

Masters Swimming Western Australia Inc.

Association Number A0820136R

Rules of Association

Associations Incorporation Act 2015 (WA)

15 August 2018



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RULES OF ASSOCIATION of MASTERS SWIMMING WESTERN AUSTRALIA INC.

PART 1 — PRELIMINARY

1. RULES OF ASSOCIATION SUMMARY

1.1 Name of Association

The name of the Association is “Masters Swimming Western Australia Inc”.

1.2 Objects of the Association

The Objects of the Association are:

- (a) to provide at Club and State level, an environment to encourage all adults, regardless of ability, to swim regularly and compete in order to promote fitness and improve their general well-being;
- (b) coordinate strategic alignment between Clubs, MSA and the Association;
- (c) to coordinate the activities of individuals through Clubs so that they may meet together for training, competition and social interaction in a safe and professional environment;
- (d) to publish results of these meetings to provide stimulus to others to take part in the Association’s activities and to measure their own performance against those of a similar age;
- (e) to develop accredited coaches and safe coaching practices; and
- (f) to develop accredited officials and to provide fair competition.

1.3 Quorum for Board Meetings

Five (5) Directors constitute a quorum for the conduct of the business at a Board meeting.

1.4 Quorum for General Meetings

Twelve (12) Affiliated Clubs represented by their Delegates and three (3) Directors.

1.5 Financial Year

The Associations financial year will be the period of twelve (12) months commencing on 1 January and ending on 31 December each year.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In these Rules of Association unless the contrary intention appears:

“**Act**” means the *Associations Incorporation Act 2015 (WA)*.

“**Affiliate**” means an affiliate of an Affiliated Club.

“**Affiliated Club**” means any swimming club which is admitted to membership of the Association.

“**Associate Member**” means a Member with the rights referred to in Rule 8.1.

“**Association**” means Masters Swimming Western Australia Inc.

“**Board**” means the body consisting of the Directors and the Executive Officer.

“**Books**” of the Association includes the following:

- (a) a register;
- (b) financial records, financial statements or financial reports, however compiled, recorded or stored;
- (c) a document; and
- (d) any other record of information.

“**Branch**” means the Western Australian Branch of Masters Swimming Australia Inc.

“**By-laws**” means any By-laws made by the Board under Rule 39.

“**Chairperson**” means the Board member holding office as the chairperson of the Association.

“**Club**” means a Masters swimming club affiliated with the Association and established in accordance with the Rules of Association of Masters Swimming Western Australia.

“**Commissioner**” means the person for the time being designated as the Commissioner under the Act.

“**Council of Clubs**” means the representative body of the Affiliates of Masters Swimming Western Australia.

“**Delegate**” means the person(s) appointed from time to time to act for and on behalf of a Club and to represent the Club at Council of Clubs meetings.

“**Director**” means a member of the Board (including the President and the Director of Finance) and includes any person acting in that capacity from time to time appointed in accordance with these Rules of Association but does not include the Executive Officer.

“**Executive Officer**” means the Executive Officer of the Association for the time being appointed under these Rules of Association.

“**Financial Records**” includes:

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers;
- (b) documents or prime entry; and
- (c) working papers and other documents needed to explain;
 - (i) methods by which financial statements are prepared; and
 - (ii) adjustments to be made in preparing financial statements.

“Financial Statements” means the financial statements in relation to the Association required under Part 5 Division 3 of the Act.

“Financial Year” means the period of twelve (12) months commencing on 1 January and ending on 31 December each year.

“General Meeting” includes the annual general meeting and any Council of Clubs meeting of the Association and means a meeting of the Association that all members are entitled to receive notice of and to attend.

“Individual Member” means a registered, financial member of a Club or a natural person who is otherwise recognised by the Association as an Individual Member.

“Intellectual Property” means all rights subsisting in copyright, business names, names, trade marks (or signs), logos, designs, equipment including computer software, images (including photographs, videos or films) or service marks relating to the Association or any activity of or conducted, promoted or administered by the Association in Western Australia.

“Instrument” means a formal or legal written document; a document in writing, such as a deed, lease, bond or contract.

“Life Member” means an individual appointed as a Life Member of the Association under Rule 9.2.

“Member” means a member of the Association under these Rules and includes an Affiliated Club.

“Membership Fees” means all membership, affiliation fees and levies payable by a member to the Association.

“MSA” means Masters Swimming Australia Inc.

“Objects” means the objects of the Association in Rule 1.2.

“Register of Members” means the register of Members referred to in section 53 of the Act and kept and maintained in accordance with Rule 11.

“Rules” means these Rules of the Association as amended from time to time in accordance with Rule 41.

“Seal” means the common seal of the Association.

“Secretary” has the meaning provided in Schedule 2 Part 3 of the *Associations Incorporation Regulations 2016 (WA)*.

“Special Resolution” means a resolution passed by the members at a general meeting in accordance with section 51 of the Act.

“Sport” means the sport of swimming, as conducted in accordance with the Rules and practices that are recognised as Masters Swimming.

2.2 Interpretation

In these Rules of Association:

- (a) a reference to a function includes a reference to a power, authority and duty;
- (b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing any gender include the other genders;
- (e) references to persons include corporations and bodies politic;
- (f) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any legislative authority having jurisdiction); and
- (h) 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.

2.3 Severance

If any provision of this Constitution or any phrase contained in it is invalid or unenforceable, the phrase or provision is to be read down if possible, so as to be valid and enforceable, and otherwise shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of these Rules of Association.

2.4 The Act

Except where the contrary intention appears, in these Rules of Association, an expression that deals with a matter under the Act has the same meaning as that provision of the Act. Model rules under the Act are expressly displaced by these Rules of Association.

PART 2 — POWERS OF THE ASSOCIATION

3. POWERS OF THE ASSOCIATION

- 3.1 Solely for furthering the Objects, the Association has, in addition to the rights, powers and privileges conferred on it under section 14 of the Act, the legal capacity and powers of a company as set out under section 124 of the *Corporations Act 2001 (Cth)*.
- 3.2 Subject to the Rules of Association, the power and control of the Association shall be vested in and reside in:
 - (a) the Council of Clubs; and
 - (b) the Board who shall manage the affairs of the Association on behalf of the Council of Clubs.
- 3.3 To form or encourage the formation of Clubs and committees, to organize workshops and lectures, to publish and sell or distribute papers, books of instruction, pamphlets and information, for the purpose of stimulating interest in and promoting the Objects of the Association and to take all other measures, including web-based resources, which may seem necessary for providing and maintaining an efficient organisation.
- 3.4 To receive income derived from business conducted under a trading name or names in accordance with the Act.
- 3.5 To receive and accept donations, endowments, gifts of money and any other asset whatsoever, either subject or not subject to any special trusts or conditions.
- 3.6 To borrow, raise or secure the payment of money as an incorporated body, with or without security for any of the Objects of the Association provided no money shall be raised by mortgage of any property of the Association without such consent or approval of three-quarters (3/4) of the Association.
- 3.7 To make and carry out any arrangements for joint working or cooperation by affiliation or otherwise with any organisation or body, whether incorporated or not, carrying on work similar to any work carried out by the Association and paying any moneys incidental thereto.
- 3.8 To undertake, execute and perform any trusts and conditions affecting any real or personal property of any description acquired by the Association.
- 3.9 To enter into any arrangements with any authority or department of Commonwealth, State or Local Governments.
- 3.10 To apply for and exercise any powers obtained under any Charter or Act of Commonwealth or State Governments which may be deemed expedient for any of the Objects of the Association.
- 3.11 To accumulate, sell, improve, manage, develop, exchange, lease, mortgage or otherwise dispose of or deal with or turn to account all or any property or rights of the Association provided that no disposition of any real or leasehold property shall be made without such consent or approval, if any, as may be required by law.
- 3.12 To invest all moneys and funds of the Association which are not immediately required to be expended in authorized investments as approved by the Council of Clubs.
- 3.13 To employ, hire, appoint, engage, remove or suspend such managers, secretaries, officers, clerks, agents or other servants for permanent, temporary, part time or special

