

WESTCYCLE

Incorporated

CONSTITUTION

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CONSTITUTION OF

WESTCYCLE Incorporated

PART I – OBJECTIVES AND POWERS

1 NAME OF ASSOCIATION

The name of the Association is WESTCYCLE Incorporated.

2 OBJECTS OF ASSOCIATION

2.1 The objects of the Association are to:

- a. act as the interface between the cycling community and government;
- b. administer financial and other assistance provided by the Federal Government, the State Government of Western Australia, Local Government or other public or private sources for the Western Australian cycling community,
- c. encourage, increase and promote whether by providing or facilitating the provision of financial assistance or otherwise the development of cycling activities throughout Western Australia;
- d. produce a strategic plan, in conjunction with Members and stakeholders, for the activity of cycling in Western Australia;
- e. source funding for the achievement of specific outcomes within the strategic plan;
- f. on behalf of/or in partnership with Members, undertake relevant projects to benefit the cycling community;
- g. advocate cycling in Western Australia and the interests of all cyclists across the competitive, recreational and transport activity areas;
- h. facilitate communication and coordination within the cycling community;
- i. communicate and advocate to government agencies, other local agencies and the public; and
- j. establish relationships with external partners to support the delivery of all Association objectives.

3 POWERS OF ASSOCIATION

The powers conferred on the Association are the same as those conferred by section 14 of the Act, so that subject to the Act and any additions, exclusions or modifications inserted below, the Association may do all things necessary or convenient for carrying out its objects and purposes, and in particular, may:

- a. acquire, hold, deal with, and dispose of any real or personal property;
- b. open and operate bank accounts;
- c. invest its money-
 - i. in any security in which trust monies may lawfully be invested; or
 - ii. in any other manner authorised by the rules of the Association;

- d. borrow money upon such terms and conditions as the Association thinks fit;
- e. give such security for the discharge of liabilities incurred by the Association as the Association thinks fit;
- f. appoint agents to transact any business of the Association on its behalf;
- g. enter into any other contract it considers necessary or desirable; and
- h. act as trustee and accept and hold real and personal property upon trust, but does not have power to do any act or thing as a trustee that, if done otherwise than as a trustee, would contravene this Act or the rules of the Association.

4 NOT FOR PROFIT

The property and income of the association must be applied solely towards the promotion of the objects of the Association and except as prescribed in this Constitution:

- a. no portion of the income or property of the Association shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any Member;
- b. no remuneration or other benefit in money or money's worth shall be paid or given by the Association to any Member or Affiliate Member who holds any office of the Association; and
- c. nothing contained in paragraph a or b shall prevent payment in good faith and in the promotion of the objects of the Association to any Member or Affiliate Member for:
 - i. any services actually rendered to the Association whether as an employee or otherwise;
 - ii. goods supplied to the Association in the ordinary and usual course of operation;
 - iii. interest on money borrowed from any Member or Affiliate Member;
 - iv. rent for premises demised or let by any Member or Affiliate Member to the Association;
 - v. any out-of-pocket expenses incurred by the Member or Affiliate Member on behalf of the Association;
 - or
 - vi. any other reason;

provided that any such payment shall not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction.

5 WINDING UP OF ASSOCIATION

If upon the winding up or dissolution of the Association there remains after satisfaction of all its debts and liabilities any property whatsoever, the same must not be paid to or distributed among the members, or former members. The surplus property must be given or transferred to another association/s incorporated or other body authorised under section 24 of the Act which has similar objects and which is not carried out for the purposes of profit or gain to its individual members, and which association shall be determined by resolution of the Members.

PART II – DEFINITIONS AND INTERPRETATION

6 DEFINITIONS

In this Constitution, unless the contrary intention appears:

Act means the *Associations Incorporation Act 2015*;

Affiliate Member means any groups/associations/organisations who are qualified under sub rule 8.4(b) and having applied for membership under rule 8.3 are admitted as affiliate members by the Board of Directors;

Annual General Meeting is the meeting convened under paragraph b of sub-rule 18.1;

Appointed Directors means those Directors referred to in Rule 12.1b who are appointed by the Board;

Association means the Association referred to in Rule 1;

Board of Directors means the Board of the Association, constituted in accordance with Rule 12 of this Constitution;

Board Meeting means a meeting referred to in Rule 17;

Board Member means a member of the Board of Directors elected, or appointed in accordance with this Constitution and includes any persons acting in those capacities from time to time;

Chairperson means:

- a. in relation to the proceedings at a Board Meeting or General Meeting, the person presiding at the Board Meeting or General Meeting in accordance with Rule 12.2; or
- b. otherwise than in relation to the proceedings referred to in paragraph (a), the person referred to in paragraph b of sub-rule 12.2 or, if that person is unable to perform his or her functions, the Deputy Chairperson;

Chief Executive Officer means the person employed by the Association in that capacity;

