

**ASSOCIATIONS INCORPORATIONS ACT 2015 - WESTERN AUSTRALIA**



**PADDLE WESTERN AUSTRALIA (INC.)**

# **Constitution**

**November 2018**

## Version Control

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1.3	19 September 2013	Management Committee	Document for Member endorsement
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## 1. PRELIMINARY

### 1.1 Name of Association

The name of the Association is Paddle Western Australia (INC)

### 1.2 Objects of Association

Paddle WA is the recognised organisation by Paddle Australia for the administration of the sport of canoeing and paddling activities in Western Australia, the objects for which Paddle WA is established and maintained is to:

- (a) promote, encourage and develop participation in canoeing and recreation canoeing and paddling activities and related opportunities as a lifelong contribution to deliver healthy and safer communities;
- (b) enhance the sustainability of Paddle WA and its membership;
- (c) align infrastructure development and access to facilities with growth of participation;
- (d) increase the profile of paddling activities in Western Australia;
- (e) progressively and inclusively lead canoeing and paddling activities in WA through good governance and management;
- (f) unite those organisations in Western Australia that have canoeing sport and recreation as part of their activities;
- (g) promote the most sustainable and effective use of the natural environment for all paddle sports; and as such strategic intentions that are adopted by the Board from time to time.

### 1.3 Quorum for Committee Meetings

A **minimum of 50% plus one (1) of the authorised voters** constitute a quorum for the conduct of the business at a Committee Meeting.

### 1.4 Quorum for General Meetings

A minimum of 50% plus one (1) of the authorised voters of Members personally present (being Members entitled to vote under these Rules at a General Meeting) will constitute a quorum for the conduct of business at a General Meeting.

### 1.5 Financial Year

The Association's Financial Year, will be the period of 12 months commencing on 1 July and ending on 30 June of each year.

## **PART I – OBJECTS, POWERS AND INTERPRETATION**

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### **2. NAME OF THE ASSOCIATION**

The name of the Association is Paddle Western Australia (INC.) hereinafter referred to as “Paddle WA”. Paddle WA, with Board approval, may adopt a trading name as identified in the By-Laws, without effecting the powers or interpretation of this constitution. The head office of Paddle WA is located in Perth, Western Australia.

### **3. OBJECTS OF PADDLE WA**

Paddle WA is the recognised organisation by Paddle Australia for the administration of the sport of canoeing and paddling activities in Western Australia, the objects for which Paddle WA is established and maintained is to:

- (a) promote, encourage and develop participation in canoeing and recreation canoeing and paddling activities and related opportunities as a lifelong contribution to deliver healthy and safer communities;
- (b) enhance the sustainability of Paddle WA and its membership;
- (c) align infrastructure development and access to facilities with growth of participation;
- (d) increase the profile of paddling activities in Western Australia;
- (e) progressively and inclusively lead canoeing and paddling activities in WA through good governance and management;
- (f) unite those organisations in Western Australia that have canoeing sport and recreation as part of their activities;
- (g) promote the most sustainable and effective use of the natural environment for all paddle sports; and as such strategic intentions that are adopted by the Board from time to time.

### **4. POWERS OF PADDLE WA**

Solely for furthering the objects set out above Paddle WA has, in addition to the rights, powers and privileges conferred on it under the Act, the legal capacity and powers of a company as set out under section 124 of the Corporations Act.

To the extent provided under section 4 of the Act, Paddle WA may undertake such activities as the Board determines appropriate in furthering the objects set out above.

### **5. NOT FOR PROFIT**

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

## 6. INTERPRETATION

### 6.1 Definitions

In this Constitution unless the contrary intention appears, these words shall have the following meanings:

**“Act”** means the Associations Incorporation Act 2015 Western Australia or any other act under which Paddle WA may be incorporated from time to time.

**“Affiliated Club”** means an incorporated club which is a member of Paddle WA.

**“Board”** means the body consisting of the Directors under Rule 24.

**“By-Law”** means any by-law, regulation or policy made by the Board under Rule 32.

**“Canoe sport and recreation”** means all paddling activities to do with all aspects of the sport and/or recreation of canoeing.

**“Delegate”** means the person elected or appointed from time to time by an Affiliated Club to act for and on behalf of that Affiliated Club and represent the Affiliated Club at General Meetings or otherwise.

**“Director”** means a member of the Board elected or appointed in accordance with this Constitution and includes the Elected Directors and the Independent Directors.

**“Elected Director”** means a Director elected under Rule 25.

**“Executive Officer”** means the person who is appointed under this Constitution to carry out the duties set out in Rule 30, whether known as the Executive Officer or otherwise.

**“Financial Year”** means the year commencing 1 July and ending 30 June in any year.

**“General Meeting”** means the annual or any special general meeting of Paddle WA.

**“Independent Director”** means a Director appointed under Rule 26.

**“Individual Member”** means a registered financial individual member of the Association and an Affiliated Club.

**“Intellectual Property”** means all rights or goodwill subsisting in copyright, business names, names, trade marks (or signs), logos, designs, patents or service marks (whether registered or registrable) relating to Paddle WA or any event, competition or activity of or conducted, promoted or administered by Paddle WA.

**“Life Member”** means an individual upon whom life membership of Paddle WA has been conferred under Rule 8.3.

**“Member”** means a member for the time being of Paddle WA under Rule 8 of this Constitution.

“**Paddle Australia**” means Paddle Australia Limited, being the national peak body for the sport of canoeing in Australia.

“**Registered Instructors and Guides**” means an individual with a current Australian Canoeing Instructional or Guiding Award or relevant industry award and a coach or official with National Coaching Accreditation Scheme or National Officiating Accreditation Scheme accreditation, who meets the updating policy as adopted by Paddle Australia from time to time.

“**Seal**” means the common seal of Paddle WA and includes any official seal of Paddle WA.

## **6.2 Interpretation**

In this Constitution:

- (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.

## **6.3 Severance**

If any provision of this Constitution or any phrase contained in them is invalid or unenforceable in any jurisdiction, the phrase or provision is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable. If the rule or phrase cannot be so read down it shall be severed to the extent of the invalidity or



unenforceability. Such severance shall not affect the remaining provisions of this Constitution or affect the validity or enforceability of any provision in any other jurisdiction.

