



AUDIT BUREAU  
OF CIRCULATIONS

# RULES

**July 1, 2010**

## NOTES

## TABLE OF CONTENTS

	Page
<b>PART 1      GENERAL</b>	<b>1</b>
1.0    NAME	1
2.0    DEFINITIONS AND INTERPRETATION	1
2.1    Definitions	1
2.2    Interpretation	4
3.0    OBJECTS	5
3.1    Objects	5
<b>PART 2      MEMBERSHIP</b>	<b>7</b>
4.0    MEMBER CATEGORIES	7
4.1    Member Categories	7
4.2    Classes of Full Members	7
5.0    APPLYING FOR MEMBERSHIP	7
5.1    Person May Apply for Membership	7
5.2    Applicant Must Comply With Relevant Provisions	7
6.0    ADMISSION TO MEMBERSHIP	7
6.1    Accepting or Refusing an Application for Membership	7
6.2    Admission as an Advertiser Member or an Advertising Agency Member	7
6.3    Admission as a Publisher Member	7

	<b>Page</b>
6.4 Admission as a Subscriber Member	8
6.5 Record and Notification of Admission as a Member	8
6.6 Requirement for Separate Membership	9
6.7 Members Bound by Rules	9
6.8 Publisher Members Elect Bound by Rules	9
<b>7.0 SUBSCRIPTIONS AND LEVIES</b>	<b>9</b>
7.1 Subscriptions for New Members	9
7.2 Subscriptions, Levies, Fees and Fines	9
7.3 Unpaid Subscriptions, Levies, Fees or Fines	10
7.4 Annual Subscription or Levy Not Refundable	10
7.5 Source of Funds	10
7.6 Management of Funds	10
<b>8.0 RESIGNATION, TERMINATION AND REINSTATEMENT OF MEMBERSHIP</b>	<b>10</b>
8.1 Resignation of Membership	10
8.2 Termination of Membership	10
8.3 Reinstatement of Membership	11
8.4 Membership Entitlements Not Transferable	11
<b>PART 3 COMMITTEES, OFFICERS AND MEETINGS</b>	<b>12</b>
<b>9.0 GENERAL COMMITTEE – AUTHORITY AND COMPOSITION</b>	<b>12</b>
9.1 Control and Management of ABC	12
9.2 Composition of General Committee	12

	<b>Page</b>
9.3    Duties of General Committee Members	12
<b>10.0    GENERAL COMMITTEE – PROCEDURE FOR ELECTING MEMBERS</b>	<b>12</b>
10.1    Membership Groups’ General Committee Members	12
10.2    Procedure for Electing General Committee Members	12
10.3    Filling a Casual Vacancy	12
<b>11.0    GENERAL COMMITTEE - MEETINGS</b>	<b>12</b>
11.1    Ordinary Meetings of General Committee	12
11.2    Meeting Before Annual General Meeting	12
11.3    Meeting After Annual General Meeting	13
11.4    Notice of General Committee Meetings	13
<b>12.0    GENERAL COMMITTEE - PROCEEDINGS</b>	<b>13</b>
12.1    Proxies	13
12.2    Quorum	13
12.3    Effect of Vacancies	13
12.4    Chairman of Meetings	13
12.5    Resolutions	13
<b>13.0    EXECUTIVE COMMITTEE – AUTHORITY AND COMPOSITION</b>	<b>14</b>
13.1    Authority of Executive Committee	14
13.2    Composition of Executive Committee	14
13.3    Filling a Casual Vacancy	14
13.4    Duties of Executive Committee Members	14
<b>14.0    EXECUTIVE COMMITTEE - MEETINGS</b>	<b>14</b>
14.1    Meetings and Proceedings of Executive Committee	14

	<b>Page</b>
14.2 Request for Meeting of Executive Committee	14
<b>15.0 EXECUTIVE COMMITTEE - PROCEEDINGS</b>	<b>15</b>
15.1 Proxies	15
15.2 Quorum	15
15.3 Chairman of Meetings	15
15.4 Resolutions	15
<b>16.0 MEETINGS OF MEMBERS – ANNUAL GENERAL MEETING</b>	<b>15</b>
16.1 Time for Annual General Meeting	15
16.2 Notice to Members of Annual General Meeting	15
16.3 Business of Annual General Meeting	16
<b>17.0 MEETINGS OF MEMBERS – SPECIAL GENERAL MEETING</b>	<b>16</b>
17.1 Chairman May Convene	16
17.2 Requisition by Full Members	16
17.3 Notice of Special General Meetings	16
<b>18.0 MEETINGS OF MEMBERS - PROCEEDINGS</b>	<b>16</b>
18.1 Notice of Business to General Committee	16
18.2 Representation	16
18.3 Proxies	16
18.4 Quorum	17
18.5 Chairman of Meetings	17
18.6 Resolutions	17
18.7 Meetings	18

	<b>Page</b>
<b>19.0 OFFICERS – ELECTION AND DUTIES</b>	<b>18</b>
19.1 Officers	18
19.2 Election of Officers	18
19.3 Duties of Honorary Treasurer	18
<b>20.0 EXECUTIVE DIRECTOR – APPOINTMENT AND DUTIES</b>	<b>19</b>
20.1 Appointment of Executive Director	19
20.2 Duties of Executive Director	19
<b>PART 4 TRUSTEES, INCOME AND PROPERTY</b>	<b>20</b>
<b>21.0 TRUSTEES</b>	<b>20</b>
21.1 Appointment and Number of Trustees	20
21.2 Term of Office of Trustees	20
21.3 Appointment of New Trustees	20
21.4 Indemnification of Trustees	20
<b>22.0 INCOME AND PROPERTY</b>	<b>20</b>
22.1 Application of Income and Property	20
22.2 Control of Income and Property	20
22.3 Copyright Vested in Trustees	21
22.4 Dealing with Income and Property on Dissolution	21
<b>PART 5 AUDITS, AUDITORS AND AUDIT REPORTS</b>	<b>22</b>
<b>23.0 AUDITS</b>	<b>22</b>
23.1 Types of Audit	22

	<b>Page</b>
<b>23.2 Circulation Audit</b>	<b>22</b>
<b>23.3 Initial Audit</b>	<b>22</b>
<b>23.4 Inspection Audit</b>	<b>22</b>
<b>23.5 Review Audit</b>	<b>22</b>
<b>23.6 Other Audits</b>	<b>22</b>
<b>23.7 Audit Guidelines</b>	<b>22</b>
<b>23.8 Audit Only by Approved Auditor</b>	<b>22</b>
<b>23.9 Audit Must be in Accordance with Rules and Audit Guidelines</b>	<b>22</b>
<b>23.10 Audit Records Must be Kept</b>	<b>22</b>
<b>23.11 Publisher Member Must Comply With Request for Inspection Audit or Review Audit</b>	<b>22</b>
<b>23.12 Auditor Must Attend Inspection Audit or Review Audit</b>	<b>23</b>
<b>24.0 AUDITORS</b>	<b>23</b>
<b>24.1 Auditor to be Qualified</b>	<b>23</b>
<b>24.2 Auditor to be Approved</b>	<b>23</b>
<b>24.3 Registration of Auditor</b>	<b>24</b>
<b>24.4 Auditor Must Notify Cessation of Qualification</b>	<b>24</b>
<b>24.5 Appointment of an Auditor to an Audit</b>	<b>24</b>
<b>24.6 Auditors for Regional Newspapers and Country Press</b>	<b>24</b>
<b>24.7 Request for Change of Appointed Auditor</b>	<b>24</b>
<b>24.8 Appointment of Audit Inspector</b>	<b>24</b>
<b>24.9 Role of Audit Inspector</b>	<b>25</b>
<b>24.10 Removal of Auditor from Register</b>	<b>25</b>



	<b>Page</b>
<b>25.0 AUDIT PERIODS</b>	<b>25</b>
25.1 Audit Periods	25
25.2 Variation of Audit Periods	26
<b>26.0 AUDIT REPORTS</b>	<b>26</b>
26.1 Audit Report Must Include Every Publishing Day	26
26.2 Form of Audit Report Determined by Executive Committee	28
26.3 Frequency of Submitting Audit Reports	28
26.4 Audit Report Must be Audited by Appointed Auditor	30
26.5 Publisher Member Must Provide Information and Access to Auditor	30
26.6 Publisher Member Responsible for Content of Audit Report	30
26.7 Auditor's Certificate	30
26.8 Submission of Audit Report	30
26.9 Fee for Late Submission	30
26.10 Acceptance of Audit Report by ABC	31
26.11 ABC May Request Amendment of Audit Report	31
 <b>PART 6 PUBLISHER'S STATEMENTS</b>	 <b>32</b>
<b>27.0 PUBLISHER'S STATEMENTS</b>	<b>32</b>
27.1 Publisher Member to Prepare and Submit Publisher's Statements	32
27.2 Publisher's Statements Must be in Accordance with Rules	32
27.3 Form of Publisher's Statement Determined by Executive Committee	32

	<b>Page</b>
27.4 Records Must be Kept	32
<b>28.0 STATEMENT PERIODS</b>	<b>32</b>
28.1 Statement Periods	32
28.2 Variation of Statement Periods	32
28.3 Publisher's Statement Must Include Every Publishing Day	33
<b>29.0 SUBMITTING PUBLISHER'S STATEMENTS</b>	<b>34</b>
29.1 Frequency of Submitting Publisher's Statements	34
29.2 Publisher Member Responsible for Content of Publisher's Statement	35
29.3 Submission of Publisher's Statement	35
29.4 Fee for Late Submission	35
29.5 Acceptance of Publisher's Statement by ABC	35
29.6 ABC May Request Amendment of Publisher's Statement	36
<b>30.0 AUDIT REPORT IN LIEU OF PUBLISHER'S STATEMENT</b>	<b>36</b>
30.1 Audit Report May be Required	36
30.2 Publisher Member May Elect to Provide Audit Report	36
<b>PART 7 CIRCULATION STATEMENTS AND CIRCULATION SUMMARIES</b>	<b>37</b>
<b>31.0 CIRCULATION STATEMENTS</b>	<b>37</b>
31.1 Form and Content Determined by Executive Committee	37
31.2 Determinations Consistent With Rules	37
31.3 Preparation of Circulation Statements and Calculation of Publication Sales or Distribution	37

	<b>Page</b>	
31.4	<b>ABC May Request Amendment of Circulation Statement</b>	<b>37</b>
31.5	<b>No Acceptance of Circulation Statement if Moneys Owed</b>	<b>37</b>
<b>32.0</b>	<b>CIRCULATION SUMMARIES</b>	<b>37</b>
32.1	<b>ABC Will Prepare and Distribute Circulation Summaries</b>	<b>37</b>
32.2	<b>Form and Content of Circulation Summaries</b>	<b>37</b>
32.3	<b>Circulation Summary May Show Lower Figure</b>	<b>38</b>
32.4	<b>Circulation Summaries Prepared and Issued Without Opinion</b>	<b>38</b>
32.5	<b>Members to Receive Circulation Summaries</b>	<b>38</b>
<b>PART 8</b>	<b>AUDIT BUREAU OF VERIFICATION SERVICES</b>	<b>39</b>
<b>33.0</b>	<b>AUDIT BUREAU OF VERIFICATION SERVICES</b>	<b>39</b>
33.1	<b>Name</b>	<b>39</b>
33.2	<b>Purpose of ABVS</b>	<b>39</b>
33.3	<b>Audits by ABVS</b>	<b>39</b>
33.4	<b>Reports of Audits by ABVS</b>	<b>39</b>
33.5	<b>Application of Fees</b>	<b>39</b>
<b>PART 9</b>	<b>MISCELLANEOUS</b>	<b>40</b>
<b>34.0</b>	<b>PUBLICITY</b>	<b>40</b>
34.1	<b>Statements by Applicants for Membership and Publisher Members Elect</b>	<b>40</b>
34.2	<b>Use of ABC Logo Generally</b>	<b>40</b>

	Page
34.3 No Publicity Until Circulation Summary Published	40
34.4 Use of ABC Logo and Statements in Relation to Circulation Data	40
34.5 Statements of Comparison	41
34.6 Statements Concerning Circulation Generally	41
34.7 Provisions Relating to ABVS Information	41
34.8 Restriction on Use of ABC Communications	41
35.0 QUERY CONCERNING MEMBER'S COMPLIANCE WITH RULES	41
35.1 Query Procedure	41
36.0 CHALLENGE CONCERNING CIRCULATION STATEMENT	42
36.1 Challenge Procedure	42
37.0 SANCTIONS UNDER RULES 35.0 AND 36.0 AND SCHEDULE 4	42
37.1 Sanctions	42
37.2 ABC's Costs	42
38.0 RESOLUTION OF MEMBERS' ISSUES	42
38.1 Members Must Follow Procedures in Rules	42
39.0 INDEMNITIES	42
39.1 Indemnity in Relation to Enforcement Action	42
39.2 Indemnity in Relation to Actions by Members or Third Parties	42
39.3 Indemnity in Relation to Actions by Members	43
40.0 AMENDMENTS TO RULES	43
40.1 Definitions	43
40.2 Full Member May Propose Amendment	43
40.3 Consideration by Executive Committee	43

	<b>Page</b>
40.4 Consideration by General Committee	43
40.5 Result of Consideration by General Committee	44
40.6 Full Members May Requisition Vote	44
40.7 Date of Amendment	44
<b>41.0 DISSOLUTION</b>	<b>44</b>
41.1 Dissolution	44
41.2 Winding Up	44
<b>42.0 EXECUTIVE COMMITTEE DETERMINATIONS</b>	<b>44</b>
42.1 Definitions	44
42.2 Executive Committee May Make Determinations	44
42.3 Members May Dispute Determinations	45
42.4 Members Must Comply With Determinations	45
<b>43.0 NOTICES</b>	<b>45</b>
43.1 Service of Notices	45
43.2 Deemed Receipt of Notices	45
<b>44.0 TRANSITIONAL PROVISIONS</b>	<b>46</b>
44.1 Provisions Concerning Publisher Members and Membership Groups	46
44.2 Provision Concerning Increased Number of Members of General Committee	46
44.3 Provision Concerning Auditors' Qualifications	46
44.4 Provision Concerning Audit Reports	47

	<b>Page</b>
<b>SCHEDULE 1</b>	<b>48</b>
<b>APPLYING FOR MEMBERSHIP</b>	
S1-1.0 Applying for Membership Generally	48
S1-2.0 Additional Matters When Applying for Publisher Membership	48
S1-3.0 Additional Matters When Applying for Advertising Agency Membership	48
<b>SCHEDULE 2</b>	<b>49</b>
<b>COMMITTEES AND MEETINGS</b>	
S2-1.0 COMPOSITION OF GENERAL COMMITTEE	49
S2-1.1 Number of Members of General Committee	49
S2-1.2 Provision Relating to Membership Group B	49
S2-2.0 MEMBERSHIP GROUPS' GENERAL COMMITTEE MEMBERS	49
S2-2.1 Electing Representatives of Membership Groups A, B and C	49
S2-2.2 Electing Representatives of Membership Groups D and E	50
S2-3.0 PROCEDURE FOR ELECTING GENERAL COMMITTEE MEMBERS	50
S2-3.1 Enquiry to Sitting General Committee Members	50
S2-3.2 Calling for Nominations	50
S2-3.3 Nominations Only for Relevant Membership Group	50
S2-3.4 Lodging Nominations	50
S2-3.5 Election Where Insufficient Nominations to Hold a Ballot	50

	<b>Page</b>
S2-3.6 Election by Ballot	50
S2-3.7 Declaration of Ballot	51
S2-3.8 Retention of Returned Ballot Papers	51
S2-3.9 Procedure Where Insufficient Elected Representatives for Membership Groups A, B or C	51
<b>S2-4.0 PROCEDURE FOR CONDUCTING A GENERAL COMMITTEE POSTAL BALLOT AND ITS DECLARATION</b>	<b>51</b>
S2-4.1 Definitions	51
S2-4.2 Conduct of General Committee Postal Ballot	52
S2-4.3 Voting by Members of General Committee	52
S2-4.4 Appointment of Ballot Supervisor	52
S2-4.5 Declaration of General Committee Postal Ballot	52
<b>S2-5.0 PROCEDURE FOR CONDUCTING A POLL AT A MEETING OF MEMBERS AND ITS DECLARATION</b>	<b>53</b>
S2-5.1 Conduct of Poll at a Meeting of Members	53
S2-5.2 Declaration of Poll Taken at a Meeting of Members	53
<b>SCHEDULE 3</b>	<b>54</b>
<b>CIRCULATION STATEMENTS</b>	
<b>S3-1.0 DEFINITIONS</b>	<b>54</b>
<b>S3-2.0 AVERAGE NET PAID SALES AND AVERAGE OTHER SALES</b>	<b>58</b>
S3-2.1 Calculation of Average Net Paid Sales	58
S3-2.2 Calculation of Average Other Sales in Australia	58

	<b>Page</b>
<b>S3-2.3</b> <b>Circulation Statement Must Show Average Net Paid Sales in Australia and Categories</b>	<b>58</b>
<b>S3-2.4</b> <b>Circulation Statement May Show Separately Average Other Sales in Australia</b>	<b>59</b>
<b>S3-2.5</b> <b>Circulation Statement Must Show Separately Average Net Paid Sales Outside Australia</b>	<b>59</b>
<b>S3-2.6</b> <b>Circulation Statement May Show Explanation of Modified Overseas Copies</b>	<b>59</b>
<b>S3-3.0</b> <b>VOUCHER COPIES</b>	<b>59</b>
<b>S3-4.0</b> <b>PUBLICATION SUBSCRIPTIONS IN ARREARS</b>	<b>59</b>
<b>S3-5.0</b> <b>NEWSPAPER INSERTED MAGAZINES</b>	<b>59</b>
<b>S3-6.0</b> <b>DIGITAL VERSIONS</b>	<b>59</b>
 <b>SCHEDULE 4</b>	 <b>60</b>
 <b>CIRCULATION STATEMENTS – QUERIES AND CHALLENGES</b>	
 <b>S4-1.0</b> <b>RULE 35.0 – QUERY CONCERNING MEMBER’S COMPLIANCE WITH RULES</b>	 <b>60</b>
<b>S4-1.1</b> <b>Lodging a Query</b>	<b>60</b>
<b>S4-1.2</b> <b>Audit Inspector to Consider Query</b>	<b>60</b>
<b>S4-1.3</b> <b>Determination of Executive Committee</b>	<b>60</b>
<b>S4-1.4</b> <b>Response to Query</b>	<b>60</b>
<b>S4-1.5</b> <b>Audit Inspector to Consider Response</b>	<b>60</b>
<b>S4-1.6</b> <b>Decision of Executive Committee</b>	<b>60</b>



	<b>Page</b>
<b>S4-2.0    RULE 36.0 – CHALLENGE CONCERNING CIRCULATION STATEMENT</b>	<b>61</b>
<b>S4-2.1    Lodging a Challenge</b>	<b>61</b>
<b>S4-2.2    Response to a Challenge</b>	<b>61</b>
<b>S4-2.3    Audit Inspector to Consider Response</b>	<b>61</b>
<b>S4-2.4    Report on Inspection Audit</b>	<b>61</b>
<b>S4-2.5    Executive Committee to Determine Whether Review Audit Required</b>	<b>61</b>
<b>S4-2.6    Decision Where No Review Audit Required</b>	<b>61</b>
<b>S4-2.7    Challenger Must Lodge Amount Where Review Audit Required</b>	<b>62</b>
<b>S4-2.8    Action After Review Audit</b>	<b>62</b>
 <b>SCHEDULE 5</b>	 <b>64</b>
 <b>AMENDMENTS TO RULES</b>	
 <b>S5-1.0    DEFINITIONS</b>	 <b>64</b>
 <b>S5-2.0    PROCEDURE FOR CONDUCTING A BALLOT OF FULL MEMBERS AND ITS DECLARATION</b>	 <b>64</b>
<b>S5-2.1    Conduct of Ballot of Full Members</b>	<b>64</b>
<b>S5-2.2    Voting by Full Members</b>	<b>64</b>
<b>S5-2.3    Appointment of Ballot Supervisor</b>	<b>65</b>
<b>S5-2.4    Declaration of Ballot</b>	<b>65</b>

# RULES

## PART 1 GENERAL

### 1.0 NAME

1.1 The name of the association is the Audit Bureau of Circulations ("**ABC**") ABN 78 449 399 715.

### 2.0 DEFINITIONS AND INTERPRETATION

#### 2.1 Definitions

In these Rules unless the context otherwise requires:

**ABC** is the Audit Bureau of Circulations named in **Rule 1.0**.

**ABC Staff Auditor** is an Auditor who:

- (a) is an employee of the ABC; or
- (b) is engaged directly by the ABC as a contractor.

**ABVS** is the division of the ABC known as the Audit Bureau of Verification Services referred to in **Rule 33.0**.

**Advertiser Member** is a Full Member who in the opinion of the Executive Committee either:

- (a) carries on business as an advertiser which (among other things) advertises in Publications but which is not an advertising agency; or
- (b) or is an association representing advertisers with a membership of at least 12 advertisers who advertise in Publications,

and who has been admitted in accordance with **Rule 6.0**.

**Advertising Agency Member** is a Full Member who in the opinion of the Executive Committee either:

- (a) carries on business as an organisation which (among other things) places advertising in Publications but which is not an advertiser; or
- (b) is an association representing advertising agencies with a membership of at least 12 advertising agencies which place advertising in Publications,

and who has been admitted in accordance with **Rule 6.0**.

**Annual General Meeting** is an annual general meeting of Members convened in accordance with **Rule 16.0**.

**Audit** is an audit of:

- (a) the paid sales of a Publication;
- (b) the distribution of a Newspaper Inserted Magazine; or
- (c) any other matter authorised by the Executive Committee under **Rule 23.6**,

which is carried out in accordance with these Rules and the Audit Guidelines.

**Audit Guidelines** are the ABC's audit guidelines determined by the Executive Committee from time to time in accordance with **Rule 23.7**.

**Audit Inspector** is the person appointed in accordance with **Rule 24.8** for the purposes described in **Rule 24.9**.

**Audit Periods** are the audit periods stipulated in **Rule 25.1**, which may be varied from time to time by the Executive Committee pursuant to **Rule 25.2**, and which apply in respect of a Publication.