Commissioner means the person for the time being designated as such under the Act;

Constitution means this Constitution;

Corporations Act means the *Corporations Act 2001* (Cth);

Director means a Board Member;

Department means the government department with responsibility for administering the Act;

Elected Director means those Directors who represent either competitive, recreation, or transport cycling dimensions referred to in Rule 12.1, who are appointed by the Board Appointments Panel and subsequently elected in accordance with this Constitution;

Financial Statements means the financial accounts of the Association including the profit and loss accounts and the balance sheets of the Association for the relevant financial year;

Financial Year means a period not exceeding 15 months fixed by the Board of Directors, being a period commencing on the date of incorporation of the Association and ending on 30 June; and thereafter each period commencing 1 July and ending on 30 June in the following year;

General Meeting means any Special General Meeting of the Association to which all Members are invited;

Member means an organisation/association, who is incorporated under the Act or the Corporations Act as a company limited by guarantee, and who is qualified under sub-rule 8.4(a) and having applied for membership under rule 8.3 are admitted by the Board of Directors;

Ordinary Resolution means a resolution other than a Special Resolution;

Representative means an individual of a Member nominated from time to time in writing, by that Member to attend and vote at General Meetings on behalf of that Member, in accordance with Rule 21 and 22;

Rules means the rules of the Association as authorised by this Constitution;

Seal means the common seal of the Association and includes any official seal of the Association;

Special General Meeting means a General Meeting other than the Annual General Meeting;

Special Resolution means a resolution passed in accordance with section 51 of the Act where at least 21 days' notice of the resolution has been given to those entitled to vote under this Constitution.

7 INTERPRETATION

In this Constitution:

- a. a reference to a function includes a reference to a power, authority and duty and a reference to exercise of a function includes, if the function is a duty, a reference to the performance of the duty;
- b. the provisions of the Acts Interpretation Act 1987 apply to and in respect of this Constitution in the same manner as those provisions would so apply if this Constitution were an instrument under that Act;
- c. unless the contrary intention appears:
 - i. words importing the singular include the plural and vice versa;
 - ii. references to persons include corporations and bodies politic;
 - iii. references to a person include the legal personal representatives, successors and permitted assigns of that person;
- d. a reference to an Australian state includes a reference to an Australian territory;
- e. a reference to any statute, regulations, proclamation, ordinances or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- f. a reference to "writing" shall unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail; and
- g. any matters of ambiguity relating to this Constitution, shall be resolved by the Board in its sole discretion.

PART III – MEMBERSHIP

8 QUALIFICATIONS FOR MEMBERSHIP OF ASSOCIATION

8.1 Membership of the Association is open to:

- a. Members;
- b. Affiliate Members; and
- c. such new classes of Members created in accordance with Rule 8.2;

provided that the Association will define the categories of members eligible for affiliation and the terms of appointment of classes of members from time to time by regulation.

8.2 The Association may, from time to time create new classes of membership with such rights, privileges and obligations as are determined applicable, even if the effect of creating a new class is to alter rights, privileges or obligations of an existing class of members.

8.3 Membership eligibility

To become a member of the Association, the Applicant must:

- a. have a commitment to the purpose of the Association;
- b. meet the eligibility criteria for the particular class of membership they are applying for as provided by Rule 8.4;
- c. agree to be bound by this Constitution and such guidelines, policies and procedures as the Board of Directors may adopt from time to time pertaining to or involving members;
- d. complete and lodge an application in such form as determined by the Board of Directors from time to time which, for the avoidance of doubt, may include applying using the Internet;
- e. in the case of a body, provide details of its nominated representative;
- f. pay and joining and annual fee as provided for in Rule 10, unless determined differently by the Board of Directors;
- g. be admitted into membership by the Board of Directors; and
- h. satisfy such other membership criteria as the Board of Directors may determine from time to time.

8.4 Membership Criteria

- a. To be eligible for admission as a Member the applicant must be:
 - i. an incorporated body under the Act or a company limited by guarantee under the Corporations Act;
 - ii. resident or situated in the State of Western Australia; and
 - iii. recognised as a body of a cycling dimension that is actively involved in the promotion and development of cycling in Western Australia consistent with the objects of the Association as set out in rule 2..
- b. To be eligible for admission as an Affiliate Member the applicant must be:
 - i. be incorporated, resident or situated in the State of Western Australia; and
 - ii. have an interest in the activity of cycling in Western Australia;
- c. An Affiliate member who satisfies the criteria in rule 8.4(a) may apply to become a Member.

8.5 Voting Entitlement

The voting entitlement of all categories of membership shall be determined in accordance with Rule 21.

8.6 Any dispute or uncertainty as to the application of this Constitution to a Member shall be resolved by the Board of Directors in its sole discretion.