#### **6.4 Expressions in the Act**

Except where the contrary intention appears, in this Constitution, an expression that deals with a matter dealt with by a particular provision of the Act has the same meaning as that provision of the Act.

### **PART II – ASSOCIATION AND AFFILIATED CLUB CONSTITUTIONS**

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#### **7. AFFILIATED CLUB COMPLIANCE**

The Affiliated Clubs acknowledge and agree that each of them shall:

- (a) be incorporated in Western Australia under the Act or similar legislation;
- (b) provide Paddle WA with copies of its audited accounts, annual report and other associated documents within 30 days of such request by Paddle WA, in a form as requested by Paddle WA;
- (c) generally, have regard to the objects of Paddle WA, and in particular the object to create a single uniform entity for the conduct, promotion, encouragement and administration of canoeing sport and recreation, in any matters of the Affiliated Club pertaining to canoeing sport and recreation;
- (d) ensure its documents are amended in conformity with future amendments made to this constitution;
- (e) have a transition period, as determined by the Board, from the time of approval of this Constitution under the Act in which to amend their constitution in accordance with this Constitution, as for such time as their Constitutions do not conform shall not be unduly penalized for such non-compliance, to the extent that such non-compliance is not willful or calculated to cause harm or prejudice to Paddle WA.

## **PART III – MEMBERSHIP**

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### **8. MEMBERS**

#### **8.1 Category of members**

The Members of Paddle WA shall consist of:

- (a) Affiliated Clubs - Incorporated associations, which have been approved by the Board - who subject to this Constitution, shall be represented by their Delegate who shall have the right to attend, debate and vote at General Meetings for and on behalf of the Affiliated Club;
- (b) Life Members - who are appointed in accordance with the criteria and procedure set out from time to time, by the Board, in the By-Laws - who subject to this Constitution, may attend, debate but shall not have the right to vote at General Meetings;
- (c) Individual Members, who subject to this Constitution, may attend, debate but shall not have the right to vote at General Meetings;
- (d) Registered Instructors and Guides who reside in Western Australia, who subject to this Constitution, may attend General Meetings but have no right to debate or vote at General Meetings;
- (e) Such new categories of Members, created in accordance with Rule 8.2 below.

#### **8.2 Creation of New Categories**

The Board has the right and power from time to time to create new categories of membership with such rights, privileges and obligations as are determined applicable (other than voting rights), even if the effect of creating a new category is to alter rights, privileges or obligations of an existing category of Members. No new category of membership may be granted voting rights.

#### **8.3 Life Members**

- (a) The Board may nominate a person who has rendered distinguished or special service to the sport of canoeing at the state level, for life membership. The nomination must be on the prescribed form (if any) and must be submitted to the Executive Officer at least fourteen (14) days before the date set down for the Annual General Meeting.
- (b) The nomination for Life Member shall be considered at the Annual General Meeting. A resolution of the Annual General Meeting to confer life membership must be passed by Special Resolution. The vote on such resolution will be taken by secret ballot.

- (c) Conditions, obligations and privileges of life membership shall be as prescribed in the By-Laws.

## **9. AFFILIATED CLUBS AND MEMBERSHIP**

### **9.1 Affiliated Clubs**

To be eligible for membership, an Affiliated Club must be incorporated

### **9.2 Application for Membership**

An application for membership by an organisation or individual (if applicable) must be:

- (a) In writing on the form prescribed in the By-Laws and lodged with the Executive Officer for Board acceptance;
- (b) Accompanied by the appropriate fee, if any.

### **9.3 Discretion to Accept or Reject Application**

- (a) Paddle WA may accept or reject an application. If the application is rejected, upon request from the applicant, the reason for the rejection of the application shall be provided.
- (b) Where Paddle WA accepts an application, the applicant shall become a Member. Membership of Paddle WA shall be deemed to commence upon acceptance of the application by Paddle WA. The Executive Officer shall amend the register accordingly as soon as practicable.
- (c) Where Paddle WA rejects an application, Paddle WA shall refund any fees forwarded with the application and the application shall be deemed rejected by Paddle WA.

### **9.4 Membership Renewal**

Affiliated clubs shall:

- (a) Renew their membership with Paddle WA in accordance with the procedures applicable from time to time;
- (b) Otherwise remain financial members of Paddle WA in accordance with the procedures applicable from time to time;
- (c) Pay the annual fees as prescribed by Paddle WA from time to time.

## **10. SUBSCRIPTIONS AND FEES**

### **10.1 The annual membership subscription**

As required, fees and any levies payable by Members (or any category of members) to Paddle WA, the basis of, the time for and manner of payment shall be as determined by the Board from time to time.

### **10.2 Monies due and payable**

Any Member which or who has not paid all monies due and payable by that Member to Paddle WA shall (subject to the Board's discretion) have all rights under this Constitution immediately suspended from the expiry of the time prescribed for payment of those monies. Such rights will be suspended until such time as the monies are fully paid or otherwise in the Board's discretion. In the meantime, the Member shall have no automatic right to resign from Paddle WA, and shall be dealt with in the Board's discretion, which includes the right to expel, suspend, disqualify, fine, discipline or retain that Member as a Member, or impose such other conditions or requirements as the Board considers appropriate.

## **11. REGISTER OF MEMBERS**

### **11.1 Executive Officer to Keep Register**

The Executive Officer shall keep and maintain a register of Members in which shall be entered such information as is required under the Act from time to time.

### **11.2 Inspection of Register**

The Register shall be kept at the principal place of administration of Paddle WA. An extract of the Register shall be available for Inspection by a member of Paddle WA, upon reasonable request and in accordance with provisions of the Act. The Member may make a copy of or take an extract from the register but shall have no right to remove the register for that purpose.

### **11.3 Use of the Register**

The Register may be used by Paddle WA to further the purposes of Paddle WA, as the Board considers appropriate.

## **12. EFFECT OF MEMBERSHIP**

### **12.1 Binding on Members**

Members acknowledge and agree that:

- (a) this Constitution constitutes a contract between each of them and Paddle WA and that they are bound by this Constitution and the By-Laws as amended;

- (b) by submitting to this Constitution and the By-Laws they are subject to the jurisdiction of Paddle WA;
- (c) this Constitution is made in pursuit of a common object, namely the mutual and collective benefit of Paddle WA, the Members and the sport of canoeing and its related disciplines;
- (d) they are entitled to all benefits, advantages, privileges and services of Paddle WA membership.

