

# RULES

## OPEN GARDENS CANBERRA INCORPORATED A0 5546

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# Part 1 Preliminary

## 1 Definitions

In these Rules:

Note A definition applies except so far as the contrary intention appears (see Legislation Act, s 155).

*financial year* means the year ending on 30 June

*member* means a member, however described, of the association

*ordinary committee member* means a member of the committee who is not an office-bearer of the association

*secretary* means the person holding office under these Rules as secretary or, if no such person holds that office, the public officer

*term of office* in relation to a member of the committee means the period commencing at the conclusion of the meeting at which a member was elected to the committee under Rule 16 or appointed to the committee under Rule 15(6), and ending at the conclusion of the next occurring annual general meeting

*the Act* means the *Associations Incorporation Act 1991*

*the association* means Open Gardens Canberra Incorporated

*the regulation* means the *Associations Incorporation Regulation 1991*

## 2 Application

(1) The *Legislation Act 2001* applies to these Rules in the same way as it would if they were an instrument made under the Act; and

(2) These Rules apply to the association subject to the Act and the regulation.

# Part 2 The association

## 3 Objects

The objects of the association are:

(1) to open gardens in the Canberra region for viewing by the public;

(2) to promote the enjoyment, knowledge and benefits of gardens and gardening for all;

(3) to promote garden design and ecological sustainability;

(4) to promote understanding of nature and the human relationship with nature;

(5) to build public support for good design and sustainability in both private and public gardens in the Canberra region; and

(6) to support charitable organisations.

# Part 3 Membership

## 4 Eligibility for membership

A person is eligible to be a member if—

- (a) the person agrees to support the aims and objects of the association and to abide by these Rules; and
- (b) the person was a member of Open Gardens Canberra at the time the association was incorporated; or
- (c) the person has applied for membership in accordance with Rule 5(1).

## **5 Application for membership**

- (1) An application by a person for membership must be made either in writing or electronically, accompanied by the annual membership fee, and lodged with the secretary.
- (2) The secretary must, on receipt of an application for membership accompanied by the annual membership fee as required under Rule 5(1) ensure that the applicant's name is entered in the register of members and, on the name being so entered, the applicant becomes a member of the association.
- (3) The secretary may, in writing, delegate the responsibilities outlined in Rule 5 (1) and (2) to another committee member.

## **6 Membership entitlements not transferable**

A right, privilege or obligation that a person has because of being a member of the association—

- (a) cannot be transferred or transmitted to another person; and
- (b) terminates on cessation of the person's membership.

## **7 Cessation of membership**

- (1) A person ceases to be a member if the person—
  - (a) dies or, for a corporation, is wound up; or
  - (b) resigns; or
  - (c) fails to renew membership; or
  - (d) the person's membership is cancelled in accordance with Rule 12.

## **8 Resignation of membership**

A member may resign from membership at any time.

## **9 Fees, subscriptions etc**

- (1) The annual membership fee of the association may be determined by resolution of the committee.
- (2) The annual membership fee is payable on or before 1 July for membership until 30 June the following year.

## **10 Members' liabilities**

The liability of a member to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of the winding up of the association is limited to the amount (if any) unpaid by the member in relation to membership as required by Rule 9.

## **11 Honorary Membership**

- (1) The Committee may award Honorary Membership on such terms and conditions as the committee sees fit to a member who has given outstanding and meritorious service in furthering any or all of the objects of the association.
- (2) An Honorary Member has the same membership entitlements as an ordinary member.

## **12 Suspension and cancelation of membership**

(1) If the committee is of the opinion that a member—

- (a) has persistently refused or neglected to comply with a provision of these Rules; or
  - (b) has persistently and willfully acted in a manner prejudicial to the interests of the association;
- the committee may, by resolution—

- (c) cancel the member's membership of the association; or
- (d) suspend the member from those rights and privileges of membership that the committee may decide for a specified period.

(2) A resolution of the committee under Rule 12(1) is of no effect unless the committee, at a meeting held not earlier than 14 days and not later than 28 days after service on the member of a notice under Rule 12(3), confirms the resolution in accordance with Rule 12.