**Audit Report** is a report by an Auditor:

- (a) in respect of an Audit;
- (b) in the form stipulated in **Part 5**; and
- (c) prepared as required in **Parts 5 and 7** and **Schedule 3** and in accordance with the Audit Guidelines.

**Auditor** is an independent auditor who satisfies the requirements of **Rule 24.1** and has been approved by the Executive Committee under **Rule 24.2** to carry out Audits.

**Auditor's Certificate** is a certificate provided by an Auditor in respect of a Circulation Audit and in the form required by the Audit Guidelines.

**Average Issue Circulation** means Average Net Paid Sales (as defined in **Schedule 3**) for each Issue of a Publication in its primary country of circulation for a Reporting Period.

**Chairman** is the person for the time being holding office as the Chairman of the ABC pursuant to **Rule 19.0**.

**Circulation Audit** is an Audit of either:

- (a) the paid sales of a Publication; or
- (b) the distribution of a Newspaper Inserted Magazine.

**Circulation Statement** is an Audit Report or a Publisher's Statement.

**Circulation Summary** is a summary of the paid sales of Publications and the distribution of Newspaper Inserted Magazines which is prepared and distributed by the ABC to Members in accordance with **Part 7**.

**Confidential Information** is information in any form or media that:

- (a) relates to the business, assets or affairs of the ABC; and
- (b) is made available by or on behalf of the ABC to the recipient, directly or indirectly, but excludes information that the recipient can establish to the satisfaction of members of the Executive Committee and the General Committee (as the case may be):
  - (c) is in or enters the public domain other than through a breach of any obligation of confidence owed to the ABC;
  - (d) is or was made available to the recipient by a person (other than the ABC) who was not then under any obligation of confidence to the ABC in relation to that information; or
  - (e) was developed by the recipient without the recipient relying on, referring to or incorporating any of the Confidential Information.

**Country Press** is a Publication which is either:

- (a)
  - (i) a non-daily newspaper;
  - (ii) published other than in a capital city for local distribution; and
  - (iii) published on at least one day each week; or
- (b) an agricultural publication targeted to the primary producer and other participants in the agribusiness sector.

**Deputy Chairman** is the person for the time being holding office as the Deputy Chairman of the ABC pursuant to **Rule 19.0**.

**Executive Committee** is the committee of persons described in **Rule 13.0** for the time being holding office as members of the Executive Committee of the ABC in accordance with these Rules.

**Executive Director** is the person for the time being appointed by the Executive Committee to the position of Executive Director of the ABC pursuant to **Rule 20.0**.

**Financial Year** is the period commencing on 1 July in any year and ending on 30 June in the following year.

**Finish Date** is the day prior to the Start Date of a new Issue.

**Full Member** is a person admitted as a full Member in accordance with **Rule 6.0**.

**General Committee** is the committee of persons described in **Rule 9.0** for the time being holding office as members of the General Committee of the ABC in accordance with these Rules.

**General Committee Postal Ballot** is a postal ballot of members of the General Committee held in accordance with **Rule 12.5 and Schedule 2**.

**GST** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Honorary Treasurer** is the person for the time being holding office as the Honorary Treasurer of the ABC pursuant to **Rule 19.0**.

**Independent** means independence of management and free of any business or other relationship that could materially interfere with, or could reasonably be perceived to interfere with, the exercise of their unfettered and independent judgement.

**Initial Audit** is the Audit described in **Rule 6.3.1(b)** and is the first Circulation Audit of a publication in accordance with these Rules.

**Inspection Audit** is an audit by the Audit Inspector, or by an ABC Staff Auditor at the Audit Inspector's direction, to check:

- (a) the records, processes, procedures and methodology being used in and for; and
- (b) a Publisher Member or Auditor's compliance with the provisions of the Rules and the Audit Guidelines applying to,

Audits and the preparation of Circulation Statements in respect of that Publisher Member's Publications.

**Issue** is an issue of a Publication with a publication date which remains as the current issue until superseded by the next following issue of that Publication and which for newspapers may only be counted as an Issue in the Membership Group which covers the period in which the bulk of the sales of the Issue occur.

**Meeting of Members** is an Annual General Meeting or a Special General Meeting.

**Member** is a member of the ABC who has been admitted in accordance with **Rule 6.0**.

**Membership Group** is any one of the groups of Full Members referred to in **Rule S2-1.0 in Schedule 2**.

**Metropolitan Monday – Friday Daily Newspaper** is a Publication which is:

- (a) a newspaper;
- (b) published in a capital city; and
- (c) published on five days each week other than Saturday or Sunday.

**Metropolitan Saturday Newspaper** is a Publication which:

- (a) is a newspaper;
- (b) is published in a capital city; and
- (c) has the bulk of its sales on a Saturday.

**Metropolitan Sunday Newspaper** is a Publication which:

- (a) is a newspaper;
- (b) is published in a capital city; and
- (c) has the bulk of its sales on a Sunday.

**Month** is a calendar month.

**National Newspaper** is a Publication which is a newspaper sold nationally in Australia.

**Newspaper Inserted Magazine** is a Publication which is:

- (a) a magazine or in the form of a magazine; and
- (b) provided by a Publisher Member:
  - (i) on a regular basis;
  - (ii) at the same time; and
  - (iii) at no further chargeto a person purchasing a copy of a newspaper published by that Publisher Member.

**Publication** is a newspaper or magazine published by a Publisher Member.

**Publisher Member** is a Full Member who in the opinion of the Executive Committee carries on the business of a publisher and who has been admitted in accordance with **Rule 6.0**.

**Publisher's Statement** is a statement by a Publisher Member:

- (a) in respect of the paid sales of a Publication or the distribution of a Newspaper Inserted Magazine;
- (b) in the form stipulated in **Part 6**; and
- (c) prepared as required in **Parts 6 and 7** and **Schedule 3**,

but which is not audited by an Auditor.

**Publishing Day** is:

- (a) the day; or
- (b) each day in the period,

(as the case may be) covered by an Issue of a Publication that is, the day or days on which an Issue of a publication is on sale prior to being superceded by a new Issue of that publication.

**Regional Daily Newspaper** is a Publication which is:

- (a) a newspaper;
- (b) published other than in a capital city; and
- (c) published on at least five days each week.

**Regional Sunday Newspaper** is a Publication which:

- (a) is a newspaper;
- (b) is published other than in a capital city; and
- (c) has the bulk of its sales on a Sunday.

**Reporting Period** is an Audit Period or a Statement Period (as the case may be).

**Review Audit** is an audit by an ABC Staff Auditor:

- (a) directed by the Executive Committee as provided in **Rule 23.5**;
- (b) in respect of, relating to, or in any way arising out of:
  - (i) the preparation or content of any Circulation Statement or Auditor's Certificate;
  - (ii) a Publisher Member or Auditor's compliance with the provisions of the Rules and the Audit Guidelines; or
  - (iii) the subject matter of a challenge lodged under **Rule 36.0 and Schedule 4**.

**Rules** are these rules of the ABC as originally in force or as amended from time to time in accordance with these Rules.

**Special General Meeting** is a special general meeting of Members convened and held in accordance with **Rule 17.0**.

**Start Date** is the date an Issue is placed on sale or delivered to subscribers.

**Statement Periods** are the periods stipulated in **Rule 28.1**, which may be varied from time to time by the Executive Committee pursuant to **Rule 28.2**, and which apply in respect of certain Publications.

**Subscriber Member** is a person (not being a Full Member) admitted as a subscriber Member in accordance with **Rule 6.0**.

**Trustees** are the persons for the time being appointed Trustees of the ABC pursuant to **Rule 21.0**.

**Weekly Magazine** is a magazine published by a Publisher Member and which generally publishes a new Issue each week.

## **2.2 Interpretation**

In these Rules unless the context otherwise requires:

- 2.2.1 references to parts and schedules refer to the parts of and schedules to these Rules;
- 2.2.2 a reference to these Rules includes all schedules to these Rules;

- 2.2.3 headings do not affect the interpretation of these Rules;
- 2.2.4 a reference to **person** includes an individual and any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and includes the person's executors, administrators, successors and assigns;
- 2.2.5 a reference to **including, includes** or **include** must be read as if it is followed by **(without limitation)**;
- 2.2.6 the words **for example** do not limit the meaning of the words to which the example relates to that particular example or examples of a similar kind;
- 2.2.7 where an expression is defined, any other part of speech or grammatical form of that expression has a corresponding meaning;
- 2.2.8 the singular includes the plural and vice-versa; and
- 2.2.9 a word which suggests one gender includes all genders.
- 2.2.10 a reference to a statute includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- 2.2.11 where under these Rules the Executive Committee:
  - (a) is required to take an action in respect of any matter, including a requirement to approve, determine, authorise, appoint, direct, prescribe, accept or refuse; or
  - (b) is otherwise required (expressly or impliedly) to consider, form an opinion or make a decision in respect of a matter,
 the Executive Committee:
  - (c) does so in its absolute discretion subject to **Rule 13.4**; and
  - (d) is not obliged to provide any reason for its opinions, determinations or decisions unless these Rules provide otherwise;
- 2.2.12 a reference to the **ABC**, which does not have a separate legal identity as it is an unincorporated association, includes a reference to the Trustees, and the officers, agents and representatives of the ABC.

### **3.0 OBJECTS**

#### **3.1 Objects**

The objects of the ABC are to:

- 3.1.1 highlight the special status of the auditing of paid media;
- 3.1.2 issue standardised statements of paid sales of Publications (and of distribution in respect of Newspaper Inserted Magazines only);
- 3.1.3 verify by Auditor's examination of the data contained in Publisher's Statements in respect of the paid sales of their Publications (and in respect of the distribution of Newspaper Inserted Magazines only);
- 3.1.4 disseminate data concerning the circulation of Publications for the benefit of Members and to publish and distribute summaries of that data to Members;
- 3.1.5 audit, and publish reports on audits of:
  - (a) aspects of the dissemination of material (including advertisements) by way of:
    - (i) outdoor advertising signs;
    - (ii) trade exhibitions and conferences;
    - (iii) the exhibition of cinematograph films;
    - (iv) any method of a like nature to any of the matters in **Rules 3.1.5 (a)(i) to (iii)**; and
    - (v) electronic or digital communication or media, including material disseminated by:
      - (A) subscription television;
      - (B) pay radio services; or
      - (C) the internet;

- (b) attendances at:
  - (i) trade exhibitions, conferences or any gathering of people for similar purposes;  
and
  - (ii) the exhibition of cinematograph films; and
- (c) generally any data relating to the media industry, the auditing of which is intended to provide the industry with improved certainty and comparability of data for the benefit of the industry; and

3.1.6 do anything which is incidental or conducive to attaining the objects in **Rules 3.1.1 to 3.1.5**.

## PART 2 MEMBERSHIP

### 4.0 MEMBER CATEGORIES

#### 4.1 Member Categories

4.1.1 There are two categories of Members, namely:

- (a) Full Members; and
- (b) Subscriber Members.

4.1.2 A Subscriber Member has all the rights of a Full Member under these Rules except the rights to:

- (a) vote at any meeting of the Members; and
- (b) nominate a representative for election as a member of the General Committee.

#### 4.2 Classes of Full Members

There are three classes of Full Members, namely:

- 4.2.1 Publisher Members;
- 4.2.2 Advertiser Members; and
- 4.2.3 Advertising Agency Members.

### 5.0 APPLYING FOR MEMBERSHIP

#### 5.1 Person May Apply for Membership

Any person requiring circulation information published by the ABC may apply in writing for membership of the ABC by completing a membership application in the form from time to time prescribed by the Executive Committee and lodging that application with the ABC.

#### 5.2 Applicant Must Comply With Relevant Provisions

A person applying for membership of the ABC must comply with those provisions of **Schedule 1** which apply to the category of membership for which they are applying.

### 6.0 ADMISSION TO MEMBERSHIP

#### 6.1 Accepting or Refusing an Application for Membership

- 6.1.1 The Executive Committee may accept or refuse an application from a person applying to be a member of the ABC at a duly convened meeting of the Executive Committee.
- 6.1.2 A person applying to be a Full Member who in the opinion of the Executive Committee is not eligible to be a Full Member may have their application considered by the Executive Committee as if they had applied to be a Subscriber Member and the Executive Committee may accept the application on that basis.
- 6.1.3 The Executive Committee may refuse any membership application and in that case must return the amount of any subscription accompanying the membership application.

#### 6.2 Admission as an Advertiser Member or an Advertising Agency Member

A person applying to be a Full Member in the class of Advertiser Member or Advertising Agency Member will be admitted to membership as a Full Member in the relevant class upon the acceptance of their application pursuant to **Rule 6.1.1**.

#### 6.3 Admission as a Publisher Member

- 6.3.1 The admission of a person as a Full Member in the class of Publisher Member who has their application accepted pursuant to **Rule 6.1.1 (Publisher Member Elect)** is subject to and conditional upon the following:
  - (a) The Publisher Member Elect must install and maintain those records which the Executive Committee reasonably requires in accordance with these Rules and the Audit Procedures; and
  - (b) When the Publisher Member Elect has complied with **Rule 6.3.1(a)**, it must arrange for an Initial Audit of each publication for which the Publisher Member Elect has applied for membership to be:



- (i) conducted by the Auditor appointed by the Executive Committee under **Rule 24.5** in accordance with these Rules and the Audit Procedures;
  - (ii) subject to **Rule 6.3.2**, for the Audit Period nominated by the Executive Committee; and
  - (iii) submitted to the ABC within a time which the Executive Committee considers reasonable.
- 6.3.2 For the purposes of **Rule 6.3.1**, if the Publisher Member Elect lodges its application for membership in respect of a publication more than thirty days after the expiration of the most recent Audit Period for the Membership Group which covers that publication, then the Initial Audit under **Rule 6.3.1(b)** must be in respect of:
- (a) that most recently expired Audit Period; or
  - (b) a period of six months ending on the last day of the month in which that application for membership was lodged.
- 6.3.3 A Publisher Member Elect will be admitted as a Full Member in the class of Publisher Member for a Publication only when:
- (a) the Publisher Member Elect has complied with **Rules 6.3.1(a) and (b)** in respect of that publication to the satisfaction of the Executive Committee; and
  - (b) the Audit Report and the Auditor's Certificate for the Initial Audit of that publication have been accepted by the ABC under **Rule 26.10**.
- 6.4 Admission as a Subscriber Member**
- 6.4.1 A person applying to be a Subscriber Member will be admitted to membership upon their election as a Subscriber Member under **Rule 6.1.1**.
- 6.4.2 A person applying to be a Full Member who has their application considered as if they had applied to be a Subscriber Member and their application accepted on that basis pursuant to **Rule 6.1.2** must:
- (a) be sent a written notice by the Executive Committee advising they have been accepted as a Subscriber Member; and
  - (b) be given the opportunity to accept or reject in writing their acceptance as a Subscriber Member not more than 30 days after the date of the written notice from the Executive Committee.
- 6.4.3 If the person advises in writing by the time required under **Rule 6.4.2** that they accept their acceptance as a Subscriber Member, they will be admitted to membership upon the Executive Committee's receipt of their written acceptance.
- 6.4.4 If the person either:
- (a) advises in writing that they reject acceptance as a Subscriber Member; or
  - (b) does not provide any advice in writing,
- by the time required in **Rule 6.4.2**:
- (c) their acceptance as a Subscriber Member will be null and void from the beginning;
  - (d) their application for membership will be deemed to have been refused by the Executive Committee under **Rule 6.1.3**; and
  - (e) the Executive Committee must return the amount of any subscription accompanying the person's membership application.
- 6.5 Record and Notification of Admission as a Member**
- 6.5.1 As soon as a person is admitted as a Member in accordance with these Rules, the Executive Committee must advise that person in writing:
- (a) that the person has been admitted as a Member;
  - (b) the category and class (if applicable) of membership to which the person has been admitted; and
  - (c) the date on which the membership commenced.

6.5.2 The Executive Director must keep a record of the names and addresses (including postal address, facsimile number and email address, if any) of the Members admitted by the Executive Committee and the category and class (if applicable) of membership to which the Members are admitted.

#### **6.6 Requirement for Separate Membership**

6.6.1 A Publisher Member must maintain a separate membership of the ABC for each Publication for which it wishes to submit Circulation Statements in accordance with these Rules.

6.6.2 Each Advertising Agency Member who wishes to make material issued by the ABC available to their employees at that Member's offices:

- (a) in more than one state or territory of Australia; or
- (b) at a location outside Australia (but only in cases where the Member also has an office in Australia),

must maintain a separate membership of the ABC in respect of:

- (c) each office in a state or territory of Australia; and
- (d) where the member has an office outside Australia, at each office located in another country.

#### **6.7 Members Bound by Rules**

A Member is bound by these Rules on and from the date the Member's membership commenced as notified under **Rule 6.5**.

#### **6.8 Publisher Members Elect Bound by Rules**

A Publisher Member Elect is bound by these Rules from the date on which its application for membership as a Full Member in the class of Publisher Member for a particular publication was accepted by the Executive Committee pursuant to **Rule 6.1.1** until either:

- 6.8.1 the date on which the Publisher Member Elect is admitted as a Full Member in the class of Publisher Member for that publication pursuant to **Rule 6.3.3** in which case **Rule 6.7** will immediately apply;
- 6.8.2 the date on which the Publisher Member in writing advises the Executive Committee that the Publisher Member Elect withdraws its application for membership as a Full Member in the class of Publisher Member for that publication; or
- 6.8.3 the date on which the Executive Committee in writing advises the Publisher Member Elect that they will not be admitted as a Full Member in the class of Publisher Member for that publication because they have been unable to comply with the requirements of **Rule 6.3.3**.

### **7.0 SUBSCRIPTIONS AND LEVIES**

#### **7.1 Subscriptions for New Members**

7.1.1 A person admitted as a Member on or before 31 December in any Financial Year must pay the full annual subscription determined pursuant to **Rule 7.2.1** for that Financial Year.

7.1.2 A person admitted as a Member on or after 1 January in any Financial Year must pay one half of the annual subscription determined pursuant to **Rule 7.2.1** for that Financial Year.

#### **7.2 Subscriptions, Levies, Fees and Fines**

7.2.1 A Member must pay each annual subscription or other levy as may be decided and approved by either:

- (a) an Annual General Meeting; or
- (b) a Special General Meeting convened for that purpose and for which:
  - (i) at least twenty-eight days' notice in writing is given to Members; and
  - (ii) the notice of meeting specifies the amount of the subscription or levy to be considered by the meeting.

7.2.2 A Member must pay any subscription, levy, fee or fine imposed in accordance with these Rules within thirty days after the date of the ABC's written request for payment.

### **7.3 Unpaid Subscriptions, Levies, Fees or Fines**

7.3.1 A Member is not entitled to:

- (a) receive any service provided by the ABC; or
- (b) exercise any rights or privileges of membership,

if any subscription, levy, fee or fine imposed in accordance with these Rules has not been paid within the time required by **Rule 7.2.2**, and that disenfranchisement will remain until either:

- (c) the subscription, levy, fee or fine is paid to the ABC; or
- (d) the Member's membership is terminated under **Rule 8.2**.

7.3.2 If a Publisher Member has not paid any subscription, levy, fee or fine imposed in accordance with these Rules within the time required by **Rule 7.2.2**, then **Rule 8.2** applies in addition to the sanctions imposed under **Rule 7.3.1**.

### **7.4 Annual Subscription or Levy Not Refundable**

An annual subscription or a levy decided and approved under **Rule 7.2.1** is not refundable.

### **7.5 Source of Funds**

7.5.1 The funds of the ABC are to be derived from annual subscriptions, levies, fees or fines payable by Members which are determined pursuant to **Rule 7.2.1**, donations and, subject to any resolution passed at a Meeting of Members, such other sources as the Executive Committee determines.

7.5.2 All money received by the ABC must be deposited as soon as practicable and without deduction to the credit of the ABC's bank account.

7.5.3 The ABC must, as soon as practicable after receiving any money, issue an appropriate receipt.

### **7.6 Management of Funds**

7.6.1 all cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by any 2 members of the executive committee or jointly by the executive director and a member of the executive committee.

## **8.0 RESIGNATION, TERMINATION AND REINSTATEMENT OF MEMBERSHIP**

### **8.1 Resignation of Membership**

A Member may resign as a Member by giving the ABC at least three months' notice in writing of its intention to resign provided that all moneys owing to the ABC by the Member in accordance with these Rules are paid in full.

### **8.2 Termination of Membership**

8.2.1 A Publisher Member's membership in respect of a Publication may be terminated at any time by the Executive Committee if:

- (a) (i) the Publisher Member's records and information presented to the Auditor appointed for the Publication under these Rules for the purposes of an Audit are not in that Auditor's opinion suitable to be audited; and
- (ii) the Publisher Member does not provide the records and information required to be maintained by the Publisher Member under these Rules as the Executive Committee requires in respect of the Publication within fourteen days after written notice by the Audit Inspector to do so;
- (b) the Publisher Member does not submit to the ABC by the due date a Circulation Statement for a Reporting Period required for the Publication in accordance with these Rules; or
- (c) (except where the Publication is a Newspaper Inserted Magazine) the Publisher Member fails to maintain the Publication with a paid circulation at least 51% of which qualifies as "Average Net Paid Sales" as defined in **Schedule 3**.

8.2.2 (a) The Executive Director or the Audit Inspector, as the case may be, must advise the Executive Committee of any breach by a Member of these Rules or the Audit Guidelines (**Breach**) which either of them may observe or which may be reported to either of them.