8.7 Discretion to Accept or Reject Application

- a. The Board of Directors must consider each application made under sub-rule 8.3 at a Board meeting and must at that Board meeting or the next Board meeting accept or reject that application.
- b. An applicant whose application for membership of the Association is rejected under sub-rule 8.7a must, if they wish to appeal against that decision, give notice to the Chief Executive Officer of the intention to do so within a period of 14 days, from the date they are advised of the rejection.
- c. When notice is given under sub-rule 8.7b, the Association in a General Meeting no later than the next Annual General Meeting, must either confirm or set aside the decision of the Board of Directors to reject the application, after having afforded the applicant who gave

that notice a reasonable opportunity to be heard by, or to make representations in writing to, the Association in the General Meeting.

- d. Membership of the Association shall be deemed to commence upon acceptance of the application by the Association in accordance with sub-rule 8.7. The Board of Directors shall immediately amend the register of Members accordingly.
- e. If the Board of Directors rejects an application, it shall refund any fees forwarded with the application, and, subject to sub-rule 8.7, the application shall be deemed rejected by the Association.

8.8 The Rules are to be made available to Members and Affiliate Members in accordance with sections 35 and 36 of the Act.

8.9 Membership entitlements not transferable

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

- a. is not capable of being transferred or transmitted to another person; and
- b. terminates on cessation of the person's membership.

8.10 Termination of membership of the Association

Membership of the Association may be terminated upon:

- a. receipt by the Association of a notice in writing from a Member of their resignation from the Association. A Member remains liable to pay to the Association the amount of any subscription due and payable by that Member to the Association but unpaid at the date of termination;
- b. non-payment by a Member of their subscription within three months of the date fixed by the Board of Directors for subscriptions to be paid; or
- c. expulsion of a Member in accordance with sub-rule 8.11.

8.11 Suspension or expulsion of Members of Association

- a. If the Board of Directors considers that a Member should be suspended or expelled from membership of the Association because their conduct is detrimental to the interests of the Association, the Board of Directors must communicate, either orally or in writing, to the Member:
 - i. notice of the proposed suspension or expulsion and of the time, date and place of the Board Meeting at which the question of that suspension or expulsion will be decided; and
 - ii. particulars of that conduct,
 - iii. not less than 30 days before the date of the Board Meeting referred to in paragraph (i).
- b. At the Board Meeting referred to in a notice communicated under sub-rule 8.11a, the Board of Directors may, having afforded the member concerned a reasonable opportunity to be heard by, or to make representations in writing to, the Board of Directors, suspend or expel or decline to suspend or expel that Member from membership of the Association and, immediately after deciding whether or not to suspend or expel that Member, communicate that decision in writing to that Member.
- c. Subject to sub-rule 8.11e, a Member has their membership suspended or ceases to be a Member 14 days after the day on which the decision to suspend or expel a Member is communicated to him or her under sub-rule 8.11b.

- d. A Member who is suspended or expelled under sub-rule 8.11b must, if they wish to appeal against that suspension or expulsion, give notice to the Board of Directors of their intention to do so within the period of 14 days referred to in sub-rule 8.11c.
- e. When notice is given under sub-rule 8.11d:
 - i. the Association in a General Meeting, must either confirm or set aside the decision of the Board of Directors to suspend or expel the Member, after having afforded the Member who gave that notice a reasonable opportunity to be heard by, or to make representations in writing to, the Association in the General Meeting; and
 - ii. the Member who gave that notice is not suspended or does not cease to be a member unless, and until the decision of the Board of Directors to suspend or expel them is confirmed under this sub-rule.

9 REGISTER OF MEMBERS OF ASSOCIATION

9.1 The Chief Executive Officer, must:

- a. keep and maintain in an up to date condition a Register recording the names of Members and Affiliate Members and a postal, residential or email address (or information by means of which contact can be made with the Member or Affiliate Member);
- b. record in the Register any changes in the membership of the Association within 28 days after the change occurs; and
- c. upon the request of a Member make the Register available for inspection by that Member.

9.2 The Register must be kept at the office of the Association, or at such other place as the Members in General Meeting decide.

9.3 The Chief Executive Officer must cause to be deleted from the Register the name of a person who dies or who ceases to be a Member or Affiliate Member.

9.4 Subject to rule 9.5 a Member may make a copy of or take an extract from the Register but shall have no right to remove the Register from the custody of the Chief Executive Officer.

9.5 If requested by the Chief Executive Officer a Member, who wishes to make a copy of or take an extract from the Register, must provide a statutory declaration setting out the purpose for which the copy or extract is required and declaring that the purpose is connected with the affairs of the Association.

10 SUBSCRIPTIONS AND FEES

The annual membership subscriptions (if any) and fees payable by Members to the Association and, the time for and manner of payment shall be as determined by the Board of Directors from time to time.

