

## By-Laws of the Ballaarat Mechanics' Institute (BMI).

ABN 53 004 034 575

Adopted XXX 2021

To be read in conjunction with the BMI Constitution

### Document Control

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### TABLE OF PROVISIONS

*Regulation*

*Page*

### Contents

<b>1—PRELIMINARY</b>	<b><u>34</u></b>
1 Name	<u>34</u>
<b>1.1 Headings</b>	<b><u>34</u></b>
<b>1.2 Replaceable rules do not apply</b>	<b><u>34</u></b>
2 Financial year	<u>34</u>
<b>PART 3—MEMBERS, DISCIPLINARY PROCEDURES AND GRIEVANCES</b>	<b><u>34</u></b>
3.1 Membership fee	<u>34</u>
4.1 Grounds for taking disciplinary action	<u>34</u>
4.2 Disciplinary subcommittee	<u>34</u>
4.3 Notice to member	<u>45</u>
4.4 Decision of subcommittee	<u>45</u>
4.5 Appeal rights	<u>45</u>

4.6	Conduct of disciplinary appeal meeting	<u>56</u>
5.1	Application	<u>56</u>
5.2	Parties must attempt to resolve the dispute	<u>56</u>
5.3	Appointment of mediator	<u>56</u>
5.4	Mediation process	<u>67</u>
5.5	Failure to resolve dispute by mediation	<u>67</u>
6	MINUTES OF GENERAL MEETING	<u>67</u>
<b>7</b>	<b>BOARD</b>	<u><b>78</b></u>
<b>7.1</b>	<b>Composition of the Board</b>	<u><b>78</b></u>
7.2	General Duties	<u>78</u>
7.3	Nominations	<u>78</u>
<b>8</b>	<b>MEETINGS OF THE BOARD</b>	<u><b>89</b></u>
8.1	Meetings of the Board	<u>89</u>
8.2	Notice of meetings	<u>94</u>
8.3	Urgent meetings	<u>94</u>
8.4	Procedure of Board business	<u>94</u>
8.5	Use of technology	<u>94</u>
8.7	Quorum	<u>94</u>
8.8	Voting	<u>104</u>
8.9	Conflict of interest	<u>104</u>
8.10	Minutes of meeting	<u>104</u>
8.11	Leave of absence	<u>104</u>
<b>9</b>	<b>FINANCIAL MATTERS</b>	<u><b>104</b></u>
9.1	Source of funds	<u>104</u>
9.2	Management of funds	<u>114</u>
9.3	Financial records	<u>114</u>
9.4	Financial statements	<u>114</u>
10.1	Registered address	<u>114</u>
10.2	Alteration of By-Laws	<u>124</u>

DRAFT FOR MEMBER INFORMATION

**By Laws of the Ballarat Mechanic's' Institute (BMI)**

**Adopted XXX 2021**

Comment [A1]:

**To be read in conjunction with the BMI Constitution**

**1—PRELIMINARY**

**1Name**

The name of the incorporated association is the Ballaarat Mechanics Institute (BMI)

**1.1Headings**

Headings are inserted for convenience and are not to affect the interpretation of these By-Laws.

**1.2Replaceable rules do not apply**

**2Financial year**

The financial year of the Institute is each period of 12 months ending on April 30<sup>th</sup>

**PART 3—MEMBERS, DISCIPLINARY PROCEDURES AND GRIEVANCES**

**3.1 Membership fee**

- (1) The Board shall review and determine the membership fee annually, and provide this advice to the AGM
- (4) The rights of a member (including the right to vote) who has not paid the membership fee are suspended until the fee is paid.

**4—Disciplinary action**

**4.1 Grounds for taking disciplinary action**

The Institute may take disciplinary action against a member in accordance with this Division if it is determined that the member—

- (a) has failed to comply with these Rules; or
- (b) refuses to support the purposes of the Institute or
- (c) has engaged in conduct prejudicial to the Institute.

**4.2 Disciplinary subcommittee**

- (1) If the Board is satisfied that there are sufficient grounds for taking disciplinary action against a member, the Board must appoint a disciplinary subcommittee to hear the matter and determine what action, if any, to take against the member.
- (2) The members of the disciplinary subcommittee—
  - (a) may be Board members, members of the Institute or anyone else; but

- (b) must not be biased against, or in favour of, the member concerned.