- (b) Where the Executive Committee receives an advice under **Rule 8.2.2(a)**, the Executive Committee by written notice (**Breach Notice**) may require the Member to remedy the Breach within the time stipulated in the Breach Notice.
  - (c) If the Breach is not remedied by the Member within the time stipulated in the Breach Notice, the Executive Committee by written notice to the Member may terminate the membership of that Member.
- 8.2.3 Subject to **Rule 8.2.4**, the Executive Committee by written notice to the relevant Member (**Termination Notice**) may terminate the membership of any Member who in the opinion of the Executive Committee:
- (a) breaches any of these Rules;
  - (b) makes any false or fraudulent statement as to the circulation of any Publication; or
  - (c) has displayed conduct which is detrimental to the ABC or its reputation.
- 8.2.4 (a) Subject to **Rule 8.2.4(b)**, the termination of the membership of a Member who receives a Termination Notice will not operate until the Member has an opportunity to be heard in their own defence by the Executive Committee on terms and conditions the Executive Committee considers reasonable.
- (b) If the Member desires to be heard by the Executive Committee under **Rule 8.2.4(a)**, the Member must give the Executive Committee written notice of that desire no later than 14 days after the date of the Termination Notice.
  - (c) If the Member does not provide a notice in accordance with **Rule 8.2.4(b)**, the termination of the membership of the Member will stand.
  - (d) Following a hearing under **Rule 8.2.4(a)**, the Executive Committee may decide to:
    - (i) confirm the termination of the Member's membership; or
    - (ii) withdraw the Termination Notice,
 and must advise the Member in writing of its decision.
- 8.2.5 A Member whose membership of the ABC is terminated in accordance with these Rules will:
- (a) forfeit to the ABC all moneys paid by the Member in respect of its membership;
  - (b) cease to have any right, title or interest in the property of the ABC; and
  - (c) remain liable for, and will pay to the ABC all moneys which at the time of ceasing to be a Member were due from the Member to the ABC.

### **8.3 Reinstatement of Membership**

A Member whose membership is terminated for any reason in accordance with these Rules may be reinstated as a Member by the Executive Committee subject to any conditions which the Executive Committee may determine.

### **8.4 Membership Entitlements Not Transferable**

A right, privilege or obligation which a Member has by reason of being a Member of the ABC:

- 8.4.1 is not capable of being transferred or transmitted to another Member or other person, and
- 8.4.2 terminates on termination or resignation of the Member's membership.

## PART 3 COMMITTEES, OFFICERS AND MEETINGS

### 9.0 GENERAL COMMITTEE – AUTHORITY AND COMPOSITION

#### 9.1 Control and Management of ABC

Subject to these Rules, the supreme control and management of the ABC is vested in a General Committee.

#### 9.2 Composition of General Committee

9.2.1 At any time the membership of the General Committee must be comprised as provided in **Rule S2-1.0 in Schedule 2**.

9.2.2 The members of the General Committee must be elected from persons nominated by the Full Members for that purpose in accordance with **Rule S2-3.0 in Schedule 2**.

9.2.3 A person elected as a member of the General Committee will serve until their successor is elected in accordance with these Rules, unless their Full Membership of the ABC is terminated earlier pursuant to these Rules.

#### 9.3 Duties of General Committee Members

9.3.1 Each Member of the General Committee should not:

- (a) act in situations of conflict of interest unless approved to do so by a simple majority of the General Committee; and
- (b) make personal use of Confidential Information or privileged information.

9.3.2 Each Member of the General Committee should:

- (a) act in the best interests of the Members as a whole;
- (b) act within the scope of the objects of the ABC in **Rule 3.0**; and
- (c) disclose to the General Committee actual or potential conflicts of interest.

### 10.0 GENERAL COMMITTEE – PROCEDURE FOR ELECTING MEMBERS

#### 10.1 Membership Groups' General Committee Members

Members of the General Committee must be elected by their respective Membership Group in accordance with the relevant provisions of **Schedule 2**.

#### 10.2 Procedure for Electing General Committee Members

Members of the General Committee must be elected in accordance with the procedures set out in the relevant provisions of **Schedule 2**.

#### 10.3 Filling a Casual Vacancy

10.3.1 If a casual vacancy occurs on the General Committee, those members of the General Committee who are in the same Membership Group as the person who created the casual vacancy (**Relevant Membership Group**) may appoint another person representing Full Members of the Relevant Membership Group to fill that casual vacancy.

10.3.2 A person appointed under **Rule 10.3.1** to fill a casual vacancy will hold office until the next Annual General Meeting following their appointment when they must retire but they will be eligible for re-election to the General Committee.

### 11.0 GENERAL COMMITTEE - MEETINGS

#### 11.1 Ordinary Meetings of General Committee

11.1.1 Subject to **Rules 11.2 and 11.3**, meetings of the General Committee may be convened by:

- (a) the Chairman; or
- (b) the written requisition of any seven members of the General Committee lodged with the Executive Director.

11.1.2 Meetings convened under **Rule 11.1.1**, will be held at a time, on a date and at a place determined by the Chairman or the Executive Committee.

#### 11.2 Meeting Before Annual General Meeting

The Chairman must convene a meeting of the General Committee under **Rule 11.1.1** to be held immediately before the Annual General Meeting.

### **11.3 Meeting After Annual General Meeting**

The Chairman must convene a meeting of the General Committee under **Rule 11.1.1** to be held immediately after the Annual General Meeting and for the purposes only of electing:

- 11.3.1 the officers of the ABC in accordance with **Rule 19.2**; and
- 11.3.2 the members of the Executive Committee in accordance with **Rule 13.2**.

### **11.4 Notice of General Committee Meetings**

- 11.4.1 The Executive Director must give each member of the General Committee notice in writing of each meeting of the General Committee at least fourteen days before the date of the meeting.
- 11.4.2 Each notice given under **Rule 11.4.1** must specify the subjects to be considered at the meeting.

## **12.0 GENERAL COMMITTEE – PROCEEDINGS**

### **12.1 Proxies**

- 12.1.1 A member of the General Committee may appoint a proxy from the Full Members with full power to act for and on their behalf at any meeting of the General Committee.
- 12.1.2 The appointment of a proxy under **Rule 12.1.1** must be in writing delivered to the Executive Director at least seven days before the General Committee meeting to which the appointment relates.

### **12.2 Quorum**

A quorum for a General Committee meeting is eleven members of the General Committee present either:

- 12.2.1 in person; or
- 12.2.2 by a proxy appointed under **Rule 12.1** who is not an elected member of the General Committee.

### **12.3 Effect of Vacancies**

The continuing members of the General Committee may act notwithstanding any vacancy in the membership of the General Committee but if their number falls below eleven the remaining members of the General Committee must not, except for the purpose of filling a vacancy, act while their number is below eleven.

### **12.4 Chairman of Meetings**

- 12.4.1 The Chairman will preside as chairman of General Committee meetings.
- 12.4.2 If the Chairman is not present within fifteen minutes after the time set for the commencement of a General Committee meeting or is unwilling to act, the Deputy Chairman will preside as chairman of that meeting.
- 12.4.3 If both the Chairman and the Deputy Chairman are not present within thirty minutes after the time set for the commencement of a General Committee meeting or are unwilling to act, the members of the General Committee present must elect one of their number to be chairman of the meeting.

### **12.5 Resolutions**

- 12.5.1 Questions arising at a meeting of the General Committee must be decided by a simple majority of the votes of members of the General Committee, each with one vote, and proxies appointed under **Rule 12.1** present and voting.
- 12.5.2 Any decision made in accordance with **Rule 12.5.1** will be deemed for all purposes to be a decision of the General Committee.
- 12.5.3 Except as provided in **Rule 13.2.1(b)**, resolutions may be determined by the General Committee by way of a General Committee Postal Ballot.
- 12.5.4 A General Committee Postal Ballot must be carried out and declared in accordance with the procedures set out in the relevant provisions of **Schedule 2**
- 12.5.5 Subject to **Rule 15.4.3**, the result of a General Committee Postal Ballot will be deemed to be the resolution of the General Committee.

## **13.0 EXECUTIVE COMMITTEE – AUTHORITY AND COMPOSITION**

### **13.1 Authority of Executive Committee**

Subject to these Rules and to any decisions or directions of the General Committee, the Executive Committee will control and manage the ABC and has full power to originate, discuss and decide all questions relating to the business of the ABC.

### **13.2 Composition of Executive Committee**

13.2.1 (a) Subject to **Rule 13.2.2**, the General Committee must elect from among its members an Executive Committee of five persons, one from each Membership Group.

(b) The election under **Rule 13.2.1(a)**:

(i) must be carried out at the meeting of the General Committee convened under **Rule 11.3**;

(ii) must be decided by a simple majority of the votes of members of the General Committee, each with one vote, and proxies appointed under **Rule 12.1** present and voting; and

(iii) cannot be the subject of a General Committee Postal Ballot under these Rules.

13.2.2 The Chairman, Deputy Chairman and Honorary Treasurer each will be deemed to have been elected a member of the Executive Committee by the General Committee to represent the Membership Group represented by them on the General Committee.

13.2.3 The members of the Executive Committee will serve until:

(a) their successors are elected (or are deemed to have been elected under **Rule 13.2.2**) in accordance with these Rules; or

(b) they cease to be a member of the General Committee,  
whichever is the earlier.

### **13.3 Filling a Casual Vacancy**

If a casual vacancy occurs on the Executive Committee, those members of the General Committee who are in the same Membership Group as the person who created the casual vacancy (**Relevant Membership Group**) may appoint another member of the General Committee from the Relevant Membership Group to fill that casual vacancy.

### **13.4 Duties of Executive Committee Members**

13.4.1 Each Member of the Executive Committee should not:

(a) act in situations of conflict of interest unless approved to do so by the Executive Committee; and

(b) make personal use of Confidential Information or privileged information.

13.4.2 Each Member of the Executive Committee should:

(a) act in the best interests of the Members as a whole;

(b) act within the scope of the objects of the ABC in **Rule 3.0**; and

(c) disclose to the Executive Committee actual or potential conflicts of interest.

## **14.0 EXECUTIVE COMMITTEE – MEETINGS**

### **14.1 Meetings and Proceedings of Executive Committee**

Subject to **Rule 14.2**, the Executive Committee may:

14.1.1 meet together for the dispatch of business, adjourn and otherwise regulate their meetings and proceedings as they think fit; and

14.1.2 hold their meetings at times, on dates and at places as the Chairman or the Executive Committee from time to time decide.

### **14.2 Request for Meeting of Executive Committee**

At any time any member of the Executive Committee may request the Executive Director to convene a meeting of the Executive Committee and the Executive Director must convene that meeting as soon as reasonably practicable after receiving the request.

## **15.0 EXECUTIVE COMMITTEE - PROCEEDINGS**

### **15.1 Proxies**

- 15.1.1 A member of the Executive Committee may appoint any other member of the Executive Committee to act as the absent member's proxy at a meeting of the Executive Committee.
- 15.1.2 A proxy may be given by the absent member:
- (a) with full power to act for and on their behalf as the proxy holder thinks fit; or
  - (b) subject to such directions and restrictions as the absent member may make or impose.
- 15.1.3 Any appointment of a proxy and the terms of the proxy must be advised to the Executive Director before the commencement of the relevant meeting.

### **15.2 Quorum**

A quorum for an Executive Committee meeting is four (or a lesser number determined by the General Committee) members of the Executive Committee present in person and not by proxy.

### **15.3 Chairman of Meetings**

- 15.3.1 The Chairman will preside as chairman of Executive Committee meetings.
- 15.3.2 If the Chairman is not present at an Executive Committee meeting convened in accordance with these Rules or is unwilling to act, the Deputy Chairman will preside as chairman of that meeting.
- 15.3.3 If both the Chairman and the Deputy Chairman are not present at an Executive Committee meeting convened in accordance with these Rules within thirty minutes after the time set for commencement of the meeting or are unwilling to act, the meeting will be deemed to be dissolved.

### **15.4 Resolutions**

- 15.4.1 Questions arising at a meeting of the Executive Committee will be decided by the votes of the members of the Executive Committee present in person or by proxy and voting and:
- (a) a resolution put to the vote of an Executive Committee meeting will only be carried if the members present in person or by proxy determine unanimously; and
  - (b) in the event that a resolution put to an Executive Committee meeting is not carried, then the Chairman, in his discretion, may refer the resolution to:
    - (i) a meeting of the General Committee; or
    - (ii) a General Committee Postal Ballot,for determination.
- 15.4.2 If a resolution is referred to a General Committee Postal Ballot under **Rule 15.4.1**:
- (a) the provision of **Rule 12.5.4** apply; and
  - (b) the resolution will be deemed not to have been carried if, in the opinion of the Chairman, less than fifteen formal postal votes are recorded in respect of that General Committee Postal Ballot.
- 15.4.3 The result of a resolution of the General Committee under **Rule 15.4.2** will be deemed to be a resolution passed unanimously by the Executive Committee.

## **16.0 MEETINGS OF MEMBERS – ANNUAL GENERAL MEETING**

### **16.1 Time for Annual General Meeting**

The Annual General Meeting must be held once in every Financial Year at the time, date and place determined by the Executive Committee or, failing agreement by the Executive Committee, by the Chairman.

### **16.2 Notice to Members of Annual General Meeting**

The Executive Director must send each Member a notice in writing of the time, date and place of the Annual General Meeting at least twenty-eight days before the date of the meeting.



### **16.3 Business of Annual General Meeting**

The business of an Annual General Meeting is to:

- 16.3.1 receive and consider the statement of revenue and expenditure and the balance sheet of the ABC, for the approval of Members by a simple majority;
- 16.3.2 receive and consider a report of the proceedings of the ABC for the previous Financial Year;
- 16.3.3 transact any other business which is brought under consideration by the annual report issued with the notice convening the meeting;
- 16.3.4 appoint Independent financial auditors of the ABC who are to attend the Annual General Meeting so that they can respond to questions by Members in respect of the audit process and the content of the audit reports;
- 16.3.5 transact any other business which the Full Members present in person or by proxy at an Annual General Meeting may transact at the meeting; and
- 16.3.6 transact business of which notice has been given in accordance with **Rule 18.1.2**.

### **17.0 MEETINGS OF MEMBERS – SPECIAL GENERAL MEETING**

#### **17.1 Chairman May Convene**

The Chairman may convene a Special General Meeting whenever the Chairman thinks fit.

#### **17.2 Requisition by Full Members**

The Chairman must convene a Special General Meeting when requisitioned in writing to the Executive Director by a simple majority of the Full Members in any Membership Group or at least twenty-five Full Members.

#### **17.3 Notice of Special General Meetings**

When a Special General Meeting is convened by the Chairman under this **Rule 17.0**, the Executive Director must send all Members a notice in writing of the time, date, place and purpose of the Special General Meeting at least fourteen days before the date of the meeting.

### **18.0 MEETINGS OF MEMBERS – PROCEEDINGS**

#### **18.1 Notice of Business to General Committee**

18.1.1 **Rules 18.1.2 and 18.1.3** do not apply to the business of an Annual General Meeting referred to in **Rules 16.3.1 to 16.3.5**.

18.1.2 Notice of all business or resolutions required to be brought forward for discussion and determination at a Meeting of Members must be submitted in writing to the Executive Director at least fourteen days before the date set for that Meeting.

18.1.3 The Executive Director must submit any notice received in accordance with **Rule 18.1.2** to the members of the General Committee before the business or resolutions contained in that notice are placed before the relevant Meeting of Members for consideration.

#### **18.2 Representation**

18.2.1 A Member which is not a natural person may authorise, by notice in writing to the Executive Director, a specified individual to act as that Member's representative at specified Meetings of Members which the Member would, if it were a natural person, be entitled to attend as a Member.

18.2.2 An authority given by a Member under **Rule 18.2.1** may be revoked only by notice in writing to the Executive Director and that revocation will operate from the date on which the written notice is received by the Executive Director.

18.2.3 Until an authority is revoked under **Rule 18.2.2**, an individual given that authority is entitled to exercise on the authorising Member's behalf the same powers as that Member could exercise as a Member if it were a natural person.

#### **18.3 Proxies**

18.3.1 A Subscriber Member entitled to attend a Meeting of Members may appoint another person as their proxy to attend that meeting instead of the Subscriber Member.

18.3.2 A Full Member entitled to attend and vote at a Meeting of Members may appoint any other Full Member as their proxy to attend and vote at that meeting instead of the absent Full Member.

18.3.3 A proxy appointed under this **Rule 18.3** has the same right to speak at a Meeting of Members as the person appointing the proxy would have if they were attending that meeting.

18.3.4 The appointment of a proxy under this **Rule 18.3** must be in writing delivered to the Executive Director at least seven days before the Meeting of Members to which the appointment relates.

#### **18.4 Quorum**

18.4.1 In this **Rule 18.4, Financial Full Member** means a Full Member who has paid to the ABC all amounts owing to the ABC in accordance with these Rules.

18.4.2 A quorum for a Meeting of Members:

(a) is:

(i) twenty-six Financial Full Members present in person; or

(ii) fifty Financial Full Members present in person or by proxy, thirteen of whom must be present in person; and

(b) must include at least one Financial Full Member present in person from each Membership Group.

18.4.3 Where:

(a) an individual present at a Meeting of Members is authorised to act as the representative of a Full Member at that meeting by virtue of an authority given by the Full Member under **Rule 18.2.1**;

(b) the individual is not otherwise entitled to be present at that Meeting of Members; and

(c) the Full Member being represented is a Financial Full Member,

the Full Member will be deemed to be personally present at the Meeting of Members for the purposes of a quorum.

18.4.4 If a quorum is not present within thirty minutes after the time set for a Meeting of Members:

(a) where the meeting was convened upon the requisition of Members, the meeting will be dissolved; or

(b) in any other case:

(i) the meeting stands adjourned to the time, date and place the Chairman determines or, if no determination is made by the Chairman, to the same day in the next week at the same time and place; and

(ii) if at the adjourned meeting a quorum is not present within thirty minutes after the time set for the meeting, the meeting will be dissolved.

#### **18.5 Chairman of Meetings**

18.5.1 The Chairman will preside as chairman of all Meetings of Members.

18.5.2 If the Chairman is not present within fifteen minutes after the time set for the commencement of a Meeting of Members or is unwilling to act, the Deputy Chairman will preside as chairman of that meeting.

18.5.3 If both the Chairman and the Deputy Chairman are not present within thirty minutes after the time set for commencement of a Meeting of Members or are unwilling to act, the Full Members present and eligible to vote must elect one of their number to be chairman of the meeting.

#### **18.6 Resolutions**

18.6.1 At any Meeting of Members decisions of the meeting will be:

(a) by way of a show of hands of the Full Members, each with one vote; and

(b) decided by a simple majority of the votes,

unless a poll is demanded by the Chairman or demanded by at least five Full Members present in person or by proxy.

18.6.2 If a poll is demanded under **Rule 18.6.1**, it must be carried out and declared in accordance with the procedures set out in the relevant provisions of **Schedule 2**.

18.6.3 For the purposes of these Rules:

(a) a decision made in accordance with **Rule 18.6.1**; or

(b) the result of a poll carried out in accordance with **Rule 18.6.2 and Schedule 2**, will be deemed to be the resolution of the Meeting of Members at which the decision or poll was taken.

18.6.4 If there is an equality of votes either on a show of hands or on a poll at a Meeting of Members the chairman of that meeting is entitled to a further, casting vote.

### **18.7 Meetings**

18.7.1 A Meeting of Members may be held at two or more venues by any means of audio or audio-visual communication that gives the Members as a whole a reasonable opportunity to participate in the Meeting.

18.7.2 A Meeting of Members held solely or partly by technology is treated as held at the place at which the greatest number of Members present at the meeting is located or, if an equal number of Members is located in each of two or more places, at the place where the Chairman or Deputy Chairman or acting chairman is located.

18.7.3 The Members shall be informed of the telecommunications medium (if any) to be used for the Meeting of Members in the notice in writing of the Meeting.

## **19.0 OFFICERS – ELECTION AND DUTIES**

### **19.1 Officers**

The officers of the ABC must consist of a Chairman, a Deputy Chairman and an Honorary Treasurer.

### **19.2 Election of Officers**

19.2.1 Subject to **Rule 19.2.2**, the Chairman, Deputy Chairman and Honorary Treasurer must be elected by the members of each incoming General Committee from their number at the General Committee meeting convened in accordance with **Rule 11.3**.

19.2.2 (a) A person cannot be elected as Deputy Chairman unless they represent a Full Member in a Membership Group different to the Membership Group represented by the Chairman.

(b) A person cannot be elected Honorary Treasurer unless they represent a Full Member in a Membership Group different to the Membership Group represented by the Chairman and the Membership Group represented by the Deputy Chairman.

19.2.3 The Chairman, Deputy Chairman and Honorary Treasurer will each serve until:

(a) their respective successor is elected in accordance with these Rules; or

(b) they cease to be a member of the General Committee,

whichever is the earlier.

### **19.3 Duties of Honorary Treasurer**

The Honorary Treasurer must:

19.3.1 supervise the accounts of the ABC and, jointly with the Executive Director, and for the purposes of certification to the Executive Committee, General Committee and the Members, be satisfied that the accounts present a true and fair view, in all material respects, of the ABC's financial condition and operational results, and are in accordance with the relevant accounting standards;

19.3.2 present independently audited statements of revenue and expenditure and balance sheets at:

(a) the meeting of the General Committee convened in accordance with **Rule 11.2**; and

(b) the Annual General Meeting for approval pursuant to **Rule 16.3.1**;

19.3.3 jointly with the Executive Director, certify to the Executive Committee, General Committee and the Members that the certification in **Rule 19.3.1** is founded on a sound system of risk management and internal compliance and control which implements the policies adopted by the Executive Committee, General Committee and the Members (as the case may be), and the ABC's risk management and internal compliance and control system is operating efficiently and effectively in all material respects; and

19.3.4 present to the General Committee or the Executive Committee any other reports required from time to time by the General Committee or the Executive Committee.

## 20.0 EXECUTIVE DIRECTOR - APPOINTMENT AND DUTIES

### 20.1 Appointment of Executive Director

The Executive Committee must appoint an Executive Director of the ABC (other than the Chairman) upon terms and conditions which the Executive Committee considers appropriate.

### 20.2 Duties of Executive Director

20.2.1 The duties of the Executive Director are to:

- (a) secure membership of the ABC;
- (b) maintain a record of all meetings of the Members, the General Committee and the Executive Committee;
- (c) jointly with the Honorary Treasurer, and for the purposes of certification to the Executive Committee, General Committee and the Members, be satisfied that the accounts present a true and fair view, in all material respects, of the ABC's financial condition and operational results, and are in accordance with the relevant accounting standards;
- (d) jointly with the Honorary Treasurer, certify to the Executive Committee, General Committee and the Members that the certification in **Rule 19.3.1** is founded on a sound system of risk management and internal compliance and control which implements the policies adopted by the Executive Committee, General Committee and the Members (as the case may be), and the ABC's risk management and internal compliance and control system is operating efficiently and effectively in all material respects;
- (e) undertake all normal business on behalf of the ABC;
- (f) perform the other duties required of the Executive Director by these Rules; and
- (g) perform other tasks relating to the objects of the ABC directed by the Executive Committee.