(3) If the committee passes a resolution under Rule 12(1), the secretary must, as soon as practicable, serve a written notice on the member—

- (a) setting out the resolution of the committee and the grounds on which it is based; and
- (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 the notice; and
- (c) stating the date, place and time of that meeting; and
- (d) informing the member that the member may do either or both of the following:
  - (i) attend and speak at that meeting;
  - (ii) submit to the committee at or before the date of that meeting written representations relating to the resolution.

(4) Subject to the Act, section 50, at a meeting of the committee mentioned in [Rule 12\(2\)](#), the committee must—

- (a) give to the member mentioned in Rule 12(1) an opportunity to make oral representations; and
- (b) give due consideration to any written representations submitted to the committee by that member at or before the meeting; and
- (c) by resolution decide whether to confirm or to revoke the resolution of the committee made under Rule 12(1).

(5) If the committee confirms a resolution under Rule 12(4), the secretary must, within 7 days after that confirmation, by written notice inform the member of that confirmation and of the member's right of appeal under Rule 13.

(6) A resolution confirmed by the committee under Rule 12(4) does not take effect—

- (a) until the end of the period within which the member is entitled to appeal against the resolution if the member does not exercise the right of appeal within that period; or
- (b) if within that period the member exercises the right of appeal—unless and until the association confirms the resolution in accordance with Rule 12(4).

## **13 Right of appeal of a member**

(1) A member may appeal to the association in general meeting against a resolution of the committee that is confirmed under Rule 12(4), within 7 days after notice of the resolution is served on the member, by lodging with the secretary a notice to that effect.

(2) On receipt of a notice under Rule 13(1), the secretary must notify the committee which must call a general meeting of the association to be held within 21 days after the date when the secretary received the notice or as soon as possible after that date.

(3) Subject to the Act, section 50, at a general meeting of the association called under Rule 13(2)—

(a) no business other than the question of the appeal may be transacted; and

(b) the committee and the member must be given the opportunity to make representations in relation to the appeal orally or in writing, or both; and

(c) the members present must vote by secret ballot on the question of whether the resolution made under Rule 12(4) should be confirmed or revoked.

(4) If the meeting passes a special resolution in favour of the confirmation of the resolution made under Rule 12(4), that resolution is confirmed.

## **Part 4 Committee**

### **14 Powers of committee**

The committee, subject to any resolution passed by the association in general meeting—

(a) controls and manages the affairs of the association; and

(b) may exercise all functions other than functions that are required by these Rules to be exercised by the association in general meeting; and

(c) has power to perform all acts and do all things that appear to the committee to be necessary or desirable for the proper management of the affairs of the association.

### **15 Constitution and membership of the committee**

(1) The committee consists of—

(a) the office-bearers; and

(b) a minimum of 3 and a maximum of 10 ordinary committee members;

each of whom must be elected under Rule 16 or appointed in accordance with Rule 15(6).

(2) The office-bearers are—

(a) the president; and

(b) the vice-president; and

(c) the treasurer; and

(d) the secretary.

(3) Each committee member holds office for one term of office, and is eligible for re-election.

(4) An office-bearer may not hold that office for more than 4 successive terms of office.

(5) An office-bearer may not hold any office for more than 7 successive terms of office.

(6) If there is a vacancy in the membership of the committee, the committee may appoint a member to fill the vacancy and the member so appointed holds office for one term of office.

### **16 Election of committee members**

(1) Nominations of candidates for election as office-bearers or as ordinary committee members—

- (a) must be made in writing, signed by 2 members and accompanied by the written consent of the candidate; and
- (b) must be given to the secretary prior to the annual general meeting at which the election is to take place.
- (2) If insufficient nominations are received to fill all vacancies on the committee, the candidates nominated are taken to be elected and further nominations may be received at the annual general meeting.
- (3) If insufficient further nominations are received, any vacant positions remaining on the committee are taken to be vacancies.
- (4) If the number of nominations received is equal to the number of vacancies to be filled, the people nominated are taken to be elected.
- (5) If the number of nominations received exceeds the number of vacancies to be filled, a ballot must be held.
- (6) The ballot for the election of office-bearers and ordinary committee members must be conducted at the annual general meeting in the way the committee may direct.
- (7) A person is not eligible to hold more than 1 position on the committee at the same time.

