

CONSTITUTION

THE LAW SOCIETY OF WESTERN AUSTRALIA INC.

(Amended at Annual General Meeting 9 November 2017)

The Department of Mines, Industry Regulation and Safety – Consumer Protection confirmed the changes took effect from 20 December 2017.

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NAME

1. The name of the Society is 'The Law Society of Western Australia Inc.'

MEANING OF THE TERMS USED

2. The following meanings apply in the Rules unless the context requires otherwise.

'Act' means the *Associations Incorporation Act 2015 (WA)*.

'Approved Practical Legal Training' means either, or a combination of both, of the following –

- (a) practical legal training by participation in course work;
- (b) supervised practical legal training, whether involving articles of clerkship or otherwise,
approved or registered by a relevant admitting authority in Australia.

'Associate Member' means a member as defined in Rule 11.

'Australian Legal Practitioner' has the meaning given in section 5(a) of the Legal Profession Act.

'Chairperson' means the person presiding at a meeting of the Council or at a general meeting of the Society.

'Chief Executive Officer' means the Chief Executive Officer of the Society appointed in accordance with the Rules and includes the Acting Chief Executive Officer.

'Clear Days' means that in calculating the days between events, the day on which an event happens is excluded.

Commissioner means the Commissioner as defined in the Act.

'Constituent Member' means a member as defined in Rule 10.

'Council' means the Council of the Society elected in accordance with the Rules.

'Country Member' means an Ordinary Member who ordinarily practises outside a radius of 50 kilometres from the Central Office of the Supreme Court of Western Australia, Perth.

'Disqualified Person' means a person who –

- (a) has been struck off the Roll of Practitioners or a roll kept outside the State of Western Australia that corresponds to the Roll of Practitioners (unless the person has been re-admitted); or
- (b) is suspended, disqualified or otherwise prohibited by order of any court or tribunal from engaging in legal practice in the State of Western Australia or in any other place (whether in or outside Australia).

'Election Date' or the date on which an election is held or takes place means the date by which ballot papers must be received by the Chief Executive Officer.

‘Executive’ means the Executive of the Council established pursuant to Rule 57.

‘Financial Report’ means the financial statements, the notes to the financial statements and the Council’s declaration about the statements and notes of the Society as set out in section 63 of the Act.

‘Financial Year’ has the meaning given in Rule 110.

‘Honorary Member’ means a member as defined in Rule 14.

‘Incorporated Legal Practice’ means a corporation which is entitled to engage in legal practice in Western Australia pursuant to Part 7 Division 2 of the Legal Profession Act.

‘Incorporated Legal Practice Member’ means a member as defined in Rule 15.

‘Judicial Member’ means a member as defined in Rule 12.

‘Legal Practitioner Director’ has the meaning given in Part 7 Division 1 of the Legal Profession Act.

‘Legal Practitioner’ means a person who is an Australian lawyer (as defined in the Legal Profession Act) who holds a current Local Practising Certificate.

‘Legal Profession’ means the profession practised by Legal Practitioners.

‘Legal Profession Act’ means the *Legal Profession Act 2008 (WA)*.

‘Legal Trainee’ means a person undertaking Approved Practical Legal Training who at the date he or she applies to become an Associate Member is ordinarily resident in Western Australia.

‘Life Member’ means a person elected under Rule 13.

‘Local Practising Certificate’ means a practising certificate granted under the Legal Profession Act.

‘Ordinary Member’ means a member as defined in Rule 9.

‘President’ means the President of the Society elected in accordance with the Rules and includes the Acting President.

‘Record of Office Holders’ means the record referred to in Rule 34(a)(ii).

‘Register’ means the register of members referred to in Rule 34(a)(i).

‘Roll’ means the Roll of legal practitioners for Western Australia.

‘Rules’ means these rules of the Society, as in force for the time being.

‘Society’ means the Law Society of Western Australia Inc.

‘Special Resolution’ means a resolution passed at a general meeting by the votes of not less than three fourths of the members of the Society who cast a vote in person or by proxy.

'Tier 3 Association' means an incorporated association to which section 64(3) of the Act applies.

'Vice Presidents' means the two Vice Presidents elected in accordance with the Rules.

INTERPRETATION OF THE RULES

3. (a) Subject to the Act and to Rule 3(b) below, the interpretation of the Rules is in the sole determination of the Council.
- (b) Subject to the Act, anything done under the Rules is not invalid because a requirement of the Rules has not been strictly complied with if the Council determines that the requirement has been substantially complied with.
- (c) A determination by the Council under Rule 3(a) or 3(b) can be set aside only by a resolution carried at a general meeting of the Society. Notice of intention to move to set aside the Council's determination must be given in writing to the Chief Executive Officer seven clear days before that general meeting.
- (d) Words and phrases defined in the Legal Profession Act have the same meaning when used in the Rules.
- (e) A reference to writing includes any means of reproducing words in a tangible and permanently visible form including facsimile, email and any other form of electronic transmission.
- (f) A reference to posting includes sending by electronic transmission.
- (g) A reference to a ballot paper includes a reference to a ballot paper in any format including an electronic document which is attached to an electronic transmission.

OBJECTS

4. The objects of the Society are as follows.
 - (a) To advance the study of jurisprudence.
 - (b) To promote the administration of justice.
 - (c) To promote the development and improvement of law throughout the State of Western Australia.
 - (d) To support and protect the character and status and promote the interest of the Legal Profession and Legal Practitioners generally in Western Australia.
 - (e) To promote honourable practice, to repress malpractice, to mediate disputed points of practice and to consider questions of professional usage or courtesy between or among Legal Practitioners.
 - (f) To consider all questions affecting the interests of the Legal Profession in Western Australia.