PART IV – BOARD OF DIRECTORS

11 BOARD APPOINTMENTS PANEL

11.1 The Directors must establish a Board Appointments Panel for the purpose of seeking, assessing and nominating candidates for the position of Elected Directors and Appointed Directors of the Association.

11.2 The Board Appointments Panel must be conducted in accordance with a terms of reference determined by and as may be amended by the Board of Directors from time to time.

11.3 The Board Appointments Panel will comprise of:

- (i) at least one Elected Director;

- (ii) at least one Appointed Director (who is not the Chairperson);
- (iii) the Chairperson; and
- (iv) a representative of the Department of Sport and Recreation.

11.4 The chair of the Board Appointments Panel must be a Director of the Association and have experience, skill, knowledge and integrity sufficient to ensure that the proper processes of assessment and nomination of candidates are implemented and followed.

11.5 The chair of the Board Appointments Panel will be responsible for, among other things:

- (a) chairing all meetings of the Board Appointments Panel; and
- (b) ensuring the proper and effective operation of the Board Appointments Panel in accordance with principles of good governance.

12 COMPOSITON OF THE BOARD OF DIRECTORS

12.1 Board of Directors

The affairs of the Association will be governed exclusively by a Board of Directors consisting of:

- a. three Elected Directors who shall comprise of one representative each from competitive, recreation and transport cycling dimensions; and
- b. six Appointed Directors.

12.2 Chairperson

The Chairperson may be an Elected or Appointed Director, and is to be elected by the Board of Directors. Subject to this rule, the Chairperson must preside at all General Meetings and Board Meetings. In the event of the absence from a General Meeting of the Chairperson;

- a. a Member elected by the other Members present at the General Meeting must preside at the General Meeting; or
- b. in the event of the absence from a board meeting of the Chairperson, a Director elected by the other Directors present at the Board Meeting must preside at the Board Meeting.

13 QUALIFICATIONS OF DIRECTORS

13.1 Each director must:

- (a) have knowledge, and expertise relevant to and be committed to the purpose and activities of the Association;
- (b) satisfy any other policies relating to the composition of the board and skills and qualifications of directors developed by the directors from time to time; and
- (c) in the case of Appointed Directors be independent from Members and Affiliate Members.

14 BECOMING A DIRECTOR

14.1 Elected Directors

Subject to rule 14.3, a person may only become an Elected Director if he or she is:

- (a) nominated by the Board Appointments Panel; and
- (b) elected by the Members at an Annual General Meeting .

14.2 Appointed Directors

Subject to rule 14.3, a person may only become an Appointed Director if he or she is nominated by the Board Appointments Panel and appointed by the Board.

14.3 Other

- a. The directors may appoint one or more persons as either an Elected Director or an Appointed Director without first receiving a nomination from the Board Appointments Panel in the following circumstances:
 - i. to increase the number of directors to such number as is required to constitute a quorum;
 - ii. if a director position has been vacant for at least six months and the Board Appointments Panel has not nominated anyone to fill the vacant position; or
 - iii. if the law requires.
- b. Each appointment made under rule 14.3a is to be for a period of up to 12 months with the precise period to be determined by the directors at the time of the appointment.

15 DIRECTORS TIME IN OFFICE

15.1 Each appointment of an Appointed Director made under rule 14.2 is to be for a period of up to three years with the precise period to be determined by the Board at the time of the appointment, but may be extended beyond 3 years by such period as is necessary to align expiry with the next occurring Annual General Meeting, so that where possible terms of appointment expire at an Annual General Meeting.

15.2 The term of each Elected Director is for the period that expires at the Annual General Meeting that is three years from the Annual General Meeting at which the Elected Director was elected.

15.3 Each Director is to remain as a Director until the term of her or his office expires or until he or she resigns, retires or is otherwise removed as a director of the Association in accordance with the law and this Constitution. However, subject to the law and rule 15.1, an Appointed Director is eligible for reappointment and an Elected Director is eligible for re-election.

15.4 All Elected Directors are eligible for re-election to the Board of Directors for up to three consecutive terms.

15.5 All Appointed Directors are eligible for reappointment to the Board of Directors for up to three consecutive terms.

15.6 Subject to rule 15.1, a person must not hold the office of an Elected Director or an Appointed Director for any more than nine consecutive years unless otherwise resolved by a special resolution of Members.

15.7 A person having held office as a director for nine consecutive years is eligible for re-election or re-appointment once a period of three years has expired since that person last held office as a director of the Association.

15.8 Right to Co-opt

The Board of Directors shall have the right to co-opt any person with appropriate experience or expertise to assist the Board of Directors in respect to matters and on terms as the Board of Directors thinks appropriate. Any person so co-opted shall not be a Director, and shall not exercise the rights of a Director, but shall act in an advisory role only.