## **17 Secretary**

- (1) The secretary must, as soon as practicable after being appointed as secretary, notify the association of his or her address.
- (2) The secretary must keep minutes of—
  - (a) all elections and appointments of office-bearers and ordinary committee members; and
  - (b) the names of members of the committee present at a committee meeting or a general meeting; and
  - (c) all proceedings at committee meetings and general meetings.
- (3) Minutes of proceedings at a meeting must be accepted by a majority of members present at the next succeeding meeting.

## **18 Treasurer**

The treasurer must—

- (a) collect and receive all amounts owing to the association and make all payments authorised by the association; and
- (b) 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.

## **19 Vacancies**

For these Rules, a vacancy in the office of a committee member happens if the member—

- (a) dies; or
- (b) ceases to be a member; or
- (c) resigns the office; or
- (d) is removed from office under Rule 20; or
- (e) becomes bankrupt or personally insolvent; or
- (f) suffers from mental or physical incapacity; or

- (g) is disqualified from office under the Act, section 63(1); or
- (h) is subject to a disqualification order under the Act, section 63A; or
- (i) is absent without the consent of the committee from all committee meetings held during a period of 6 months.

## **20 Removal of committee members**

The association in general meeting may by resolution, subject to the Act, section 50, remove any committee member from office before the end of the member's term of office.

## **21 Committee meetings and quorum**

- (1) The committee must meet at least 3 times in each calendar year at the place and time that the committee may decide.
- (2) Additional committee meetings may be called by any committee member.
- (3) Notice of a committee meeting must be given by the secretary to each committee member at least 48 hours (or any other period that may be unanimously agreed on by the committee) before the time appointed for the holding of the meeting.
- (4) Notice of a meeting given under Rule 21(3) must specify the general nature of the business to be transacted at the meeting and no business other than that business may be transacted at the meeting, except business that the committee members present at the meeting unanimously agree to treat as urgent business.
- (5) A notice of meeting may be sent by such means as the committee determines is appropriate.
- (6) Any 3 committee members constitute a quorum for the transaction of the business of a committee meeting.
- (7) No business may be transacted by the committee unless a quorum is present and, if within half an hour after the time appointed for the meeting a quorum is not present, the meeting stands adjourned to a place, date and time to be agreed by those present.
- (8) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the meeting is dissolved.
- (9) A committee member who is not physically present at a committee meeting may participate in the meeting by the use of technology that allows that committee member and the committee members present at the meeting to clearly and simultaneously communicate with each other.
- (10) A committee member participating in a committee meeting as permitted under Rule 21(9) is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.
- (11) If an urgent item of business requires a resolution of the committee and it is not possible for a committee meeting to be called in time—
  - (a) the secretary must provide all committee members with a document setting out:
    - (i) the proposed resolution; and
    - (ii) the date by which committee members who wish to vote on the resolution must notify their vote; and
    - (iii) the manner in which a committee member who wishes to vote on the resolution must do so.
  - (b) several copies of the document may be used provided the wording of the document is identical in each copy;



(c) the resolution is passed if a majority of committee members have voted in favour of the resolution in the manner and by the date as notified.

(12) At committee meetings—

(a) the president or, in the absence of the president, the vice-president, presides; or

(b) if the president and the vice-president are absent—1 of the remaining members of the committee members may be chosen by the members present to preside.

## **22 Delegation by committee to subcommittee**

(1) The committee may, in writing, delegate to a subcommittee, consisting of members that the committee considers appropriate, the exercise of the functions of the committee that are specified in the instrument, other than—

(a) this power of delegation; and

(b) a function that is a function imposed on the committee by the Act, by any other Territory law, or by resolution of the association in general meeting.

(2) A subcommittee may exercise a delegated function from time to time in accordance with the terms of the delegation.

(3) A delegation under this Rule may specify any conditions or limitations about the exercise of any function, including about time or circumstances.

(4) Despite any delegation under this Rule, the committee may continue to exercise any function delegated.

(5) Any act or thing done or suffered by a subcommittee acting in the exercise of a delegation under this Rule has the same force and effect as it would have if it had been done or suffered by the committee.

(6) The committee may, in writing, revoke wholly or in part any delegation under this Rule.

(7) A subcommittee may meet and adjourn as it considers appropriate.