#### 4.3 Notice to member

- (1) Before disciplinary action is taken against a member, the Secretary must give written notice to the member—
  - (a) stating that the Institute proposes to take disciplinary action against the member; and
  - (b) stating the grounds for the proposed disciplinary action; and
  - (c) specifying the date, place and time of the meeting at which the disciplinary subcommittee intends to consider the disciplinary action (the *disciplinary meeting*); and
  - (d) advising the member that he or she may do one or both of the following—
    - (i) attend the disciplinary meeting and address the disciplinary subcommittee at that meeting;
    - (ii) give a written statement to the disciplinary subcommittee at any time before the disciplinary meeting; and
  - (e) setting out the member's appeal rights under rule 23.
- (2) The notice must be given no earlier than 28 days, and no later than 14 days, before the disciplinary meeting is held.

#### 4.4 Decision of subcommittee

- (1) At the disciplinary meeting, the disciplinary subcommittee must—
  - (a) give the member an opportunity to be heard; and
  - (b) consider any written statement submitted by the member.
- (2) After complying with subrule (1), the disciplinary subcommittee may—
  - (a) take no further action against the member; or
  - (b) subject to subrule (3)—
    - (i) reprimand the member; or
    - (ii) suspend the membership rights of the member for a specified period; or
    - (iii) expel the member from the Association.
- (3) The disciplinary subcommittee may not fine the member.
- (4) The suspension of membership rights or the expulsion of a member by the disciplinary subcommittee under this rule takes effect immediately after the vote is passed.

#### 4.5 Appeal rights

- (1) A person whose membership rights have been suspended or who has been expelled from the Institute under By Law 4 may give notice to the effect that he or she wishes to appeal against the suspension or expulsion.
- (2) The notice must be in writing and given—
  - (a) to the disciplinary subcommittee immediately after the vote to suspend or expel the person is taken; or
  - (b) to the Secretary not later than 48 hours after the vote.

- (3) If a person has given notice under subrule (2), a disciplinary appeal meeting must be convened by the Board as soon as practicable, but in any event not later than 21 days, after the notice is received.
- (4) Notice of the disciplinary appeal meeting must be given to each member of the Institute who is entitled to vote as soon as practicable and must—
  - (a) specify the date, time and place of the meeting; and
  - (b) state—
    - (i) the name of the person against whom the disciplinary action has been taken, and
    - (ii) the grounds for taking that action; and
    - (iii) that at the disciplinary appeal meeting the members present must vote on whether the decision to suspend or expel the person should be upheld or revoked.

#### **4.6 Conduct of disciplinary appeal meeting**

- (1) At a disciplinary appeal meeting—
  - (a) no business other than the question of the appeal may be conducted; and
  - (b) the Board must state the grounds for suspending or expelling the member and the reasons for taking that action; and
  - (c) the person whose membership has been suspended or who has been expelled must be given an opportunity to be heard.
- (2) After complying with subrule (1), the members present and entitled to vote at the meeting must vote by secret ballot on the question of whether the decision to suspend or expel the person should be upheld or revoked.
- (3) A member may not vote by proxy at the meeting.
- (4) The decision is upheld by a majority of the members voting at the meeting vote in favour of the decision.

### **5—Grievance procedure**

#### **5.1 Application**

- (1) The grievance procedure set out in this Division applies to disputes under these Rules between—
  - (a) a member and another member;
  - (b) a member and the Board,
  - (c) a member and the Institute
- (2) A member must not initiate a grievance procedure in relation to a matter that is the subject of a disciplinary procedure until the disciplinary procedure has been completed.

#### **5.2 Parties must attempt to resolve the dispute**

The parties to a dispute must attempt to resolve the dispute between themselves within 14 days of the dispute coming to the attention of each party.

#### **5.3 Appointment of mediator**

- (1) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 26, the parties must within 10 days—
  - (a) notify the Board of the dispute; and
  - (b) agree to or request the appointment of a mediator; and
  - (c) attempt in good faith to settle the dispute by mediation.
- (2) The mediator must be—
  - (a) a person chosen by agreement between the parties; or
  - (b) in the absence of agreement—
    - (i) if the dispute is between a member and another member—a person appointed by the Board; or
    - (ii) if the dispute is between a member and the Board or the Institute—a person appointed or employed by the Dispute Settlement Centre of Victoria.
- (3) A mediator appointed by the Committee may be a member or former member of the Institute but in any case must not be a person who—
  - (a) has a personal interest in the dispute; or
  - (b) is biased in favour of or against any party.

#### **5.4 Mediation process**

- (1) The mediator to the dispute, in conducting the mediation, must—
  - (a) give each party every opportunity to be heard; and
  - (b) allow due consideration by all parties of any written statement submitted by any party; and
  - (c) ensure that natural justice is accorded to the parties throughout the mediation process.
- (2) The mediator must not determine the outcome of the dispute.