services as may from time to time be thought fit and to determine their duties and to grant, continue and pay such salaries, pensions, gratuities or other forms of emoluments in recognition of services as may from time to time be sanctioned by the Association.

- 3.14 To arrange for the importation and/or manufacture and distribution of awards, badges, clothing, etc. of the Association.
- 3.15 To promote, organize and conduct entertainment and other functions, raffles and lotteries when legally permitted to do so for the raising of funds for the purpose of furthering the aims and objectives of the Association.
- 3.16 To promote, conduct and organize swim meets, competitions and awards. Awards are described in the By-laws.
- 3.17 To appoint disciplinary panels and tribunals, mediators, referees or other intermediaries for the purposes of carrying out the provisions of any policy, By-law or Rule of the Association and to pay any of those so appointed such remuneration as sanctioned by the Association or the Board and as required under these Rules.
- 3.18 To do all such other acts and things as are or may be deemed incidental or conducive to the attainment of any of the Objects of the Association.
- 3.19 The Council of Clubs may appoint Trustees when Trustee services are required.

4. NOT FOR PROFIT

- 4.1 The property and income of the Association must be applied solely towards promoting the Objects of the Association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to any Member or Director, except in good faith in promoting those Objects.

5. PAYMENTS TO MEMBERS

- 5.1 A payment may be made to a Member out of the funds of the Association only if;
 - (a) the payment is made in good faith to the Member as reasonable remuneration for any services provided to the Association, or for goods supplied to the Association, in the ordinary course of business; or
 - (b) the payment of interest, on money borrowed by the Association from the Member, at a rate of not greater than the cash rate published from time to time by the Reserve Bank of Australia; or
 - (c) the payment of reasonable rent to the Member for premises leased by the Member to the Association; or
 - (d) the reimbursement of reasonable expenses properly incurred by the Member or a Board member on behalf of the Association.

6. PAYMENTS TO BOARD MEMBERS

- 6.1 A payment to a Board member out of the funds of the Association is authorised is it is;
 - (a) in accordance with Rule 5.1; or
 - (b) for the reimbursement of reasonable expenses for travel and accommodation properly incurred in connection with the performance of the Director's functions; or by resolution at a General Meeting of Members.

PART 3 — MEMBERS

7. MEMBERSHIP ELIGIBILITY

7.1 Minimum number of Members

The Association must have at least six (6) Members with full voting rights.

7.2 Qualifications for membership

Any Club or individual that supports the Objects of the Association is eligible to apply for membership.

8. CLASSES OF MEMBERSHIP

8.1 The Members of the Association shall consist of:

- (a) Affiliated Clubs, which subject to these Rules of Association, shall be represented by a Delegate, and who shall have the right to receive notice of Council of Clubs Meetings and to be present, debate and vote on behalf of the Club at Council of Clubs Meetings;
- (b) Life Members, who subject to these Rules of Association, shall have the right to receive notice of Council of Clubs Meetings and to be present and to debate at Council of Clubs Meetings, but shall have no voting rights;
- (c) Individual Members who have attained the age of eighteen (18) years and who shall have the right to be present at Council of Clubs Meetings but shall have no rights, to debate or to vote at Council of Clubs Meetings; and
- (d) Associate Members. Associate Members shall not have voting rights and other rights shall be defined in the By-laws.

9. BECOMING A MEMBER

9.1 Affiliated Clubs

Affiliated Clubs shall be admitted as Members as per the procedure outlined under Rule 10.

9.2 Life Members

- (a) The Board may recommend to the Association's Annual General Meeting that any natural person, nominated in accordance with the By-laws, who has rendered distinguished service to the Association or Masters Swimming, where such service is deemed to have assisted the advancement of Masters Swimming in Western Australia, be appointed as a Life Member.
- (b) A resolution of the Annual General Meeting to confer life membership (subject to Rule 9.2(c)) on the recommendation of the Board must be a Special Resolution.
- (c) A person must accept or reject the Association's resolution to confer life membership in writing. Upon written acceptance, the person's details shall be entered upon the Register and from the time of entry on the Register the person shall be a Life Member.

9.3 Individual Members

Individual Membership of the Association is gained and commenced by:

- (a) agreeing to support the Objects of the Association;
- (b) agreeing to comply with the Rules, By-laws and policies of the Association; and
- (c) joining a club that is affiliated with the Association and by paying the required Membership Fees online.

9.4 Associate Members

Procedures for gaining Associate Membership of the Association shall be outlined in the By-laws.

10. CLUB AFFILIATION

10.1 Application Process

An applicant for membership of the Association as an Affiliated Club becomes a member when:

- (a) the Board accepts the application; and
- (b) the applicant pays any fees due under Rule 14.

10.2 Clubs

- (a) To be, or remain, eligible for membership through affiliation, a Club must be incorporated or in the process of incorporation. This process must be complete within one year of applying for affiliation under these Rules of Association.
- (b) For such time as the Club is not incorporated, the Secretary of any such unincorporated Club shall be deemed to be the Affiliate (on behalf of the unincorporated entity), and shall be entitled to exercise the same voting and other rights and have the same obligations and shall follow such procedures on behalf of the unincorporated Club as incorporated Affiliates, to the extent that this is possible.
- (c) Any dispute or uncertainty as to the application of these Rules of Association to an unincorporated Club shall be resolved by the Board in its sole discretion.
- (d) Failure to incorporate within the period stated in Rule 10.2(a) shall result in the expulsion of the Secretary (acting on behalf of the unincorporated entity) from affiliation. The expelled unincorporated entity shall not be entitled to re-apply for affiliation until it becomes incorporated.
- (e) Clubs which are affiliated with an incorporated parent body are exempt from mandatory incorporation with the Association.

10.3 Application for Membership

An application for affiliation must be:

- (a) in writing on the form prescribed from time to time by the Board, from the applicant or its nominated representative and lodged with the Association;
- (b) accompanied by a copy of the applicant's Rules of Association (which must be acceptable to the Association and must substantially conform to these Rules of Association) and the applicant's register of members; and

- (c) accompanied by the appropriate membership fee.