16 CASUAL VACANCIES OF DIRECTORSHIP

16.1 A casual vacancy occurs in the office of Director and that office becomes vacant if the Director:

- a. dies;
- b. resigns by notice in writing delivered to the Chairperson or, if the Director is the Chairperson, to another Director and that resignation is accepted by resolution of the Board;
- c. becomes an employee of the Association;
- d. is convicted of an offence under the Act;
- e. becomes ineligible to serve as a Director under Section 39 of the Act;
- f. is directly or indirectly interested in any contract or proposed contract with the Association and fails to declare the nature of their interest;
- g. is permanently incapacitated by mental or physical ill-health;
- h. in the opinion of the Board in its discretion:
 - i. has acted in a manner unbecoming or prejudicial to the objects and interests of the Association;
 - ii. would otherwise be prohibited from being a Director of a corporation under the Corporations Act;
- i. is absent from more than:
 - i. three consecutive Board Meetings; or
 - ii. three Board Meetings in the same financial year without tendering an apology to the person presiding at each of those Board Meetings; of which meetings the Director received notice, and the Board of Directors has resolved to declare the office of that Director vacant; or
- j. is the subject of a resolution passed by a General Meeting of Members terminating his or her appointment as a Director.

16.2 Remaining Directors May Act

In the event of a casual vacancy or vacancies in the office of a Director or Directors, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of the Board of Directors, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute a quorum.

16.3 Casual Vacancies

- a. In the event of a casual vacancy in the office of an Appointed Director, the Board Appointments Panel will appoint another Director to the vacant office and the person appointed may continue in office in accordance with sub-rule 15.
- b. In the event of a casual vacancy in the office of an Elected Director, the Board of Directors will appoint a Director to the vacant office and the person so appointed may continue in office in accordance with sub-rule 15.
- c. In the event of a casual vacancy in the office of Chairperson, the Board of Directors may appoint one of their number to the vacant office and the person so appointed may continue in office until the ordinary end of their term.

17 PROCEEDINGS OF BOARD

- 17.1** The Board of Directors must meet together for the dispatch of business as deemed necessary, but not less than eight times per year.
- 17.2** The Chairperson, or at least half the Directors, may at any time convene a meeting of the Board.
- 17.3** A resolution of the Board may be conducted by telephone or video conference provided that each person purporting to participate may hear simultaneously what is being said by each person purporting to participate.
- 17.4** A resolution in writing signed by a majority of the Board shall be as valid and as effectual and have the same effect as an ordinary resolution of the Board passed at a meeting of the Board.
- 17.5** Any such resolution may consist of several documents in like form each signed by one or more directors and or the attorney or attorneys or a director.
- 17.6** Each Director has a deliberative vote.
- 17.7** A question arising at a Board Meeting must be decided by a majority of votes, but, if there is no majority, the person presiding at the Board Meeting will have a casting vote in addition to his or her deliberative vote.
- 17.8** At a Board meeting, five Directors constitute a quorum.
- 17.9** Subject to this Constitution, the procedure and order of business to be followed at a Board Meeting must be determined by the Directors.
- 17.10** A director having material personal interest in a contract, or proposed contract, made by, or in the contemplation of, the Association, must:
- a. as soon as he or she becomes aware of the interest, disclose the nature and extent of his or her interest to the Board of Directors;
 - b. not take part in any deliberations or decisions of the Board of Directors with respect to that contract; and
 - c. disclose the nature and extent of the interest at the next General Meeting of the Association.
- 17.11** The Chief Executive Officer must cause every disclosure of a material personal interest made under sub-rule 17.10 by a director of the Board to be recorded in the minutes of the Board Meeting at which it is made.
- 17.12** Notice of Meetings of Board of Directors
- Not less than seven days' notice of a Board Meeting shall be given to each Director. The agenda shall be forwarded to each person entitled to notice not less than three days prior to that meeting.
- 17.13** Payments to Directors may only be made if the payment is:
- a. for out of pocket expenses for travel and accommodation in connection with the performance of the Directors functions.; or
 - b. authorised by ordinary resolution of the Association.

PART V – GENERAL MEETINGS

18 GENERAL MEETINGS

- 18.1** The Board:
- a. may at any time convene a Special General Meeting;

- b. must convene Annual General Meetings within the time limits provided for the holding of such meetings by section 50 of the Act, that is, in every calendar year within six months after the end of the Association's financial year or such longer period as may in a particular case be allowed by the Commissioner; and
- c. must, within 30 days of-
 - i. receiving a request in writing, signed by the presidents of 75% of Members, convene a Special General Meeting for the purpose specified in that request; or
 - ii. the Chief Executive Officer receiving a notice under sub-rule 8.11d, convene a General Meeting to deal with the appeal to which that notice relates.
- d. must, after receiving a notice under sub-rule 8.7b, convene a General Meeting, no later than the next Annual General Meeting, at which the appeal referred to in the notice will be dealt with. Failing that, the applicant is entitled to address the Association at that next Annual General Meeting in relation to the Board's rejection of the application and the Association at that meeting must confirm or set aside the decision of the Board.

