution prohibits distributions or payments to its members and directors (if any) to an extent at least as great as is outlined in sub-clause (2) of this rule 32; and
    - iii. gifts to which can be deducted under Division 30 of the *Income Tax Assessment Act 1997*.
  - (b) The identity of the fund, authority or institution referred to in sub-clause (3)(a) of this rule 32 must be decided by the Committee.
  - (c) Where in respect of a fund, authority or institution gifts to

it are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B are satisfied, a gift or transfer under sub-clause 3(a) of this rule 32 to that fund, authority or institution must be made in accordance with or subject to those conditions.

### **CUSTODY OF BOOKS**

33. Except as otherwise provided in these Rules, the secretary shall keep in his or her custody or under his or her control all books, documents and securities of the Association.

*Sch. 13*

### **SOURCE OF FUNDS**

34. The Funds of the Association shall be derived from entrance fees, annual subscriptions, donations and such other sources as the Committee determines.

*Sch. 7*

### **ESTABLISHMENT AND OPERATION OF GIFT FUND**

- 35(1) The Association must maintain for its principal purposes as set out in the statement of purposes a fund (the **Gift Fund**):
- (a) to which gifts of money or property for those purposes are to be made; and
  - (b) to which any money received by the Association because of such gifts is to be credited; and
  - (c) that does not receive any other money or property.
- 35(2) The Association must use the following only for its principal purposes as set out in the statement of purposes:
- (a) gifts made to the Gift Fund;
  - (b) any money received because of such gifts.
- 35(3) (a) At the first occurrence of:
- (1) the winding up of the Gift Fund; or
  - (2) the Association ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of the *Income Tax Assessment Act 1997*;
- any surplus assets of the Gift Fund must be transferred to a fund, authority or institution:

- (3) which is charitable at law; and
  - (4) gifts to which can be deducted under Division 30 of the *Income Tax Assessment Act 1997*.
- (b) The identity of the fund, authority or institution must be decided by the Committee.
- (c) Where in respect of a fund, authority or institution gifts to it are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B are satisfied, a transfer under this clause to that fund, authority or institution must be made in accordance with or subject to those conditions.”.