- (g) To uphold the honour of the Legal Profession and encourage cordial relations amongst members of the Legal Profession.
- (h) To encourage the study of law.
- (i) To give prizes or other rewards or distinctions to encourage the study of law.
- (j) To promote and disseminate continuing legal education and information on legal subjects.
- (k) To provide for the relief of distressed and deserving Legal Practitioners and their families and to make disbursements for them out of the general funds of the Society and to establish for such purpose any special funds and to make disbursements from them as the Society from time to time thinks fit.
- (l) To undertake commercial activities in order to assist in the attainment of any of the objects of the Society.
- (m) To establish, own, support and assist in the establishment and support of any trust, association fund, institution or body where to do so would assist in the attainment of any of the objects of the Society and to act as trustee and manager or one of the trustees and managers of any such trust, association fund, institution or body.
- (n) To seek, receive and disseminate information which may be of interest to the Legal Profession.
- (o) To establish, maintain and manage a legal museum or museums and to maintain historical records and things of interest to the Society.
- (p) To establish, maintain and manage such legal assistance schemes, legal advice bureaus and other forms of legal assistance for the benefit of the public generally or of any section of the public, and with or without restrictions as to the eligibility for advice and assistance, as the Society from time to time thinks fit.
- (q) To settle, adopt and promote usage by Legal Practitioners of general conditions or forms relating to the sale and disposition of, or other dealings in, property.
- (r) Undertake any other acts or functions devolved to the Society under written law or laws of the Commonwealth.

POWERS

5. The Society has the powers set out in section 14 of the Act.

APPLICATION OF ASSETS AND INCOME

6. The property and income of the Society must be applied solely towards the promotion of the objects of the Society and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to any member of the Society, except in good faith in the promotion of those objects.

PAYMENT TO COUNCIL MEMBERS

7. There must be no payment to Council members from the funds of the Society other than:
 - (a) a stipend to the President, and payment to the President for any travel and related expenses, and any other expenses, incurred in connection with the performance of the President's functions, authorised by a resolution at a general meeting of the Society; or
 - (b) all reasonable out of pocket travelling expenses approved by Council which are incurred by the country member in attending and returning from meetings of Council and general meetings of the Society; or
 - (c) a payment for any service rendered to the Society by a Council member in a professional or technical capacity, other than in the capacity as a member of the Council, but only if the Council has agreed to engage the professional services of the Council member and payment of the fee is authorised by a resolution at a general meeting of the Society; or
 - (d) payment to those Council members who also sit on the PII Management Committee in relation to their role as a member of the PII Management Committee where payment has been authorised by a resolution at a general meeting of the Society.

CLASSES OF MEMBERSHIP

8. There are the following classes of membership of the Society:
 - (a) Ordinary Members;
 - (b) Constituent Members;
 - (c) Associate Members;
 - (d) Judicial Members;
 - (e) Life Members;
 - (f) Honorary Members; and
 - (g) Incorporated Legal Practice Members.

QUALIFICATION FOR MEMBERSHIP

Ordinary Members

9. Australian Legal Practitioners, and persons entitled under the laws of the Commonwealth to practise as a barrister, solicitor or barrister and solicitor in, or in a court of, Western Australia, are entitled to become Ordinary Members of the Society.

Constituent Members

10. (a) A body or organisation that the members may in general meeting from time to time resolve to approve will be a Constituent Member of the Society subject to that Constituent Member entering into an arrangement acceptable to the

Society for a fee in lieu of the annual subscription fee fixed pursuant to Rule 17(b).

- (b) The interstate partners of members of the Society can join collectively as a Constituent Member subject to the Constituent Member entering into an arrangement acceptable to the Society for a fee in lieu of the annual subscription fee fixed pursuant to Rule 17(b).

Associate Members

11. The following persons are entitled to become Associate Members of the Society.
- (a) Law graduates of Australian law faculties who are not Australian Legal Practitioners.
 - (b) Persons who have been admitted in a Supreme Court in Australia to the Legal Profession and who are not Disqualified Persons but who are not entitled to become Ordinary Members.
 - (c) Legal Trainees.
 - (d) Members of the academic staff of the faculties of law at Australian universities.
 - (e) Persons appointed as Registrars of courts and tribunals in Western Australia.
 - (f) Subject to the approval of the Council, persons employed in a managerial capacity in:
 - (i) courts and tribunals in Western Australia; or
 - (ii) a legal practice; or
 - (iii) a legal practice in the public sector; or
 - (iv) a community legal service organisation.
 - (g) Law students enrolled in undergraduate Bachelor of Laws or legal studies courses in recognised faculties of law at Australian universities.
 - (h) All members of tribunals in Western Australia.
 - (i) Persons who are members of other professions whose interests, in the opinion of the Council, complement the interests of the Society.

Judicial Members

12. The following persons are entitled to be Judicial Members of the Society.

All persons who are or have been Judges or Masters of the Supreme Court of Western Australia or Judges of the District Court of Western Australia, the Family Court of Western Australia or any other Court of Record in Western Australia or who are or have been Magistrates in Western Australia or who are or have been Judges of the Federal Court of Australia normally resident in Western Australia.

Life Members

13. (a) A Life Member is a person who is elected as Life Member at a general meeting of the Society upon the recommendation of the Council.
- (b) Life Members are entitled to all rights and privileges of Ordinary Members, including the right to vote under Rule 53(b).

Honorary Members

14. The following persons are Honorary Members of the Society.
 - (a) The Chief Justice of Western Australia.
 - (b) The Deans of Western Australian university law schools offering a degree in law specified in the Rules of the Legal Practice Board.
 - (c) Such other persons as the Council may from time to time and for such period determine.

Incorporated Legal Practice Members

15. An incorporated Legal Practice, each of whose Legal Practitioner Directors usually carrying on practice in Western Australia is an Ordinary Member of the Society, is entitled to become an Incorporated Legal Practice Member of the Society.