20.2.2 The Executive Director must provide reports concerning:

- (a) the progress and operations of the ABC;
- (b) any alleged breach of these Rules or other default by any Member,
- (c) any suggestions which the Executive Director believes would tend to improve the working of the ABC,

to:

- (d) each Annual General Meeting; and
- (e) any other meeting required by the Chairman or the Executive Committee.

## PART 4 TRUSTEES, INCOME AND PROPERTY

### 21.0 TRUSTEES

#### 21.1 Appointment and Number of Trustees

The Executive Committee may appoint a person to be a Trustee and the number of Trustees must not be more than three.

#### 21.2 Term of Office of Trustees

A Trustee holds office until:

- 21.2.1 the Trustee's death;
- 21.2.2 the Trustee's resignation; or
- 21.2.3 the Trustee is removed from office by a resolution of the Executive Committee.

#### 21.3 Appointment of New Trustees

21.3.1 If a Trustee ceases to hold office pursuant to **Rule 21.2**, the Executive Committee may decide that a new Trustee should be appointed.

21.3.2 If the Executive Committee decides that a new Trustee should be appointed, the Executive Committee by resolution must nominate the person to be the new Trustee.

21.3.3 For the purpose of giving effect to a nomination under **Rule 21.3.2**, the Chairman:

- (a) is the person authorised to appoint a new Trustee for the purposes of section 6 of the *Trustee Act 1925* (NSW); and
- (b) must by deed duly appoint the person nominated by the Executive Committee as the new Trustee and the provisions of the *Trustee Act 1925* (NSW) will apply to that appointment.

21.3.4 Any statement of fact in a deed appointing a new Trustee is conclusive evidence of that fact in favour of any person dealing bona fide and for value with the ABC or the Executive Committee and who has no notice that the statement of fact is wrong.

#### 21.4 Indemnification of Trustees

Each Trustee is indemnified by the ABC out of property vested in that Trustee against risk and expense and is not personally liable for any:

- 21.4.1 diminution in the property of the ABC vested in the Trustees;
- 21.4.2 liability incurred by the Trustee as trustee of the ABC; or
- 21.4.3 debt or other obligation of the ABC,

except to the extent that such diminution, liability, debt or other obligation arises as a result of the Trustee's fraud, wilful negligence, breach of trust or breach of duty.

### 22.0 INCOME AND PROPERTY

#### 22.1 Application of Income and Property

22.1.1 The income and property of the ABC must be applied solely towards the promotion of the objects of the ABC.

22.1.2 Subject to **Rule 22.1.3**, on no account must any part of the income and property of the ABC be paid or transferred to Members.

22.1.3 Nothing in **Rule 22.1.2** prevents the ABC from:

- (a) paying remuneration to any officer or employee of the ABC or to any Member or any other person for services provided to the ABC including performance bonuses for the achievement of the objects of the ABC in **Rule 3.0** and the exceptional performance of their respective roles; or
- (b) paying interest (at a rate not exceeding that approved by the Executive Committee) on money borrowed from or lawfully due to any Member.

#### 22.2 Control of Income and Property

22.2.1 Cash in hand belonging to the ABC is under the control of the Executive Committee through the Honorary Treasurer.

- 22.2.2 All other property of the ABC vests in the Trustees to be dealt with by the Trustees as the Executive Committee from time to time directs by resolution.
- 22.2.3 Without limiting the generality of **Rule 22.2.2**, the Executive Committee from time to time may direct the Trustees to:
- (a) invest money belonging to the ABC in any form of investment; and
  - (b) deal with any investment in any manner,
- which the Executive Committee considers expedient.

### **22.3 Copyright Vested in Trustees**

Ownership of copyright in Circulation Statements, Circulation Summaries and any other material published by the ABC in any form and in any medium is vested in the Trustees on trust for the ABC.

### **22.4 Dealing with Income and Property on Dissolution**

- 22.4.1 On the winding up or dissolution of the ABC, if there is any property remaining after the satisfaction of all the ABC's debts and liabilities that property must not be paid to or distributed among the Members but must be given or transferred to some other organisation or organisations which have objects similar to the ABC's objects.
- 22.4.2 For the purposes of **Rule 22.4.1**, the organisation or organisations must be determined:
- (a) by the Members at a Special General Meeting convened for that purpose at or before the time of winding up or dissolution; or
  - (b) in default of a Special General meeting under **Rule 22.4.2(a)**, by a Judge of the Supreme Court of New South Wales who has or acquires jurisdiction in the matter.
- 22.4.3 If it is proposed to wind up or dissolve the ABC and the Executive Committee determines that upon the winding up or dissolution there would be a deficit, persons:
- (a) who would be Members at; or
  - (b) who were Members at any time during the twelve months immediately preceding,
- the date of the proposed winding up or dissolution will be subject to, and must pay to the ABC, a special levy determined by the General Committee to meet the deficiency.

## PART 5 AUDITS, AUDITORS AND AUDIT REPORTS

### 23.0 AUDITS

#### 23.1 Types of Audit

The audits which may be carried out in accordance with these Rules and the Audit Guidelines are:

- 23.1.1 Circulation Audits;
- 23.1.2 Initial Audits;
- 23.1.3 Inspection Audits;
- 23.1.4 Review Audits; and
- 23.1.5 any other type of audit under **Rule 23.6**.

#### 23.2 Circulation Audit

A Circulation Audit must be carried out for the purposes of providing an Audit Report for an Audit Period as provided in **Rules 25 and 26**.

#### 23.3 Initial Audit

An Initial Audit must be carried out in the circumstances described in **Rule 6.3**.

#### 23.4 Inspection Audit

The Executive Committee or the Audit Inspector at any time may direct an Inspection Audit in respect of a Publication.

#### 23.5 Review Audit

The Executive Committee may direct a Review Audit be carried out:

- 23.5.1 as provided in **Rule 36.0 and Schedule 4**; or
- 23.5.2 where the Executive Committee determines that the data in a Circulation Statement cannot be verified to the satisfaction of the Executive Committee.

#### 23.6 Other Audits

The Executive Committee may authorise audits to be carried out by the ABC in respect of any matter which the Executive Committee considers is within the ABC's objects under **Rule 3.0**.

#### 23.7 Audit Guidelines

- 23.7.1 The Executive Committee from time to time may determine in writing Audit Guidelines to be observed by Auditors when carrying out Audits under these Rules and by Publisher Members when preparing Publisher's Statements required by **Part 6**.
- 23.7.2 All determinations of the Executive Committee under **Rule 23.7.1** must be consistent with these Rules.

#### 23.8 Audit Only by Approved Auditor

An Audit must only be carried out by an Auditor approved by the Executive Committee and registered with the ABC under **Rule 24.0**.

#### 23.9 Audit Must be in Accordance with Rules and Audit Guidelines

An Auditor must:

- 23.9.1 carry out an Audit in accordance with these Rules and the Audit Guidelines; and
- 23.9.2 ensure that they use the latest version of these Rules and Audit Guidelines when performing an Audit.

#### 23.10 Audit Records Must be Kept

A Publisher Member must keep all records and documents which are relevant to supporting the circulation claims made in an Audit Report for not less than twenty-four months after the date of that Audit Report.

#### 23.11 Publisher Member Must Comply With Request for Inspection Audit or Review Audit

23.11.1 If:

- (a) the Executive Committee or the Audit Inspector directs an Inspection Audit under **Rule 23.4**; or

- (b) the Executive Committee directs a Review Audit under **Rule 23.5** in respect of a Publication,

the Audit Inspector must notify in writing the Publisher Member who publishes that Publication of the Executive Committee or the Audit Inspector's direction and request the Publisher Member to provide access to their relevant records and documents for the purpose of the Audit.

23.11.2 A Publisher Member who receives a notice under **Rule 23.11.1** must comply with the request in that notice within fourteen days after the date the Publisher Member receives the notice.

23.11.3 For the purposes of an Inspection Audit or a Review Audit, a Publisher Member must:

- (a) provide to the Auditor nominated by the Audit Inspector or appointed by the Executive Committee (as the case may be):
- (i) full and unrestricted access to all of the Publisher Member's records and documents which are relevant to supporting circulation claims; and
  - (ii) an authority addressed to every third party involved in the distribution of the Publication being audited (for example distributors, mailing houses or computer bureaux) requesting them to provide full and unrestricted access to their records and documents relevant to supporting circulation claims; and
- (b) if requested by the Audit Inspector, ensure that the Publisher Member's relevant staff attend the Audit.

23.11.4 A Publisher Member who does not comply with the provisions of **Rules 23.11.2 or 23.11.3** will not be entitled to have their circulation claims, which are the subject of the Inspection Audit or Review Audit, included in any Circulation Summary.

## **23.12 Auditor Must Attend Inspection Audit or Review Audit**

23.12.1 If requested by the Audit Inspector, the Auditor appointed by the Executive Committee to the Circulation Audit which is the subject of an Inspection Audit or a Review Audit must attend that Inspection Audit or Review Audit.

23.12.2 An Auditor requested to attend an Inspection Audit or a Review Audit must:

- (a) co-operate with the Auditor performing that Inspection Audit or Review Audit; and
- (b) if requested by the Audit Inspector, provide all of their working papers relating to their Circulation Audit which is the subject of that Inspection Audit or Review Audit.

## **24.0 AUDITORS**

### **24.1 Auditor to be Qualified**

An individual who wishes to be an Auditor must be a current financial member of one of the following organisations:

24.1.1 The Institute of Chartered Accountants (Australia);

24.1.2 CPA Australia;

24.1.3 The National Institute of Accountants;

24.1.4 The Association of Taxation and Management Accountants (Australia) in one of the following categories of membership:

- (a) Member;
- (b) Fellow; or
- (c) International Member; or

24.1.5 any other association which the Executive Committee considers has equivalent standards of expertise, professionalism and independence for its members as the associations in **Rules 24.1.1 to 24.1.4**.

### **24.2 Auditor to be Approved**

24.2.1 The Executive Committee may approve to be an Auditor an individual who:

- (a) is qualified in accordance with **Rule 24.1**; and
- (b) the Executive Committee considers is of good character and professional reputation; and
- (c) either is employed by a Member of the ABC or holds ABC Membership.



24.2.2 An approval under **Rule 24.2.1** is personal to the individual approved to be an Auditor and does not operate to include any entity which may employ that individual.

### **24.3 Registration of Auditor**

24.3.1 An individual approved as an Auditor under **Rule 24.2** will be registered with the ABC by the Executive Director as an Auditor approved to carry out Audits under these Rules.

24.3.2 The Executive Director will maintain a list of the individuals approved and registered as Auditors.

24.3.3 An individual approved as an Auditor or involved in the audit process may be required to attend training workshops relating to the application of the ABC Rules and Audit Guidelines and other topics, as determined by the Executive Committee, to maintain their ABC registration.

### **24.4 Auditor Must Notify Cessation of Qualification**

If an Auditor ceases to be a current financial member of one of the organisations stipulated in **Rule 24.1**, the Auditor must notify the Executive Committee of that fact.

### **24.5 Appointment of an Auditor to an Audit**

Subject to **Rule 24.6**, the Executive Committee must appoint an Auditor to carry out Circulation Audits of a Publication.

### **24.6 Auditors for Regional Newspapers and Country Press**

24.6.1 Publisher Members in the Membership Group of Regional Daily Newspapers, Regional Sunday Newspapers and Country Press may compile a list of all individuals who are on the ABC's register of Auditors and who are local to any of the places where those Publisher Members' Publications are published.

24.6.2 If requested by a Publisher Member in that Membership Group and if practicable, the Executive Committee must appoint one or more of those local Auditors to carry out Audits of that Publisher Member's Publication.

### **24.7 Request for Change of Appointed Auditor**

24.7.1 A Publisher Member may at any time request the Executive Committee to withdraw the appointment of an Auditor under **Rule 24.5** in respect of a Publication of that Publisher Member (**Existing Auditor**) and appoint another Auditor.

24.7.2 A Publisher Member who makes a request under **Rule 24.7.1** must:

- (a) make that request in writing; and
- (b) provide their reasons for requesting the withdrawal of the appointment of the Existing Auditor.

24.7.3 If the Executive Committee decides that the reasons provided under **Rule 24.7.2**:

- (a) do not warrant the withdrawal of the appointment of the Existing Auditor:
  - (i) the Executive Committee must advise the Publisher Member who lodged the request of that decision; and
  - (ii) the Existing Auditor must proceed to carry out the Circulation Audits required by these Rules in respect of the relevant Publication; or
- (b) warrant the withdrawal of the appointment of the Existing Auditor, the Executive Committee must:
  - (i) advise both the Publisher Member who lodged the request and the Existing Auditor of that decision; and
  - (ii) appoint another Auditor under **Rule 24.5**.

### **24.8 Appointment of Audit Inspector**

24.8.1 The Executive Committee must appoint an Audit Inspector on terms and conditions which the Executive Committee considers appropriate.

24.8.2 The Audit Inspector must be an employee of the ABC.

## **24.9 Role of Audit Inspector**

24.9.1 The Audit Inspector:

- (a) must advise the Executive Committee concerning matters relevant to Audits, including processes and procedures to ensure the integrity and accuracy of Audits; and
- (b) is responsible for ensuring that the Rules relating to Audits and the Audit Guidelines meet the needs of Members advised from time to time by the Executive Committee.

24.9.2 The Audit Inspector must, or must arrange for ABC Staff Auditors to, carry out Inspection Audits and Review Audits when directed by the Executive Committee in accordance with these Rules.

24.9.3 The Audit Inspector must carry out the responsibilities assigned to the Audit Inspector under any other provision of these Rules.

## **24.10 Removal of Auditor from Register**

The Executive Committee may withdraw its approval of an Auditor under **Rule 24.2** and direct the Executive Director to remove the Auditor's name from the list of approved and registered Auditors maintained under **Rule 24.3** if:

24.10.1 the Auditor requests their name be removed from the list of approved and registered Auditors;

24.10.2 the Auditor ceases to be a current financial member of any of the organisations listed in **Rule 24.1**; or

24.10.3 in the opinion of the Executive Committee, the Auditor:

- (a) has failed to carry out an Audit in accordance with these Rules or the Audit Guidelines;
- (b) has failed to comply with the requirements of **Rule 23.12**; or
- (c) is no longer a person of good character and professional reputation.

## **25.0 AUDIT PERIODS**

### **25.1 Audit Periods**

The Audit Periods for Audit Reports for the purposes of these Rules are:

25.1.1 for:

- (a) National Newspapers;
- (b) Metropolitan Monday – Friday Daily Newspapers;
- (c) Metropolitan Saturday Newspapers;
- (d) Metropolitan Sunday Newspapers;
- (e) Regional Daily Newspapers with an Average Issue Circulation of 25,000 copies or more;
- (f) Regional Sunday Newspapers with an Average Issue Circulation of 25,000 copies or more;
- (g) Country Press with an Average Issue Circulation of 25,000 copies or more;
- (h) Newspaper Inserted Magazines provided with a newspaper nominated in **Rules 25.1.1(a) to (g)**; and
- (i) Weekly Magazines with an Average Issue Circulation of 25,000 copies or more,

the periods:

- (j) 1 January to 31 March;
- (k) 1 April to 30 June;
- (l) 1 July to 30 September; and
- (m) 1 October to 31 December,

all periods including their start and finish dates, or

- (n) thirteen weeks in each period of three months nearest the periods in **Rules 25.1.1(j), (k) (l) and (m)**,

and where necessary to accommodate accumulated odd days a period may cover fourteen weeks;

- 25.1.2 for magazines (not being Weekly Magazines) with an Average Issue Circulation of 25,000 copies or more, the periods:
- (a) 1 January to 30 June; and
  - (b) 1 July to 31 December,
- both periods including their start and finish dates, or
- (c) twenty-six weeks in each period of six months nearest the periods in **Rules 25.1.2(a) and (b)**,

and where necessary to accommodate accumulated odd days a period may cover twenty-seven weeks; and

- 25.1.3 for:
- (a) Regional Daily Newspapers with an Average Issue Circulation less than 25,000 copies;
  - (b) Regional Sunday Newspapers with an Average Issue Circulation less than 25,000 copies;
  - (c) Country Press with an Average Issue Circulation less than 25,000 copies;
  - (d) Newspaper Inserted Magazines provided with a newspaper nominated in **Rules 25.1.3(a), (b) or (c)**; and
  - (e) any magazine with an Average Issue Circulation less than 25,000 copies;

either the period:

- (f) 1 January to 30 June; or
- (g) 1 July to 31 December,

both periods including their start and finish dates, or

- (h) twenty-six weeks in one period of six months nearest either of the periods in **Rules 25.1.3(f) and (g)**,

and where necessary to accommodate accumulated odd days a period may cover twenty-seven weeks.

## **25.2 Variation of Audit Periods**

Notwithstanding any other provision of these Rules, the Executive Committee may vary an Audit Period in respect of a Publication:

- 25.2.1 on written application to the Executive Committee by the Publisher Member who publishes the Publication;
- 25.2.2 where that Publisher Member has provided documentation in support of their application; and
- 25.2.3 the Executive Committee considers the variation is warranted because of the occurrence of an event outside the control of the Publisher Member which would result in the circulation data for the relevant Publication being misleading, deceptive or unreliable if the variation was not made.

## **26.0 AUDIT REPORTS**

### **26.1 Audit Report Must Include Every Publishing Day**

- 26.1.1 Subject to the remaining provisions of this **Rule 26.1**, an Audit Report for an Audit Period must include every Publishing Day in respect of the Publication to which it relates subsequent to the immediately previous Reporting Period for that Publication.
- 26.1.2 Publisher Members publishing Metropolitan Monday – Friday Daily Newspapers and Metropolitan Saturday Newspapers must provide a separate Audit Report for each Publication.
- 26.1.3 Publisher Members publishing a:
  - (a) Metropolitan Monday – Friday Daily Newspaper;
  - (b) Metropolitan Saturday Newspaper;
  - (c) Metropolitan Sunday Newspaper;
  - (d) Regional Daily Newspaper;
  - (e) Regional Sunday Newspaper;
  - (f) Country Press; or

- (g) Newspaper Inserted Magazine provided with a newspaper nominated in **Rules 26.1.3(a) to (f)**,

may elect to omit from an Audit Report for that newspaper or Newspaper Inserted Magazine those Issues published on:

- (h) officially gazetted public holidays in the state or territory of publication; and
- (i) other days nominated by the Executive Committee from time to time and advised to affected Members and in this respect the Executive Committee must nominate relevant days relating to the Christmas, New Year and Easter holiday periods each year.

26.1.4 Publisher Members publishing a National Newspaper or a Newspaper Inserted Magazine provided with a National Newspaper may elect to omit from an Audit Report for that newspaper or Newspaper Inserted Magazine (as the case may be) those Issues published on:

- (a) officially gazetted public holidays which are held on the same or different dates in the various states and territories of publication; and
- (b) other days nominated by the Executive Committee from time to time and advised to affected Members and in this respect the Executive Committee must nominate relevant days relating to the Christmas, New Year and Easter holiday periods each year.

26.1.5 Publisher Members publishing a Weekly Magazine may elect to omit from an Audit Report for that magazine those Issues published on:

- (a) officially gazetted public holidays:
- (i) in the state or territory of publication; or
- (ii) where that magazine is published nationally, which are held on the same or different dates in the various states and territories of publication; and
- (b) other days nominated by the Executive Committee from time to time and advised to affected Members and in this respect the Executive Committee must nominate relevant days relating to the Christmas, New Year and Easter holiday periods each year.

26.1.6 The Executive Committee may omit days from an Audit Period:

- (a) in respect of a Publication if:
- (i) the Publisher Member for that Publication makes a written application to the Executive Committee requesting that omission;
- (ii) the reason for the Publisher Member's request for omission of days relates to an event beyond the control of the Publisher Member (**Event**);
- (iii) the Publisher Member provides evidence satisfactory to the Executive Committee which substantiates that the Event occurred; and
- (iv) the Executive Committee considers that the Event would result in the circulation data for the Publication for the relevant Audit Period being misleading, deceptive or unreliable if days were not omitted from the Audit Period for that Publication; or
- (b) if the Executive Committee on its own initiative considers that an omission of days is reasonable in respect of a certain class of Publication in all the circumstances and the omission applies to all Publisher Members who publish that class of Publication.

26.1.7 Publisher Members publishing a:

- (a) newspaper; or
- (b) Newspaper Inserted Magazine provided with a newspaper,

may elect not to publish an Issue of the Publication on a regular Publishing Day which is either:

- (c) an officially gazetted public holiday in the state or territory (or all states and territories) in which the Publication is published;
- (d) a day nominated by the Executive Committee and advised to affected Members pursuant to **Rule 26.1.3(i)** or **Rule 26.1.4(b)**; or
- (e) a day which immediately precedes or immediately follows a day mentioned in **Rules 26.1.7(c) or (d)**,

and instead may:

- (f) publish a single Issue across a period which comprises only days referred to in **Rules 26.1.7(c) to (e)** or any combination of them (**Occasion**); and
- (g) for the purposes of an Audit Report, elect to regard all sales of that single Issue made across the Occasion as being made on a day nominated by the Publisher Member and which falls in the Occasion,

but only in respect of:

- (h) for a National Newspaper or a Newspaper Inserted Magazine provided with a National Newspaper, not more than five Occasions each year; and
- (i) for any other newspaper or a Newspaper Inserted Magazine provided with that other newspaper, not more than four Occasions each year,

including any Occasion which the Publisher Member is entitled to select under **Rule 28.3.5**. Where a Publisher Member includes an Occasion (or more than one Occasion) in an Audit Period for a Publication, the Publisher Member must advise that fact to the ABC. In that case, the ABC must note in any relevant Circulation Summary covering the Audit Period that the number of Issues for that Publication for the Audit Period includes the relevant number of 'Bumper Issues'.

- 26.1.8 If a Publisher Member elects to omit gazetted public holidays or other days in accordance with **Rules 26.1.3, 26.1.4 or 26.1.5** or accepts an omission allowed by the Executive Committee under **Rule 26.1.6** (or where the Publisher Member is entitled to do so, omits days in accordance with more than one of those Rules), the Publisher Member must submit an Audit Report for the Audit Period with days omitted as provided in **Rules 26.1.3, 26.1.4, 26.1.5 or 26.1.6** (or where the Publisher Member is entitled to do so, as provided in more than one of those Rules), as the case may be.