## **23 Voting and decisions**

(1) Questions arising at a committee or subcommittee meeting are decided by a majority of the votes of committee or subcommittee members present at the meeting.

(2) Each member present at a committee or subcommittee meeting (including the person presiding at the meeting) is entitled to 1 vote but, if the votes on any question are equal, the person presiding may exercise a second or casting vote.

## **Part 5 General meetings**

### **24 Annual general meetings—holding of**

(1) With the exception of the first annual general meeting, the association must:

(a) call an annual general meeting of its members at least once in each calendar year; and

(b) the annual general meeting must be held within 5 months after the end of each financial year.

(2) The association must hold its first annual general meeting—

(a) within 18 months after its incorporation; and

(b) within 5 months after the end of the first financial year.

(3) Subsections (1) and (2) have effect subject to the powers of the registrar general under the Act, section 120 in relation to extensions of time.

## **25 Annual general meetings—calling of and business at**

- (1) The annual general meeting must be called on the date and at the place and time that the committee considers appropriate.
- (2) In addition to any other business that may be transacted at an annual general meeting, the business of an annual general meeting is—
  - (a) to confirm the minutes of the last annual general meeting and of any general meeting held since that meeting; and
  - (b) to receive from the committee reports on the activities of the association during the last financial year; and
  - (c) to elect members of the committee, including office-bearers; and
  - (d) to receive and consider the statement of accounts and the reports that are required to be submitted to members under the Act, section 73(1).
- (3) An annual general meeting must be specified as such in the notice calling the meeting, in accordance with Rule 27.
- (4) An annual general meeting must be conducted in accordance with the provisions of this part.

## **26 General meetings—calling of**

- (1) The committee may, whenever it considers appropriate, call a general meeting of the association.
- (2) The committee must, on the requisition in writing of not less than 5% of the total number of members, call a general meeting of the association.
- (3) A requisition of members for a general meeting—
  - (a) must state the purpose or purposes of the meeting; and
  - (b) must be signed by the members making the requisition; and
  - (c) must be lodged with the secretary; and
  - (d) may consist of several documents in a similar form, each signed by 1 or more of the members making the requisition.
- (4) If the committee fails to call a general meeting within 1 month after the date when a requisition of members for the meeting is lodged with the secretary, any 1 or more of the members who made the requisition may call a general meeting to be held not later than 3 months after that date.
- (5) A general meeting called by a member or members mentioned in Rule 26(4) must be called as nearly as is practicable in the same way as general meetings are called by the committee and any member who thereby incurs expense is entitled to be reimbursed by the association for any reasonable expense so incurred.

## **27 Notice**

- (1) The secretary must send to each member a notice specifying the place, date and time of a general meeting and the nature of the business proposed to be transacted at the meeting:
  - (a) at least 14 days before the date fixed for the general meeting if the nature of the business proposed to be dealt with at that meeting does not require a special resolution of the association; or
  - (b) at least 21 days before the date fixed for the general meeting if the nature of the business proposed to be dealt with at that meeting does require a special resolution of the association.
- (2) If the nature of the business to be dealt with at a general meeting requires a special resolution of the association, the notice of meeting must specify, in addition to the matter required under Rule 27(1):

- (a) the intention to propose the resolution as a special resolution, and
  - (b) a draft of the proposed special resolution.
- (3) No business other than that specified in the notice calling a general meeting may be transacted at the meeting except, for an annual general meeting, business that may be transacted under Rule 25(2).
- (4) A member desiring to bring any business before a general meeting may give written notice of that business to the secretary who must include that business in the next notice calling a general meeting given after receipt of the notice from the member.
- (5) A notice of meeting may be sent by such means as the committee determines is appropriate.

## **28 General meetings—procedure and quorum**

- (1) No item of business may be transacted at a general meeting unless a quorum of members entitled to vote is present during the time the meeting is considering that item.
- (2) 7 members present in person, who are entitled to vote, constitute a quorum for the transaction of the business of a general meeting.
- (3) If within 30 minutes after the appointed time for the start of a general meeting a quorum is not present, the meeting if called on the requisition of members is dissolved and in any other case stands adjourned to a place, date and time in the following week to be agreed by those present, unless another place, date and time is communicated by notice to members at least 48 hours before the time of the adjourned meeting.
- (4) If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the start of the meeting, the members present (being not less than 3) constitute a quorum.