PERSONS NOT ELIGIBLE FOR MEMBERSHIP

16. A Disqualified Person is not eligible for membership of the Society.

MEMBERSHIP AND SUBSCRIPTIONS

17. (a) Persons entitled to become Ordinary Members, Associate Members, Judicial Members or Incorporated Legal Practice Members are not required to be nominated and become Ordinary Members, Associate Members, Judicial Members or Incorporated Legal Practice Members (as the case may be) on application to the Council and on payment of all subscriptions due.
 - (b) A body or organisation becomes a Constituent Member of the Society upon entering into the arrangement prescribed in Rule 10(a) of the Rules and on payment of the applicable fee.
 - (c) A Life Member becomes a Life Member of the Society upon election in accordance with Rule 13(a) of the Rules.
 - (d) An Honorary Member becomes an Honorary Member upon appointment as the holder of an applicable office set out in Rule 14(a) or (b), or upon the determination of the Council in accordance with Rule 14(c).
 - (e) The annual subscription payable by members of each class of members is the amount from time to time fixed by the Council.
 - (f) All subscriptions are payable in advance by the 1st day of July in every year.
18. The Council has power:

- (a) to remit any subscription in arrears or any part;
- (b) to allow a reduction in the subscription payable by any member or by any class of members if circumstances are such that the Council thinks a reduction is warranted; and
- (c) to make a call on members.

RIGHTS AND PRIVILEGES OF MEMBERSHIP

19. Associate, Judicial, Honorary, Constituent and Incorporated Legal Practice members are entitled to all privileges of membership of the Society other than the right to vote at general meetings, polls or elections of the Society or to seek election to the Council except that Legal Trainees are entitled:
- (a) to vote for the election of the junior members to the Council; and
 - (b) subject to Rule 55(e), to stand for election as a junior member of the Council.

RIGHTS AND PRIVILEGES NOT TRANSFERABLE

20. The rights and privileges of membership are personal to each member and are not transferable.

SUBSCRIPTIONS IN ARREARS

21. Any Ordinary, Associate or Incorporated Legal Practice Member whose subscription has been in arrears for three months forfeits membership but is eligible for re-admission on the payment of the subscription for the year current at the time of payment.

CESSATION OF MEMBERSHIP

22. An Ordinary Member, a Constituent Member, an Associate Member, a Judicial Member and an Incorporated Legal Practice Member's membership of the Society ceases forthwith if the member:
- (a) in the case of an individual, dies; or
 - (b) gives written notice of resignation to the Council; or
 - (c) fails to pay subscriptions which have been in arrears for three months; or
 - (d) is no longer eligible for that class of membership; or
 - (e) becomes a Disqualified Person; or
 - (f) is an Incorporated Legal Practice Member and has been wound up or has been deregistered pursuant to the *Corporations Act 2001* (Cth); or
 - (g) is suspended or expelled from the Society under Rule 25.
23. A Life Member's membership of the Society ceases forthwith if the member:
- (a) dies; or

- (b) gives written notice of resignation to the Council; or
 - (c) becomes a Disqualified Person; or
 - (d) is suspended or expelled from the Society under Rule 25.
24. An Honorary Member's membership to the Society ceases forthwith if:
- (a) the member dies;
 - (b) in the case of the holder of an office under Rule 14(a) or (b), the member ceases to hold that office; or
 - (c) in the case of a person who becomes an Honorary Member under Rule 14(c), the period of appointment ends; or
 - (d) the member gives written notice of resignation to the Council; or
 - (e) the member becomes a Disqualified Person; or
 - (f) the member is suspended or expelled from the Society under Rule 25.

SUSPENSION OR EXPULSION

25. The Council may decide to suspend a member's membership or to expel a member from the Society if:
- (a) the member has refused or neglected to comply with the provisions of the Rules or any applicable rules made by the Council; or
 - (b) the member has engaged in conduct unbecoming of the member or prejudicial to the interests of the Society.
26. The Council must give the member written notice of the proposed suspension or expulsion at least twenty eight days before the Council meeting at which the proposal is to be considered by the Council.
27. The notice given to the member must state:
- (a) when and where the Council meeting is to be held;
 - (b) the grounds on which the proposed suspension or expulsion is based; and
 - (c) that the member, or the member's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the Council about the proposed suspension or expulsion.
28. At the Council meeting, the Council must:
- (a) give the member, or the member's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the Council about the proposed suspension or expulsion; and
 - (b) give due consideration to any submissions so made; and

- (c) decide:
 - (i) whether or not to suspend the member's membership and, if the decision is to suspend the membership, the period of suspension; or
 - (ii) whether or not to expel the member from the Society.
- 29. A decision of the Council to suspend the member's membership or to expel the member from the Society takes immediate effect.
- 30. The Council must give the member written notice of the Council's decision, and the reasons for the decision, within seven days after the Council meeting at which the decision is made.
- 31. A member whose membership is suspended or who is expelled from the Society may, within fourteen days after receiving notice of the Council's decision under Rule 30, give written notice to the President requesting the appointment of a mediator under Rule 101.
- 32. If notice is given under Rule 31, the member who gives the notice and the Council are the parties to the mediation.
- 33. During the period a member's membership is suspended, the member:
 - (a) loses any rights (including voting rights) arising as a result of membership; and
 - (b) is not entitled to a refund, rebate, relief or credit for membership fees paid, or payable, to the Society.

REGISTER OF MEMBERS AND RECORD OF OFFICE HOLDERS

- 34. (a) The Chief Executive Officer must keep and maintain on behalf of the Society:
 - (i) the Register which must include the following information in respect of each member and past member:
 - i. full name;
 - ii. residential, postal or email address;
 - iii. any firm or corporate name under which the member practises as a Legal Practitioner;
 - iv. category of membership;
 - v. the date to which subscription is paid;
 - vi. the date of admission to membership;
 - vii. if the member is suspended, the date on which any suspension of membership took effect and the period of suspension; and
 - viii. the date of cessation of membership.
 - (ii) the Record of Office Holders, which includes:

- i. the name and business address of the Chief Executive Officer and each member of the Executive and the Council;
 - ii. the name and business address of any person who is authorised to use the common seal of the Society; and
 - iii. the name and business address of any person who is appointed or acts as trustee on behalf of the Society.
- (iii) the Rules.
- (b) The Chief Executive Officer will have custody of the Society's records, books, documents, securities, the Register and the Record of Office Holders, which must be kept at the Society's office.
 - (c) The Chief Executive Officer will record in the Register any change in the membership of the Society within twenty eight days after the change occurs.

NOTIFICATION BY MEMBERS

- 35. Each member must promptly give to the Chief Executive Officer written notice of any change in the member's eligibility for membership.
- 36. The Chief Executive Officer must amend the Register to correct any error or misdescription of which the Council becomes aware.