18.2 The Members making a request referred to in sub-rule 18.1c.i must:

- a. state in that request the purpose for which the Special General Meeting concerned is required; and
- b. sign that request.

18.3 If a Special General Meeting is not convened within the relevant period of 30 days referred to in sub-rule 18.1c.i, the Member who made the request concerned may themselves convene a Special General Meeting as if they were the Board.

18.4 When a Special General Meeting is convened under sub-rule 18.3 the Association must pay the reasonable expenses of convening and holding the Special General Meeting.

18.5 Subject to sub-rule 18.7, the Chief Executive Officer must give to all Members not less than 14 days' notice of a General Meeting and that notice must specify:

- a. when and where the General Meeting concerned is to be held; and
- b. particulars of the business to be transacted at the General Meeting concerned and of the order in which that business is to be transacted.

18.6 Subject to sub-rule 18.7 the Chief Executive Officer must give to all Members not less than 21 days' notice of an Annual General Meeting and that notice must specify:

- a. when and where the Annual General Meeting is to be held; and
- b. the particulars and order in which business is to be transacted.

18.7 A special resolution may be moved either at a Special General Meeting or at an Annual General Meeting, however the Chief Executive Officer must give to all Members not less than 21 days' notice of the meeting at which a special resolution is to be proposed. In addition to those matters specified in sub-rules 18.5 and 18.6, as relevant, the notice must also include the resolution to be proposed and the intention to propose the resolution as a special resolution.

18.8 The Chief Executive Officer must give a notice under sub-rule 18.5, 18.6 or 18.7 by:

- a. electronic notification, which may include, but not limited to email and facsimile; or
- b. sending it by post to a Member at the address of the organisation appearing in the register of Members kept and maintained under Rule 9.

18.9 When a notice is sent by post under sub-rule 18.8b, sending of the notice will be deemed to be properly effected if the notice is sufficiently addressed and posted to the member concerned by

ordinary prepaid mail. Service of the notice is deemed to have been effected three days after posting.

18.10 When a notice is sent by electronic methods under sub-rule 18.8a, service of the notice shall be deemed to be effected upon receipt of a confirmation report confirming the electronic mail message was received at the electronic mail address to which it was sent.

19 QUORUM AND PROCEEDINGS AT GENERAL MEETINGS

19.1 At a General Meeting one more than 50% of Member Representatives present in person constitute a quorum.

19.2 If within 30 minutes after the time specified for the holding of a General Meeting in a notice given under sub-rule 18.5 or 18.6:

- a. as a result of a request or notice referred to in sub-rule 18.1c or as a result of action taken under rule 18.3 a quorum is not present, the General Meeting lapses; or
- b. otherwise than as a result of a request, notice or action referred to in paragraph (a), the General Meeting stands adjourned to the same time on the same day in the following week and to the same venue.

19.3 If within 30 minutes of the time appointed by sub-rule 19.2b for the resumption of an adjourned General Meeting a quorum is not present, the Members who are present in person or by proxy may nevertheless proceed with the business of that General Meeting as if a quorum were present.

19.4 The Chairperson may, with the consent of a General Meeting at which a quorum is present, and must, if so directed by such a General Meeting, adjourn that General Meeting from time to time and from place to place.

19.5 There must not be transacted at an adjourned General Meeting any business other than business left unfinished or on the agenda at the time when the General Meeting was adjourned.

19.6 When a General Meeting is adjourned for a period of 30 days or more, the Chief Executive Officer must give notice under Rule 17 of the adjourned General Meeting as if that General Meeting were a fresh General Meeting.

19.7 At a General Meeting:

- a. an ordinary resolution put to the vote will be decided by a majority of votes cast on a show of hands, subject to sub-rule 19.8; and
- b. a special resolution put to the vote will be decided in accordance with section 51 of the Act as defined in Rule 6.

19.8 A declaration by the Chairperson of a General Meeting that a resolution has been passed as an ordinary resolution at the meeting will be evidence of that fact.

20 MINUTES OF MEETINGS OF ASSOCIATION

20.1 The Chief Executive Officer must cause proper minutes of all proceedings of all General Meetings and Board Meetings to be taken and then to be recorded within 30 days after the holding of each General Meeting or Board Meeting, as the case requires.

20.2 The Chairperson must ensure that the minutes taken of a General Meeting or Board Meeting under sub-rule 20.1 are checked and signed as correct by the Chairperson of the General Meeting or Board Meeting to which those minutes relate or by the Chairperson of the next succeeding General Meeting or Board Meeting, as the case requires.