10.4 Discretion to Accept or Reject Application

- (a) The Board may accept or reject an application for membership whether the club has complied with the requirements in Rules 10.2 and 10.3 or not. The Board shall not be required or compelled to provide any reason for such acceptance or rejection.
- (b) Where the Board accepts an application, the club shall become an Affiliate. Affiliation shall be deemed to commence upon acceptance of the application by the Board. The Executive Officer shall amend the Register accordingly as soon as practicable.
- (c) Where the Board rejects an application the Association shall refund any fees forwarded with the application and the application shall be deemed rejected by the Association.

10.5 Re-Affiliation

- (a) Clubs must re-affiliate annually with the Association in accordance with the procedures set down by the Association from time to time.
- (b) Upon re-affiliation a Club must lodge with the Association an updated copy of its Rules of Association (including all amendments) and must provide details of any change in its Delegate and any other information reasonably required by the Association. Each Club must ensure that its Rules of Association are amended to conform to any amendments made to these Rules of Association and/or to the MSA Rules of Association.

10.6 Deemed Affiliation

- (a) All clubs which are, prior to the approval of these Rules of Association under the Act, affiliates of the Association, shall be deemed Affiliates from the time of approval of these Rules of Association under the Act.
- (b) Clubs shall provide the Association with such details as are reasonably required by the Association under these Rules of Association within one (1) month of the approval of these Rules of Association under the Act.
- (c) Any affiliated clubs of the Association prior to approval of these Rules of Association under the Act, who are not deemed Affiliates under Rule 10.6(a) shall be entitled to carry on such functions analogous to their previous functions as are provided for under these Rules of Association.

11. REGISTER OF MEMBERS

11.1 Association to keep a Register of Members

The Association will keep and maintain in an up to date condition a register in which shall be entered:

- (a) the full name of each Members of the Association;
- (b) a contact postal, residential or email address of each Member;
- (c) the class of membership held by the Member;

- (d) the date on which the Member became a Member; and
- (e) for Affiliated Clubs, the following shall also be held:
 - (i) the Rules of the Association; and
 - (ii) a record of office holders.

11.2 A Member who wishes to inspect the Register of Members must contact the Executive Officer. If a Member inspecting the Register of Members wishes to make a copy of or take an extract from the register under section 54(2) of the Act or a Member makes a written request under section 56(1) of the Act to be provided with a copy of the Register of Members then the Board may require the member to 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.

11.3 Clubs, Directors and Life Members shall provide notice of any change and required details to the Association within one month of such change.

11.4 Any change in membership of the Association must be recorded in the Register of Members within twenty-eight (28) days after the change occurs.

11.5 The Register of Members must be kept and maintained at such place as the Board decides.

12. EFFECT OF MEMBERSHIP

12.1 Affiliates acknowledge and agree that:

- (a) these Rules of Association constitute a contract between each of them and the Association and that they are bound by these Rules of Association and the By-laws and the MSA Constitution and By-laws;
- (b) they shall comply with and observe these Rules of Association and the By-laws and any determination, resolution or policy which may be made or passed by the Board or other entity with delegated authority;
- (c) by submitting to these Rules of Association and By-laws they are subject to the jurisdiction of the Association and MSA;
- (d) the Rules of Association and By-laws are necessary and reasonable for promoting the Objects and particularly the advancement and protection of Masters Swimming in Western Australia; and
- (e) they are entitled to all benefits, advantages, privileges and services of Association affiliation.

13. CEASING OF MEMBERSHIP

13.1 Notice of Resignation

- (a) An Affiliate having paid all arrears of fees payable to the Association may resign or withdraw from affiliation with the Association by giving one month's notice in writing to the Board of such resignation or withdrawal.
- (b) A Club may not resign, disaffiliate or otherwise seek to withdraw from the Association without approval by Special Resolution of the Club. A copy of the

relevant minutes of the Club meeting showing that the Special Resolution has been passed by the Club must be provided to the Association.

- (c) If a Club ceases to be an Affiliate under these Rules of Association, the Association membership of all Individual Members affiliated or registered with or through the Club shall not automatically cease at that time but shall be dealt with in accordance with the By-laws.
- (d) Upon the Association receiving notice of resignation of affiliation given under Rules 13.1(a) and (b), an entry in the Register of Members shall be made recording the date on which the Affiliate who or which gave notice ceased to be an Affiliate.

13.2 Discontinuance for breach

- (a) Affiliation with the Association may be discontinued by the Board upon breach of any rule of these Rules of Association or the By-laws, including but not limited to the failure to pay any monies owed to the Association, failure to comply with the By-laws or any resolutions or determinations made or passed by the Board or any duly authorised committee.
- (b) Affiliation shall not be discontinued by the Board under Rule 13.2(a) without the Board first giving the accused Affiliate the opportunity to explain the breach and/or remedy the breach.
- (c) Where an Affiliated club fails, in the Board's view to adequately explain the breach, that club's affiliation shall be discontinued under Rule 13.2(a) by the Association's giving written notice of the discontinuance to the Affiliate. The Register of Members shall be amended to reflect any discontinuance of affiliation under Rule 13.3 as soon as practicable.

13.3 Discontinuance for failure to re-affiliate

Affiliation with the Association may be discontinued by the Board if a Club has not re-affiliated with the Association within one month of re-affiliation falling due. The Register of Members shall be amended to reflect any discontinuance of affiliation under this Rule 13.3 as soon as practicable.

13.4 Affiliate to Re-Apply

An Affiliate whose affiliation has been discontinued under Rules 13.2 or 13.3:

- (a) must seek renewal or re-apply for affiliation in accordance with these Rules of Association; and
- (b) may be re-admitted at the discretion of the Board.

13.5 Forfeiture of Rights

An Affiliate who or which ceases to be an affiliate, for whatever reason, shall forfeit all rights in and claims upon the Association and its property and shall not use any property of the Association including Intellectual Property. Any Association documents, records or other property in the possession, custody or control of that Affiliate shall be returned to the Association immediately. Where a Club ceases to be an Affiliate it shall also forfeit all representation rights on the Board and at Council of Clubs Meetings.

13.6 Delegate Position Lapses

The position of Delegate shall lapse immediately on cessation of affiliation of a Club.

13.7 Affiliation may be Re-instated

Affiliation which has been discontinued under this Rule 13 may be reinstated at the discretion of the Board, with such conditions as it deems appropriate.

13.8 Refund of Affiliation Fees

Affiliation fees or subscriptions paid by the discontinued Affiliate may be refunded on a pro-rata basis to the Affiliate upon discontinuance.

14. MEMBERSHIP SUBSCRIPTIONS AND FEES

14.1 Membership subscriptions and fees shall be set as follows:

- (a) the annual affiliation subscription and any fees or other levies payable by Affiliates to the Association, the time for and manner of payment shall be as determined by the Board and endorsed by the Council of Clubs;
- (b) Life Members of the Association shall be exempt from the Branch component of the annual Membership Fee;
- (c) the Branch component of the annual Membership Fee for Individual Members shall be determined by the Board and endorsed by the Council of Clubs; and
- (d) any Branch fees for any classes of Associate Member shall be determined by the Board and endorsed by the Council of Clubs.