REGISTER TAKEN AS CONCLUSIVE PROOF OF ELIGIBILITY

- 37. The Register is taken as conclusive evidence of the eligibility of any Ordinary Member to vote at general meetings, polls and elections of the Society.

GENERAL MEETINGS

- 38. An annual general meeting must be held within six months after the end of the Society's Financial Year and not more than eighteen months after the previous general meeting of the Society.
- 39. The Council must hold a general meeting within twenty eight days after passing a resolution that a general meeting shall be held, or within twenty eight days after receipt of the written request of any 5% of members of the Society, but there is not to be a general meeting of the Society in the months of January and February unless the Council deems it expedient to call such a meeting.
- 40. A general meeting of the Society must be held at such place and at such time as the Council determines and at least seven days' notice in writing of any meeting, the business to be conducted at such meeting, the member's right to attend such meeting and the member's right to vote at such meeting must be given by the Chief Executive Officer to each of the members of the Society.
- 41. The number of members required to constitute a quorum at a general meeting is 25 members then entitled to exercise a vote at a general meeting.
- 42. The President, or the Senior Vice-President or the Vice-President nominated by the President, must preside at all general meetings of the Society but if the President or the Vice-President so nominated is absent the remaining Vice-President must

preside. If the President and both Vice-Presidents are absent the meeting must elect a Chairperson.

43. (a) At a general meeting a motion put to the vote of the meeting is decided on a show of hands unless, before or on the declaration of the result of the show of hands, a poll is demanded by:
- (i) the Chairperson; or
 - (ii) at least three members present and entitled to vote.
- (b) A demand for a poll may be withdrawn.
44. A poll must be conducted at a general meeting as the Chairperson directs and the result of the poll is the resolution of the meeting at which the poll was demanded but a poll demanded to decide the election of a Chairperson or on a question of adjournment of the meeting must be held immediately.
45. (a) (i) If a member expects that at the time a general meeting is to be held the member will be outside a radius of 50 kilometres of the place at which the meeting is to be held, then the member may appoint the Chairperson as the member's proxy for that meeting; and
- (ii) a notice appointing a proxy must be in writing, must be issued and validated by the Chief Executive Officer or any person the Chief Executive Officer appoints for that purpose and must be in the form prescribed at annexure 1; and
 - (iii) the Chief Executive Officer or nominee must issue a notice to a member and validate it immediately following a request for a notice; and
 - (iv) a notice appointing a proxy is valid only if the notice and a declaration in the form as prescribed at annexure 2 are lodged with the Chief Executive Officer at least 48 hours before the meeting is scheduled to start.
- (b) The proxy must vote on a motion only in the manner specified in the notice. The proxy may vote on any amendments to that motion at the meeting.
- (c) If after appointing a proxy the member attends the meeting then the appointment of the proxy is invalid from that time.

ALTERATION OF THE RULES

46. (a) (i) In compliance with the Act, the Rules may be altered, rescinded or added to only by Special Resolution.
- (ii) Seven days before the general meeting, written notice of the proposed Special Resolution, the wording of the proposed Special Resolution and the time and place of the general meeting at which it is proposed to move the resolution, must be given to each member.
 - (iii) If a Special Resolution is passed, the Chief Executive Officer must take all steps necessary for the Society to comply with the Act.

- (b) The alterations to the Rules shall take effect upon lodgement of the required documents with the Commissioner in compliance with section 30(3) of the Act and the approval of the Commissioner under section 31(1) or section 33(2) of the Act, if required.
- (c) Notwithstanding Rule 46(b), the adoption of Rule 55(b)(iii) and the alteration to Rule 57 and Rule 7 passed at the general meeting on 9 November 2017 shall not take effect before 1 January 2018.

POSTAL POLL

47. (a) A postal poll of the members of the Society in respect of any particular matter must be held if:
- (i) a majority of the members present at any general meeting so resolves; or
 - (ii) the Council so resolves provided that the Council must not so resolve in respect of any matter upon which a motion has been passed at a general meeting of the Society within the preceding three months.
- (b) The postal poll must be conducted as a secret poll.
- (c) Within fourteen clear days of the passing of a resolution that there should be a postal poll, the Chief Executive Officer must post a voting paper to each member of the Society who is entitled to exercise a vote on the postal poll. That voting paper must include:
- (i) the motion and a direction to vote either for or against the motion; and
 - (ii) the date and time prior to which the vote must be received, which shall not be less than fourteen clear days from the date on which the voting paper was posted to members.
- (d) In all cases when a postal poll is conducted the Council must cause to be sent to all members with the voting paper a statement approved by the Council and which must contain the following relevant facts pertaining to the motion:
- (i) a summary of the arguments for and against the motion; and
 - (ii) a summary of the views and discussion of the Council in relation to the motion.
- (e) Once the votes for and against the motion have been counted, the Chief Executive Officer or nominee and the returning officer must report the result to the President who must declare the motion either carried or lost.

INADVERTENT OMISSION TO PROVIDE BALLOT

48. The accidental omission to send a voting paper in relation to a postal poll to any member or the failure of any member to receive any such voting paper does not invalidate the result of such postal poll.