### **12.2 Obligations of Affiliated Clubs**

It is a condition that each Affiliated Club shall agree:

- (a) to act in good faith and loyalty to each other to ensure the maintenance and enhancement of the sport of canoeing or its related disciplines, standards, quality and reputation for the collective and mutual benefit of the Members and the sport of canoeing;
- (b) 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 canoeing or its related disciplines;
- (c) to make full and proper disclosure to each other of all matters of importance to Paddle WA and the sport of canoeing or its related disciplines;
- (d) not to acquire a private advantage at the expense of Paddle WA or any other Association or the sport of canoeing or its related disciplines;
- (e) to register all individuals of the club, as defined as members under the Clubs constitution, with Paddle WA;
- (f) to act for and on behalf of the interests of the sport of Paddle or its related disciplines, Paddle WA and the Members.

### **12.3 Membership Entitlements Not Transferable**

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

- (a) is not capable of being transferred or transmitted; and
- (b) ceases upon termination of membership.

## **13. DISCONTINUANCE OF MEMBERSHIP**

### **13.1 Notice of Resignation**

Subject to this Constitution any Member which has paid all monies due and payable to Paddle WA and has no other liability (contingent or otherwise) to Paddle WA may resign from Paddle WA by giving one (1) months notice in writing to Paddle WA of such intention to withdraw or resign and upon the expiration of that period of notice, the Member shall cease to be a Member. A Life Member who has paid all monies due and payable to Paddle WA may resign by notice in writing with immediate effect.

### **13.2 Expiration of Notice Period**

Subject to Rule 13.5 upon the expiration of any notice period applicable under Rule 13.1 an entry, recording the date on which the Member who or which gave notice ceased to be a Member shall be recorded in the register.

### **13.3 Forfeiture of Rights**

A Member who or which ceases to be a Member, for whatever reason, shall forfeit all right in and claim upon Paddle WA and its property including Intellectual Property. Any Paddle WA documents, records or other property in the possession, custody or control of that Member shall be returned to Paddle WA immediately.

### **13.4 Membership may be Reinstated**

Membership which has lapsed, been withdrawn or terminated under this Constitution may be reinstated at the discretion of the Board, on application in accordance with this Constitution and otherwise on such conditions as it sees fit.

### **13.5 Cessation of Membership**

Where an Affiliated Club ceases to be a Member in accordance with this Constitution or the Act, the Individual Members of that Affiliated Club may cease or remain Members to the extent (if any) and for such time (if any) as is determined in the sole discretion of the Board.

## **14. DISCIPLINE OF MEMBERS**

### **14.1 Disciplinary Action**

Where the Board is advised or considers that a Member has allegedly:

- (i) Breached, failed, refused or neglected to comply with a provision of this Constitution, the By-Laws or any resolution or determination of the Board or any duly authorised committee; or
- (ii) acted in a manner unbecoming of a Member or prejudicial to the objects and interests of Paddle WA and/or canoeing sport and recreation; or

- (iii) brought Paddle WA or canoeing sport and recreation or related disciplines into disrepute;

the Board may commence or cause to be commenced disciplinary proceedings against that Member, and that Member will be subject to, and submits unreservedly to the jurisdiction, procedures, penalties and appeal mechanisms (if any) of Paddle WA set out in the By-Laws.

## **15. DELEGATES**

### **15.1 Appointment of Delegates**

Each Affiliated Club may be represented by one (1) Delegate, who may vote on behalf of the Affiliated Club.

A Delegate must:

- (a) Be a member over the age of 18 years of the Affiliated Club and the Affiliated Club must be a current financial member of Paddle WA;
- (b) Be appropriately empowered by the appointing Affiliated Club, as per the Clubs Constitution, to consider, make decisions and vote in proceedings so provided by the Paddle WA Constitution;
- (c) Not be a Director of Paddle WA;
- (d) Not be an employee of Paddle WA;
- (e) Not be a Delegate for more than one Affiliated Club.

### **15.2 Notification of Delegate**

An Affiliated Club shall advise Paddle WA at least seven (7) days prior to a nominated meeting at which Delegate shall represent the Affiliated Club. Nominations may include an alternate Delegate where the nominated delegate is unable to fulfill the role. Notification should be in the approved form including the name, address and contact details of the Delegate.

## **PART IV - GENERAL MEETINGS**

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### **16. GENERAL MEETINGS**

#### **16.1 Annual General Meeting**

An Annual General Meeting of Paddle WA shall be held in accordance with the provisions of the Act and this Constitution and on a date and at a venue to be determined by the Board.

- (a) the Association must convene an AGM each calendar year;
- (b) within 6 months after the end of the Association's Financial Year;
- (c) If the Association requires the approval from the Commissioner to hold its AGM within a longer period under rule 16.1(b), the Secretary must apply to the Commissioner no later than four months after the end of the Association's Financial Year.

## **16.2 General Meetings**

All General Meetings other than the Annual General Meeting shall be Special General Meetings and shall be held in accordance with this Constitution.

## **17. NOTICE OF GENERAL MEETING**

### **17.1 Notice of General Meetings**

- (a) Notice of every General Meeting shall be given to the Board Members, Affiliated Clubs and other Members of Paddle WA in writing at the address appearing in the register kept by Paddle WA. No other person shall be entitled as of right to receive notices of General Meetings.
- (b) Notice of General Meeting shall be given at least twenty-one (21) days prior to the General Meeting and shall specify the place and day and hour of the General Meeting.
- (c) The agenda for the General Meeting stating the business to be transacted at the General Meeting shall be given at least fourteen (14) days prior to the General Meeting, together with any notice of motion received from the Affiliated Clubs.

### **17.2 Entitlement to Attend General Meeting**

Notwithstanding any other Rule, no Member shall be represented at, or take part in a General Meeting, unless all monies (set in accordance with Rule 10) then due and payable to Paddle WA are paid.