PART 4 — DISCIPLINARY ACTION, DISPUTES AND MEDIATION

15. DISCIPLINE

- (a) Where the Board is advised or considers that an Affiliate has allegedly:
 - (i) breached, failed, refused or neglected to comply with a provision of these Rules of Association, the By-laws, the MSA Constitution or by-laws or any resolution or determination of the Board or any duly authorised committee; or
 - (ii) acted in a manner unbecoming of an affiliate, or prejudicial to the Objects and interests of the Association, MSA and/or Masters Swimming; or
 - (iii) brought the Association, MSA, any other Affiliate or Masters Swimming into disrepute,

the Board may commence or cause to be commenced, disciplinary proceedings against that Affiliate, and that Affiliate, will be subject to, and submits unreservedly to the jurisdiction, procedures, penalties and the appeal mechanisms of the Association set out in the By-laws.

- (b) The Board may appoint a mediator to deal with any disciplinary matter referred to it. Such a mediator shall operate in accordance with the procedures expressed in the By-laws but subject always to the Act.

16. GRIEVANCE PROCEDURE

- (a) In this section, Member also refers to a Member expelled within six (6) months before the dispute has come to the attention of each party to the dispute.
- (b) The grievance procedure set out in this Rule 16 applies to disputes under these Rules between:
 - (i) Members; or
 - (ii) one (1) or more Members and the Association.
- (c) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within fourteen (14) days after the dispute comes to the attention of all parties.
- (d) 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 ten (10) days, refer the dispute for resolution to an independent tribunal established by the Board in accordance with the procedures prescribed in the By-laws.
- (e) Any party to the dispute may:
 - (i) request that the dispute goes straight to mediation; or
 - (ii) give written notice to the Board within fourteen (14) days after receiving notice of the tribunal's determination under Rule 16(d) requesting the appointment of a mediator.

17. MEDIATION

- (a) Any mediator appointed must be:
 - (i) a person chosen by agreement between the parties; or
 - (ii) in the absence of agreement:
 - A. in the case of a dispute not involving the Board or any Member or the Board, a person appointed by the Board; or
 - B. in the case of a dispute involving the Board or a Member of the Board, a person who acts as a mediator for another not-for-profit body such as a community legal centre or be otherwise acceptable to all parties
- (b) The person appointed as a mediator may be a Member or former Member or the Association, but must not:
 - (i) have a personal interest in the matter that is the subject of the mediation; or
 - (ii) be biased in favour of or against any party to the mediation.
- (c) The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.
- (d) Each party to the mediation must give the mediator a written statement of the issues that need to be considered at the mediation at least five (5) days before the mediation takes place.
- (e) In conducting the mediation, the mediator must:
 - (i) give each part to the mediation every opportunity to be heard; and
 - (ii) allow each party of the mediation to give due consideration to any written statement given by another party; and
 - (iii) ensure that natural justice is given to the parties to the mediation throughout the mediation process.
- (f) The mediator cannot determine the matter that is the subject of the mediation.
- (g) The mediation must be confidential, and any information given at the mediation cannot be used in any other proceedings that take place in relation to the matter that is the subject of the mediation.
- (h) The costs of the mediation are to be paid by the party or parties to the mediation that requested the appointment of the mediator, and are to be paid in advance.

PART 5 — BOARD

18. POWERS OF THE BOARD

- 18.1 Subject to the Act and these Rules of Association, the business of the Association shall be managed, and the powers of the Association shall be exercised, by the Board. In particular, the Board as the governing body for the Association shall be responsible for acting on WA Branch and local issues in accordance with the Objects and shall operate for the benefit of the Affiliates and the community throughout Western Australia and shall govern the Association in accordance with these Rules of Association and in particular the Objects.

19. COMPOSITION OF THE BOARD AND DUTIES OF BOARD MEMBERS

19.1 Composition of the Board

The Board shall consist of nine (9) Directors (who must all be Individual Members) and the Executive Officer, as follows:

- (a) the President (elected);
- (b) the Director of Finance (elected);
- (c) seven (7) Board Members (elected); and
- (d) the Executive Officer (employed position).

19.2 President Duties

The President shall:

- (a) preside at all Board Meetings when present. In the absence of the President, those qualified to vote shall elect a Chairperson;
- (b) have a casting vote in the event of a tied vote at a Board Meeting. In the absence of the President, the elected Chairperson shall have a casting vote in the event of a tied vote;
- (c) guide the other Board Members and officers and employees of the Association in the commission of their duties; and
- (d) represent the Association at official functions when available.

19.3 Director of Finance Duties

The Director of Finance shall:

- (a) ensure that any amounts payable to the Association are collected, and that receipts for those amounts are issued in the Association's name;
- (b) ensure that any amounts paid to the Association are credited to the appropriate account of the Association, as directed by the Board;
- (c) ensure that any payments to be made by the Association that have been authorised by the Board or at a General Meeting are made on time;
- (d) ensure that the Association complies with the relevant requirements of Part 5 of the Act;

- (e) ensure the safe custody of the Association's Financial Records, Financial Statements and financial reports, as applicable to the Association;
- (f) coordinate the preparation of the Association's financial report before its submission to the Association's Annual General Meeting;
- (g) provide any assistance required by an auditor or reviewer conducting an audit or review of the Association's Financial Statements or financial report under Part 5 Division 5 of the Act; and
- (h) carry out any other duty given to the Director of Finance under these Rules, the By-Laws, or as directed by the Board.

19.4 Portfolios for Board Members

The Board may allocate portfolios and/or titles to Board Members; these shall be provided for in the By-laws.

19.5 How members become Board Members

A member becomes a Board Member if the member:

- (a) is elected to the Board at an Annual General Meeting; or
- (b) is appointed to the Board by the Board to fill a casual vacancy under Rule 23.

20. DIRECTORS

20.1 Nominations

- (a) Nominations to fill vacancies for the Director positions of President, Director of Finance, and Board Members shall be called for sixty (60) days prior to the Association's Annual General Meeting. When calling for nominations details of the necessary qualifications and job descriptions for the positions shall also be provided. Qualifications and job descriptions shall be as determined by the Board from time to time .
- (b) Nominees for Director positions must declare any position they hold in a Club including as an officer (howsoever described including as a Delegate) or as a full-time employee.

20.2 Form of Nomination

Nominations must be:

- (c) in writing;
- (d) on the prescribed form provided for that purpose;
- (e) signed by an authorised representative from two (2) Affiliated Clubs;
- (f) certified by the nominee (who must be an Individual Member) expressing their willingness to accept the position for which they are nominated; and
- (g) delivered to the Association not less than thirty-five (35) days before the date fixed for the Association's Annual General Meeting.