COUNCIL ELECTIONS

49. The annual election must be held on a normal working day.
50. The annual election poll must be held between the last Friday in September and the first Friday in December.
51. Nominations must be called by the Chief Executive Officer, in writing, from all members entitled to vote, at least twenty eight days before the poll.
52. (a) Every member who wants to be elected as a member of the Council must by a date from time to time to be determined by the Council, forward to the Chief Executive Officer written notice of the member's intention to seek election countersigned by at least one member entitled to vote. In the notice the member may nominate for election as President, Vice-President and also as either an ordinary or country or junior member of the Council. The notice must specify the position or positions for which the member nominates and if more than one, the nominee must specify the preferred position.
 - (b) Notwithstanding any other rule, the following persons are ineligible to nominate for election:
 - (i) employees of the Society;
 - (ii) any person who is prohibited from accepting an appointment or acting as a member of the Council under section 39(2) of the Act;
 - (iii) any person who is found to have engaged in professional misconduct under the Legal Profession Act or equivalent misconduct under a corresponding law or corresponding foreign law as those terms are defined in the Legal Profession Act.
 - (c) Rule 52(b)(iii) only applies where the relevant finding, or the completion of any orders as a result of the finding, occurred within the previous five years.
 - (d) If a member has nominated for a position in respect of which the number of candidates is not more than the number of vacancies to be filled, the member is deemed to be elected to that position, but:
 - (i) if a candidate has nominated for more than one position in respect of each of which the number of candidates is not more than the vacancy or vacancies, as the case may be, the position to which the member is deemed to be elected is the one for which in the notice of intention to seek election, the member has indicated a preference;
 - (ii) no member is deemed to be elected Vice-President unless or until an election has been held for the position of President, if such election is necessary and the member is a nominee for that position;
 - (iii) no member is deemed to be elected an ordinary, country or junior member of the Council unless or until an election has been held for the positions of President and Vice-Presidents, if either of those elections is necessary and if the member is one of the nominees for either of those positions.

- (e) If a candidate who has nominated for more than one position has by the operation of Rule 52(d) been deemed to have been elected to a position, the member must be removed from the list of candidates for the other position or positions for which the member has nominated.
53. The following provisions apply if a postal ballot is required:
- (a) The Chief Executive Officer must post a ballot paper to each member entitled to vote, at least ten clear days before the day of the election. The ballot paper must contain particulars of the positions to be filled and of the candidates for them.
 - (b) The Ordinary Members may vote for all positions according to the voting system determined by the Council from time to time.
 - (c) As provided in Rule 19(a), Legal Trainees may only vote for the junior member positions.
 - (d) No member may have more than one ballot paper.
54. (a) The Chief Executive Officer shall be the returning officer and the votes may be counted by the Chief Executive Officer or his or her nominee.
- (b) Votes must be counted and positions filled whether by elections or uncontested by operation of Rule 52 in the following order:
- President, Vice-Presidents, ordinary members, country member, junior members.
- (c) If there appears in the list of candidates for any position the name of a candidate who has already been elected to one of the other positions on the Council, that name must, before the election for the first mentioned position takes place, be crossed off the list. If the number of names remaining on the list is then not more than the number of vacancies to be filled, those candidates must be elected to fill the vacancies, but if the number of names remaining on the list is then more than the number of vacancies to be filled, the election must take place.
- (d) In the event of an equality of votes in favour of two or more candidates and it being necessary that one should have a majority over any other candidate or candidates to secure election, the election must be resolved by lot conducted by the President in such manner as the President determines.
- (e) Any voting paper upon which the votes are not recorded for the exact number of candidates to be elected or which is not completed and received in accordance with the voting system determined by the Council must be rejected as informal.

THE COUNCIL

55. The Council consists of the following persons.
- (a) The President, who must be elected from persons who are serving, or who have previously served for at least one year in the three years preceding his or her appointment, as Vice-President or as a member of the Executive or as

an ordinary member of the Council. If only one candidate having that qualification stands for election, any such candidate having that qualification may be declared elected. If no candidate having that qualification stands for election, the position may be filled by the Council from eligible members of the Society.

- (b)
 - (i) Two Vice-Presidents, who must be elected from persons who have served, for at least one year in the three years preceding their appointment, as members of the Executive or as ordinary members of the Council. If two or more candidates having that qualification do not stand for election, any such candidate having that qualification may be declared elected, and the other position or positions may be filled by the Council from eligible members of the Society.
 - (ii) One of the Vice-Presidents is the Senior Vice-President and shall act in the position of President in all instances in which the President is absent or otherwise unable to act or the office of President is vacant.
 - (iii) The other Vice-President is the Junior Vice-President and shall be the Treasurer of the Society. For the avoidance of doubt, the Junior Vice President will become the Treasurer immediately upon this Rule taking effect in accordance with Rule 46.
 - (iv) The seniority of the Vice-President must be based upon length of service of each as a member of the Executive or in the case of equal length of service upon the determination of the Council.
- (c) Twelve ordinary members, who must be elected from persons who are not eligible to nominate for election as a junior member.
- (d) One member who at the time of the election is a Country Member, who must be elected from persons who are not eligible to nominate for election as a junior member.
- (e) Three junior members, who at the Election Date have been admitted to practice for not more than five years. A Legal Trainee at the Election Date is eligible to nominate for election as a junior member of the Council if the Legal Trainee can demonstrate to the reasonable satisfaction of the Chief Executive Officer that:
 - (i) he or she is likely to be admitted to practice before 1 April in the year following the Election Date; and
 - (ii) he or she will be based principally in Western Australia in the year following the Election Date.
- (f) The immediate past President of the Society for a term of one year commencing on 1 January in the year immediately following retirement or resignation from the office of President.
- (g) For the term of their appointment to Council, a junior member nominated by Council will sit as a committee member of the Young Lawyers Committee (if any) or such other committee of the Society as the Council may nominate.

- (h) For the term of their appointment to Council, the country member will sit as a committee member of the Country Lawyers Committee (if any) or such other committee of the Society as the Council may nominate.
 - (i) The Council shall make By-Laws setting out the duties and responsibilities of the President, the Vice-Presidents, the Treasurer and the CEO.
56. (a) All members of the Council must be members of the Society.
- (b) All members of the Council are to take office on the 1st day of January next following their election.
- (c) The President and the Vice-Presidents are to hold office for a term of one year.
- (d) The country member is to hold office for a term of two years.
- (e) The junior members are to hold office for a term of one year.
- (f) Ordinary members of the Council are each to hold office for a term of two years, but if there are more than six positions of ordinary members of the Council to be elected at an annual election, the first six persons elected are to hold office for a term of two years and the remainder are to hold office for a term of one year only.
- (g) All members of the Council are to be eligible for re-election.

EXECUTIVE

57. There is an Executive of the Council consisting of the President, the Vice-Presidents, the immediate past President and one ordinary member of the Council who is to be appointed by the Executive for up to 6 months in each calendar year. For the avoidance of doubt, the Executive of the Council will be constituted in accordance with this Rule immediately upon the alteration to the Rule taking effect in accordance with Rule 46.
58. The Council may on terms and with the restrictions it thinks fit, confer on the Executive any of the powers of the Council.
59. The Council may at any time withdraw or vary any powers conferred on the Executive.