- 20.3** When minutes have been recorded and signed as correct under this rule, they are, until the contrary is proved, evidence that-
- a. the General Meeting or Board Meeting to which they relate (in this sub-rule called "the meeting") was duly convened and held;
 - b. all proceedings recorded as having taken place at the meeting did in fact take place at the meeting; and
 - c. all appointments or elections purported to have been made at the meeting have been validly made.

21 VOTING RIGHTS OF MEMBERS OF ASSOCIATION

21.1 Members Entitled to Vote

- a. Subject to this Constitution, each Member Representative present, shall have one deliberative voting entitlement either in person or by proxy at a General Meeting. Directors shall have the right to attend and debate at General Meetings.
- b. Where voting at General Meetings is equal the motion or question is lost. The Chairperson does not have a casting vote.

21.2 Other Members

No Affiliate Member or other member shall be entitled to vote on a show of hands or in a poll at a General Meeting or a Special Meeting. Affiliated Members are subject to this Constitution and are entitled to receive notice of meetings of Members and to appoint one observer to attend all General Meetings and Special Meetings of Members.

22 PROXIES OF MEMBERS OF ASSOCIATION

22.1 A Member (in this rule called "the appointing Member") may appoint in writing another Member Representative who is a natural person to be the proxy of the appointing Member and to attend, and vote on behalf of the appointing Member at, any General Meeting.

22.2 An appointment made under sub-rule 22.1 must be made by a resolution of the Board or other governing body of the appointing Member concerned:

- a. which resolution is authenticated under the common seal of that Member; and
- b. a copy of which resolution is lodged with the Chief Executive Officer.

22.3 A person appointed under sub-rule 22.1 to represent a Member is deemed for all purposes to be a Member Representative until that appointment is revoked by that Member or, in the case of an appointment in respect of a particular General Meeting, which appointment is not so revoked, the conclusion of that General Meeting.

23 CONSTITUTION

23.1 Constitution Review and Alterations

The Association may alter or rescind the rules, or make rules additional to these rules, in accordance with the procedure set out in sections 30, 31 and 33 of the Act, which is as follows:

- a. Subject to sub-rules 23.1d and 23.1e, the Association may alter its rules by special resolution but not otherwise;
- b. Within one month of the passing of a special resolution altering its rules, or such further time as the Commissioner may in a particular case allow (on written application by the Association), the Association must lodge with the Commissioner notice of the special resolution setting out particulars of the alteration together with a certificate given by a

member of the Board of Directors certifying that the resolution was duly passed as a special resolution and that the rules of the Association as so altered conform to the requirements of this Act;

- c. An alteration of the rules of the Association does not take effect until sub-rule 23.1b is complied with;
- d. An alteration of the rules of the Association having effect to change the name of the association does not take effect until sub-rules 23.1a to 23.1c are complied with and the approval of the Commissioner is given to the change of name;
- e. An alteration of the Constitution of the Association having effect to alter the objects or purposes of the association does not take effect until sub-rules 23.1a to 23.1c are complied with and the approval of the Commissioner is given to the alteration of the objects or purposes.

23.2 This Constitution binds every Member and the Association to the same extent as if every Member and Affiliated Member and the Association had signed and sealed this Constitution and agreed to be bound by all of its provisions.

24 COMMON SEAL OF ASSOCIATION

24.1 The Association must have a common seal on which its corporate name appears in legible characters.

24.2 The common seal of the Association must not be used without the express authority of the Board and every use of that common seal must be recorded in the minute book referred to in Rule 20.

24.3 The affixing of the common seal of the Association must be witnessed by any two of the Chairperson, the Chief Executive Officer and a Director.

24.4 The common seal of the Association must be kept in the custody of the Chief Executive Officer or of such other person as the Board from time to time decides.

25 DISPUTES AND MEDIATION

25.1 The grievance procedure set out in this rule applies to disputes under this Constitution between:

- a. a Member and another Member (including Affiliated Members); or
- b. a Member (including Affiliated Members) and the Association;

25.2 The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all of the parties.

25.3 If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within 10 days, hold a meeting in the presence of a mediator.

25.4 The mediator must be-

- a. a person chosen by agreement between the parties; or
- b. in the absence of agreement-
 - i. in the case of a dispute between a Member and another Member, a person appointed by the Board ;
 - ii. in the case of a dispute between a member and the Association, a person who is a mediator appointed to, or employed by, a not for profit organisation.