20.3 Election of President and Director of Finance

- (a) If only one member has nominated for a vacancy in either or both of these positions, then those nominated shall be declared elected only if approved by the majority of Affiliates entitled to vote.
- (b) In the event of no written nomination for either or both positions, the Chairperson may accept late nominations.
- (c) If there is no nomination for either or both positions, or if the person is not approved by the majority of Affiliates under Rule 20.3(a), the position will be deemed a casual vacancy under Rule 23.1.
- (d) If more than one member has nominated for a position, voting papers shall be prepared containing the names of the candidates in alphabetical order, for each vacancy on the Board.
- (e) Voting for President and Director of Finance shall be as set out in this Rule 20.3 excepting where a sitting member of the Board is seeking re-election to the same position and there is a tied vote, the sitting member shall retain the position.
- (f) Voting shall be conducted in such manner and by such method as may be determined by the Board from time to time.

20.4 Elections of Board Members

- (a) If the number of nominations received for Board Members is equal to the number of vacancies to be filled or if there are insufficient nominations received to fill all vacancies on the Board, then those nominated shall be declared elected only if approved by the majority of Affiliates entitled to vote.
- (b) In the event of no written nomination the chairperson may accept late nominations.
- (c) If there are insufficient nominations received to fill all vacancies on the Board, or if a person is not approved by the majority of Affiliates under Rule 20.4(a), the positions will be deemed casual vacancies under Rule 23.1.
- (d) If the number of nominations exceeds the number of vacancies to be filled, voting papers shall be prepared containing the names of the candidates in alphabetical order, for each vacancy on the Board.
- (e) Voting for members of the Board shall be as set out in this Rule 20.4 excepting where a sitting member of the Board is seeking re-election to the same position and there is a tied vote, the sitting member shall retain the position.
- (f) Voting shall be conducted in such manner and by such method as may be determined by the Board from time to time.

20.5 Term of Appointment for Directors

- (a) Directors elected under this Rule 20.5 shall be elected for a term of two (2) years. Subject to provisions in these Rules of Association relating to earlier retirement or removal of Directors, Directors shall remain in office from the conclusion of the Association's Annual General Meeting at which the election occurred until the conclusion of the second Annual General Meeting following.

- (b) The Finance Director and four (4) Directors shall retire in each odd year, and the President and three (3) Directors shall retire in each even year.
- (c) The sequence of retirements under Rule 20.5(b) to ensure rotational terms shall be determined by the Board. If the Board cannot agree it will be determined by lot.
- (d) No person may hold the office of President or Director of Finance for more than three (3) successive two (2) year terms, although they may stand for re-election as a Board Member, and may be appointed by the Board to fill a short-term vacancy in one of these positions until the position may be filled by election or as a casual vacancy.

21. EXISTING DIRECTORS

- (a) The members of the Board of the Association in office immediately prior to approval of these Rules of Association under the Act shall continue in those positions until the next Association's Annual General Meeting following such adoption of these Rules of Association. After this Annual General Meeting the positions of Directors shall be filled, vacated and otherwise dealt with in accordance with these Rules of Association.
- (b) The person known and appointed to the position of Executive Officer immediately prior to approval of these Rules of Association under the Act shall continue in that position following such approval, subject to any contractual arrangements.

22. EXECUTIVE OFFICER

22.1 Appointment of Executive Officer

- (a) An Executive Officer may be appointed by the Board for such term and on such conditions as the Board thinks fit.
- (b) The Executive Officer shall act as and carry out the duties of Secretary of the Association and shall administer and manage the Association in accordance with the Act and these Rules of Association.

22.2 Specific Duties

The Executive Officer shall:

- (a) as far as practicable attend all Board meetings and all Council of Clubs Meetings;
- (b) prepare the agenda for all Board and Council of Clubs Meetings;
- (c) record and prepare minutes of the proceedings of all Board meetings and Council of Clubs Meetings, and shall use their best endeavours to distribute those minutes to Clubs promptly from the date of the meeting; and
- (d) regularly report to the Board on the activities of, and issues relating to, the Association.

22.3 Board Power to Manage

Subject to the Act, these Rules of Association, the By-laws and any policy directive of the Board, the Executive Officer has power to perform all such things as appear necessary or desirable for the proper management and administration of the Association. No resolution passed by the Association in Council of Clubs Meeting shall invalidate any prior act of the

Executive Officer or the Board which would have been valid if that resolution had not been passed.

22.4 Executive Officer may employ

The Executive Officer may in consultation with the Board, 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 Executive Officer determines.

23. VACANCIES ON THE BOARD

23.1 Casual Vacancies

Any casual vacancy occurring in the position of Director may be filled by the remaining Directors from among appropriately qualified persons. Any casual vacancy may only be filled for the remainder of the Director's term under these Rules of Association.

23.2 Grounds for Termination of Director or Vacancy of Position

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act, the office of a Director becomes vacant if the Director:

- (a) dies;
- (b) becomes bankrupt or makes any arrangement or composition with their creditors generally;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in anyway under the law relating to mental health;
- (d) resigns their office in writing to the Association;
- (e) is absent without the consent of the Board from meetings of the Board held during a period of six (6) months;
- (f) holds any office of employment with the Association;
- (g) is directly or indirectly interested in any contract or proposed contract with the Association and fails to declare the nature of their interest; and
- (h) in the opinion of the Board (but subject always to these Rules of Association):
 - (i) has acted in a manner unbecoming or prejudicial to the Objects of the Association; or
 - (ii) has brought the Association into disrepute; or
 - (iii) is removed by Special Resolution; or
 - (iv) would otherwise be prohibited from being a director of a corporation under the *Corporations Act 2001* (Cth).

23.3 Board 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, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum.

24. MEETINGS OF THE BOARD

24.1 Board to Meet

The Board shall meet as often as is deemed necessary, and at least six (6) times, in every calendar year for the dispatch of business and subject to these Rules of Association may adjourn and otherwise regulate its meetings as it thinks fit. The President or a Director may at any time convene a meeting of the Board within a reasonable time.

24.2 Decisions of Board

Subject to these Rules of Association, questions arising at any meeting of the Board shall be decided by a majority of votes and a determination of a majority of Directors shall for all purposes be deemed a determination of the Board. All Directors shall have one (1) vote on any question. Where voting is equal, the Chairperson may exercise a casting vote. If the Chairperson does not exercise a casting vote, the motion will be lost.