## **18. BUSINESS**

### **18.1 Business of General Meetings**

- (a) The business to be transacted at the Annual General Meeting includes the consideration of accounts, reports of the Board (including in relation to the activities of Paddle WA during the last preceding Financial Year) and auditors and the election of Directors and Life Members.
- (b) All business that is transacted at a General Meeting, and also all that is transacted at the Annual General Meeting, with the exception of those matters set out in Rule



18.1(a) shall be special business. "Special business" is business of which a notice of motion has been submitted in accordance with Rule 18.

## **18.2 Business Transacted**

No business other than that stated on the notice shall be transacted at that meeting.

## **19. NOTICES OF MOTION**

All notices of motion for inclusion as special business at a General Meeting must be submitted in writing (in the required form) to the Executive Officer not less than fourteen (14) days (excluding receiving date and meeting date) prior to the General Meeting.

## **20. SPECIAL GENERAL MEETINGS**

### **20.1 Special General Meetings May be Held**

The Board may, whenever it thinks fit, convene a Special General Meeting of Paddle WA and, where, but for this Rule more than 15 months would elapse between Annual General Meetings, shall convene a Special General Meeting before the expiration of that period.

### **20.2 Requisition of Special General Meetings**

- (a) The Board shall on the requisition in writing of the majority of the Affiliated Clubs convene a Special General Meeting.
- (b) The requisition for a Special General Meeting shall state the object(s) of the meeting shall be signed by the Affiliated Clubs making the requisition and be sent to Paddle WA. The requisition may consist of several documents in a like form, each signed by one (1) or more of the Affiliated Clubs making the requisition.
- (c) If the Board does not cause a Special General Meeting to be held within three (3) months after the date on which the requisition is sent to Paddle WA, the Affiliated Clubs making the requisition, or any of them, may convene a Special General Meeting to be held not later than 3 months after that date.
- (d) A Special General Meeting convened by Affiliated Clubs under this Constitution shall be convened in the same manner, or as nearly as possible as that, in which meetings are convened by the Board.

## **21. PROCEEDINGS AT GENERAL MEETINGS**

### **21.1 Quorum**

No business shall be transacted at any General Meeting unless a quorum is present at the time when the meeting proceeds to business. A quorum for General Meetings of Paddle WA shall be a minimum of 50% plus one (1) of the authorised voters.

## **21.2 Chair of Board Preside**

The Chair of the Board shall, subject to this Constitution, preside as Chair at every General Meeting of Paddle WA. If the Chair is not present, or is unwilling or unable to preside, the Directors shall choose one of their number present who shall, subject to this Constitution, preside as Chair for that meeting only.

## **21.3 Adjournment of Meeting**

- (a) If within half an hour from the time appointed for the General Meeting a quorum is not present the meeting shall be adjourned to such other day and at such other time and place as the Chair may determine. 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 Chair may, with the consent of any General 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 General Meeting is adjourned for 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 21.3(c) it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

## **21.4 Voting Procedure**

At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a secret ballot is (before or on the declaration of the result of the show of hands) demanded:

- (a) by the Chair; or
- (b) by the majority of authorised voters present.

## **21.5 Recording of Determinations**

Unless a poll is demanded under Rule 21.6, a declaration by the Chair 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 Paddle WA shall be conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution.

### **21.6 Where Poll Demanded**

If a poll is duly demanded under Rule 21.6 it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chair directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

### **21.7 Resolutions at General Meetings**

Except where a Special Resolution is required, all resolutions at General Meetings shall be determined by the majority of votes (as set out in Rule 21.4).

### **21.8 Special Resolution**

Special Resolutions means a Resolution passed:

- (a) at a General Meeting of Paddle WA of which 21 days notice, accompanied by notice of intention to propose a resolution as a special resolution, has been given to the Member in accordance with this Constitution; and
- (b) by at least three quarters of votes of those Members who, being entitled to vote, vote in person at the meeting.

### **21.9 Minutes**

- (a) The Executive Officer shall keep minutes of the resolutions and proceedings of each General Meeting in books provided for that purpose, together with a record of the names of persons present at all meetings;
- (b) Any member of Paddle WA, on giving reasonable notice to the Executive Officer, may inspect the minutes of any General Meeting;
- (c) Within one (1) calendar month after each General Meeting the Executive Officer shall supply to the Secretary of each Affiliated Club a copy of the minutes of the General Meeting.

## **22. VOTING AT GENERAL MEETINGS**

- (a) Subject to this Constitution, Affiliated Clubs, through the nominated Delegate, shall be entitled to one (1) vote at General Meetings.
- (b) Subject to this Constitution, Affiliated Club votes shall be exercised by the Delegate. No other Member shall be entitled to vote, but shall subject to this Constitution have, and be entitled to exercise, those rights set out in Rule 8.1.
- (c) All votes shall be given personally or by Mail as provided in Rule 23.2.

## **23. PROXY AND POSTAL VOTING**

### **23.1 Proxy Voting Not Permitted**

Proxy voting shall not be permitted at General Meetings.

### **23.2 Postal Ballot**

- (a) Should an issue arise between General Meetings which requires a decision or ratification by Affiliated Clubs the Board may call a postal vote in such manner as it considers necessary.
- (b) Any such Mail vote shall be in accordance with the following procedure:
  - (i) The Executive Officer shall, upon receipt of the directive as aforesaid, as soon as practicable, dispatch a copy of the proposed resolution to each Voting Member.
  - (ii) Such dispatch shall be, at the discretion of the Chair, either by post or by Electronic Mail and shall be accompanied by a notice stating the date on which the voting shall close and indicating whether voting is by post or Electronic Mail.
  - (iii) The dispatch of the proposed resolution and notice shall be deemed to have been received by each Voting Member;
    - 1) in the case of dispatch by Post two (2) working days after posting;
    - 2) in the case of dispatch by Electronic Mail – on successful delivery to the entities nominated electronic mail address.
  - (iv) All votes shall be received by the Executive Officer in the case of:
    - 1) Mail Votes - within fourteen (14) days of dispatch of the proposed motion and notice, unless otherwise advised;
    - 2) Electronic Mail- (including facsimile and e-mail) no later than midday on the normal working day preceding the meeting.
- (c) Upon the close and counting of voting, the Chair shall examine the votes as tallied and advise each Authorised Voter the result of the voting so received.
- (d) A vote on any proposed motion captured by authenticated electronic voting system/s via an independent registered organisation, convening an authorised election on behalf of Paddle WA, shall be valid and binding in all respects.