COUNCIL VACANCIES

60. The office of a Council member becomes vacant if the Council member:
- (a) resigns in writing; or
 - (b) dies or becomes unsound of mind; or
 - (c) ceases to be a member of the Society; or
 - (d) ceases to be entitled to be an Ordinary Member of the Society or, in the case of a Legal Trainee, ceases to be entitled to be an Associate Member of the Society and does not simultaneously become an Ordinary Member; or

- (e) becomes a person to whom Rule 52(b)(i), (ii) or (iii) applies; or
 - (f) is absent from three consecutive meetings of the Council without the prior leave of the Council unless the Council is satisfied that the absence was justified in all the circumstances; or
 - (g) being a junior member who is a Legal Trainee when elected as a member of the Council, is not admitted to practice by 1 April in the year following the Election Date.
61. (a) If there is a vacancy in the office of President or a Vice President during the currency of any term, the Council must elect one of its members to fill the vacancy.
- (b) If there is a vacancy in the office of any ordinary, country or junior member of the Council, or if there are insufficient persons standing for election to, or who are elected to the Council (for any reason, including without limitation, the invalidity of all or a part of an election process, or the ineligibility of a candidate, or otherwise), the Council may resolve to appoint eligible members to fill the vacancy or vacancies.
- (c) Any person succeeding to or appointed by the Council to fill a vacancy must retire on the 31st day of December after so succeeding or being appointed, unless the Council of the Society resolves that the replacement or replacements so concerned should fill and serve out a term of longer duration, being a term to be specified by the resolution of the Council, but in any event, such greater term in duration is not to exceed a further period of twelve months beyond the 31 December date first mentioned. All members of the Council, including replacements filling vacancies, shall be eligible to vote on resolution(s) of the Council concerning a proposed extended duration of term for a Councillor, save in respect of their own term.
- (d) As soon as practicable after a person has ceased to be a member of the Council, that person or, where the member has died, a personal representative of that person, must deliver to a member of the Council all documents and records pertaining to the management of the affairs of the Society or, in the case of relevant documents or records that are stored on a computer, a copy of all such documents and records.
- (e) The Society may provide copies of any documents or records pertaining to the management of the affairs of the Society to any former Council member where Council authorises the provision of those documents or records.
62. The Council is deemed to be properly constituted and to have full power to exercise any of its powers and functions notwithstanding any vacancy unless the Council lacks sufficient quorum pursuant to Rule 77.

POWERS AND DUTIES OF THE COUNCIL

63. Subject the Act and the Rules, the Council has power to make decisions on all matters and things coming before it unless it has been expressly forbidden to do so by resolution carried at a general meeting.
64. Without in any way limiting or affecting the general powers of the Council, the Council has specifically conferred upon it the following powers:

- (a) to control the finances of the Society and the expenditure of its funds for such purposes as the Council may think fit; and
 - (b) to borrow money, and to charge any property or business of the Society.
65. Without in any way limiting or affecting the general duties of the Council, the Council has specifically imposed upon it the following duties:
- (a) the members of the Council must keep all information gained by virtue of their position as member of the Council confidential except where the Council's standing orders expressly state that access is granted; and
 - (b) the Council must take all reasonable steps to ensure that the Society complies with the Act, the Rules and the By-Laws (if any).

COMMITTEES

66. The Council has the power to create Committees. The Committees are bound by the relevant By-Laws. Committees are to consider and make recommendations to the Council for determination by the Council. In exceptional circumstances, the Council may delegate any of its powers to Committees.

VALIDITY OF ACTS

67. The acts of the Council or of any Committee or of a member of the Council or of a member of any Committee are valid despite any defect in the election, appointment or qualification of a member of the Council or a member of a Committee.

NEGOTIABLE INSTRUMENTS

68. (a) Subject to paragraph (b) of this Rule, the Council may adopt from time to time such procedures as it considers appropriate in relation to payments to be made by the Society, including:
- (b) All payments are to be authorised by two persons, one of whom shall be an elected member of the Council and the other of whom shall be either another member of the Council or a member of the Society's staff, except that the Council may determine that this paragraph shall not apply in relation to any particular class or category of payments.
 - (c) A payment may be authorised in such manner as the Council may approve from time to time.

MANAGEMENT

69. The management of the Society is vested in the Council which may exercise all powers necessary or convenient to carry out the objects of the Society in accordance with the Rules.

CHIEF EXECUTIVE OFFICER

70. The Council must appoint a Chief Executive Officer of the Society for such period or periods as it thinks fit and subject to the terms of any agreement, may terminate the appointment.

71. Subject to the terms of any agreement, the Council must fix the remuneration of the Chief Executive Officer.
72. Subject to the leave of the Council the Chief Executive Officer is required to attend meetings of the Council but is not entitled to exercise any vote.
73. Subject to the leave of the Executive the Chief Executive Officer is required to attend meetings of the Executive but may not vote.

POWERS OF CHIEF EXECUTIVE OFFICER

74. The Council may on terms and with the restrictions it thinks fit, confer on the Chief Executive Officer any of the powers of the Council.
75. The Council may at any time withdraw or vary any powers conferred on the Chief Executive Officer.

PROCEEDINGS OF THE COUNCIL

76.
 - (a) The Council may meet as often as it determines but the President may at any time call a special meeting of the Council for any purpose.
 - (b) The Council shall make By-Laws for the voting, procedure and conduct at meetings of Council.
77. The presence of six members of the Council constitutes a quorum of the Council.
78. When, by reason of the existence of material personal interests, there are not enough members of the Council to form a quorum to consider a matter, one or more members of the Council (including those who have a material personal interest in the matter) may call a general meeting of the Society.
79. The President must preside at all meetings of the Council but if the President is absent a Vice-President must preside. If the President and the Vice-Presidents are all absent, the meeting must elect a Chairperson.
80. A member or other person who is not a Council member may attend a Council meeting if invited to do so by the Council.
81. A person invited to attend a Council meeting:
 - (a) has no right to any agenda, minutes, or other document circulated at the meeting; and
 - (b) must not comment about any matter discussed at the meeting unless invited by the Council to do so; and
 - (c) cannot vote on any matter that is to be decided at the meeting.