## **29 Presiding member**

- (1) The president, or in the absence of the president, the vice-president, presides at each general meeting.
- (2) If the president and the vice-president are absent from a general meeting, the members present must elect 1 of their number to preside at the meeting.

## **30 Adjournment**

- (1) The person presiding at a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting to a later place, date and time.
- (2) No business may be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (3) If a general meeting is adjourned for 14 days or more, the secretary must give notice of the adjourned meeting to each member of the association stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- (4) Except as provided in Rule 30(1) and (3), notice of an adjournment of a general meeting or of the business to be transacted at an adjourned meeting is not required to be given.

## **31 Making of decisions**

- (1) A question arising at a general meeting of the association is to be decided 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 person presiding that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, or 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.

- (2) At a general meeting, a poll may be demanded before or on the declaration of the show of hands by the person presiding or by not less than 3 members present at the meeting.
- (3) If a poll is demanded at a general meeting, the poll must be taken—
- (a) immediately if the poll relates to the election of the person to preside at the meeting or to the question of an adjournment; or
  - (b) in any other case—in the way and at the time before the close of the meeting that the person presiding directs; and
  - (c) the resolution of the poll on the matter is taken to be the resolution of the meeting on that matter.

### **32 Voting**

- (1) Subject to Rule 32(3), on any question arising at a general meeting a member has 1 vote only.
- (2) All votes must be given personally. No vote may be made by proxy.
- (3) If the votes on a question at a general meeting are equal, the person presiding is entitled to exercise a second or casting vote.
- (4) A member is not entitled to vote at any general meeting unless all money due and payable by the member to the association has been paid.

## **Part 6 Miscellaneous**

### **33 Funds—source**

- (1) The funds of the association must be derived from annual subscriptions of members, entrance fees to open gardens, donations and, subject to any resolution passed by the association in general meeting and subject to the Act, section 114, any other sources that the committee decides.
- (2) All money received by the association must be deposited as soon as practicable and without deduction to the credit of the association's bank account.
- (3) The association must, as soon as practicable after receiving any money, issue an appropriate receipt.

### **34 Funds—management**

- (1) Subject to any resolution passed by the association in general meeting, the funds of the association must be used for the objects of the association in the way that the committee decides.
- (2) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by any 2 committee members or employees of the association, who have been authorised to do so by the committee.

### **35 Alteration of Objects and Rules**

Neither the Objects of the association mentioned in the Act, section 29 nor these Rules may be altered except in accordance with the Act.

### **36 Custody of books**

The secretary must keep in his or her custody or under his or her control all records, books and other documents relating to the association.

### **37 Inspection of books**

The records, books and other documents of the association must be open to inspection at a place in the ACT, free of charge, by a member at any reasonable hour.

### **38 Service of notice**

For these rules, the association may serve a notice on a member by sending it by post to the member at the member's address shown in the register of members or by such other means as the member has notified the association.

*Note:* For how documents may be served, see the Legislation Act, pt 19.5.

### **39 Surplus property**

In the event of the dissolution or winding up of the Open Gardens Canberra Incorporated Association, surplus property is to pass to the association known as the Friends of the National Arboretum Canberra as an Australian Capital Territory Incorporated Association number A04702 in accordance with Section 92 (1) (a) of the Act.”

### **40 Dispute Resolution**

- (1) In the event of a dispute (either between two members or between a member and the association) the secretary must inform the member or association of the complaint. This should include details of the issues along with copies of any supporting materials. Information about the possible outcomes of the complaint should also be provided.
- (2) The member or association must respond to the issues raised through either a written submission or in person at a meeting called to decide the issue. If the dispute is between the association and any of its members, the association must not take disciplinary action related to the same matter until the grievance procedure is completed.
- (3) Each party to the dispute must be given an opportunity to be heard on the matter.
- (4) The outcome of the dispute must be determined by an unbiased decision-maker.
- (5) The secretary must inform the parties of the outcome of the dispute in writing and giving reasons for the decision including any consequences or penalties.
- (6) The secretary must inform the member of their rights to appeal the outcome. This should be undertaken in accordance with Rule 13.