## **PART V - THE BOARD**

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### **24. POWERS OF THE BOARD**

The Board, subject to the Act of this Constitution, shall have full power, jurisdiction and authority to do all things necessary to carry out the business, the affairs and the objects of Paddle WA.

#### **24.1 Board Composition**

The Board shall comprise:

- (a) the President elected in accordance with Rule 24.3;
- (b) Five (5) Elected Directors elected in accordance with Rule 25;
- (c) Two (2) Independent Directors that shall be appointed in accordance with Rule 26.

#### **24.2 ROLE AND RESPONSIBILITIES OF BOARD MEMBERS**

##### **OBLIGATIONS OF THE BOARD**

- (a) The board must take all reasonable steps to ensure the association complies with its obligations under the act and these rules.
- (b) Responsibilities of Board Members
- (c) A Board Member must exercise his or her powers and discharge his or her duties with a degree of care and diligence that a reasonable person would exercise in the circumstances.
- (d) A Board Member must exercise his or her powers and discharge his or her duties in good faith in the best interests of the Association and for a proper purpose.
- (e) A Board Member or former Board Member must not improperly use information obtained because he or she is a Board Member to:
  - (i) gain an advantage for himself or herself or another person; or
  - (ii) cause detriment to the Association.
- (f) A Board Member or former Board member must not improperly use his or her position to:
  - (i) gain an advantage for himself or herself or another person; or
  - (ii) cause detriment to the Association.

- (g) A Board Member having any material personal interest in a matter being considered at a Board Meeting must:
  - (i) as soon as he or she becomes aware of that interest, disclose the nature and extent of his or her interest to the Board;
  - (ii) disclose the nature and extent of the interest at the next General Meeting of the Association; and
  - (iii) not be present while the matter is being considered at the Board Meeting or vote on the matter.
- (h) Rule 24.2(g) does not apply in respect of a material personal interest that:
  - (i) exists only because the Board Member belongs to a class of persons for whose benefit the Association is established; or
  - (ii) the Board Member has in common with all, or a substantial proportion of, the members of the Association.
- (i) The Secretary must record every disclosure made by a Board Member under rule 24.2(g) in the minutes of the Board Meeting at which the disclosure is made.
- (j) No Board Member shall make any public statement or comment or cause to be published any words or article concerning the conduct of the Association unless the person is authorised by the Board to do so and such authority is recorded in the minutes of the Board Meeting.

### **24.3 Election of the President**

- (a) The President shall be elected by Board.
- (b) The President shall be one of the five (5) Elected Directors of the Board.
- (c) The President shall hold a three year term in accordance with Rule 24.3.

### **24.4 Chair of Board**

The President shall preside at every meeting of the Board. If the President is not present, or is unwilling or unable to preside, the Directors shall choose one of their number present to preside as Chair for that meeting only. Where the President is granted a leave of absence by the Board a single Chair may be appointed for the duration of the absence.

## **25. ELECTION OF ELECTED DIRECTORS**

### **25.1 Qualifications for Elected Directors**

- (a) Nominees for Elected Director positions on the Board must meet the qualifications as prescribed from time to time by the Board and set out in the By-Laws.
- (b) Elected Directors should have knowledge of canoeing or related disciplines, its strategic direction, its stakeholders and a commitment to the development of the sport of canoeing;
- (c) Nominees for Elected Director positions on the Board must declare any position they hold in an Affiliated Club, including as an office bearer, director or a paid appointee. If the nominee is elected they must resign from their position in the Affiliated Club, including but not limited to a position as officer, director or a paid appointee.
- (d) Nominees for Elected Director positions on the Board may not be employees of Paddle WA.

### **25.2 Elections of Elected Directors**

- (a) The Executive Officer shall call for nominations twenty-one (21) days before the date of the Annual General Meeting. All Affiliated Clubs shall be notified of the call for nominations.
- (b) A nominee shall be a Member of Paddle WA over the age of 18 years;
- (c) Nominations for Elected Directors must be:
  - (i) in writing;
  - (ii) on the prescribed form (if any) provided for that purpose;
  - (iii) signed by a witness, who shall be a member of Paddle WA over the age of 18 years; and
  - (iv) certified by the nominee (who must be a Member) expressing a willingness to accept the position for which they have applied.
- (d) Nominations must be received by the Executive Officer at least fourteen (14) days prior to the Annual General Meeting.
- (e) If the number of nominations received for the Board 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 duly elected
- (f) If the number of nominations exceeds the number of vacancies to be filled, a secret ballot shall be taken in such usual and proper manner as the Chair directs.
- (g) The voting shall be conducted by ballot, the procedure for which will be detailed in By-Laws.

- (h) Ballot results will be determined by a majority of votes.
- (i) If there are insufficient nominations received to fill all vacancies on the Board, any remaining vacant positions are to be taken as casual vacancies, to be dealt with in accordance with Rule 27.3.

### **25.3 Term of Appointment**

- (a) Elected Directors shall be elected in accordance with this Constitution for a term of three (3) years, which shall commence from the conclusion of the Annual General Meeting at which the election occurred until the conclusion of the third Annual General Meeting following.
- (b) No person who has served as an Elected Director for a period of six (6) consecutive years shall be eligible for election as an Elected Director until after the expiration of twelve months following the date of conclusion of the most recent term as an Elected Director.
- (c) For each three year interval, two Elected Directors shall be elected in the first year; two Elected Directors shall be elected in the second year and one Elected Director in the third year.
- (d) Should any adjustment to the term of Elected Directors elected under this Constitution be necessary to ensure rotational terms in accordance with this Constitution, this shall be determined by the Board. Elections to subsequent Boards shall then proceed in accordance with the procedures in this Constitution with approximately one third of the Elected Directors positions being declared vacant each year.

## **26. APPOINTMENT OF INDEPENDENT DIRECTORS**

### **26.1 Appointment of Independent Directors**

- (a) The Elected Directors will appoint two (2) Independent Directors.
- (b) Independent Directors may be appointed by the Elected Directors in accordance with this Constitution for a term of 2 years, which shall commence six weeks after the Annual General Meeting until six weeks after the conclusion of the second Annual General Meeting following.