## **26.2 Form of Audit Report Determined by Executive Committee**

26.2.1 The Executive Committee from time to time may determine in writing:

- (a) the form or forms in which Audit Reports are to be submitted to the ABC; and
- (b) the information to be contained in Audit Reports and the procedures to be adopted in preparing them.

26.2.2 All determinations of the Executive Committee under **Rule 26.2.1** must be consistent with these Rules.

26.2.3 A Publisher Member must ensure that they use the form of Audit Report which is current from time to time.

## **26.3 Frequency of Submitting Audit Reports**

26.3.1 Each Publisher Member during the period of their membership and for each Publication in respect of which they are a Member must submit Audit Reports as required by these Rules.

26.3.2 Publisher Members publishing:

- (a) National Newspapers;
- (b) Metropolitan Monday – Friday Daily Newspapers;
- (c) Metropolitan Saturday Newspapers;
- (d) Metropolitan Sunday Newspapers;
- (e) Regional Daily Newspapers with an Average Issue Circulation of 25,000 copies or more;
- (f) Regional Sunday Newspapers with an Average Issue Circulation of 25,000 copies or more;
- (g) Country Press with an Average Issue Circulation of 25,000 copies or more;
- (h) Newspaper Inserted Magazines provided with a newspaper nominated in **Rules 26.3.2(a) to (g)**; or
- (i) Weekly Magazines with an Average Issue Circulation of 25,000 copies or more,

and for each of the above types of Publication for which they are a Publisher Member, must submit an Audit Report for each Audit Period listed in **Rule 25.1.1**.

- 26.3.3 Publisher Members publishing magazines (not being Weekly Magazines) with an Average Issue Circulation of 25,000 copies or more, and for each of that type of magazine for which they are a Publisher Member, must submit an Audit Report for each Audit Period listed in **Rule 25.1.2**.
- 26.3.4 Publisher Members publishing:
- (a) Regional Daily Newspapers with an Average Issue Circulation less than 25,000 copies;
  - (b) Regional Sunday Newspapers with an Average Issue Circulation less than 25,000 copies;
  - (c) Country Press with an Average Issue Circulation less than 25,000 copies;
  - (d) Newspaper Inserted Magazines provided with the newspapers nominated in **Rules 26.3.4(a), (b) or (c)**; or
  - (e) any magazine with an Average Issue Circulation less than 25,000 copies,
- and for each of the above types of Publication for which they are a Publisher Member, must submit an Audit Report for at least one of the Audit Periods listed in **Rule 25.1.3**. If a Publisher Member elects to submit an Audit Report for only one of the Audit Periods listed in **Rule 25.1.3**, that Publisher Member must submit a Publisher's Statement under Part 6 for the other Audit Period listed in **Rule 25.1.3**.
- 26.3.5 A Publisher Member may elect to provide Audit Reports for a Publication more frequently than required under **this Rule 26.3** for that Publication but only if that increased frequency is not greater than the most frequent Audit Periods stipulated for any Publication under **Rule 25.0**.
- 26.3.6 Where a Publisher Member makes an election under **Rule 26.3.5** which has the effect of the Publisher Member submitting an Audit Report for the Audit Period:
- (a) 1 January to 31 March; or
  - (b) 1 July to 30 September,
- the Publisher Member must also submit an Audit Report for the immediately following three monthly period stipulated in **Rule 25.1.1(k) and (m)**.
- 26.3.7 If either a:
- (a) Regional Daily Newspaper;
  - (b) Regional Sunday Newspaper;
  - (c) Country Press; or
  - (d) Weekly Magazine
- with an Average Issue Circulation less than 25,000 copies and submitting Audit Reports in accordance with **Rule 26.3.4 and Rule 26.3.9** increases its circulation to an Average Issue Circulation of 25,000 copies or more for two consecutive Reporting Periods, the Publisher Member for that Publication must commence in the next following Audit Period to submit an Audit Report for that Publication for each Audit Period listed in **Rule 25.1.1**.
- 26.3.8 If a magazine (not being a Weekly Magazine) with an Average Issue Circulation less than 25,000 copies and submitting Audit Reports in accordance with **Rule 26.3.4 and Rule 26.3.10** increases its circulation to an Average Issue Circulation of 25,000 copies or more for two consecutive Reporting Periods, the Publisher Member for that magazine must commence in the next following Audit Period to submit an Audit Report for that magazine for each Audit Period listed in **Rule 25.1.2**.
- 26.3.9 If either a:
- (a) Regional Daily Newspaper;
  - (b) Regional Sunday Newspaper;
  - (c) Country Press; or
  - (d) Weekly Magazine
- with an Average Issue Circulation of 25,000 copies or more and submitting Audit Reports in accordance with **Rule 26.3.2 or Rule 26.3.7** decreases its circulation to an Average Issue Circulation less than 25,000 copies, the Publisher Member for that Publication must continue

to submit Audit Reports in accordance with **Rule 26.3.2 or 26.3.7** (as the case may be) until the next following Reporting Period after the decrease which commences on either:

(e) 1 January; or

(f) 1 July,

and must then commence in that Reporting Period to submit:

(g) Audit Reports in accordance with **Rule 26.3.4**; and

(h) Publisher's Statements in accordance with **Rule 29.1.1**.

26.3.10 If a magazine (not being a Weekly Magazine) with an Average Issue Circulation of 25,000 copies or more and submitting Audit Reports in accordance with **Rule 26.3.3 or Rule 26.3.8** decreases its circulation to an Average Issue Circulation less than 25,000 copies, the Publisher Member for that Publication must:

(a) submit an Audit Report for the Audit Period in which the decrease occurs and;

(b) commence in the next following Reporting Period to submit:

(i) Audit Reports in accordance with **Rule 26.3.4**; and

(ii) Publisher's Statements in accordance with **Rule 29.1.1**.

#### **26.4 Audit Report Must be Audited by Appointed Auditor**

All Audit Reports submitted to the ABC in respect of Circulation Audits for a Publication must be audited by the Auditor appointed by the Executive Committee under **Rule 24.5**.

#### **26.5 Publisher Member Must Provide Information and Access to Auditor**

26.5.1 A Publisher Member must make available to an Auditor carrying out an Audit of that Publisher Member's Publication for the purposes of these Rules all records, documents, information and explanations which the Auditor considers necessary and reasonable to enable the Auditor to prepare an accurate Audit Report.

26.5.2 If a Publisher Member refuses to make available any of the matters referred to in **Rule 26.5.1**, the Auditor must issue a written demand on that Publisher Member for access to, or the provision of, the necessary records, documents, information or explanations.

26.5.3 If the Auditor's written demand is refused or not fully complied with by the Publisher within seven days of the demand being made, the Auditor must immediately advise the Audit Inspector.

#### **26.6 Publisher Member Responsible for Content of Audit Report**

26.6.1 Each Audit Report submitted by a Publisher Member to the ABC must be signed:

(a) where the Publisher Member is an individual, by that individual;

(b) where the Publisher Member is a partnership, by the partner designated as the senior or managing partner or similar; or

(c) where the Publisher Member is a corporation, by the Publisher Member's chief executive officer or another officer reporting directly to the chief executive officer who is duly authorised by the Publisher Member to sign Audit Reports.

26.6.2 For the purposes of these Rules, a Publisher Member is solely responsible for the accuracy of an Audit Report in respect of that Member's Publication and the signing of an Audit Report by or on behalf of the Publisher Member in accordance with **Rule 26.6.1** will be deemed to be a representation to the ABC that the Publisher Member verifies the accuracy of the Audit Report.

#### **26.7 Auditor's Certificate**

Each Audit Report submitted by a Publisher Member must be accompanied by an Auditor's Certificate.

#### **26.8 Submission of Audit Report**

An Audit Report must be submitted by a Publisher Member to the ABC not more than thirty days after the end of the Audit Period to which the Audit Report relates.

#### **26.9 Fee for Late Submission**

26.9.1 If a Publisher Member submits an Audit Report after the time stipulated in **Rule 26.8**, the Publisher Member must pay to the ABC a late submission fee determined from time to time by the Executive Committee.

26.9.2 The fee for late submission of an Audit Report must accompany the Audit Report when it is submitted and in those circumstances, if the ABC accepts the Audit Report under **Rule 26.10**, the ABC will only be obliged to include the content of the Audit Report in the relevant Circulation Summary if that inclusion will not otherwise delay the publication of that Circulation Summary.

26.9.3 If a Publisher Member fails to pay a late submission fee required under **Rule 26.9.1** within ninety days after the end of the Audit Period for the Audit Report to which the late submission fee applies, the Executive Committee will regard that failure to be a failure to pay a fee for the purposes of **Rule 7.3**.

#### **26.10 Acceptance of Audit Report by ABC**

26.10.1 The ABC will only include in a relevant Circulation Summary the content of an Audit Report accepted by the ABC.

26.10.2 The ABC's acceptance of an Audit Report will be deemed to have occurred immediately before the content of the Audit Report is published in the relevant Circulation Summary or on the ABC's website.

26.10.3 If the ABC accepts an Audit Report, that acceptance does not constitute a representation by the ABC that the content of that Audit Report is correct.

26.10.4 Subject to **Rule 26.10.5**, the ABC will accept an Audit Report for the purposes of this **Rule 26.10**:

- (a) subject to inspection by the Audit Inspector of the Audit Report and the Auditor's Certificate and the right of the Audit Inspector to:
  - (i) inspect all records, documents and information which the Auditor used to form the view expressed in the Auditor's Certificate; and
  - (ii) have access to any other information held by the Publisher Member or the Auditor which the Audit Inspector reasonably considers is necessary to interpret or verify the content of the Audit Report;
- (b) subject to the result of any Inspection Audit or Review Audit directed by the Executive Committee or the Audit Inspector (as the case may be) in accordance with these Rules in respect of the Audit Report or its content; and
- (c) if the ABC has no reason to believe that the Audit Report and its submission does not comply with the requirements of these Rules and the Audit Guidelines.

26.10.5 The ABC will not accept an Audit Report if:

- (a) the Auditor's Certificate in respect of the Audit Report contains a qualification;
- (b) the Executive Committee considers that the content of the Audit Report has not been verified in accordance with these Rules and the Audit Guidelines;
- (c) the Audit Report has not been submitted within the time stipulated in **Rule 26.8** and the required fee for late submission has not been paid;
- (d) the Audit Inspector has:
  - (i) advised the Executive Committee that there is a concern relating to the reliability of the content of the Audit Report; and
  - (ii) provided the Executive Committee with reasons for that concern which the Executive Committee considers are such that the Audit Report should not be accepted by the ABC; or
- (e) the ABC has exercised its discretion not to accept the Audit Report under **Rule 31.5**.

#### **26.11 ABC May Request Amendment of Audit Report**

The ABC may request a Publisher Member to amend an Audit Report in accordance with **Rule 31.4**.



## PART 6 PUBLISHER'S STATEMENTS

### 27.0 PUBLISHER'S STATEMENTS

#### 27.1 Publisher Member to Prepare and Submit Publisher's Statements

A Publisher Member, who is required by these Rules to submit Publisher's Statements in respect of any or all of its Publications for which it is a Member, must prepare and submit those Publisher's Statements during the period of their membership.

#### 27.2 Publisher's Statements Must be in Accordance with Rules

A Publisher Member who is required to submit Publisher's Statements must:

- 27.2.1 prepare and submit those statements in accordance with these Rules; and
- 27.2.2 ensure that they use the latest version of these Rules when preparing those statements.

#### 27.3 Form of Publisher's Statement Determined by Executive Committee

27.3.1 The Executive Committee from time to time may determine in writing:

- (a) the form or forms in which Publisher's Statements are to be submitted to the ABC; and
- (b) the information to be contained in Publisher's Statements and the procedures to be adopted in preparing them.

27.3.2 All determinations of the Executive Committee under **Rule 27.3.1** must be consistent with these Rules.

27.3.3 A Publisher Member must ensure that they use the form of Publisher's Statement which is current from time to time.

#### 27.4 Records Must be Kept

A Publisher Member must keep all records and documents which are relevant to supporting the circulation claims made in a Publisher's Statement for not less than 24 months after the date of the Publisher's Statement.

### 28.0 STATEMENT PERIODS

#### 28.1 Statement Periods

The Statement Periods for Publisher's Statements for the purposes of these Rules are:

28.1.1 for:

- (a) Regional Daily Newspapers with an Average Issue Circulation less than 25,000 copies;
- (b) Regional Sunday Newspapers with an Average Issue Circulation less than 25,000 copies;
- (c) Country Press with an Average Issue Circulation less than 25,000 copies;
- (d) Newspaper Inserted Magazines provided with a newspaper nominated in **Rules 28.1.1(a), (b) or (c)**; and
- (e) any magazine with an Average Issue Circulation less than 25,000 copies,

either the period:

- (f) 1 January to 30 June (where the relevant Publication's Audit Period is 1 July to 31 December); or
- (g) 1 July to 31 December (where the relevant Publication's Audit Period is 1 January to 30 June),

both periods including their start and finish dates, or

- (h) twenty-six weeks in one period of six months nearest either of the periods in **Rules 28.1.1(f) and (g)**,

and where necessary to accommodate accumulated odd days a period may cover twenty-seven weeks.

#### 28.2 Variation of Statement Periods

Notwithstanding any other provision of these Rules, the Executive Committee may vary a Statement Period in respect of a Publication:

- 28.2.1 on written application to the Executive Committee by the Publisher Member who publishes the Publication;
- 28.2.2 where that Publisher Member has provided documentation in support of their application; and
- 28.2.3 the Executive Committee considers the variation is warranted because of the occurrence of an event outside the control of the Publisher Member which would result in the circulation data for the relevant Publication being misleading, deceptive or unreliable if the variation was not made.

**28.3 Publisher's Statement Must Include Every Publishing Day**

28.3.1 Subject to the remaining provisions of this **Rule 28.3**, a Publisher's Statement for a Statement Period must include every Publishing Day in respect of the Publication to which it relates subsequent to the immediately previous Reporting Period for that Publication.

28.3.2 Publisher Members publishing a:

- (a) Regional Daily Newspaper with an Average Issue Circulation less than 25,000 copies;
- (b) Regional Sunday Newspaper with an Average Issue Circulation less than 25,000 copies;
- (c) Country Press with an Average Issue Circulation less than 25,000; or
- (d) Newspaper Inserted Magazines provided with a newspaper nominated in **Rules 28.3.2 (a) to (c)**,

may elect to omit from a Publisher's Statement for that newspaper or Newspaper Inserted Magazine those Issues published on:

- (e) officially gazetted public holidays in the state or territory of publication; and
- (f) other days nominated by the Executive Committee from time to time and advised to affected Members and in this respect the Executive Committee must nominate relevant days relating to the Christmas, New Year and Easter holiday periods each year.

28.3.3 Publisher Members publishing a Weekly Magazine with an Average Issue Circulation less than 25,000 copies:

- (a) may elect to omit from a Publisher's Statement for that magazines those Issues published on officially gazetted public holidays:
  - (i) in the state or territory of publication; or
  - (ii) where that magazine is published nationally, which are held on the same or different dates in the various states and territories of publication; and
- (b) other days nominated by the Executive Committee from time to time and advised to affected Members and in this respect the Executive Committee must nominate relevant days relating to the Christmas, New Year and Easter holiday periods each year.

28.3.4 The Executive Committee may omit days from a Statement Period:

- (a) in respect of a Publication if:
  - (i) the Publisher Member for that Publication makes a written application to the Executive Committee requesting that omission;
  - (ii) the reason for the Publisher Member's request for omission of days relates to an event beyond the control of the Publisher Member (**Event**);
  - (iii) the Publisher Member provides evidence satisfactory to the Executive Committee which substantiates that the Event occurred; and
  - (iv) the Executive Committee considers that the Event would result in the circulation data for the Publication for the relevant Statement Period being misleading, deceptive or unreliable if days were not omitted from the Statement Period that Publication; or
- (b) if the Executive Committee on its own initiative considers that the omission of days is reasonable in respect of a certain class of Publication in all the circumstances and the omission applies to all Publisher Members who publish that class of Publication.

- 28.3.5 Publisher Members publishing a:
- (a) Regional Daily Newspaper with an Average Issue Circulation less than 25,000 copies;
  - (b) Regional Sunday Newspaper with an Average Issue Circulation less than 25,000 copies;
  - (c) Country Press with an Average Issue Circulation less than 25,000 copies; or
  - (d) Newspaper Inserted Magazine provided with a newspaper nominated in **Rules 28.3.5(a) to (c)**,

may elect not to publish an Issue of the Publication on a regular Publishing Day which is either:

- (e) an officially gazetted public holiday in the state or territory in which the Publication is published;
- (f) a day nominated by the Executive Committee and advised to affected Members pursuant to **Rule 28.3.2(f)**; or
- (g) a day which immediately precedes or immediately follows a day mentioned in **Rules 28.3.5(e) or (f)**,

and instead may:

- (f) publish a single Issue across a period which comprises only days referred to in **Rules 28.3.5 (e) to (g)** or any combination of them (**Occasion**); and
- (g) for the purposes of a Publisher's Statement, elect to regard all sales of that single Issue made across the Occasion as being made on a day nominated by the Publisher Member and which falls in the Occasion,

but only in respect of not more than four Occasions each year, including any Occasion which the Publisher Member is entitled to select under **Rule 26.1.7**. Where a Publisher Member includes an Occasion (or more than one Occasion) in a Statement Period for a Publication, the Publisher Member must advise that fact to the ABC. In that case, the ABC must note in any relevant Circulation Summary covering the Statement Period that the number of Issues for that Publication for the Statement Period includes the relevant number of 'Bumper Issues'.

- 28.3.6 If a Publisher Member elects to omit gazetted public holidays or other days in accordance with **Rules 28.3.2 or 28.3.3** or accepts an omission allowed by the Executive Committee under **Rule 28.3.4** (or where the Publisher Member is entitled to do so, omits days in accordance with both of those Rules), the Publisher Member must submit a Publisher's Statement for the Statement Period with days omitted as provided in (or where the Publisher Member is entitled to do so, as provided in more than one of those Rules), as the case may be.

## **29.0 SUBMITTING PUBLISHER'S STATEMENTS**

### **29.1 Frequency of Submitting Publisher's Statements**

29.1.1 Publisher Members publishing:

- (a) Regional Daily Newspapers with an Average Issue Circulation less than 25,000 copies;
- (b) Regional Sunday Newspapers with an Average Issue Circulation of less than 25,000 copies;
- (c) Country Press with an Average Issue Circulation less than 25,000 copies;
- (d) Newspaper Inserted Magazines provided with a newspaper nominated in **Rules 29.1.1(a), (b) or (c)**; or
- (e) any magazine with an Average Issue Circulation less than 25,000 copies,

and for each of the above types of Publication for which they are a Publisher Member, must submit a Publisher's Statement for each Statement Period listed in **Rule 28.1.1**.

### **29.2 Publisher Member Responsible for Content of Publisher's Statement**

29.2.1 Each Publisher's Statement submitted by a Publisher Member to the ABC must be signed:

- (a) where the Publisher Member is an individual, by that individual;
- (b) where the Publisher Member is a partnership, by the partner designated as the senior or managing partner or similar; or

- (c) where the Publisher Member is a corporation, by the Publisher Member's chief executive officer or another officer reporting directly to the chief executive officer who is duly authorised by the Publisher Member to sign Publisher's Statements.
- 29.2.2 For the purposes of these Rules, a Publisher Member is solely responsible for the accuracy of a Publisher's Statement in respect of that Member's Publication and the signing of a Publisher's Statement by or on behalf of the Publisher Member in accordance with **Rule 29.2.1** will be deemed to be a representation to the ABC that the Publisher Member verifies the accuracy of the Publisher's Statement.

### **29.3 Submission of Publisher's Statement**

A Publisher's Statement must be submitted by a Publisher Member to the ABC not more than thirty days after the end of the Statement Period to which the Publisher's Statement relates.

### **29.4 Fee for Late Submission**

- 29.4.1 If a Publisher Member submits a Publisher's Statement after the time stipulated in **Rule 29.3**, the Publisher Member must pay to the ABC a late submission fee determined from time to time by the Executive Committee.
- 29.4.2 The fee for late submission of a Publisher's Statement must accompany the Publisher's Statement when it is submitted and in those circumstances, if the ABC accepts the Publisher's Statement under **Rule 29.5**, the ABC will only be obliged to include the content of the Publisher's Statement in the relevant Circulation Summary if that inclusion will not otherwise delay the publication of that Circulation Summary.
- 29.4.3 If a Publisher Member fails to pay a late submission fee required under **Rule 29.4.1** within ninety days after the end of the Statement Period for the Publisher's Statement to which the late submission fee applies, the Executive Committee will regard that failure to be a failure to pay a fee for the purposes of **Rule 7.3**.

### **29.5 Acceptance of Publisher's Statement by ABC**

- 29.5.1 The ABC will only include in a relevant Circulation Summary the content of Publisher's Statement accepted by the ABC.
- 29.5.2 The ABC's acceptance of a Publisher's Statement will be deemed to have occurred immediately before the content of the Publisher's Statement is published in the relevant Circulation Summary or on the ABC's website.
- 29.5.3 If the ABC accepts a Publisher's Statement, that acceptance does not constitute a representation by the ABC that the content of that Publisher's Statement is correct.
- 29.5.4 Subject to **Rule 29.5.5**, the ABC will accept a Publisher's Statement for the purposes of this **Rule 29.5**:
- (a) subject to the result of any Inspection Audit or Review Audit directed by the Executive Committee in respect of the Publisher's Statement or its content; and
  - (b) if the ABC has no reason to believe that the Publisher's Statement and its submission does not comply with the requirements of these Rules.
- 29.5.5 The ABC will not accept a Publisher's Statement if:
- (a) the Executive Committee considers that the content of the Publisher's Statement has not been calculated, prepared or certified in accordance with these Rules;
  - (b) the Publisher's Statement has not been submitted within the time stipulated in **Rule 29.3** and the required fee for late submission has not been paid;
  - (c) the Audit Inspector has:
    - (i) advised the Executive Committee that there is a concern relating to the reliability of the content of the Publisher's Statement; and
    - (ii) provided the Executive Committee with reasons for that concern which the Executive Committee considers are such that the Publisher's Statement should not be accepted by the ABC;
  - (d) the ABC has exercised its discretion not to accept the Publisher's Statement under **Rule 31.5**; or
  - (e) **Rule 30.0** applies.