TECHNOLOGY

82. The Council may hold a meeting at two or more venues using any technology that gives the Council members as a whole a reasonable opportunity to participate.
83. A Council member participating in a meeting held at two or more venues using technology is deemed to be present in person at that meeting.

WRITTEN RESOLUTIONS

84. The members of the Council may pass a resolution without a meeting of the Council being held if a majority of the Council members entitled to vote on the resolution sign a statement that they are in favour of the resolution.
85. (a) For the purposes of Rule 84 separate copies of a document may be used for signing by the Council members if the wording of the resolution and statement are identical.
- (b) A facsimile or an electronic transmission may be used for the purpose of Rule 84.
- (c) At the next meeting of the Council the resolution must be put to the Council for ratification and minuting.

COUNCIL MEMBERS' INTERESTS

86. A Council member who has a material personal interest in a matter being considered at a Council meeting must, as soon as the Council member becomes aware of the interest, disclose the nature and extent of the interest to the Council, and the relation of the interest to the activities of the Society.
87. A Council member who has a material personal interest in a matter being considered at a meeting of the Council:
- (a) must not be present while the matter is being considered at the meeting; and
- (b) must not vote on the matter.
88. A Council member who has a material personal interest in a matter being considered at a Council meeting must disclose the nature and extent of the interest, and the relation of the interest to the activities of the Society, at the next general meeting of the Society.
89. Rules 86, 87 and 88 do not apply in respect of a material personal interest:
- (a) that exists only because the member belongs to a class of persons for whose benefit the Society is established; or
- (b) that the member has in common with all, or a substantial proportion of, the members of the Society.
90. The nature and extent of any interest disclosed by a Council member, and the relation of that interest to the activities of the Society, must be recorded in the minutes of the Council meeting at which the disclosure is made.

RESOLVING DISPUTES

91. The procedures in Rules 92 to 100 apply to disputes between members and disputes between one or more members and the Society.
92. The parties to a dispute must attempt to resolve the dispute between themselves within fourteen days after the dispute has come to the attention of each party.

93. If the parties to a dispute are unable to resolve the dispute between themselves within fourteen days after the dispute has come to the attention of each party, any party to the dispute may start the grievance procedure by giving written notice to the President of the parties to the dispute and the matters that are the subject of the dispute.
94. Within twenty eight days after the President is given the notice, a Council meeting must be convened to consider and determine the dispute.
95. The Council must give each party to the dispute written notice of the Council meeting at which the dispute is to be considered and determined at least seven days before the meeting is held.
96. The notice given to each party to the dispute must state:
 - (a) when and where the Council meeting is to be held; and
 - (b) that the party, or the party's representative, may attend the meeting and will be given a reasonable opportunity to make written and oral (or both written and oral) submissions to the Council about the dispute.
97. If:
 - (a) the dispute is between one or more members and the Society; and
 - (b) any party to the dispute gives written notice to the President stating that the party:
 - (i) does not agree to the dispute being determined by the Council; and
 - (ii) requests the appointment of a mediator under Rule 101,

the Council must not determine the dispute.
98. At the Council meeting at which a dispute is to be considered and determined, the Council must:
 - (a) give each party to the dispute, or the party's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the Council about the dispute; and
 - (b) give due consideration to any submissions so made; and
 - (c) determine the dispute.
99. The Council must give each party to the dispute written notice of the Council's determination, and the reasons for the determination, within seven days after the Council meeting at which the determination is made.
100. A party to the dispute may, within fourteen days after receiving notice of the Council's determination, give written notice to the President requesting the appointment of a mediator under Rule 101. If such notice is given, each party to the dispute is a party to the mediation.

MEDIATION

101. The mediator must be a person chosen:
 - (a) by agreement between the member and the Council (if the appointment was requested by a member under Rules 31 or 97); or
 - (b) by agreement between the parties to the dispute (if the appointment was requested by a party to a dispute under Rule 100).
102. If there is no agreement to appoint a mediator then the Council or, if the Society is a party to the dispute, the President of the Western Australian Bar Association, must appoint the mediator. The mediator can be a member or former member of the Society but must not have a personal interest in the matter that is the subject of the mediation or be biased in favour of or against any party to the mediation.
103. Each party to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.
104. Each party to the mediation must give the mediator a written statement of the issues that need to be considered at the mediation at least five days before the mediation takes place.
105. In conducting the mediation, the mediator must:
 - (a) give each party to the mediation every opportunity to be heard; and
 - (b) allow each party to the mediation to give due consideration to any written statement given by another party; and
 - (c) ensure that natural justice is given to the parties to the mediation throughout the mediation process.
106. The mediator cannot determine the matter that is the subject of the mediation.
107. The mediation must be confidential, and any information given at the mediation cannot be used in any other proceedings that take place in relation to the matter that is the subject of the mediation.
108. The costs of the mediation are to be paid by the party or parties to the mediation that requested the appointment of the mediator.
109. If as a result of the mediation, a decision to suspend the member's membership or to expel the member is revoked, that revocation does not affect the validity of any decision made at a Council meeting or general meeting during the period of suspension or expulsion.

ACCOUNTS

110. The Financial Year of the Society commences on the 1st day of July in each year.
111. Gifts made to the Society for special purposes must each be placed in a separate account in the name of the Society and the Council may, if it thinks fit, appoint or agree to the appointment of any two or more persons (whether members of the Society or not) as Trustees of separate accounts for special purposes.

112. The Chief Executive Officer on behalf of the Society must keep financial records that:
- (a) correctly record and explain its transactions and financial position and performance; and
 - (b) enable true and fair statements to be prepared in accordance with Part 5 Division 3 of the Act.
113. For each Financial Year the Society must ensure that the requirements imposed on a Tier 3 Association under Part 5 of the Act are met. These include:
- (a) the keeping and retention of financial records; and
 - (b) within six months after the end of the Financial Year, the preparation of the Financial Report; and
 - (c) the auditing of the Financial Report; and
 - (d) the presentation to the annual general meeting of the Financial Report; and
 - (e) the presentation to the annual general meeting of the copy of the auditor's report on the Financial Report.