### **26.2 Qualifications for Independent Directors**

The Independent Directors may have specific skills in commerce, finance, marketing, law or business generally or such other skills, which compliment the Board composition, but need not have experience in or exposure to the sport of canoeing. Independent Directors must become a member of Paddle WA.



### **26.3 Term of Appointment**

- (a) No person who has served as an Independent Director for a period of four (4) consecutive years shall be eligible for election as an Independent Director until after the expiration of twelve months following the date of conclusion of the most recent term as an Elected Director.
- (b) One (1) or two (2) Independent Directors may be appointed in each year of odd number and one (1) or two (2) Independent Director may be appointed, in each year of even number in accordance with Rule 26.1.
- (c) Should any adjustment to the term of Independent Directors appointed under this Constitution be necessary to ensure rotational terms in accordance with this Constitution, this shall be determined by the Board. Appointments to subsequent Boards shall then proceed in accordance with the procedures in this Constitution with approximately half the Board retiring each year.

## **27. VACANCIES OF BOARD MEMBERS**

### **27.1 Grounds for Termination of Director**

In addition to the circumstances (if any) 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) has, according to the *Interpretation Act* section 13D, be a bankrupt or a person whose affairs are under insolvency laws unless the person has obtained the consent of the Commissioner;
- (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 Paddle WA;
- (e) is absent without the consent of the Board from three (3) consecutive meetings of the Board;
- (f) holds any office of employment of Paddle WA;
- (g) without the prior consent or later ratification of the Members in General Meeting holds any office of profit under Paddle WA;
- (h) is directly or indirectly interested in any contract or proposed contract with Paddle WA and fails to declare the nature of his interest;
- (i) is removed from office by Special Resolution under Rule 27.2;

- (j) would otherwise be prohibited from being a director of a corporation under the Corporations Act or is disqualified from office under the Act;
- (k) breaches Board confidentiality such that the breach poses serious and indefensible circumstances with regards to the Directors fiduciary duty to Paddle WA or the Board's good governance of Paddle WA.

## **27.2 Removal of a Director**

- (a) Paddle WA in a General Meeting may by Special Resolution remove any Director, before the expiration of their term of office. If a Director is removed in accordance with this Rule the office of the Director becomes vacant and shall be filled in accordance with the procedure set out in Rule 27.3.
- (b) Where the Director to whom a proposed resolution referred to in Rule 27.2(a) makes representations in writing to the Executive Officer and requests that such representations be notified to the Members, the Executive Officer may send a copy of the representations to each Affiliated Club or, if they are not so sent, the Director may require that they be read out at the meeting, and the representations shall be so read.
- (c) Any written communication must be of reasonable length and must not contain any illegal, offensive or defamatory material.
- (d) At the Special General Meeting, the person whose removal is proposed; shall have the right to address the Meeting.
- (e) Removal of any Director shall be without prejudice to any legal claim against Paddle WA or that Paddle WA may have against the Director in respect to matters arising from such removal.
- (f) No person shall be entitled to hold a position on the Board if the person has been convicted of, or imprisoned in the previous five years for:
  - 1. an indictable offence in relation to the promotion, formation or management of a body corporate;
  - 2. an offence involving fraud or dishonesty punishable by imprisonment for a period of not less than three months; or
  - 3. an offence under Part 4 Division 3 or section 127 of the Act;unless the person has obtained the consent of the Commissioner.

## **27.3 Casual Vacancies**

- (a) In the event of a casual vacancy of an Elected Director the Board shall identify a

successor, within the parameters of Rule 25.2, and appoint a suitable person for the remainder of the vacating Directors natural term.

- (b) In the event of a casual vacancy of an Appointed Director the Board shall identify a successor from among appropriately qualifies persons, with due consideration to Rule 25.2 and appoint a suitable person for the remainder of the vacating Directors natural term.

#### **27.4 Remaining Directors May Act**

In the event of a casual vacancy or vacancies in the office of a Director, 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.

### **28. MEETINGS OF THE BOARD**

#### **28.1 Board to Meet**

The Board shall meet at least nine (9) times every calendar year for the dispatch of business and may adjourn and, subject to this Constitution otherwise regulate, its meetings as it thinks fit. The Executive Officer shall, on the requisition of two (2) Directors, convene a meeting of the Board within a reasonable time.

#### **28.2 Decisions of Board**

Subject to this Constitution, questions arising at any meeting of the Board shall be decided by a majority of votes and all questions so decided shall for all purposes be deemed a determination of the Board.

All Directors in attendance shall have one (1) vote on any question. The Chair shall also have a casting vote where voting is equal.

#### **28.3 Resolutions not in Meeting**

- (a) A resolution in writing, signed or assented to by electronic mail or other form of visible or other 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 their meetings as they think 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 and such notice specifies that Directors are not required to be present in person;
- (iii) in the event that a failure in communications prevents condition (i) from being satisfied by that number of Directors which constitutes a quorum, and none of such Directors are 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 condition (i) is satisfied again. If such condition is not satisfied within 15 minutes from the interruption the meeting shall be deemed to have terminated;
- (iv) any meeting held where 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 Chair is located.

#### **28.4 Quorum**

At meetings of the Board the number of Directors whose presence (or participation under Rule 28.2) is required to constitute a quorum is the majority of the Directors but shall be a minimum of four (4) Directors (50% plus 1).

#### **28.5 Notice of Board Meetings**

Unless all Directors agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their presence) not less than 7 days' oral or written notice of the meeting of the Board shall be given to each Director by the Executive Officer. The agenda shall be forwarded to each Director not less than 3 days prior to such meeting.

#### **28.6 Validity of Board Decisions**

A procedural defect in decisions taken by the Board shall not result in such decision being invalidated.

### **29. CONFLICTS**

#### **29.1 Directors' Interests**

A Director is disqualified by holding any place of profit or position of employment in Paddle WA, any Affiliated Club or in any company or incorporated association in which Paddle WA is a shareholder or otherwise interested or from contracting with Paddle WA 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 Paddle WA in which any Director is in any way interested will be voided for such reason.