24.3 Resolutions not in Meeting

- (a) A resolution in writing, signed or assented to by postal or electronic communication by all the Directors shall be as valid and effectual as if it had been passed at a meeting of Directors duly convened and held. Any such resolution may consist of several documents in like form each signed by one (1) or more of the Directors.
- (b) Without limiting the power of the Board to regulate its meetings as it thinks fit, a meeting of the Board may be held where one (1) or more of the Directors is not physically present at the meeting, provided that:
 - (i) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously whether by means of telephone or other form of communication;
 - (ii) notice of the meeting is given to all the Directors entitled to notice in accordance with the usual procedures agreed upon or laid down from time to time by the Board or these Rules of Association and such notice specifies that Directors are not required to be present in person;
 - (iii) if a failure in communications prevents Rule 24.3(b)(i) from being satisfied by that number of Directors which constitutes a quorum, and none of such Directors is present at the place where the meeting is deemed by virtue of the further provisions of this Rule to be held then the meeting shall be suspended until Rule 24.3(b)(i) is satisfied again. If such condition is not satisfied within fifteen (15) minutes from the interruption the meeting shall be deemed to have terminated or adjourned; and
 - (iv) any meeting held where one (1) or more of the Directors is not physically present shall be deemed to be held at the place specified in the notice of meeting provided a Director is there present and if no Director is there present the meeting shall be deemed to be held at the place where the Chairperson of the meeting is located.

24.4 Quorum

No business shall be transacted at any Board Meeting unless a quorum is present at the time when the meeting proceeds to business.

24.5 Notice of Board Meetings

Unless all Directors agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their apology or presence) not less than fourteen (14) days written notice of the meeting of the Board shall be given to each Director. The agenda shall be forwarded to each Director not less than forty-eight (48) hours prior to such meeting.

24.6 Directors' Interests

A Director is disqualified by holding any place of profit or position of employment in the Association or in any company or incorporated association in which the Association is a shareholder or otherwise interested or from contracting with the Association either as vendor, purchaser or otherwise except with express resolution of approval of the Board. Any such contract or any contract or arrangement entered into by or on behalf of the Association in which any Director is in any way interested will be void unless approved by the Board.

24.7 Conflict of Interest

A Director shall declare their interest in any:

- (a) contractual matter;
- (b) selection matter;
- (c) disciplinary matter; or
- (d) financial matter,

in which a conflict of interest arises or may arise, and shall, unless otherwise determined by the Board, absent themselves from discussions of such matter and shall not be entitled to vote in respect of such matter. If the Director votes the vote shall not be counted. In the event of any uncertainty as to whether it is necessary for a Director to absent himself from discussions and refrain from voting, the issue should be immediately determined by vote of the Board, or if this is not possible, the matter shall be adjourned or deferred.

24.8 Disclosure of Interests

The nature of the interest of such Director must be declared by the Director at the meeting of the Board at which the relevant matter is first taken into consideration if the interest then exists or in any other case at the first meeting of the Board after the acquisition of the interest. If a Director becomes interested in a matter after it is made or entered into the declaration of the interest must be made at the first meeting of the Board held after the Director becomes so interested.

24.9 General Disclosure

A general notice that a Director is a member of any specified firm or company and is to be regarded as interested in all transactions with that firm or company is sufficient declaration under Rule 24.8 as regards such Director and the said transactions. After such general notice it is not necessary for such Director to give a special notice relating to any particular transaction with that firm or company.

24.10 Recording Disclosures

Any declaration made, any disclosure or any general notice given by a Director in accordance with Rules 24.7, 24.8 and/or 24.9 must be recorded in the minutes of the relevant meeting.

25. DELEGATIONS

25.1 Board may Delegate Functions

The Board may by instrument in writing create or establish or appoint special committees, individual officers and consultants to carry out such duties and functions, and with such powers, as the Board determines from time to time. In exercising its power under this Rule 25 the Board must take into account broad stakeholder involvement.

25.2 Delegation by Instrument

The Board may in the establishing instrument delegate such functions as are specified in the instrument, other than:

- (a) this power of delegation; and
- (b) a function imposed on the Board or the Executive Officer by the Act or any other law, or these Rules of Association or by resolution of the Association in a Council of Clubs meeting.

25.3 Delegated Function Exercised in Accordance With Terms

A function, the exercise of which has been delegated under this Rule 25, may whilst the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.

25.4 Procedure of Delegated Entity

The procedures for any entity exercising delegated power shall, subject to these Rules of Association and with any necessary or incidental amendment, be the same as that applicable to meetings of the Board under Rule 24 above. The entity exercising delegated powers shall make decisions in accordance with the Objects, and shall promptly provide the Board with details of all material decisions and shall provide any other reports, minutes and information as the Board may require from time to time.

25.5 Delegation may be Conditional

A delegation under this Rule 25 may be made subject to such conditions or limitations as to the exercise of any function or at the time or circumstances as may be specified in the delegation.

25.6 Revocation of Delegation

The Board may by instrument in writing, at any time revoke wholly or in part any delegation made under this Rule 25 and may amend or repeal any decision made by such body or person under this Rule.

PART 6 — GENERAL MEETINGS OF THE ASSOCIATION

26. ANNUAL GENERAL MEETING

- (a) An Annual General Meeting of the Association shall be held in accordance with the Act and these Rules of Association and on a date and at a venue to be determined by the Board.
- (b) All Council of Clubs Meetings other than the Annual General Meeting shall be special Council of Clubs Meetings and shall be held in accordance with these Rules of Association.
- (c) The notice convening an Annual General Meeting must specify that it is the Annual General Meeting of the Association, include the names of Members who have been nominated for election and otherwise must comply with Rule 28.

27. GENERAL MEETINGS - SPECIAL COUNCIL OF CLUBS MEETINGS

27.1 Special Council of Clubs Meetings May Be Held

The Board may, whenever it thinks fit, convene a special Council of Clubs Meeting of the Association and, where, but for this Rule 27 more than fifteen (15) months would elapse between Annual General Meetings, shall convene a special Council of Clubs Meeting before the expiration of that period.

27.2 Requisition of special Council of Clubs Meetings

- (a) The Executive Officer, on the requisition in writing of 20% of the Affiliated Clubs, shall convene a special Council of Clubs Meeting.
- (b) The requisition for a special Council of Clubs Meeting shall state the object(s) of the meeting, shall be signed by the Affiliates making the requisition and be sent to the Association and may consist of several documents in a like form, each signed by one or more of the Affiliates making the requisitions.
- (c) If the Executive Officer does not cause a special Council of Clubs Meeting to be held within one (1) month after the date on which the requisition is sent to the Association, the Affiliates making the requisition, or any of them, may convene a special Council of Clubs Meeting to be held not later than three (3) months after that date.
- (d) A special Council of Clubs Meeting convened by Affiliates under these Rules of Association shall be convened in the same manner, or as nearly as possible as that, in which meetings are convened by the Board.

28. NOTICE OF COUNCIL OF CLUBS MEETING

- (a) Notice of every Council of Clubs Meeting shall be given to every Affiliated Club and Life Member or other Member entitled to receive notice at the address appearing in the Register of Members kept by the Association. The Executive Officer and Directors shall also be entitled to notice of every Council of Clubs Meeting, which shall be sent to their last notified address. No other person shall be entitled as of right to receive notices of Council of Clubs Meetings.
- (b) A notice of a Council of Clubs Meeting shall specify the place and day and hour of meeting and shall state the business to be transacted at the meeting.

- (c) At least sixty (60) days' notice of a Council of Clubs Meeting shall be given to those Affiliates and members entitled to receive notice.
- (d) At least twenty-one (21) days' notice shall be given of:
 - (i) the agenda for the meeting; and
 - (ii) any notice of motion received from Affiliates and members entitled to vote.
- (e) Notice of every Council of Clubs Meeting shall be given in the manner authorised in Rule 43.