### **29.6 ABC May Request Amendment of Publisher's Statement**

The ABC may request a Publisher Member to amend a Publisher's Statement in accordance with **Rule 31.4**.

## **30.0 AUDIT REPORT IN LIEU OF PUBLISHER'S STATEMENT**

### **30.1 Audit Report May be Required**

30.1.1 If a Publisher Member ascertains that the Average Net Paid Sales in Australia for a Publication for a Statement Period (**Current Statement Period**) has increased by more than 10% over that shown in the Publisher's Statement for the equivalent Statement Period in the previous year, the Publisher Member must submit an Audit Report instead of a Publisher's Statement for the Current Statement Period.

30.1.2 If **Rule 30.1.1** applies, the Current Statement Period will be deemed to be an Audit Period for that Publication for the purposes of these Rules.

### **30.2 Publisher Member May Elect to Provide Audit Report**

30.2.1 A Publisher Member may elect to provide an Audit Report for a Publication instead of a Publisher's Statement for a Statement Period.

30.2.2 If a Publisher Member elects to provide an Audit Report for a Statement Period under **Rule 30.2.1**, that Statement Period will be deemed to be an Audit Period for that Publication for the purposes of these Rules.

## **PART 7 CIRCULATION STATEMENTS AND CIRCULATION SUMMARIES**

### **31.0 CIRCULATION STATEMENTS**

#### **31.1 Form and Content Determined by Executive Committee**

The Executive Committee from time to time may determine in writing:

- 31.1.1 the form or forms in which Circulation Statements are to be submitted to the ABC; and
- 31.1.2 the information to be contained in Circulation Statements and the procedures to be adopted in preparing them.

#### **31.2 Determinations Consistent with Rules**

All determinations of the Executive Committee under **Rule 31.1** must be consistent with these Rules.

#### **31.3 Preparation of Circulation Statements and Calculation of Publication Sales or Distribution**

A Publisher Member must ensure that each Circulation Statement for its Publications:

- 31.3.1 only contains sales data (or in the case of a Newspaper Inserted Magazine, distribution data) which has been:
  - (a) calculated in accordance; and
  - (b) otherwise complies,with the requirements of **Schedule 3**; and
- 31.3.2 has been prepared in accordance with the provisions of **Schedule 3**.

#### **31.4 ABC May Request Amendment of Circulation Statement**

If the ABC considers that a Circulation Statement (or its content) lodged by a Publisher Member does not comply with these Rules (or the Audit Procedures if applicable):

- 31.4.1 the ABC may return the Circulation Statement to the Publisher Member with a written request for amendment; and
- 31.4.2 the Publisher Member must:
  - (a) amend the Circulation Statement as requested by the ABC; and
  - (b) return the amended Circulation Statement to the ABC,not more than seven days after the date on which the Publisher receives the ABC's written request under **Rule 31.4.1**.

#### **31.5 No Acceptance of Circulation Statement if Moneys Owed**

The ABC is not obliged to:

- 31.5.1 accept a Circulation Statement from; or
- 31.5.2 include in a Circulation Summary the content of a Circulation Statement it has accepted from, a Publisher Member if any subscription, levy or fee imposed on that Publisher Member in accordance with these Rules has not been paid within the time required by **Rule 7.2.2**.

### **32.0 CIRCULATION SUMMARIES**

#### **32.1 ABC Will Prepare and Distribute Circulation Summaries**

After the end of a Reporting Period the ABC will prepare Circulation Summaries in respect of that Reporting Period and distribute them to Members.

#### **32.2 Form and Content of Circulation Summaries**

Each Circulation Summary prepared pursuant to **Rule 32.1** must:

- 32.2.1 summarise the contents of all Circulation Statements which:
  - (a) Publisher Members have lodged with the ABC for the most recent Audit Period or Statement Period; and
  - (b) have been accepted by the ABC in accordance with these Rules; and
- 32.2.2 be in the form determined by the Executive Committee from time to time.

### **32.3 Circulation Summary May Show Lower Figure**

A Circulation Summary may show a figure for Average Net Paid Sales (as defined in **Schedule 3**) in respect of a Publication for a Reporting Period as less than the actual figure appearing in the relevant Circulation Statement and then followed by the symbol "+" if a request to that effect is submitted in writing to the ABC by the Publisher Member who publishes that Publication.

### **32.4 Circulation Summaries Prepared and Issued Without Opinion**

Each Circulation Summary prepared and distributed by the ABC under these Rules is prepared and distributed on the basis that the ABC:

32.4.1 has relied on the representations under **Rules 26.6.2 or 29.2.2** of each Publisher Member which has submitted a Circulation Statement that the content of the Circulation Statement is factual and accurate; and

32.4.2 includes the content of a Circulation Statement on the basis of the representations under **Rules 26.6.2 or 29.2.2** and without expressing any opinion.

### **32.5 Members to Receive Circulation Summaries**

32.5.1 Each Member will receive one free copy of each Circulation Summary prepared by the ABC.

32.5.2 A Member may purchase from the ABC:

(a) additional copies of the current Circulation Summaries; and

(b) where available, copies of non-current Circulation Summaries,

at the price per copy determined by the Executive Committee from time to time.

## PART 8      AUDIT BUREAU OF VERIFICATION SERVICES

### 33.0    AUDIT BUREAU OF VERIFICATION SERVICES

#### 33.1    Name

There is a division of the ABC named the Audit Bureau of Verification Services ("**ABVS**").

#### 33.2    Purpose of ABVS

The Executive Committee may cause the ABVS to carry out and report on Audits (other than Circulation Audits) as the Executive Committee from time to time determines in accordance with those ABC objects specified in **Rule 3.1.5**.

#### 33.3    Audits by ABVS

An Audit carried out by the ABVS under **Rule 33.2**:

33.3.1 may be carried out:

- (a) for Members of the ABC only;
- (b) for fees which the Executive Committee from time to time determines; and

33.3.2 must be carried out:

- (a) in accordance with the procedures, rules and guidelines; and
- (b) on such terms and conditions,  
as the Executive Committee from time to time determines.

#### 33.4    Reports of Audits by ABVS

A report of an Audit carried out under **Rule 33.2**:

33.4.1 must be published under the name of the ABVS and must bear the logo of the ABVS;

33.4.2 must indicate that the ABVS is a division of the ABC;

33.4.3 subject to **Rules 33.4.1 and 33.4.2**, must be in a form or forms which the Executive Committee from time to time determines;

33.4.4 is not circulation information for the purposes of **Rule 5.1** and does not constitute a Circulation Statement or a Circulation Summary for the purpose of these Rules; and

33.4.5 may be provided by the ABC to Members on terms and conditions and in a manner as the Executive Committee from time to time determines.

#### 33.5    Application of Fees

All fees received by the ABC in respect of Audits carried out under **Rule 33.2** must be applied in accordance with **Rule 22.1**.



## PART 9 MISCELLANEOUS

### 34.0 PUBLICITY

#### 34.1 Statements by Applicants for Membership and Publisher Members Elect

- 34.1.1 An applicant for membership of the ABC may not make any reference to ABC membership until the applicant has been advised by the ABC that their application has been accepted and they have been admitted as a Member.
- 34.1.2 The Executive Committee may delay, for any period it considers appropriate, consideration of an application for membership where the applicant has not complied with **Rule 34.1.1**.
- 34.1.3 A Publisher Member Elect under **Rule 6.3.1** in addition to the requirements of **Rule 34.1.1**:
- (a) must not make any claim, representation or statement that they are a Member in respect of a publication until they are admitted as a Full Member in the class of Publisher Member for that publication under **Rule 6.3.3**; and
  - (b) may state that their application for membership has been approved (and the month it was approved) and that the approval is conditional on their complying with the requirements for admission as a Publisher Member, but no other reference to the ABC may be used in that statement or any other publicity statement.

#### 34.2 Use of ABC Logo Generally

- 34.2.1 Subject to **Rule 34.2.2**, a Full Member may use:
- (a) the logo of the ABC; and
  - (b) words denoting membership of the ABC,
- on its letterheads, advertising matter or publications while they are a Member.
- 34.2.2 A Publisher Member must not use the logo of the ABC or words denoting its membership of the ABC:
- (a) in respect of a Publication until it is admitted as a Full Member in respect of that Publication in accordance with **Rule 6.3**; or
  - (b) in connection with any publication which is not the subject of a membership of the ABC.

#### 34.3 No Publicity Until Circulation Summary Published

A Member must not, and must not allow another person to, publicise the content of any Circulation Statement before:

- 34.3.1 that content is accepted by the ABC for inclusion in a Circulation Summary and formally released to members in a preliminary release of circulation data which will appear in a Circulation Summary to be distributed to Members in accordance with **Rule 32.1**; and
- 34.3.2 the date stipulated in the ABC's preliminary release made under **Rule 34.3.1**.

#### 34.4 Use of ABC Logo and Statements in Relation to Circulation Data

- 34.4.1 A Member must not use or position the logo of the ABC in connection with any statement concerning the circulation data for a Publication in such a way as to imply that non-audited data has been Audited and accepted by the ABC under these Rules.
- 34.4.2 If a Member makes any statement concerning the circulation data for a Publication and involving any figures sourced to the ABC or the ABC's Circulation Summaries, that statement:
- (a) must acknowledge the ABC as the source of the figures and include the figures appearing in the ABC's most recently published Circulation Summary, or Notice of Amendment;
  - (b) must clearly indicate whether the figures have been the subject of a Circulation Audit or not;
  - (c) must state the Reporting Period to which the figures relate;
  - (d) must not accumulate or calculate figures across:
    - (i) the categories of Average Net Paid Sales and Average Other Sales (both as defined in **Schedule 3**) and must not refer to Average Other Sales without also referring to Average Net Paid Sales and explaining the difference between them;

- (ii) the categories of sales in Australia, New Zealand and other countries; or
- (iii) the print and Digital Version Average Net Paid Sales of a Publication; or
- (iv) Reporting Periods,

to create other figures which do not appear in any Circulation Summary or which relate to periods which are not Reporting Periods for the Publication; and

- (e) where eighty per cent or more of Average Net Paid Sales (as defined in **Schedule 3**) in Australia are attributable to one of the categories stipulated in **Rule S3-2.3.2 in Schedule 3**, must clearly indicate the actual percentage of those Average Net Paid Sales in that category.

### **34.5 Statements of Comparison**

If a Member makes any statement involving a comparison of circulation data, they must comply with the following requirements in relation to that statement:

34.5.1 The Member must comply with **Rule 34.4.2**.

34.5.2 Where a comparison is made between figures sourced to the ABC or the ABC's Circulation Summaries, the Reporting Period for each figure must be shown and the same Reporting Periods must be compared if available.

34.5.3 Comparisons must be on a like for like basis and figures must not be manipulated so as to create or attempt to create a false impression.

34.5.4 If the publishing frequencies of the Publications being compared are different, the comparison must include their respective frequencies.

34.5.5 A Member must not compare data relating to an Audit Report or an Audit Period with data relating to a Publisher's Statement or a Statement Period.

34.5.6 A Member must not compare figures sourced to the ABC or the ABC's Circulation Summaries for a Publication with figures:

- (a) from any other source; or
- (b) relating to a publication not published by a Publisher Member,

so as to create an impression that the sets of figures can be compared on an equal footing.

### **34.6 Statements Concerning Circulation Generally**

34.6.1 Subject to **Rule 34.6.2**, a Publisher Member may make general statements concerning the aspects of the field of circulation, the quality of circulation or the merits of their publication generally.

34.6.2 Any statement made by a Publisher Member of the nature described in **Rule 34.6.1** must not be made in such a manner so as to appear in any way to:

- (a) have been issued with the imprimatur or the authority of; or
- (b) be associated with,

the ABC.

### **34.7 Provisions Relating to ABVS Information**

The provisions of this **Rule 34.0** apply, with the necessary changes being made, to any statement by a Member concerning any figures sourced to the ABVS, the result of any ABVS Audit or the content of any ABVS Audit report, all pursuant to **Rule 33.0**.

### **34.8 Restriction on Use of ABC Communications**

A Member must not reproduce, republish or release any part of any correspondence or other communication from the ABC unless:

- (a) required by law; or
- (b) the Member obtains the prior written consent of the Executive Committee, which may be given subject to any conditions which the Executive Committee determines.

## **35.0 QUERY CONCERNING MEMBER'S COMPLIANCE WITH RULES**

### **35.1 Query Procedure**

Any query by a Member concerning a Member's compliance with these Rules or the Audit Guidelines, other than a challenge under **Rule 36.0**, must be lodged and dealt with as provided in **Schedule 4**.

## **36.0 CHALLENGE CONCERNING CIRCULATION STATEMENT**

### **36.1 Challenge Procedure**

Any challenge by a Member to the content of a Circulation Statement must be lodged and dealt with as provided in **Schedule 4**.

## **37.0 SANCTIONS UNDER RULES 35.0 AND 36.0 AND SCHEDULE 4**

### **37.1 Sanctions**

The Executive Committee may impose the following sanctions for the purposes of **Rules 35.0 and 36.0 and Schedule 4**:

37.1.1 as against an Auditor:

- (a) a reprimand in writing;
- (b) suspension as an Auditor for a period determined by the Executive Committee, with or without a requirement for training by the ABC; or
- (c) revocation of approval and registration as an Auditor under these Rules with or without a direction that the Auditor is permanently ineligible to be approved and registered as an Auditor in the future; and

37.1.2 as against a Member, any or any combination of the following (in addition to the provisions of these Rules concerning the ABC's right to not accept a Circulation Statement for the inclusion of its content in a Circulation Summary) which the Executive Committee considers appropriate in all the circumstances of the case:

- (a) A warning where the Executive Committee considers that the Member's breach of the Rules or Audit Guidelines was inadvertent.
- (b) A formal censure for breach of the Rules or Audit Guidelines with or without a requirement for the Member to attend training by the ABC concerning the requirements of the Rules and Audit Guidelines.
- (c) A fine payable to the ABC and not exceeding \$10,000 including GST.
- (d) Termination of the Member's membership.

### **37.2 ABC's Costs**

A Member against whom a sanction is imposed under **Rule 37.1** is also liable to reimburse the ABC's costs as provided in **Rule 39.0**.

## **38.0 RESOLUTION OF MEMBERS' ISSUES**

### **38.1 Member Must Follow Procedures in Rules**

38.1.1 In this **Rule 38.0**, "officer" means the Chairman, Deputy Chairman, Honorary Treasurer, Executive Director or Audit Inspector.

38.1.2 A Member must not bring any action against another Member or the ABC or its officers unless the Member has first exhausted all rights and remedies provided in these Rules.

## **39.0 INDEMNITIES**

### **39.1 Indemnity in Relation to Enforcement Action**

If the Executive Committee determines that it is necessary for the ABC to take action (whether by internal procedure, litigation or any form of alternative dispute resolution) to:

39.1.1 collect any moneys owing to it on any account; or

39.1.2 enforce any Rule,

the Member or former Member against whom the action is taken must indemnify and reimburse the ABC for all costs incurred by the ABC (including legal costs on a solicitor client basis) in any way related to that action.

### **39.2 Indemnity in Relation to Actions by Members or Third Parties**

If the ABC is subjected to any claim or action from a Member or a third party arising (in whole or in part) from a failure by a Member to comply with any of these Rules, then that Member must indemnify and reimburse the ABC for:

39.2.1 all costs incurred by the ABC (including legal costs on a solicitor client basis) in any way related to that claim or action; and

39.2.2 any amount paid by the ABC by way of settlement, judgment or an order of any person authorised by law to make such a disposition.

### **39.3 Indemnity in Relation to Actions by Members**

39.3.1 A Member who:

- (a) brings a claim or an action against the ABC;
- (b) joins the ABC in a claim or any action the Member takes against another Member or a third party; or
- (c) joins the ABC in a claim or any action brought against the Member by another Member or a third party,

must indemnify and reimburse the ABC for all costs incurred by the ABC (including legal costs on a solicitor client basis) in any way related to that claim or action.

39.3.2 Nothing in this **Rule 39.3** operates so as to:

- (a) require a Member to reimburse the ABC contrary to an order of a court or any person authorised by law that the ABC must bear (in whole or in part) its own costs and expenses in any action, but if that order relates to part only of the ABC's costs then **Rule 39.3.1** applies to the remainder of those costs;
- (b) have the effect that the ABC's costs are reimbursed more than once.

## **40.0 AMENDMENTS TO RULES**

### **40.1 Definitions**

In this **Rule 40.0 and Schedule 5** unless the context otherwise requires:

**Amendment Proposal** means a proposal in writing to amend any of these Rules and which provides full details of the proposal, the reasons for making the proposal, the words proposed to be amended and the exact wording of the amendment proposed.

**Proponent** means a Full Member who submits an Amendment Proposal.

**Rule Amendment Ballot Closing Time** has the meaning defined in **Rule S5-1.0 in Schedule 5**.

### **40.2 Full Member May Propose Amendment**

A Full Member may propose an amendment to these Rules by submitting an Amendment Proposal to the Executive Director.

### **40.3 Consideration by Executive Committee**

40.3.1 As soon as practicable after the Executive Director receives an Amendment Proposal, the Executive Director must provide a copy of the Amendment Proposal to the Executive Committee.

40.3.2 The Executive Committee must consider the Amendment Proposal and may:

- (a) require the Proponent to provide any further information concerning the Amendment Proposal which the Executive Committee requires;
- (b) obtain any advice the Executive Committee considers it requires in relation to any aspect of the Amendment Proposal and its impact on those Rules which are not part of the Amendment Proposal; and
- (c) discuss the Amendment Proposal with the Proponent or any other Member.

40.3.3 During the period of the Executive Committee's consideration of the Amendment Proposal, the Proponent may:

- (a) withdraw the Amendment Proposal; or
- (b) with the written consent of the Executive Committee, amend the Amendment Proposal.

### **40.4 Consideration by General Committee**

40.4.1 After considering the Amendment Proposal, the Executive Committee must forward to each member of the General Committee a copy of:

- (a) the Amendment Proposal;
- (b) any further information received pursuant to **Rule 40.3.2(a)**;
- (c) any written advice received by the Executive Committee pursuant to **Rule 40.3.2(b)**,

together with the Executive Committee's recommendation as to whether the Amendment Proposal should be submitted to a vote of Full Members in accordance with this **Rule 40.0 and Schedule 5**.

40.4.2 The General Committee must determine whether the Amendment Proposal should be submitted to a vote of Full Members in accordance with this **Rule 40.0 and Schedule 5** and must make that determination at a meeting of the General Committee called for that purpose.

#### **40.5 Result of Consideration by General Committee**

40.5.1 If the General Committee decides that the Amendment Proposal should be put to a vote of Full Members vote in accordance with this **Rule 40.0 and Schedule 5**, the Executive Director must arrange for a ballot of Full Members in accordance with the procedures in **Schedule 5**.

40.5.2 If the General Committee decides that the Amendment Proposal should not be put to a vote of Full Members, the Executive Committee must advise the Proponent of that fact.

#### **40.6 Full Members May Requisition Vote**

40.6.1 If the General Committee decides pursuant to **Rule 40.5.2** that the Amendment Proposal should not be put to a vote of Full Members, the Proponent and at least twenty-five other Full Members may requisition in writing to the Executive Director that the Amendment Proposal be put to a vote of Full Members.

40.6.2 As soon as practicable after receiving a requisition in accordance with **Rule 40.6.1**, the Executive Director must arrange for a ballot of Full Members in accordance with the procedures in **Schedule 5**.

#### **40.7 Date of Amendment**

40.7.1 Subject to **Rule 40.7.2**, if more than a simple majority of votes by Full Members entitled to vote in respect of an Amendment Proposal vote in favour of a proposed amendment, these Rules will be amended in the manner proposed on and from a date which the Executive Committee determines and which is notified in the notice of the ballot for that vote pursuant to **Schedule 5**.

40.7.2 The date which the Executive Committee determines for the purposes of **Rule 40.7.1** must be a date occurring no later than six months after the Rule Amendment Ballot Closing Time.

### **41.0 DISSOLUTION**

#### **41.1 Dissolution**

The ABC must be dissolved if:

41.1.1 a resolution to dissolve the ABC is carried in the same manner as provided in **Rule 40.0 and Schedule 5** for amendments to the Rules, modified as appropriate including the requirement that the resolution to dissolve the ABC is carried by at least a two-thirds majority of votes by Full Members entitled to vote in respect of the dissolution; or

41.1.2 the number of Full Members drops to ten or less.

#### **41.2. Winding Up**

The ABC may be wound up if Part 5.7 of the *Corporations Act 2001* (Cth) (winding up bodies other than companies) applies.

### **42.0 EXECUTIVE COMMITTEE DETERMINATIONS**

#### **42.1 Definitions**

In this **Rule 42.0** "Determination" means a determination of the Executive Committee concerning the application or interpretation of these Rules in accordance with their spirit and intent.

#### **42.2 Executive Committee May Make Determinations**

42.2.1 The Executive Committee may make a Determination either:

(a) in response to an enquiry from a Member concerning the application or interpretation of the Rules or any like matter; or

(b) where the Executive Committee considers that a Determination is required.

- 42.2.2 A Determination must:
- (a) be consistent with these Rules;
  - (b) be circulated in writing to all Members; and
  - (c) must include a reference to the category of Member, class of Member and Membership Group (as the case may be) to which the Determination applies.

#### **42.3 Members May Dispute Determinations**

42.3.1 If a Member disputes a determination made by the Executive Committee pursuant to **Rule 42.2**, the Member may lodge with the ABC a notice in writing providing details of the dispute (**Dispute**) and the Dispute will be referred to the General Committee for decision.

42.3.2 The General Committee must determine the Dispute and in doing so must either:

- (a) uphold the Determination;
- (b) revoke the Determination; or
- (c) vary the Determination, in which case the variation will be deemed to be a Determination for the purposes of this **Rule 42.0**.

#### **42.4 Members Must Comply with Determinations**

A Member must comply with a Determination which applies to that Member.