#### **29.2 Conflict of Interest**

A Director shall declare his or her interest in any:

- (a) contractual matter;
- (b) selection matter;
- (c) judicial or disciplinary matter;
- (d) sponsorship matter; or
- (e) other financial matter;

in which a conflict of interest arises or may arise, and shall, unless otherwise determined by the Board, absent himself 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.

### **29.3 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 contract or other 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 contract or other 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.

### **29.4 Recording Disclosures**

Conflicts of interest shall be a standing agenda item at meetings of the Board and it is the duty of the Executive Officer to ensure that any declaration made or any general notice given by a Director in accordance with Rule 29.2 is recorded in the minutes.

## **30. EXECUTIVE OFFICER**

### **30.1 Appointment of Executive Officer**

- (a) The Executive Officer shall be appointed by the Board for such term and on such conditions as it thinks fit. The Executive Officer, shall be entitled to notice of, attend and participate in debate at, all meetings of the Board, but shall have no entitlement to vote.
- (b) If an Executive Officer is not appointed by the Board, the Board shall appoint a member of the Board to fulfill the obligations of the Executive Officer under this Constitution.

### **30.2 Executive Officer to Act as Secretary**

The Executive Officer shall act as and carry out the duties of secretary (and unless prohibited by law), public officer of Paddle WA and shall administer and manage Paddle WA in accordance with this Constitution.

### **30.3 Specific Duties**

The Executive Officer shall:

- (a) as far as practicable attend all Board meetings and General Meetings;
- (b) prepare the agenda for all Board meetings and all General Meetings;
- (c) record and prepare minutes of the proceedings of all meetings of the Board and Paddle WA; and
- (d) regularly report on the activities of, and issues relating to, Paddle WA.

### **30.4 Broad Power to Manage**

Subject to the Act, this Constitution, the By-Laws and any 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 Paddle WA.

### **30.5 Executive Officer may employ**

The powers of the Executive Officer to employ are outlined in the By-Laws.

## **PART VI - MISCELLANEOUS**

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### **31. DELEGATIONS**

#### **31.1 Board may Delegate Functions to Committees**

The Board may by instrument in writing create or establish or appoint from among its own members, the Members, or otherwise, committees to carry out such duties and functions, and with such powers, as the Board determines.

#### **31.2 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 by the Act or any other law, or this Constitution.

#### **31.3 Delegated Function Exercised in Accordance With Terms**

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

#### **31.4 Procedure of Delegated Entity**

- (a) The procedures for any committee established shall, with any necessary or incidental amendment, be the same as that applicable to meetings of the Board under Rule 28. The quorum shall be determined by the committee, but shall be no less than the majority of the total number of committee members.
- (b) Notwithstanding the specific construct of a committee, a Director or the Executive Officer shall be ex-officio members of any committee so appointed.
- (c) Within 7 days of any meeting of any committee, the committee shall send a copy of the minutes and any supporting documents to the Executive Officer.

### **31.5 Delegation may be Conditional**

A delegation under this Rule 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.

### **31.6 Revocation of Delegation**

The Board may by instrument in writing, revoke wholly or in part any delegation made under this Rule, and may amend, repeal or veto any decision made by such committee under this Rule where such decision is contrary to this Constitution, the By-Laws, the Act, the objects of Paddle WA or the committee's delegation.

### **31.7 Right to Co-opt**

It is expressly acknowledged that Board of Directors shall have the right to co-opt any person with appropriate experience or expertise to assist a Board Committee or the Board, in respect to such matters and on such terms as the Board of Directors thinks fit. Any person so co-opted shall not exercise the rights of a Committee member or Director but shall act in an advisory role only.

## **32. BY-LAWS**

### **32.1 Board to Formulate By-Laws**

The Board may (by itself or by delegation to a committee) formulate, approve, issue, adopt, interpret and amend such by-laws, regulations and policies ("By- Laws") for the proper advancement, management and administration of Paddle WA, the advancement of the objects of Paddle WA as it thinks necessary or desirable. Such By-Laws must be consistent with this Constitution.

### **32.2 By-Laws Binding**

All By-Laws made under this Rule shall be binding on Paddle WA and Members.

### **32.3 By-Laws Deemed Applicable**

All By-Laws, regulations and policies of Paddle WA in force at the date of the approval of this Constitution under the Act in so far as such By-Laws, regulations and policies are not inconsistent with, or have been replaced by this Constitution, shall be deemed to be By-Laws under this Rule.

### **32.4 Notices Binding on Members**

Amendments, alterations, interpretations or other changes to By-Laws shall be advised to Affiliated Clubs by means of notices approved by the Board and prepared and issued by the Executive Officer. Affiliated Clubs shall be obliged to draw such notices to the attention of their respective Members. Notices are binding upon all Members.

## **33. RECORDS AND ACCOUNTS**

### **33.1 Executive Officer to Keep Records**

The Executive Officer shall establish and maintain proper records and minutes concerning all transactions, business, meetings and dealings of Paddle WA and the Board and shall produce these as appropriate at each Board meeting or General Meeting.

### **33.2 Records Kept in Accordance with Act**

Proper accounting and other records shall be kept in accordance with the Act, generally accepted accounting principles and/or any applicable code of conduct. The books of account shall be kept in the care and control of the Executive Officer.

### **33.3 Inspection of Records**

Subject to privacy and commercial considerations and clause 9 of this Constitution, the Board may in its discretion make the records, books and other documents of Paddle WA available for inspection (but not copying) by a Member at any reasonable hour.

### **33.4 Negotiable Instruments**

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to Paddle WA, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by two (2) persons appointed in writing by the Board.

## **34. AUDITOR**

A properly qualified auditor or auditors shall be appointed and the remuneration of such auditor or auditors fixed by the Board. The auditor's duties shall be regulated in accordance with the Act, or if no relevant provisions exist under the Act, in accordance with generally accepted accounting principles and/or any applicable codes of conduct.

## **35. NOTICE**



### **35.1 Manner of Notice**

- (a) Notices may be given by the Executive Officer to any Member by sending the notice by post or facsimile transmission or where available, by electronic mail, to the Member's registered 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 and posting the notice. Service of the notice is deemed to have been effected 2 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 upon receipt of a confirmation report confirming the electronic mail message was received at the electronic mail address to which it was sent.