29. BUSINESS

- (a) The business to be transacted at the Association's Annual General Meeting includes the consideration of accounts and the reports of the Board and auditors, the election of Directors under these Rules of Association and the appointment of the auditors.
- (b) All business that is transacted at a Council of Clubs Meeting and all business that is transacted at an Association's Annual General Meeting, with the exception of those matters set down in Rule 29(a) shall be special business.
- (c) No business other than that stated on the notice for a Council of Clubs Meeting shall be transacted at that meeting.

30. NOTICES OF MOTION

Members entitled to vote may submit notices of motion for inclusion as special business at a Council of Clubs Meeting. All notices of motion must be submitted in writing to the Executive Officer not less than thirty (30) days (excluding receiving date and meeting date) prior to the Council of Clubs Meeting.

31. PROCEEDINGS AT GENERAL MEETINGS OF THE ASSOCIATION

31.1 Proxies

- (a) Subject to Rule 31.1(b), an Affiliated Club may appoint an Individual Member, including another Delegate, as its proxy to vote and speak on its behalf at a General Meeting.
- (b) An Individual Member may be appointed the proxy for not more than five (5) Affiliated Clubs.
- (c) The appointment of a proxy must be in writing and signed by an authorised representative of the Club making the appointment.
- (d) The Club appointing the proxy may give specific directions as to how the proxy is to vote on its behalf. If no instructions are given to the proxy, the proxy may vote on behalf of the Club in any matter as the proxy sees fit.
- (e) If the Board has approved a form for the appointment of a proxy, the Club may use that form or any other form:
 - (i) that clearly identifies the person appointed as the Member's proxy; and
 - (ii) that has been signed by an authorised representative of the Club.

- (f) Notice of a General Meeting given to an Affiliated Club under Rule 28 must:
 - (i) state that the Club may appoint any Individual Member as a proxy for the meeting; and
 - (ii) include a copy of any form that the Board has approved for the appointment of a proxy.
- (g) A form appointing a proxy must be given to the Chairperson or Secretary of the meeting before the commencement of the General Meeting for which the proxy is appointed.
- (h) A form appointing a proxy sent by post or electronically is of no effect unless it is received by the Association not later than twenty-four (24) hours before the commencement of the meeting.

31.2 Quorum

No business shall be transacted at any General Meeting unless a quorum is present at the time when the meeting proceeds to business.

31.3 Chairperson to preside

The Chairperson of the Board shall, subject to these Rules of Association, preside as chair at every Council of Clubs Meeting except:

- (a) in relation to any election for which the Chairperson is a nominee; or
- (b) where a conflict of interest exists.

If the Chairperson is not present, or is unwilling or unable to preside the Delegates present shall appoint another Director to preside as Chairperson for that meeting only.

31.4 Adjournment of Meeting

- (a) If within half an hour from the time appointed for the meeting, a quorum is not present the meeting shall be adjourned until the same day in the next week at the same time and place or to such other day and at such other time and place as the Chairperson may determine and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the meeting will lapse.
- (b) The Chairperson may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (d) Except as provided in Rule 31.4(c) it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

31.5 Voting Procedure

At any meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by:

- (a) the Chairperson; or
- (b) a simple majority of Delegates on behalf of their Members.

31.6 Recording of Determinations

Unless a poll is demanded under Rule 31.5, a declaration by the Chairperson that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the Association shall be conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution.

31.7 Where Poll Demanded

If a poll is duly demanded under Rule 31.5 it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chairperson directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

32. VOTING AT GENERAL MEETINGS OF THE ASSOCIATION

32.1 Members Entitled to Vote

Each Club shall be entitled to one (1) vote at Council of Clubs Meetings which, subject to this Rule 32, shall be exercised by the Club's Delegate or their nominated proxy. No other Member shall be entitled to vote.

32.2 Chairperson May Exercise Casting Vote

Where voting at Council of Clubs Meetings is equal the Chairperson may exercise a casting vote. If the Chairperson does not exercise a casting vote the motion will be lost.

32.3 Postal Voting

No motion shall be determined by a postal ballot unless determined by the Board. If the Board so determines, the postal ballot shall be conducted under the procedures set by the Board from time to time in the By-laws.

PART 7 — FINANCIAL AND ADMINISTRATIVE MATTERS

33. RECORDS AND ACCOUNTS

33.1 Records

The Association shall establish and maintain proper records and minutes concerning all transactions, business, meetings and dealings of the Association and the Board and shall produce these as appropriate at each Board or Council of Clubs Meeting.

33.2 Records Kept in Accordance with Act

Proper accounting and other records shall be kept in accordance with the Act. The books of account shall be kept in the care and control of the Executive Officer.

33.3 Association to Retain Records

The Association shall retain such records for seven (7) years after the completion of the transactions or operations to which they relate.

33.4 Board to Submit Accounts

The Board shall submit to the Affiliates at the Association's Annual General Meeting the statements of account of the Association in accordance with these Rules of Association and the Act.

33.5 Accounts Conclusive

The statements of account when approved or adopted by a Association's Annual General Meeting shall be conclusive except as regards any error discovered in them within three (3) months after such approval or adoption.

33.6 Accounts to be Sent to Affiliates

The Executive Officer shall cause to be sent to all persons entitled to receive notice of Association's Annual General Meetings in accordance with these Rules of Association, a copy of the statements of account, the Board's report, and the auditor's report.

33.7 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 any two (2) duly authorised Directors or in such other manner as the Board determines.

34. AUDITOR

(a) A properly qualified auditor or auditors shall be appointed by the Association in Council of Clubs Meeting. The auditor's duties shall be regulated in accordance with the Act, or if no relevant provisions exist under the Act, in accordance with the *Corporations Act 2001* (Cth) and generally accepted principles, and/or any applicable code of conduct. The auditor may be removed by the Association in Council of Clubs Meeting.

(a) 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.

PART 8 — GENERAL MATTERS

35. WINDING UP

- 35.1 The Association may be dissolved or wound up by a resolution at any Annual General Meeting or Extraordinary Meeting called for such purpose.
- 35.2 At least sixty (60) days' notice to Club Secretaries must be given by certified mail for the holding of such Extraordinary meeting; the reasons being set out in the notice calling the meeting and no other business shall be transacted at such meeting.

36. SEAL

- (a) The Association may have a Seal upon which its corporate name shall appear in legible characters.
- (b) The Seal shall not be used without the express authorisation of the Board and every use of the Seal shall be recorded in the minute books of the Association. The affixing of the Seal must be witnessed by the President and one (1) Director, unless the Board determines otherwise.