### **43.0 NOTICES**

#### **43.1 Service of Notices**

43.1.1 Except where specifically stipulated otherwise in these Rules, a notice or other communication may be given by the General Committee, the Executive Committee, the Executive Director or the Audit Inspector to any Member either by:

- (a) handing it to them personally;
- (b) sending it by:
  - (i) pre-paid ordinary post to the Member's postal address;
  - (ii) facsimile to the Member's facsimile number; or
  - (iii) e-mail to the Member's e-mail address,

shown in the record kept by the Executive Director pursuant to **Rule 6.5** or the postal address, e-mail address or facsimile number supplied by the Member to the ABC for the giving of notices to them.

43.1.2 Except where specifically stipulated otherwise in these Rules, a notice or other communication may be given by a Member to the General Committee or the Executive Committee either by:

- (a) handing it to the Executive Director personally;
- (b) sending it by:
  - (i) pre-paid ordinary post to the ABC's postal address;
  - (ii) facsimile to the ABC's facsimile number; or
  - (iii) e-mail to the Executive Director's e-mail address.

43.1.3 Except where specifically stipulated otherwise in these Rules, a notice or other communication may be given by a Member to the Executive Director or the Audit Inspector either by:

- (a) handing it to the addressee personally;
- (b) sending it by:
  - (i) pre-paid ordinary post to the ABC's postal address marked to the attention of the addressee;
  - (ii) facsimile to the ABC's facsimile number marked to the attention of the addressee; or
  - (iii) e-mail to the addressee's e-mail address.

#### **43.2 Deemed Receipt of Notices**

A letter, facsimile transmission or e-mail is deemed to be received:

43.2.1 in the case of a posted letter, on the third day after the date on which the letter was posted;

- 43.2.2 in the case of a facsimile, at the time stated in a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and
- 43.2.3 in the case of an e-mail, in the absence of the receipt of a failed delivery report by the machine from which the e-mail was sent.

#### **44.0 TRANSITIONAL PROVISIONS**

##### **44.1 Provisions Concerning Publisher Members and Membership Groups**

On the commencement of these Rules:

- 44.1.1 a Publisher Member who:
- (a) before the commencement of these Rules, was regarded by the Executive Committee as being the Publisher of a national publication; and
  - (b) publishes a Publication which is a newspaper sold nationally in Australia,
- will, in respect of that Publication, be a Publisher Member in Membership Group A as a publisher of a National Newspaper; and
- 44.1.2 a Publisher Member who:
- (a) before the commencement of these Rules, was regarded by the Executive Committee as being the Publisher of a regional newspaper; and
  - (b) publishes a Publication which is a newspaper published in other than a capital city and has the bulk of its sales on a Sunday,
- will, in respect of that Publication, be a Publisher Member in Membership Group B as a publisher of a Regional Sunday Newspaper; and
- 44.1.3 a Publisher Member who:
- (a) before the commencement of these Rules, was not eligible to be a Publisher Member in Membership Group B as Country Press for a particular publication and as a consequence was a member of another Membership Group; and
  - (b) publishes a Publication which is an agricultural publication targeted to the primary producer and other participants in the agribusiness sector,
- will, in respect of that Publication, be a Publisher Member in Membership Group B as a publisher of a Country Press.

##### **44.2 Provision Concerning Increased Number of Members of the General Committee**

On the commencement of these Rules and for the purposes of the increase in the number of members of the General Committee from twenty-four to twenty-six under **Rule S2-1.0 in Schedule 2**, the two additional positions will be regarded as positions which are casually vacant and which must be filled in accordance with these Rules.

##### **44.3 Provision Concerning Auditors' Qualifications**

- 44.3.1 An independent auditor who:
- (a) was an auditor approved by the Executive Committee and registered with the ABC for the purposes of carrying out audits required by the previous rules of the ABC in force before the commencement of these Rules; and
  - (b) desires to continue to be an Auditor for the purposes of these Rules,
- must provide evidence of their financial membership of a relevant organisation as provided in **Rule 24.1** within ninety days after the commencement of these Rules.
- 44.3.2 Until an auditor described in **Rule 44.3.1** complies with the requirements of that Rule within the time stipulated, the auditor will be deemed to be an Auditor for the purpose of these Rules.
- 44.3.3 If an auditor described in **Rule 44.3.1** does not comply with the requirements of that Rule within the time stipulated, that auditor's previous approval and registration before the commencement of these Rules will automatically terminate without any requirement for any further action by the Executive Committee or the ABC.

#### **44.4 Provision Concerning Audit Reports**

For the purposes of **Rule 25.0**, the first Audit Period for all Publications will be the three or six month period (as the case may be in accordance with **Rule 25.0**) commencing 1 July 2006 and all Publisher Members must provide an Audit Report for the relevant three or six month period applying to their Publications as the first Circulation Statement to be submitted after the commencement of these Rules.



**SCHEDULE 1**  
**APPLYING FOR MEMBERSHIP**

**S1-1.0 Applying for Membership Generally**

A person applying for membership of the ABC must:

- S1-1.1 nominate in their membership application form the category of membership to which the person seeks admission;
- S1-1.2 where the person is seeking admission as a Full Member, nominate the class of Full Membership which they are seeking; and
- S1-1.3 submit with their membership application form the applicable amount of the annual subscription determined pursuant to **Rule 7.2.1**.

**S1-2.0 Additional Matters When Applying for Publisher Membership**

A person applying to be a Full Member in the class of Publisher Member, in addition to the requirements of **Rule S1-1.0**:

- S1-2.1 must nominate in writing the publication or publications in respect of which they are applying to be a Publisher Member;
- S1-2.2 where they are applying in respect of more than one publication:
  - (a) acknowledges that they will be required to have and maintain separate Publisher Membership in respect of each publication nominated if they are admitted as a Publisher Member; and
  - (b) must submit with their application form the applicable amount of the annual subscription determined pursuant to **Rule 7.2.1** in respect of each separate Publisher Membership.

**S1-3.0 Additional Matters When Applying for Advertising Agency Membership**

A person applying to be a Full Member in the class of Advertising Agency Member who wishes to make circulation information issued by the ABC available at that person's offices maintained by them in more than one state or territory of Australia or at a location outside Australia, in addition to the requirements of **Rule S1-1.0**:

- S1-3.1 must nominate in writing the locations of those offices; and
- S1-3.2 acknowledges that they will be required to have and maintain separate Advertising Agency Membership in respect of each of those offices if they are admitted as an Advertising Agency Member; and
- S1-3.3 must submit with their application form the applicable amount of the annual subscription determined pursuant to **Rule 7.2.1** in respect of each separate Advertising Agency Membership.

**SCHEDULE 2**  
**COMMITTEES AND MEETINGS**

**S2-1.0 COMPOSITION OF GENERAL COMMITTEE**

**S2-1.1 Number of Members of General Committee**

The number of members of the General Committee is twenty-six comprised as follows:

<i>Membership Group Represented</i>	<i>Number of Members of the General Committee</i>
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**Membership Group A**

Publisher Members publishing: Metropolitan Monday – Friday Daily Newspapers; Metropolitan Saturday Newspapers; Metropolitan Sunday Newspapers; National Newspapers; or Newspaper Inserted Magazines	Six
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**Membership Group B**

Publisher Members publishing: Regional Daily Newspapers; Regional Sunday Newspapers; or Country Press	Four
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**Membership Group C**

Publisher Members publishing: Magazines	Six
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**Membership Group D**

Advertiser Members	Five
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**Membership Group E**

Advertising Agency Members	Five
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**S2-1.2 Provision Relating to Membership Group B**

At least two of the four members of the General Committee representing Membership Group B must represent Publisher Members publishing Country Press.

**S2-2.0 MEMBERSHIP GROUPS' GENERAL COMMITTEE MEMBERS**

**S2-2.1 Electing Representatives of Membership Groups A, B and C**

S2-2.1.1 The six members of the General Committee representing Membership Group A must be elected by the Publisher Members in Membership Group A in accordance with these Rules.

S2-2.1.2 The four members of the General Committee representing Membership Group B, and subject to **Rule S2-1.2**, must be elected by the Publisher Members in Membership Group B in accordance with these Rules.

- S2-2.1.3 The six members of the General Committee representing Membership Group C must be elected by the Publisher Members in Membership Group C in accordance with these Rules.
- S2-2.2 Electing Representatives of Membership Groups D and E**
- S2-2.2.1 The five members of the General Committee representing Membership Group D must be elected by the Advertiser Members in accordance with these Rules.
- S2-2.2.2 The five members of the General Committee representing Membership Group E must be elected by the Advertising Agency Members in accordance with these Rules.
- S2-3.0 PROCEDURE FOR ELECTING GENERAL COMMITTEE MEMBERS**
- S2-3.1 Enquiry to Sitting General Committee Members**  
At least sixty days before the date of the next occurring Annual General Meeting, the Executive Director must ascertain if sitting members of the General Committee who are eligible are seeking re-election.
- S2-3.2 Calling for Nominations**  
At least forty-five days before the date of the next occurring Annual General Meeting the Executive Director must send a nomination form to every Full Member together with a notice (**Election Notice**):
- S2-3.2.1 inviting nominations for election to the General Committee in each of the Membership Groups referred to in **Rule S2-1.1**; and
- S2-3.2.2 advising whether or not any of the sitting members of the General Committee are seeking re-election and, if so, the names of those sitting members.
- S2-3.3 Nominations Only for Relevant Membership Group**  
A Full Member receiving a nomination form may only nominate persons for election to represent the same Membership Group on the General Committee as the Membership Group to which that Full Member belongs.
- S2-3.4 Lodging Nominations**  
Nominations for election to membership of the General Committee must:
- S2-3.4.1 be in writing using the nomination form provided by the Executive Director with the Election Notice; and
- S2-3.4.2 be lodged with the Executive Director no later than fourteen days after the date appearing on the Election Notice.
- S2-3.5 Election Where Insufficient Nominations to Hold a Ballot**  
If the number of nominations received by the Executive Director for a Membership Group is not more than the number of members of the General Committee entitled to be elected for that Membership Group as provided in **Rule S2-1.1**, then the persons nominated will be deemed to have been duly elected as members of the General Committee pursuant to these Rules.
- S2-3.6 Election by Ballot**
- S2-3.6.1 If the number of nominations received by the Executive Director for a Membership Group exceeds the number of members of the General Committee entitled to be elected to represent that Membership Group as provided in **Rule S2-1.1**, then a ballot must be held to elect the persons to represent that Membership Group (**Ballot**).
- S2-3.6.2 The Executive Director must prepare a Ballot paper:
- (a) listing in alphabetical order the persons nominated;
  - (b) instructing Full Members entitled to vote to indicate by a cross on the Ballot paper the names of the required number of representatives to fill the number of positions on the General Committee for the relevant Membership Group as provided in **Rule S2-1.1**;
  - (c) notifying the time and date by which completed Ballot papers must be returned and which must be the date fourteen days after the date on which the Ballot paper will be despatched by the Executive Director (**Ballot Closing Time**); and,
  - (d) notifying the method by which completed Ballot papers must be returned by the Ballot Closing Time.

- S2-3.6.3 The Executive Director must send a Ballot paper to each Full Member entitled to vote in the Ballot.
- S2-3.6.4 Completed Ballot papers must be returned by voting Full Members entitled to vote to reach the Executive Director by the Ballot Closing Time.
- S2-3.6.5
  - (a) The Executive Director must count all Ballot papers received by or before the Ballot Closing Time from Full Members entitled to vote in the Ballot.
  - (b) Any Ballot paper which is marked so as to indicate either more or less than the required number of representatives instructed on the Ballot paper will be deemed invalid and must not be counted.

### **S2-3.7 Declaration of Ballot**

After the Executive Director has counted the votes on the Ballot papers returned by the Ballot Closing Time, the Executive Director must:

- S2-3.7.1 notify Members of the result of the Ballot; and
- S2-3.7.2 following the notification under **Rule S2-3.7.1**, notify:
  - (a) the General Committee meeting held immediately before the Annual General Meeting; and
  - (b) the Annual General Meeting,

the names of the persons elected as members of the General Committee in the Ballot. The positions on the General Committee of each Relevant Membership Group will be filled by the nominees with the most votes. In the event of a 'tie' where two or more nominees have received an equal number of votes for an unfilled position on the General Committee of each Relevant Membership Group, the Chairman has the casting vote to break the 'tie' in determining which nominee will fill that unfilled position on the General Committee of each Relevant Membership Group.

### **S2-3.8 Retention of Returned Ballot Papers**

Ballot papers returned to the Executive Director must be kept by the Executive Director for at least two months after the declaration of the Ballot under **Rule S2-3.7**.

### **S2-3.9 Procedure Where Insufficient Elected Representatives for Membership Groups A, B or C**

If the Publisher Members in any of Membership Groups A, B or C:

- S2-3.9.1 nominate less than the required number of members of the General Committee for their Membership Group as provided in **Rule S2-1.1**; or
- S2-3.9.2 having nominated a number of persons as candidates for election so as to require a ballot under **Rule S2-3.6**, fail to elect the required number of members of the General Committee for their Membership Group as provided in **Rule S2-1.1**,

the representatives of Publisher Members elected to the General Committee may appoint a representative to fill each vacancy for Membership Groups A, B and C by a simple majority vote, and each person appointed in that manner will hold office until the next Annual General Meeting following their appointment.

## **S2-4.0 PROCEDURE FOR CONDUCTING A GENERAL COMMITTEE POSTAL BALLOT AND ITS DECLARATION**

### **S2-4.1 Definitions**

In this **Rule S2-4.0** unless the context otherwise requires:

**Ballot Supervisor** means a person who is not:

- (a) a Member;
- (b) a person authorised pursuant to **Rule 18.2.1**;
- (c) a member of the General Committee;
- (d) a member of the Executive Committee;
- (e) the Executive Director; or
- (f) the Audit Inspector.

**General Committee Postal Ballot** has the meaning defined in **Rule 2.1**.

**General Committee Postal Ballot Closing Time** means the time and date by which completed General Committee Postal Ballot papers must be returned to the Executive Director and which must be a date at least fourteen days after the date on which the Statement and the General Committee Postal Ballot paper are despatched by the Executive Director.

**Statement** means the statement specified in **Rule S2-4.2.2**.

**S2-4.2 Conduct of General Committee Postal Ballot**

S2-4.2.1 In conducting a General Committee Postal Ballot, the Chairman must arrange for the preparation of a Statement and a General Committee Postal Ballot paper.

S2-4.2.2 A Statement must contain:

- (a) details of the motion calling for the vote;
- (b) the wording of the resolution to be put to the vote;
- (c) a statement of the facts which the Chairman considers to be relevant to the resolution to be put to the vote; and
- (d) the General Committee Postal Ballot Closing Time.

S2-4.2.3 The Executive Director must send the Statement and the General Committee Postal Ballot paper to each member of the General Committee.

**S2-4.3 Voting by Members of General Committee**

S2-4.3.1 A member of the General Committee may vote for or against a resolution in a General Committee Postal Ballot by duly completing a General Committee Postal Ballot paper and either:

- (a) posting it so as to reach the Executive Director; or
- (b) delivering it by hand to the ABC's office,

no later than the General Committee Postal Ballot Closing Time.

S2-4.3.2 If for any reason a General Committee Postal Ballot paper does not reach the Executive Director or is not delivered by hand to the ABC's office by the General Committee Postal Ballot Closing Time that General Committee Postal Ballot paper will not constitute a valid vote.

**S2-4.4 Appointment of Ballot Supervisor**

S2-4.4.1 The Executive Committee must appoint a Ballot Supervisor to scrutinise and count all votes contained in General Committee Postal Ballot papers received:

- (a) in accordance with the requirements of **Rule S2-4.3.1**; and
- (b) on or before the General Committee Postal Ballot Closing Time.

S2-4.4.2 The Ballot Supervisor:

- (a) must report to the Executive Committee on the number of votes received for and against the resolution put to the vote by the General Committee Postal Ballot; and
- (b) must not disclose to any person (unless required by law) the manner in which any Member of the General Committee has voted in respect of a General Committee Postal Ballot.

**S2-4.5 Declaration of General Committee Postal Ballot**

S2-4.5.1 The Ballot Supervisor must declare in writing whether a resolution has or has not been carried by a General Committee Postal Ballot and the Executive Committee must arrange for that declaration to be circulated to all members of the General Committee.

S2-4.5.2 A declaration by the Ballot Supervisor under **Rule S2-4.5.1** that a resolution which is the subject of a General Committee Postal Ballot has been:

- (a) carried or carried by a particular majority; or
- (b) not carried or not carried by a particular majority,

will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

**S2-5.0 PROCEDURE FOR CONDUCTING A POLL AT A MEETING OF MEMBERS AND ITS DECLARATION**

**S2-5.1 Conduct of Poll at a Meeting of Members**

S2-5.1.1 If a poll is demanded at a Meeting of Members (**Poll**), each Full Member present in person or by proxy entitled to vote in accordance with these Rules on any resolution will have one vote in respect of each membership of the ABC recorded by the Executive Director in accordance with **Rule 6.5.2** in the name of that Full Member.

S2-5.1.2 A Poll will be taken in the manner the chairman of the meeting directs.

**S2-5.2 Declaration of Poll Taken at a Meeting of Members**

S2-5.2.1 The chairman of the meeting must declare the result of a Poll at the Meeting of Members at which the Poll was taken.

S2-5.2.2 A declaration by the chairman of the meeting under **Rule S2-5.2.1** that a resolution has been:

(a) carried or carried by a particular majority; or

(b) not carried or not carried by a particular majority,

will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

## SCHEDULE 3 CIRCULATION STATEMENTS

### S3-1.0 DEFINITIONS

In this Schedule 3 unless the context otherwise requires:

**Accommodation and Airline Sale** is a sale at a price of a Publication under an arrangement by or with the publisher of the Publication to either:

- (a) a place which provides accommodation on a commercial basis to a person, and which is not that person's usual place of residence, for distribution to that person; or
- (b) an airline operating within, or leaving from, Australia for distribution to that airline's passengers.

**Advertised Price** is the price at which a subscription to a Publication is offered to either:

- (a) the public, or a class of the public, generally;
- (b) an organisation which:
  - (i) arranges for a single copy of the Publication to be distributed to named persons, or their named positions, in that organisation or any other organisation; and
  - (ii) allows the named persons, or the persons in those named positions, the choice to refuse the Publication; or
- (c) a person as a member of an association in circumstances where:
  - (i) the price of the subscription is clearly, separately identified from the membership fee of the association; and
  - (ii) the member can refuse the subscription so as to result in the member not being required to pay the amount identified as the price of the subscription.

**Association Subscription Sale** is a sale of a Publication to a person as a member of an association in circumstances where the member receives the Publication either:

- (a) as part of the member's membership fee of the association, or
- (b) at a separately identified price;

and cannot elect to refuse to receive the Publication so as to result in the member receiving a refund of the price of the Publication.

**Average Net Paid Sales** is the average number of copies of a Publication sold during a Reporting Period calculated in accordance with **Rule S3-2.1**.

**Average Other Sales** is the average number of Other Sales during a Reporting Period calculated in accordance with **Rule S3-2.2**.

**Banded Copies** are copies of a Publication which are Out of Date Copies and which are either:

- (a) included in sample bags;
- (b) banded with a current Issue of any Publication; or
- (c) is otherwise made available to a person for a promotional purpose.

**Basic Identity** is the masthead, layout and pagination of an Edition of an audited Issue of a print Publication.

**Bundled Sale** is a sale (not being an Event Sale or Multiple Publication Sale) involving the bundling of a publication with other good(s) or service(s) under an arrangement by or with the publisher of the Publication and the supplier of the item making up the bundled sale, where:

- (a) the offer of the Publication is communicated clearly to the purchaser;
- (b) the purchaser has the right to purchase the good(s) and/or service(s) individually by refusing the publication within the bundled offer;
- (c) the price of the bundled sale must exceed the Cover Price of the publication;
- (d) only one copy of the Publication is provided to the purchaser;

- (e) for Audit purposes, the sales and Return Copies of the Publication are accounted for and the documentation concerning those sales and Return Copies is retained and available for inspection by an Auditor.

**Content** is editorial and/or advertorial information and material that appears in an Edition of an audited Issue of a print Publication.

**Contra Copies** are copies of a Publication sold where the consideration for the sale of those copies is an arrangement which is other than the payment of money (for example: the placing of advertising in a Publication) and which otherwise are not Gross Paid Sales.

**Cover Price** is the price charged for a single copy of a Publication sold to the public and as displayed on the Publication or as advertised to the public.

**Cover Price Sale** is a sale of a Publication by a Publisher Member at the Cover Price direct to the public.

**Dependent Transaction Sale** is a sale (not being an Event Sale) at a price of a Publication under an arrangement by or with the publisher of the Publication (**Secondary Transaction**) which is made as part of another transaction (**Primary Transaction**) where:

- (a) the Primary Transaction is not the sale of a Publication;
- (b) only one copy of the Publication is provided to the purchaser in the Secondary Transaction; and
- (c) for Audit purposes, the sales and returns of the Publication are accounted for and the documentation concerning those sales and returns is retained and available for inspection by an Auditor.

**Digital Version** is a version of a print Publication accessible or distributable digitally. A Digital Version must be a Replica of its print counterpart. An email newsletter or website does not constitute a Digital Version.

**Edition** is an edition of an Issue which is different in content to another edition as a result of either:

- (a) the intended time of its sale;
- (b) the intended place of its sale; or
- (c) both (a) and (b).

**Education Sale** is a sale at a price of a Publication under an arrangement by or with the publisher of the Publication for distribution at a learning institution.

**Enhanced** means enriched through digital enhancements for use in a Digital Version.

**Event Sale** is a sale at a price of a Publication under an arrangement by or with the publisher of the Publication at an event as part of the cost of admission to that event where:

- (a) the offer of the Publication is communicated clearly to the purchaser;
- (b) the purchaser has the right to refuse the Publication;
- (c) only one copy of the Publication is provided to the purchaser;
- (d) the purchaser pays an agreed price for the Publication (which may be included in the admission price for the event); and
- (e) for Audit purposes, the sales and returns of the Publication are accounted for and the documentation concerning those sales and returns is retained and available for inspection by an Auditor.