#### **5.5 Failure to resolve dispute by mediation**

If the mediation process does not resolve the dispute, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

#### **6 MINUTES OF GENERAL MEETING**

- (1) The Board must ensure that minutes are taken and kept of each general meeting.
- (2) The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.
- (3) In addition, the minutes of each annual general meeting must include—
  - (a) the names of the members attending the meeting; and
  - (b) proxy forms given to the Chairperson of the meeting.
  - (c) the financial statements submitted to the members in accordance with rule 27 of the Constitution
  - (d) the certificate signed by two Board members, on behalf of the Board certifying that the financial statements give a true and fair view of the financial position and performance of the Institute; and

- (e) any audited accounts and auditor's report or report of a review accompanying the financial statements that are required under the Act.

## **7 BOARD**

### **7.1 Composition of the Board**

The Board consists of—

- (a) a President; and
- (b) a Vice-President; and
- (c) ordinary members elected under Constitution rule 10.1 and 10.3

### **7.2 General Duties**

- (1) As soon as practicable after being elected or appointed to the Board, each Board member must become familiar with the Constitution, these By-Laws and the Act
- (2) The Board is collectively responsible for ensuring that the Institute complies with the Act and that individual members of the Board comply with these By-Laws, the Constitution, and the Code of Conduct
- (3)

### **7.3 Nominations**

- (1) A valid nomination requires the completion of a Board Candidate Nomination Form. It is required to include the member name and address of two current members who are eligible to vote and support the nomination
- (2) In addition to any eligibility requirements in the Nomination Form, a candidate must:
  - (a) Undertake a robust skills and attributes assessment in accordance with the eligibility requirements outlined in the Nomination Form
  - (b) Participate in an interview before an election panel
- (3) Nomination forms must be received by the Institute no later than the last business day on or before the last business day two months prior to the AGM in the relevant year.

### **7.4 Ballot Papers**

- (1) When election by ballot is required, voting will be carried out by ballot in such manner as determined by the Board and in accordance with the Constitution.
- (2) The Returning Officer must make available to members the appropriate voting papers
- (3) Ballot papers will be distributed no later than one month before the AGM and the close of ballot is at
  - 2:00 pm AEST, 21 days later
- (4) The scrutiny of the voting papers will be conducted by an independent scrutineer Appointed by the Board.
- (5) Counting of votes is the responsibility of the returning officer

- (6) The results of the ballot is declared at the AGM
- (7) The Returning Officer must destroy all election material one month from the AGM

#### **7.5 Election Material**

- (1) All election material produced, published or issued by the Association must have the prior approval of the Returning Officer.
- (2) Information concerning a candidate provided by the candidate may be included in election material produced, published or issued by the Institute
- (3) All election material must comply with the following principles and requirements:
  - (a) Material must not be misleading or deceptive;
  - (b) Material must not be false or defamatory;
  - (c) Material must not disclose confidential Institute information;
  - (d) Material must not bring the Institute into disrepute; and
  - (e) Material must not expose the Institute to legal proceedings or prosecution
- (4) Each candidate is entitled to have included in the election material sent to members a candidate statement (of no more than 200 words) of relevance to that candidate's nomination for election
- (5) Candidates must adhere to the Board's election guidelines concerning restrictions on electioneering, candidates' engagement with members, making of statements in relation to public policy and the use of social or other media during the election process.
- (6) Breach or violation of the election guidelines by a candidate or by a person assisting the candidate, may, at the discretion of the Board result in disqualification from the election.

## **8—MEETINGS OF THE BOARD**

### **8.1 Meetings of the Board**



- (1) The Board must meet at least four times in each year at the dates, times and places determined by the Board.
- (2) The date, time and place of Board meetings must be determined by the President as soon as practicable after the annual general meeting of the Association.
- (3) Special Board meetings may be convened by the President or by any three members of the Board.

#### **8.2 Notice of meetings**

- (1) Notice of each Board meeting must be given to each Board member no later than 7 days before the date of the meeting.
- (2) Notice may be given of more than one Board meeting at the same time.
- (3) The notice must state the date, time and place of the meeting.
- (4) If a special Board meeting is convened, the notice must include the general nature of the business to be conducted.
- (5) The only business that may be conducted at a special Board meeting is the business for which the meeting is convened.

#### **8.3 Urgent meetings**

- (1) In cases of urgency, a meeting can be held without notice being given in accordance with By Law 8.2 provided that as much notice as practicable is given to each Board member by the quickest means practicable.
- (2) Any resolution made at the meeting must be passed by an absolute majority of the Board. (An absolute majority means a majority of the Board members currently holding office and entitled to vote, as distinct from a majority of Board members present at a Board meeting.)
- (3) The only business that may be conducted at an urgent meeting is the business for which the meeting is convened.