- 25.5** A member of the Association cannot be a mediator.
- 25.6** The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- 25.7** The mediator, in conducting the mediation, must-
- a. give the parties to the mediation process every opportunity to be heard;
 - b. allow due consideration by all parties of any written statement submitted by any party;
and
 - c. ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- 25.8** The mediator must not determine the dispute.
- 25.9** The mediation must be confidential and without prejudice.
- 25.10** If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

26 RECORDS & ACCOUNTS

26.1 Association to Keep Records

The Association shall:

- a. be responsible for the receipt of all moneys paid to or received by the Association and must issue receipts for those moneys in the name of the Association;
- b. pay all moneys referred to in paragraph (a) into such account or accounts of the Association as the Board may from time to time direct;
- c. make payments from the funds of the Association with the authority of the Board and in so doing ensure that all cheques are signed by any two persons authorised by the Board;

26.2 Records Kept in Accordance With Act

The Association shall comply with Part 5 of the Act with respect to the accounting records of the Association by:

- a. keeping such accounting records as correct records and explain the financial transactions and financial position of the Association;
- b. keeping its accounting records in such manner as will enable true and fair accounts of the Association to be prepared from time to time;
- c. keeping its accounting records in such manner as will enable true and fair accounts of the Association to be conveniently and properly audited; and
- d. submitting to members as required, accounts of the Association showing the financial position of the Association at the end of the immediately preceding financial year.

26.3 Custody of Records

The Association shall retain custody of such records, books, documents and securities for at least seven years after the completion of the financial year to which the transactions or operations relate or any such length of time as might be required by law.

26.4 Board of Directors to Submit Accounts

The Board of Directors shall present to the Annual General Meeting the Financial Statements of the Association in accordance with these Rules.

26.5 Accounts Conclusive

The Financial Statements when presented to the Annual General Meeting shall be conclusive except as regards any error discovered in them within three months of that Annual General Meeting.

26.6 Accounts to be Sent to Members

The Association shall cause to be sent to all Members and persons entitled to receive notice of Annual General Meetings of the Association in accordance with these Rules, a copy of the Financial Statements, the report of the Board of Directors, the auditor's report and every other document required under the Act (if any).

26.7 Negotiable Instruments

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Association, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by the Association in such manner as the Board determines.

27 INSPECTION OF RECORDS, CUSTODY OF AND ACCESS TO

27.1 In this rule;

- a. the '*Association record*' includes all of the Association's books, documents, records and securities and any other record that is required to be made by these rules and any record the Association is required to make by law;
- b. '*responsible person*' for an Association record, means the Chief Executive Officer or a person appointed by the Board instead of the Chief Executive Officer.

27.2 The responsible person for an Association record must keep it in safe custody and control access to it.

27.3 No member is entitled to possession of any Association record except that (subject to rule 27.4) a Member may request the Association to provide the member with a copy of the register of members in accordance with the Act.

27.4 If a Member requests a copy of the register of members as contemplated in rule 27.3, the Association is not obliged to provide a copy of the register of members unless the requesting Member first provides a statutory declaration setting out the purpose for which the request is made and declaring that the purpose is connected with the affairs of the Association.

27.5 Every member may at any reasonable time inspect the Associations books, documents, records and securities without charge.

28 AUDITOR

- a. A properly qualified auditor or auditors shall be appointed by the Board of Directors and their remuneration shall be approved by the Board of Directors. The auditor's duties shall be regulated in accordance with the Act, in accordance with generally accepted principles, and/or any applicable code of conduct.
- b. The accounts of the Association shall be examined and the correctness of the profit and loss accounts and balance sheets ascertained by an auditor or auditors at the conclusion of each Financial Year.

29 INDEMNITY

Every Director, Auditor, Employee and Volunteer of the Association shall be indemnified out of the property of the Association against any liability incurred by that person in the capacity of director, auditor, employee or volunteer in defending any proceedings, whether civil or criminal in which

judgment is given in their favour or in which they are acquitted or in connection with any application in relation to any such proceedings in which relief is, under the Act granted to them by the court.

30 CHIEF EXECUTIVE OFFICER

30.1 Appointment of Chief Executive Officer

The Board of Directors shall appoint a Chief Executive Officer for such term and on such conditions as it thinks fit.

30.2 Chief Executive Officer as Public Officer

The Chief Executive Officer shall act as and carry out the duties of the public officer of the Association and shall administer and manage the Association in accordance with this Constitution and the Act.

30.3 Specific Duties

The Chief Executive Officer shall:

- a. as far as is practicable attend all meetings of the Board of Directors and all General Meetings of the Association;
- b. prepare the agenda for all meetings of the Board of Directors and General Meetings of the Association;
- c. pursue the objects of the Association; and
- d. regularly report to the Board of Directors on the activities of, and issues relating to, the Association.

30.4 Broad Power to Manage

Subject to the Act, this Constitution, the Regulations and any directive of the Board of Directors, the Chief Executive Officer shall have the delegated power to perform all such things as are necessary or desirable for the proper management and administration of the Association. No resolution passed by the Association in General Meeting shall invalidate any prior act of the Chief Executive Officer or the Board of Directors that would have been valid if that resolution had not been passed.

30.5 Chief Executive Officer May Employ

The Chief Executive Officer may in consultation with the Board of Directors, and as appropriate, employ such personnel as are deemed necessary or appropriate from time to time and such appointments shall be for such period and on such conditions as the Chief Executive Officer determines.