**Gross Paid Sales** are copies of a Publication, which are:

- (a) sold through retailers, wholesale distributors, sellers and other regular channels of distribution or sale who pay a Wholesale Price for the Publication;
- (b) Cover Price Sales;
- (c) Individual Subscription Sales;
- (d) Accommodation and Airline Sales;
- (e) Education Sales; or



- (f) Multiple Publication Sales.
- (g) Bundled Sales

**Individual Subscription Sale** is a sale by way of a subscription for a term to a Publication which is offered to a person at the Advertised Price and accepted by that person at that price.

**Modified Domestic Copies** are copies of an Issue:

- (a) which do not contain all advertisements booked to appear for the entire run of the Issue in Australia; or
- (b) which do not contain all advertisements booked to appear only in a particular Edition of the Issue in Australia; or
- (c) both (a) and (b).

**Modified Overseas Copies** are copies of an Edition sold outside Australia which do not contain all advertisements booked to appear (except in cases where an advertiser requests removal of its advertisement) in that Edition's Issue sold in Australia.

**Multiple Publication Sale** is a sale of one Publication under an arrangement by or with the publisher of the Publication (**Secondary Publication**) with another Publication (**Primary Publication**) as part of the same transaction (other than as a Banded Copy) where:

- (a) only one copy of the Secondary Publication is provided with the Primary Publication;
- (b) the offer of the Secondary Publication has been communicated clearly to the purchaser;
- (c) the purchaser must have the right to refuse the Secondary Publication;
- (d) the combined price of the Primary Publication and the Secondary Publication must exceed the Cover Price of whichever of the Primary Publication or the Secondary Publication has the higher Cover Price plus at least 25% of the Cover Price of whichever of the Primary Publication or the Secondary Publication has the lower Cover Price; and
- (e) for Audit purposes, the sales and returns of the Secondary Publication are accounted for and the documentation concerning those sales and returns is retained and available for inspection by an Auditor,

and which for Audit purposes relates to identification of the sale of the Secondary Publication.

**Net Paid Sales** are the sales of copies of a Publication calculated in accordance with **Rule S3-2.1**.

**Replica:** A Digital Version is a Replica of a print Publication if:

- (a) The Digital Version has the same Basic Identity as an Edition of the audited Issue of the print Publication;
- (b) The Digital Version has the same Content as an Edition of the audited Issue of the print Publication;
- (c) The Digital Version includes all authorised ROP (Run of Paper/Book) advertisers, including classifieds, as are in an Edition of the audited Issue of the print Publication;
- (d) The same advertiser appears in both an Edition of the audited Issue of the print Publication and the Digital Version in the same position on the same pages;
- (e) The Digital Version is published on or about the distribution date of its print counterpart; and
- (f) The Digital Version carries a masthead incorporating the generic name of its print counterpart and is consistent with the general appearance of its print counterpart.

Notwithstanding (a) to (f) above:

- (g) The Content of an Edition of the audited Issue of the print Publication can be Enhanced in the Digital Version.
- (h) The Advertising of an Edition of the audited Issue of the print Publication can be Enhanced in the Digital Version.

- (i) The Content of an Edition of the audited Issue of the print Publication can be removed for reasons outside the publisher's control on application to the ABC (for example, international publishing laws/legal issues) in the Digital Version.
- (j) The Content of an Edition of the audited Issue of the print Publication can be Updated in a subsequent Digital Version of that Edition.

**Other Sales** are:

- (a) Association Subscription Sales;
- (b) Dependent Transaction Sales; and
- (c) any sale of a Publication which is not otherwise a Net Paid Sale,

but excluding:

- (d) Return Copies;
- (e) Contra Copies;
- (f) Out of Date Copies;
- (g) Banded Copies;
- (h) Modified Domestic Copies; and
- (i) Modified Overseas Copies.

**Out of Date Copies** are copies of Issues which go off sale or out of date after a new Issue is distributed in the same Reporting Period.

**Return Copies** are copies of a Publication which are:

- (a) unsold copies returned to the Publisher of the Publication;
- (b) unsold copies destroyed after the provision of documentation to the Publisher substantiating the number of unsold copies destroyed; or
- (c) unsold for any other reason.

**Updated** means a change to the Content.

**Voucher Copies** are copies of a Publication which are used for checking advertisements by:

- (a) the publisher of the Publication; or
- (b) advertising agencies, advertisers or their agents,

or which are provided free for use for similar purposes.

**Wholesale Price** is a price for a Publication charged by a Publisher to retailers, wholesale distributors, sellers and other regular channels of distribution or sale.

### **S3-2.0 AVERAGE NET PAID SALES AND AVERAGE OTHER SALES**

#### **S3-2.1 Calculation of Average Net Paid Sales**

Average Net Paid Sales must be calculated as follows:

S3-2.1.1 Add the total number of copies comprising Gross Paid Sales of each Issue made in the Reporting Period (**Total Gross Paid Sales**).

S3-2.1.2 From Total Gross Paid Sales;

(a) Adjust for the number (if any) of copies comprising the difference between the estimated number of Return Copies of the previous Reporting Period and the actual number of Return Copies of the same Reporting Period.

(b) Then, deduct the number (if any) of copies which are any of the following and which are included in Total Gross Paid Sales:

(i) Return Copies;

(ii) Contra Copies;

(iii) Out of Date Copies;

(iv) Banded Copies;

(v) Modified Domestic Copies; and

(vi) Modified Overseas Copies.

**(Total Adjusted Gross Paid Sales).**

S3-2.1.3 Determine the number of Total Adjusted Gross Paid Sales in Australia and add to that number the number of Event Sales in Australia up to a maximum of 1% of the Total Adjusted Gross Paid Sales in Australia, to obtain the number for Net Paid Sales in Australia.

S3-2.1.4 Divide the number of Net Paid Sales in Australia by the number of Issues during the Reporting Period to obtain the number for Average Net Paid Sales in Australia.

S3-2.1.5 Determine the number of Total Adjusted Gross Paid Sales for each of:

(a) New Zealand; and

(b) countries other than Australia and New Zealand,

which will be the numbers for, respectively:

(c) Net Paid Sales in New Zealand; and

(d) Net Paid Sales in countries other than Australia and New Zealand.

S3-2.1.6 Divide each of the numbers for Net Paid Sales in New Zealand and Net Paid Sales in other countries by the number of Issues during the Reporting Period to obtain the numbers for, respectively:

(a) Average Net Paid Sales in New Zealand; and

(b) Average Net Paid Sales in countries other than Australia and New Zealand.

#### **S3-2.2 Calculation of Average Other Sales in Australia**

If a Publisher Member elects to show in a Circulation Statement the number for Average Other Sales in Australia pursuant to **Rule S3-2.4**, Average Other Sales in Australia must be calculated as follows:

S3-2.2.1 Divide the number of Other Sales in Australia by the number of Issues during the Reporting Period to obtain the number for Average Other Sales in Australia.

#### **S3-2.3 Circulation Statement Must Show Average Net Paid Sales in Australia and Categories**

A Circulation Statement must show:

S3-2.3.1 the number for Average Net Paid Sales in Australia; and

- S3-2.3.2 as separate categories, the percentage (to two decimal places) of Average Net Paid Sales in Australia, which comprise each of the following:
- (a) Accommodation and Airline Sales;
  - (b) Education Sales;
  - (c) Event Sales; and
  - (d) Multiple Publication Sales.
  - (e) Bundled Sales

**S3-2.4 Circulation Statement May Show Separately Average Other Sales in Australia**

A Circulation Statement may show the number for Average Other Sales in Australia separate from the number for Average Net Paid Sales in Australia.

**S3-2.5 Circulation Statement Must Show Separately Average Net Paid Sales Outside Australia**

A Circulation Statement must show each of the numbers for:

S3-2.5.1 Average Net Paid Sales in New Zealand; and

S3-2.5.2 Average Net Paid Sales in countries other than Australia and New Zealand,

separate from any other number in the Circulation Statement.

**S3-2.6 Circulation Statement May Show Explanation of Modified Overseas Copies**

The number of Modified Overseas Copies referred to in **Rule S3-2.1.2 (f)** may be shown and explained in the paragraph in a Circulation Statement set aside for general explanations.

**S3-3.0 VOUCHER COPIES**

S3-3.1 Voucher Copies must not be included in any number in a Circulation Statement.

**S3-4.0 PUBLICATION SUBSCRIPTIONS IN ARREARS**

S3-4.1 An individual continuous subscription to a Publication which:

- (a) being a Regional Daily Newspaper or a Country Press, is more than six months in arrears; or
- (b) being any other type of Publication, is more than four months in arrears,

must not be included in the calculation of any class of Net Paid Sales under **Rule S3-2.1**.

**S3-5.0 NEWSPAPER INSERTED MAGAZINES**

S3-5.1 The provisions of these Rules concerning the calculation of the numbers of Average Net Paid Sales of a Publication (and their classes and categories) and Average Other Sales in Australia allowed to be shown in a Circulation Statement apply, with the necessary changes being made, to the calculation of the respective numbers for the average distribution of Newspaper Inserted Magazines allowed to be shown in a Circulation Statement prepared for that purpose.

**S3-6.0 DIGITAL VERSIONS**

S3-6.1 The provisions of these Rules concerning the calculation of the number of Average Net Paid Sales of a Publication (and their classes and categories) in Australia allowed to be shown in a Circulation Statement apply, with the necessary changes being made, to the calculation of sales of a Digital Version allowed to be shown in a Circulation Statement.

**SCHEDULE 4**  
**CIRCULATION STATEMENTS – QUERIES AND CHALLENGES**

**S4-1.0     **RULE 35.0 - QUERY CONCERNING MEMBER’S COMPLIANCE WITH RULES****

**S4-1.1     **Lodging a Query****

If a Member (**Enquirer**) wishes to make a query about a Member’s compliance with these Rules or the Audit Guidelines, the Member must lodge with the ABC a notice in writing, in the form determined by the Executive Committee from time to time, providing details of the query (**Query**).

**S4-1.2     **Audit Inspector to Consider Query****

The Audit Inspector must consider the Query and provide his findings to the Executive Committee.

**S4-1.3     **Determination of Executive Committee****

S4-1.3.1    If the Executive Committee determines that the Query does not contain any contravention of these Rules or the Audit Guidelines, the Executive Committee must advise the Enquirer in writing of that determination.

S4-1.3.2    If the Executive Committee determines that the Query indicates that there has been or may have been a contravention of these Rules or the Audit Guidelines, the Audit Inspector must provide a copy of the Query:

- (a)       to each Publisher Member and Auditor referred to in the Query; or
- (b)       if there is no Publisher Member or Auditor referred to in the Query, to each Publisher Member and Auditor which the Executive Committee determines may be affected by the Query.

**S4-1.4     **Response to Query****

Each Publisher Member and Auditor which receives a copy of a Query under **Rule S4-1.3** must provide to the Audit Inspector a response in writing to the Query within the time advised by the Audit Inspector.

**S4-1.5     **Audit Inspector to Consider Response****

The Audit Inspector must consider the Query and each response received under **Rule S4-1.4**, and provide his findings and recommendations (if any) to the Executive Committee, which may include a recommendation for an Inspection Audit.

**S4-1.6     **Decision of Executive Committee****

S4-1.6.1    If the Executive Committee decides that the Query does not in fact disclose to the Executive Committee’s satisfaction any contravention of these Rules or the Audit Guidelines, the Executive Committee must advise the Enquirer in writing of that decision.

S4-1.6.2    If the Executive Committee decides that the Query in fact shows to the Executive Committee’s satisfaction that there has been contravention of these Rules or the Audit Guidelines, the Executive Committee must:

- (a)       decide whether any sanction will apply and against whom as a result of that contravention and in accordance with the Executive Committee’s authority under these Rules;
- (b)       advise:
  - (i)       the Enquirer; and
  - (ii)      all Publisher Members and Auditors which were provided a copy of the Query under **Rule S4-1.3.2**,

in writing of the Executive Committee’s decision and the sanction (if any) imposed and against whom; and

- (c)       advise all Members of the Query, the Executive Committee’s decision in respect of the Query, and the sanction (if any) imposed and against whom.

## **S4-2.0 RULE 36.0 – CHALLENGE CONCERNING CIRCULATION STATEMENT**

### **S4-2.1 Lodging a Challenge**

If a Member wishes to challenge the content of a Circulation Statement or, where a Circulation Statement is an Audit Report, the content of an Audit Report:

- S4-2.1.1 The Member (**Challenger**) must lodge with the ABC a notice in writing, in the form determined by the Executive Committee from time to time, providing full details of:
- (a) the nature of the challenge (**Challenge**);
  - (b) the reasons for the Challenge; and
  - (c) the evidence which the Challenger has to support the reasons for the Challenge, (**Challenge Notice**).
- S4-2.1.2 The ABC must provide a copy of the Challenge Notice to:
- (a) the Publisher Member whose Circulation Statement is being challenged; and
  - (b) where the Challenge Notice relates to an Audit Report, the Auditor of that Audit Report.

### **S4-2.2 Response to a Challenge**

The Publisher Member and, if applicable, the Auditor referred to in **Rule S4-2.1.2** must provide to the Executive Committee a response in writing to the matters raised in the Challenge Notice within the time advised by the Executive Committee.

### **S4-2.3 Audit Inspector to Consider Response**

The Audit Inspector must review the matters raised in the Challenge Notice and each response received under **Rule S4-2.2** and provide his findings and recommendations (if any) in respect of the Challenge to the Executive Committee, which may include a recommendation for an Inspection Audit.

### **S4-2.4 Report on Inspection Audit**

If the Executive Committee accepts a recommendation by the Audit Inspector under **Rule S4-2.3** for an Inspection Audit, the Audit Inspector must:

- S4-2.4.1 arrange for the Inspection Audit to be undertaken; and
- S4-2.4.2 provide a report to the Executive Committee on the findings of the Inspection Audit.

### **S4-2.5 Executive Committee to Determine Whether Review Audit Required**

- S4-2.5.1 The Executive Committee must consider:
- (a) the matters raised in the Challenge Notice;
  - (b) the responses received under **Rule S4-2.2**;
  - (c) the Audit Inspector's findings and recommendations (if any) under **Rule S4-2.3**; and
  - (d) where there has been an Inspection Audit under **Rule S4-2.4**, the Audit Inspector's report to the Executive Committee on the findings of the Inspection Audit.
- S4-2.5.2 When the Executive Committee has concluded its consideration under **Rule S4-2.5.1**, the Executive Committee must determine whether a Review Audit is required.

### **S4-2.6 Decision Where No Review Audit Required**

- S4-2.6.1 If the Executive Committee determines under **Rule S4-2.5** that a Review Audit is not required, the Executive Committee must make its decision in respect of the Challenge.
- S4-2.6.2 If the Executive Committee decides that the matters it has considered under **Rule S4-2.5** in respect of the Challenge do not show to the Executive Committee's satisfaction that there has been a contravention of these Rules or the Audit Guidelines, the Executive Committee must advise:
- (a) the Challenger; and
  - (b) the Publisher Member and Auditor (if any) who received a copy of the Challenge Notice under **Rule S4-2.1.2**,
- in writing of that decision.

- S4-2.6.3 If the Executive Committee decides that the matters it has considered under **Rule S4-2.5** in respect of the Challenge show to the Executive Committee's satisfaction that there has been a contravention of these Rules or the Audit Guidelines, the Executive Committee must:
- (a) determine whether any sanction will apply and against whom as a result of that contravention and in accordance with the Executive Committee's authority under these Rules;
  - (b) advise:
    - (i) the Challenger; and
    - (ii) the Publisher Member and Auditor (if any) who received a copy of the Challenge Notice under **Rule S4-2.1.2**,in writing of the Executive Committee's decision in respect of the Challenge, and the sanction (if any) imposed and against whom; and
  - (c) advise all Members of the Challenge, the Executive Committee's decision in respect of the Challenge, and the sanction (if any) imposed and against whom.

#### **S4-2.7 Challenger Must Lodge Amount Where Review Audit Required**

If the Executive Committee determines under **Rule S4-2.5** that a Review Audit is required, the Challenger must lodge with the ABC an amount estimated by the Audit Inspector to be sufficient to meet the cost of the Review Audit.

#### **S4-2.8 Action After Review Audit**

S4-2.8.1 On the conclusion of the Review Audit under **Rule S4-2.7**, the Executive Committee must decide whether the result of that Review Audit shows to the Executive Committee's satisfaction that there has been a contravention of these Rules or the Audit Guidelines.

S4-2.8.2 If the Executive Committee decides that the result of the Review Audit does not show to the Executive Committee's satisfaction that there has been a contravention of these Rules or the Audit Guidelines:

- (a) the Executive Committee must advise:
  - (i) the Challenger; and
  - (ii) the Publisher Member and Auditor (if any) who received a copy of the Challenge Notice under **Rule S4-2.1.2**,in writing of that decision; or
- (b) the Challenger must pay the full cost of the Review Audit, as certified by the Audit Inspector, and if the amount of that full cost:
  - (i) is less than the amount lodged by the Challenger under **Rule S4-2.7**, then the amount of the excess must be refunded to the Challenger by the ABC; and
  - (ii) exceeds the amount lodged by the Challenger under **Rule S4-2.7**, then the amount of the shortfall is a debt due and immediately payable by the Challenger to the ABC.

S4-2.8.3 If the Executive Committee decides that the result of the Review Audit shows to the Executive Committee's satisfaction that there has been a contravention of these Rules or the Audit Guidelines, the Executive Committee must:

- (a) determine whether any sanction will apply and against whom as a result of that contravention and in accordance with the Executive Committee's authority under these Rules;
- (b) advise:
  - (i) the Challenger; and
  - (ii) the Publisher Member and Auditor (if any) who received a copy of the Challenge Notice under **Rule S4-2.1.2**,in writing of the result of the Review Audit, Executive Committee's decision in respect of the Challenge, and the sanction (if any) imposed and against whom;

- (c) advise all Members of the Challenge, the result of the Review Audit, the Executive Committee's decision in respect of the Challenge, and the sanction (if any) imposed and against whom; and
- (d) who will bear the full costs of the Review Audit, as certified by the Audit Inspector, and, if more than one person, in what proportions.

S4-2.8.4 After the Executive Committee has made its decision concerning costs of the Review Audit under **Rule S4-2.8.3(d)**, the Audit Inspector must advise the relevant parties of the Executive Committee's decision and:

- (a) any amount payable to the ABC by a Member in respect of the costs of the Review Audit is a debt due and immediately payable by that member to the ABC; and
- (b) any amount owing to the Challenger in respect of the amount lodged by the Challenger under **Rule S4-2.7** must be refunded immediately to the Challenger by the ABC.



**SCHEDULE 5**  
**AMENDMENTS TO RULES**

**S5-1.0 DEFINITIONS**

In this Schedule 5 unless the context otherwise requires:

**Amendment Proposal** has the meaning defined in **Rule 40.1**.

**Ballot Supervisor** means a person who is not:

- (a) a Member;
- (b) a person authorised pursuant to **Rule 18.2.1**;
- (c) a member of the General Committee;
- (d) a member of the Executive Committee;
- (e) the Executive Director; or
- (f) the Audit Inspector.

**Notice** means the notice specified in **Rule S5-2.1.2**.

**Rule Amendment Ballot** means a ballot of Full Members in relation to an Amendment Proposal.

**Rule Amendment Ballot Closing Time** means the time and date by which completed Rule Amendment Ballot papers must be returned to the Executive Director and which must be a date at least fourteen days after the date on which the Notice and Rule Amendment Ballot paper are despatched by the Executive Director.

**S5-2.0 PROCEDURE FOR CONDUCTING A BALLOT OF FULL MEMBERS AND ITS DECLARATION**

**S5-2.1 Conduct of Ballot of Full Members**

S5-2.1.1 In conducting a Rule Amendment Ballot, the Executive Director must prepare a Notice and a Rule Amendment Ballot paper.

S5-2.1.2 A Notice must contain, as a minimum:

- (a) the Amendment Proposal;
- (b) a copy of any:
  - (i) further information received pursuant to **Rule 40.3.2(a)**; and
  - (ii) written advice received pursuant to **Rule 40.3.2(b)**;
- (c) the wording of the resolution to put the Amendment Proposal to the vote;
- (d) a statement of the facts which the Chairman considers to be relevant to the Amendment Proposal;
- (e) the Rule Amendment Ballot Closing Time; and
- (f) the date determined by the Executive Committee on which the Amendment Proposal, if passed, will come into effect pursuant to **Rule 40.7.2**.

S5-2.1.3 The Executive Director must send the Notice and the Rule Amendment Ballot paper to each Full Member entitled to vote in the Rule Amendment Ballot.

**S5-2.2 Voting by Full Members**

S5-2.2.1 A Full Member entitled to vote in a Rule Amendment Ballot may vote for or against an Amendment Proposal by duly completing a Rule Amendment Ballot paper and either:

- (a) posting it so as to reach the Executive Director; or
- (b) delivering it by hand to the ABC's office,

no later than the Rule Amendment Ballot Closing Time.

S5-2.2.2 If for any reason a Rule Amendment Ballot paper does not reach the Executive Director or is not delivered by hand to the ABC's office by the Rule Amendment Ballot Closing Time that Rule Amendment Ballot paper will not constitute a valid vote.

S5-2.2.3 In a Rule Amendment Ballot, each Full Member has one vote in respect of each Publication in respect of which that Full Member is a Member.

**S5-2.3 Appointment of Ballot Supervisor**

S5-2.3.1 The Executive Committee must appoint a Ballot Supervisor to scrutinise and count all votes contained in Rule Amendment Ballot papers received:

- (a) in accordance with the requirements of **Rule S5-2.2.1**; and
- (b) on or before the Rule Amendment Ballot Closing Time.

S5-2.3.2 The Ballot Supervisor:

- (a) must report to the Executive Committee on the number of votes received for and against the Amendment Proposal; and
- (b) must not disclose to any person (unless required by law) the manner in which any Full Member has voted in respect of an Amendment Proposal.

**S5-2.4 Declaration of Ballot**

S5-2.4.1 The Ballot Supervisor must declare in writing whether an Amendment Proposal has or has not been passed as a result of a Rule Amendment Ballot and the Executive Committee must arrange for that declaration to be circulated to all Members.

S5-2.4.2 A declaration by the Ballot Supervisor under **Rule S5-2.4.1** that an Amendment Proposal has or has not been passed as a result of a Rule Amendment Ballot is conclusive evidence of that fact without proof of the number of votes cast for and against the Amendment Proposal.

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## NOTES



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