#### **8.4 Procedure of Board business**

- (1) The procedure to be followed at a meeting of a Board shall be determined from time to time by the President in consultation with the Board.

#### **8.5 Use of technology**

- (1) A Board member who is not physically present at a Board meeting may participate in the meeting by the use of technology that allows that Board member and the Board members present at the meeting to clearly and simultaneously communicate with each other.
- (2) For the purposes of this Part, a Board member participating in a Board meeting as permitted under subrule (1) is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

#### **8.7 Quorum**

- (1) No business may be conducted at a Board meeting unless a quorum is present.
- (2) The quorum for a Board meeting is the presence (in person or as allowed under rule 21 of the Constitution of a majority of the Board members holding office.

- (3) If a quorum is not present within 30 minutes after the notified commencement time of a Board meeting—
  - (a) in the case of a special meeting—the meeting lapses;
  - (b) in any other case—the meeting must be adjourned to a date no later than 14 days after the adjournment and notice of the time, date and place to which the meeting is adjourned must be given in accordance with rule 59.

#### **8.8 Voting**

- (1) On any question arising at a Board meeting, each Board member present at the meeting has one vote.
- (2) A motion is carried if a majority of Board members present at the meeting vote in favour of the motion.
- (4) If votes are divided equally on a question, the Chairperson of the meeting has a second or casting vote.
- (5) Voting by proxy is not permitted.

#### **8.9 Conflict of interest**

- (1) A Board member who has a material personal interest in a matter being considered at a Board meeting must disclose the nature and extent of that interest to the Board.
- (2) The member—
  - (a) must not be present while the matter is being considered at the meeting; and
  - (b) must not vote on the matter.
- (3) This rule does not apply to a material personal interest that the member has in common with all, or a substantial proportion of, the members of the Association.

#### **8.10 Minutes of meeting**

- (1) The Board must ensure that minutes are taken and kept of each Board meeting.
- (2) The minutes must record the following—
  - (a) the names of the members in attendance at the meeting;
  - (b) the business considered at the meeting;
  - (c) any resolution on which a vote is taken and the result of the vote;
  - (d) any material personal interest disclosed under rule 65.

#### **8.11 Leave of absence**

- (1) The Board may grant a committee member leave of absence from Board meetings for a period not exceeding 3 months.
- (2) The Board must not grant leave of absence retrospectively unless it is satisfied that it was not feasible for the Board member to seek the leave in advance.

### **9 FINANCIAL MATTERS**

#### **9.1 Source of funds**

The funds of the Institute may be derived from joining fees, annual subscriptions, donations, fund-raising activities, grants, interest and any other sources approved by the Board.

### **9.2 Management of funds**

- (1) The Institute must open an account or accounts with a licenced financial institution or institutions from which all expenditure of the Institute is made and into which all of the Institute's revenue is deposited.
- (2) Subject to any restrictions imposed by a general meeting of the Institute, the Board may approve expenditure on behalf of the Institute.
- (3) The Board may authorise the CEO to expend funds on behalf of the Institute (including by electronic funds transfer) up to a specified limit without requiring approval from the Board for each item on which the funds are expended.
- (4) All electronic transfers, cheques, drafts, bills of exchange, promissory notes and other negotiable instruments can only be signed/authorised by delegated officers .
- (5) All funds of the Institute must be deposited into the financial account of the Institute no later than 5 working days after receipt.

### **9.3 Financial records**

- (1) The Institute must keep financial records that—
  - (a) correctly record and explain its transactions, financial position and performance; and
  - (b) enable financial statements to be prepared as required by the Act.
- (2) The Institute must retain the financial records for 7 years after the transactions covered by the records are completed.
- (3) The CEO must keep in his or her custody, or under his or her control—
  - (a) the financial records for the current financial year; and
  - (b) any other financial records as authorised by the Board.

### **9.4 Financial statements**

- (1) For each financial year, the Board must ensure that the requirements under the Act relating to the financial statements of the Institute are met.
- (2) Without limiting subrule (1), those requirements include—
  - (a) the preparation of the financial statements;
  - (b) the auditing of the financial statements
  - (c) the certification of the financial statements by the Board;
  - (d) the submission of the financial statements to the annual general meeting of the Institute;
  - (e) the lodgement with the Registrar of the financial statements and accompanying reports, certificates, statements and fee.

## **—10 GENERAL MATTERS**

### **10.1 Registered address**

The registered address of the Association is the address determined from time to time by resolution of the Board

#### **10.2 Alteration of By-Laws**

These By-Laws may only be altered by resolution of a the Board.

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DRAFT FOR MEMBER INFORMATION