AUDIT

114. Subject to there being no such appointment in effect by resolution at a general meeting of the Society, the Council must appoint an independent auditor each year.
115. (a) The Chief Executive Officer must present or cause to be presented to the auditor as soon as can be conveniently done after the close of each Financial Year the Financial Report for the past year together with all books of account, cheque books, receipts, vouchers, bank statements and other information as the auditor may reasonably require.
- (b) The auditor must prepare a report for submission by the President to the annual general meeting.
 - (c) The auditor must be given access to all books of account kept by the Society and is entitled to make the enquiries the auditor may think fit from the President and other members of the Council, the Chief Executive Officer and the senior officer responsible for the Society's accounts.
 - (d) At each annual general meeting, the audited Financial Report in respect of the last Financial Year together with the auditor's report must be presented for consideration and any member may ask any question in relation to the accounts and the members may either adopt or reject the auditor's report and Financial Report subject to any terms and conditions the members think fit to impose.

EXECUTING DOCUMENTS AND COMMON SEAL

116. The Society has a Common Seal which must remain in the custody of the Chief Executive Officer. The Seal must be used only by the authority of the Council. Every instrument to which the Seal is affixed must be signed by the President or a Vice-

President and countersigned by either a Vice-President or the Chief Executive Officer.

117. The Society may execute a document without using a common seal if the document is signed by the President or a Vice President and countersigned by either a Vice-President or the Chief Executive Officer.

KEEPING OF MINUTES

118. The Council and Executive must keep:
- (a) minutes of all proceedings of general meetings and meetings of the Council and enter those minutes, as soon as practicable, in books kept for that purpose; and
 - (b) the minutes must be signed by the Chairperson of the meeting at which the proceedings took place or by the Chairperson of a subsequent meeting at which they are approved.

RIGHTS OF INSPECTION

- 119 (a) Upon request to the Chief Executive Officer a Society member may inspect the Register, the Rules or the Record of Office Holders and may make a copy of or take an extract from the Rules or the Record of Office Holders but a member does not have the right to remove the Register, the Rules or the Record of Office Holders for that purpose.
- (b) If -
- (i) a member inspecting the Register wishes to make a copy of, or take an extract from, the Register under section 54(2) of the Act; or
 - (ii) a member makes a written request under section 56(1) of the Act to be provided with a copy of the Register,
- the Council may require the member to provide a statutory declaration setting out the purpose for which the copy or extract is required, or the purpose for which the request for a copy of the Register is made, and declaring that the purpose is connected with the affairs of the Society.
- (c) Upon a person becoming a member of the Society, or at the request of a member, the Society must give to the member a copy of the Rules or, in the case of a request for any particular part of the Rules, a copy of that part, which may, if requested, be in hardcopy form.
- (d) The Council may determine whether and to what extent, at what times and places and under what conditions accounting records and related documents are to be made available for inspection by members.
120. Members may inspect the minutes of the Council meetings and Executive meetings (other than In-Camera minutes) and minutes of general meetings at the Society's office.

BY-LAWS

121. The Council may from time to time by resolution make, amend and repeal By-Laws not inconsistent with the Rules in relation to:
- (a) voting, procedure and conduct at meetings of the Council;
 - (b) the duties and responsibilities of the President, Vice-Presidents, Treasurer and CEO;
 - (c) voting and conduct of the Council elections;
 - (d) regulation of the proceedings of Committees created by the Council;
 - (e) the Professional Conduct Rules of the Society to guide the professional practice and conduct of members and other Legal Practitioners who practise law in Western Australia;
 - (f) the Law Mutual professional indemnity insurance scheme; and
 - (g) other professional practice matters including accreditation, continuing professional development, professional standards and quality practice standards.

WINDING UP

122. The Society may be wound up and dissolved voluntarily only by Special Resolution.
123. If upon the winding up or dissolution of the Society there remains any surplus property after the satisfaction of all its debts and liabilities, and the costs and charges and expenses of winding up, that property must be given or transferred to one or more of those entities specified in section 24 of the Act which has wholly or substantially similar purposes to the Society, as the meeting resolving upon winding up and dissolution or any subsequent meeting may determine.
124. Except as provided for in the Rules, no portion of the property of the Society may be paid to or distributed among members of the Society whether upon the winding up or dissolution of the Society or otherwise.

ANNEXURE 1

Appointment of Proxy

Certified by the Chief Executive Officer, the Law Society of Western Australia

(signed)

I,....., being a member of the Law Society of Western Australia, hereby appoint the Chairperson as my proxy to vote for me and on my behalf at the general meeting of the Society to be held on theday of (year).....

AND FURTHER I DIRECT the Chairperson to vote on the motions and amendments to them as the Rules of the Society permit, in the following manner:

(INSERT motion as on Notice of Meeting)

For

Against

(place cross in one box only)

Dated this..... day..... (year).....

Signed.....

Note: Pursuant to Rule 45 of the Rules of the Society this Notice must be lodged with the Chief Executive Officer or a person appointed by the Chief Executive Officer for that purpose, not less than 48 hours before the time at which the meeting for which this proxy is given is scheduled to start. This Notice and the Declaration may be lodged by facsimile or email transmission.

ANNEXURE 2

DECLARATION

To the Chief Executive Officer

The Law Society of Western Australia.

I, _____, being a member of the Law Society of Western Australia, hereby declare that I anticipate that on the _____ day of _____ (year) at the hour of _____ am/pm at which time a general meeting of the Society has been called to commence, I shall be outside a radius of 50 kilometres of the place at which the meeting is scheduled to be held.

Declared this _____ day of _____ (year)

Signed.....

NOTE: Pursuant to Rule 45 of the Rules of the Society this Declaration must be lodged with the Chief Executive Officer or a person appointed by the Chief Executive Officer for that purpose, not less than 48 hours before the time at which the meeting for which this proxy is given is scheduled to start.