37. DISTRIBUTION OF PROPERTY ON DISSOLUTION

If upon the dissolution or winding up of the Association, any property of the Association remains after the satisfaction of the debts and liabilities of the Association and the costs, charges and expenses of that dissolution or winding up, then that property shall be distributed:

- (a) to another association incorporated under the Act; or
- (b) for charitable purposes;

which incorporated association or purposes, as the case requires shall be determined by resolution of the members when authorising and directing the Committee under Section 33(3) of the Act to prepare a distribution plan for the distribution of the surplus property of the Association.

38. ALTERATION OF RULES OF ASSOCIATION

These Rules of Association shall not be altered except by Special Resolution. No amendment resolved shall be adopted unless agreed to by a three quarters (3/4) majority of the eligible votes.

39. BY-LAWS

39.1 Board to Formulate By-laws

The Board may formulate, issue, adopt, interpret and amend such By-laws for the proper advancement, management and administration of the Association, the advancement of the Objects of the Association and Masters Swimming in Western Australia as it thinks necessary or desirable. Such By-laws must be consistent with the Rules of Association, the MSA Constitution, any by-laws made by MSA and any policy directives of the Board.

39.2 By-laws Binding

All By-laws are binding on the Association and all Members.

39.3 By-laws Deemed Applicable

All clauses, Rules, By-laws and By-laws of the Association in force at the date of the approval of these Rules of Association insofar as such clauses, Rules, By-laws and By-laws are not inconsistent with, or have been replaced by these Rules of Association, shall be deemed to be By-laws and shall continue to apply.

39.4 Bulletins Binding on Affiliates

Amendments, alterations, interpretations or other changes to By-laws shall be advised to Affiliates by means of Bulletins approved by the Board and prepared and issued by the Executive Officer. Clubs shall take reasonable steps to distribute information in the Bulletins to Individual Members. The matters in the Bulletins are binding on all Members.

40. STATUS AND COMPLIANCE OF ASSOCIATION

40.1 Recognition of Association

The Association is a member of MSA and is recognised by MSA as the controlling authority for Masters Swimming in Western Australia and subject to compliance with these Rules of Association and the MSA Constitution shall continue to be so recognised and shall administer Masters Swimming in Western Australia in accordance with the Objects.

40.2 Compliance of Association

The Affiliates acknowledge and agree the Association shall:

- (a) be or remain incorporated in Western Australia;
- (a) apply its property and capacity solely in pursuit of the Objects of Masters Swimming;
- (b) do all that is reasonably necessary to enable the Objects to be achieved;
- (c) act in good faith and loyalty to ensure the maintenance and enhancement of Masters Swimming, its standards, quality and reputation for the benefit of the Members and Masters Swimming;
- (d) at all times act in the interests of the Members and Masters Swimming;
- (e) not resign, disaffiliate or otherwise seek to withdraw from MSA without approval by Special Resolution; and
- (f) abide by the MSA Constitution and the Rules of Masters Swimming.

40.3 Operation of Rules of Association

The Association and the Affiliates acknowledge and agree:

- (a) that they are bound by these Rules of Association and that these Rules of Association operate to create uniformity in the way in which the Objects of Masters Swimming are to be conducted, promoted, encouraged, advanced and administered throughout Western Australia;
- (b) to ensure the maintenance and enhancement of Masters Swimming, its standards, quality and reputation for the benefit of the Members and Masters Swimming;

- (c) not to do or permit to be done any act or thing which might adversely affect or derogate from the standards, quality and reputation of Masters Swimming and its maintenance and enhancement;
- (d) to promote the economic and community service success, strength and stability of each other and to act interdependently with each other in pursuit of their respective Objects;
- (e) to act in the interests of Masters Swimming and the Members; and
- (f) that should an Affiliate have administrative, operational or financial difficulties the Association may act to assist the Affiliate in whatever manner the Association considers appropriate.

41. RULES OF ASSOCIATION

41.1 Rules of Association

These Rules of Association will clearly reflect the Objects of MSA and will conform to the MSA Constitution, subject always to the Act.

41.2 Operation of MSA Rules of Association

- (a) The Association will take all reasonable steps to ensure these Rules of Association conform to the MSA Constitution subject always to the Act.
- (b) The Association shall provide to MSA a copy of these Rules of Association and all amendments to this document. The Association acknowledges and agrees that the MSA has power to veto any provision in its Rules of Association which, in MSA's opinion, is contrary to the Objects of MSA.

42. STATUS AND COMPLIANCE OF CLUBS

42.1 Compliance

Clubs acknowledge and agree that they shall:

- (a) be or remain incorporated in Western Australia;
- (b) nominate a Delegate annually to attend Council of Clubs Meetings;
- (c) recognise the Association as the authority for Masters Swimming in Western Australia and MSA as the national authority for Masters Swimming;
- (d) adopt and implement such communications and Intellectual Property policies as may be developed by the Association from time to time; and
- (e) have regard to the Objects in any matter of the Club pertaining to Masters Swimming.

42.2 Club Rules of Association

- (a) The constituent documents of Clubs will clearly reflect the Objects and will conform to these Rules of Association.
- (b) Clubs will take all reasonable steps necessary to ensure their constituent documents conform to these Rules of Association.

- (c) Clubs shall provide to the Association a copy of their constituent documents and all amendments to these documents.
- (d) The constituent documents of each Club shall, at the earliest available opportunity, but within one year of the commencement of these Rules of Association, recognise the Association as the authority for Masters Swimming in Western Australia and MSA as the national authority for Masters Swimming in Australia.

42.3 Register

Clubs shall maintain, in a form acceptable to the Association, a register of all Members of the Club.

43. NOTICE

- (a) Notices may be given by the Association to any person entitled under these Rules of Association to receive any notice by sending the notice by pre-paid post or electronic mail, to the Affiliate's registered address or facsimile number or electronic mail address, or in the case of a Delegate, to the last notified address, facsimile number or electronic mail address.
- (b) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting the notice. Service of the notice is deemed to have been effected three (3) days after posting.
- (c) Where a notice is sent by facsimile transmission, service of the notice shall be deemed to be effected upon receipt of a confirmation report confirming the facsimile was sent to/or received at the facsimile number to which it was sent.
- (d) Where a notice is sent by electronic mail, service of the notice shall be deemed to be effected the next business day after it was sent.
- (e) The accidental omission to give any notice to any person entitled to attend the Association's Annual General Meeting or other meetings shall not invalidate the meeting or its proceedings, including any resolution or appointment made thereat.

44. PATRONS AND VICE PATRONS

The Association at its Annual General Meeting may appoint annually on the recommendation of the Board a chief patron, subject to agreement of that person.

45. INDEMNITY

- (a) Every Director and employee of the Association shall be indemnified out of the property and assets of the Association against any liability incurred by them in their capacity as Director or employee in defending any proceedings, whether civil or criminal, in which judgement 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 granted by the Court.
- (b) The Association shall indemnify its Directors and employees against all damages and losses (including legal costs) for which any such Director or employee may be or become liable to any third party in consequence of any act or omission except wilful misconduct:

- (i) in the case of a Director, performed or made whilst acting on behalf of and with the authority, express or implied of the Association; and
- (ii) in the case of an employee, performed or made in the course of, and within the scope of their employment by the Association.