## **36. SEAL**

### **36.1 Safe Custody of Seal**

The Executive Officer shall provide for safe custody of the Seal.

### **36.2 Affixing Seal**

The Seal shall only be used by authority of the Board and every document to which the seal is affixed shall be signed by 2 Directors or a Director and the Executive Officer.

### **36.3 Director's Interest**

A Director may not sign a document to which the seal of Paddle WA is fixed where the Director is interested in the contract or arrangement to which the document relates.

## **37. INDEMNITY**

### **37.1 Directors to be Indemnified**

Every Director, auditor, manager, employee or agent of Paddle WA shall be indemnified to the extent provided under the directors and officers insurance policy of Paddle WA (if any) against any liability incurred by him/her in his/her capacity as Director, auditor, manager, employee or agent in defending any proceedings, whether civil or criminal, in which judgment is given in his/her favor or in which he/she is acquitted or in connection with any application in relation to any such proceedings in which relief is, under the Act, granted to him/her by the Court.

### **37.2 Association to Indemnify**

Paddle WA shall indemnify its Directors and employees to the extent provided under the directors and officers insurance policy of Paddle WA (if any) against all damages and costs (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 willful misconduct:

- (a) in the case of a Director performed or made whilst acting on behalf of and with the authority, express or implied of Paddle WA; and
- (b) in the case of an employee, performed or made in the course of, and within the scope of his/her employment by Paddle WA.

### **38. CANCELLATION AND DISTRIBUTION OF SURPLUS PROPERTY**

- (a) The Association may cease its activities and have its incorporation cancelled in accordance with the Act if the Members resolve by Special Resolution that the association will:
  - (i) apply to the Commissioner for cancellation of its incorporation; or
  - (ii) appoint a liquidator to wind up its affairs.
- (b) The association must be wound up under rule 38(a)(ii) and Part 9 of the Act before cancellation can take place if it has outstanding debts or any other outstanding legal obligations, or is a party to any current legal proceedings.
- (c) Upon cancellation of the Association, the Surplus Property must only be distributed to one or more of the following:
  - (i) an incorporated association under the Act;
  - (ii) a body corporate that at the time of the distribution is the holder of a licence under the charitable collections legislation in Western Australia;
  - (iii) a company limited by guarantee that is registered as mentioned in section 150 of the *Corporations Act 2001 (Cwth)*;
  - (iv) a company holding a licence that continues in force under section 151 of the *Corporations Act 2001(Cwth)*;
  - (v) a body corporate that:
    - A. is a Member or former member of the Association; and
    - B. at the time of the Surplus Property is distributed, has rules that prevent the property being distributed to its members;

- (vi) a trustee for a body corporate referred to in rule 38(c)(v); or
- (vii) a co-operative registered under the *Co-operatives Act 2009* that, at the time of the distribution, is a non-distributing co-operative as defined in that Act.

## **39. RESOLVING DISPUTES**

### **39.1 Disputes Arising under the Rules**

- (a) This rule applies to:
  - (i) Disputes between Members; and
  - (ii) Disputes between the Association and one or more Membersthat arise under the rules or relate to the rules of the Association.
- (b) In this rule “Member” includes any former Member whose membership ceased not more than six months before the dispute occurred.
- (c) The parties to a dispute must attempt to resolve the dispute between themselves within 14 days of the dispute coming to the attention of each party.
- (d) If the parties are unable to resolve the dispute, any party to the dispute may initiate a procedure under this rule by giving written notice to the Secretary of the parties to, and details of, the dispute.
- (e) The Secretary must convene a Committee Meeting within 28 days after the Secretary receives notice of the dispute under rule 39.1(d) for the Committee to determine the dispute.
- (f) At the Committee Meeting to determine the dispute, all parties to the dispute must be given a full and fair opportunity to state their respective cases orally, in writing or both.
- (g) The Secretary must inform the parties to the dispute of the Committee’s decision and the reasons for the decision within 7 days after the Committee Meeting referred to in rule 39.1(e).
- (h) If any party to the dispute is dissatisfied with the decision of the Committee they may elect to initiate further dispute resolution procedures as set out in the Rules.

### **39.2. Mediation**

- (a) This rule applies:

- (i) where a person is dissatisfied with a decision made by the Committee under rule 39.1; or  
  
where a dispute arises between a Member or more than one Member and the Association and any party to the dispute elects not to have the matter determined by the Committee.
- (b) Where the dispute relates to a proposal for the suspension or expulsion of a Member this rule does not apply until the procedure under rule 14 in respect of the proposed suspension or expulsion has been completed.
- (c) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 39.1(c), or a party to the dispute is dissatisfied with a decision made by the Committee under rule 39.1(g) a party to a dispute may:
  - (i) Provide written notice to the Secretary of the parties to, and the details of, the dispute;
  - (ii) Agree to, or request the appointment of, a mediator.
- (d) The party, or parties requesting the mediation must pay the costs of the mediation.
- (e) The mediator must be:
  - (i) a person chosen by agreement between the parties; or
  - (ii) in the absence of agreement:
    - A. if the dispute is between a Member and another Member – a person appointed by the Committee; or
    - B. if the dispute is between a Member or more than one Member and the Association, the Committee or a Committee Member then an independent person who is a mediator appointed to, or employed with, a not for profit organisation.
- (f) A Member can be a mediator, but the mediator cannot be a Member who is a party to the dispute.
- (g) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (h) The parties are to exchange written statements of the issues that are in dispute between them and supply copies to the mediator at least 5 days before the mediation session.
- (i) The mediator, in conducting the mediation, must:

- (i) give the parties to the mediation process every opportunity to be heard;
  - (ii) allow all parties to consider any written statement submitted by any party; and
  - (iii) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- (j) The mediator must not determine the dispute and the mediation must be confidential. Information provided by the parties in the course of the mediation cannot be used in any other legal proceedings that may take place in relation to the dispute.

### **39.3. Inability to Resolve Disputes**

If a dispute cannot be resolved under the procedures set out in the Rules, any party to the dispute may apply to the State Administrative Tribunal to determine the dispute in accordance with the Act or otherwise at law.