

CONSTITUTION

of

SURFING WESTERN AUSTRALIA INCORPORATED

1. NAME OF ASSOCIATION

The name of the Association is Surfing Western Australia Incorporated ("**Association**").

2. OBJECTS OF THE ASSOCIATION

The Association is established to:

- (a) participate as a member of Surfing Australia Incorporated ("SA") through and by which surfing can be conducted, encouraged, promoted, advanced and administered;
- (b) provide for the conduct, encouragement, promotion and administration of surfing throughout Western Australia;
- (c) ensure the maintenance and enhancement of the Association, SA, the other State Affiliates and surfing, its standards, quality and reputation for the benefit of the Members and surfing;
- (d) at all times promote mutual trust and confidence between the Association, SA, the other State Affiliates and the Members in pursuit of these Objects;
- (e) at all times act on behalf of and in the interest of the Members and surfing;
- (f) promote the success, strength and stability of the Association, SA, each State Association and surfing;
- (g) affiliate and otherwise liaise with SA, in the pursuit of these Objects;
- (h) use and protect the Intellectual Property;
- (i) apply the property and capacity of the Association towards the fulfilment and achievement of these Objects;
- (j) further develop surfing into an organised institution and with these Objects in view, to foster, regulate, organise and manage competitions, displays and other activities and to issue certificates and award trophies to successful Members;
- (k) review and/or determine any matters relating to surfing in Western Australia which may arise, or be referred to it, by any Member;
- (l) act as arbiter on all matters pertaining to the conduct of surfing in Western Australia, including disciplinary matters;

- (m) pursue through itself or other such commercial arrangements, including sponsorship and marketing opportunities as are appropriate to further the interests of surfriding in Western Australia;
- (n) formulate or adopt and implement appropriate policies, including in relation to sexual harassment, equal opportunity, equity, drugs in sport, health, safety, junior and senior programs, infectious diseases and such other matters as arise from time to time as issues to be addressed in surfriding;
- (o) represent the interests of its Members and of surfriding generally in any appropriate forum in Western Australia;
- (p) have regard to the public interest in its operations;
- (q) do all that is reasonably necessary to enable these Objects to be achieved and to enable the Members to receive the benefits which these Objects are intended to achieve;
- (r) promote the health and safety of Members and all other users of the aquatic environment;
- (s) encourage Members to realise their potential and athletic abilities by extending to them the opportunity of education and participation in surfriding competition and to award trophies and rewards to successful competitors;
- (t) encourage and promote performance-enhancing drug free competitions;
- (u) construct or engage in research, either solely or jointly with any other body or organisation, artificial reefs or other constructions or facilities that would lead to the improvement of surfing conditions;
- (v) actively support the preservation and conservation of the environment, and join with or affiliate with bodies or organisations concerned with the conservation and preservation of the environment;
- (w) undertake and or do all such things or activities, which are necessary, incidental or conducive to the advancement of these Objects.

3. POWERS OF THE ASSOCIATION

Solely for furthering the objects set out above the Association 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.

4. APPLICATION OF INCOME

4.1 The income and property of the Association shall be applied solely towards the promotion of the Objects.

4.2 Except as prescribed in this Constitution:

- (a) no portion of the income or property of the Association shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any Member; and
- (b) no remuneration or other benefit in money or money's worth shall be paid or given by the Association to any Member who holds any office of the Association.

4.3 Nothing contained in **clauses 4.1 or 4.2** shall prevent payment in good faith of or to any Member for:

- (a) any services actually rendered to the Association whether as an employee or otherwise;
- (b) goods supplied to the Association in the ordinary and usual course of operation;
- (c) interest on money borrowed from any Member;
- (d) rent for premises demised or let by any Member to the Association;
- (e) any out-of-pocket expenses incurred by the Member on behalf of the Association; or

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

5. LIABILITY OF MEMBERS

The liability of the Members is limited.

6. MEMBER'S CONTRIBUTIONS

Every Member undertakes to contribute to the assets of the Association in the event of it being wound up while the Member, or within one year after ceasing to be a Member, for payment of the debts and liabilities of the Association contracted before the time at which it ceases to be a Member and the costs, charges and expenses of winding up the Association, such an amount not exceeding one dollar (\$1.00).

7. DISTRIBUTION OF PROPERTY ON WINDING UP

If upon winding up or dissolution of the Association there remains after satisfaction of all its debts and liabilities any assets or property, the same shall not be paid to or distributed amongst the Members but shall be given or transferred to some other institution or institutions having Objects similar to the Objects of the Association and which prohibits the distribution of its or their income and property among its or their Members to an extent at least as great as is imposed on the Association by this Constitution. Such institution or institutions to be determined by the Members at or before the time of dissolution, and in default thereof by such judge of the Supreme Court of Western Australia or other Court as may have or acquire jurisdiction in the matter.

8. DEFINITIONS AND INTERPRETATION

8.1 Definitions

In this Constitution unless the contrary intention appears:

“**Act**” means the *Associations Incorporation Act 1981*.

“**Association**” means Surfing Western Australia Incorporated.

“**Board**” means the body consisting of the Directors.

“**By-Laws**” means any By-Laws made by the Board under **clause 37**.

“**Club**” means a surfing club which is a Member or is otherwise affiliated with the Association.

“**Club 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 General Meetings and on delegated sub-committees of the Association.

“**Constitution**” means the Constitution of the Association.

“**Director**” means a member of the Board and includes any person acting in that capacity from time to time appointed in accordance with this Constitution.

“**Executive Director**” means the Executive Director of the Association for the time being appointed under this Constitution.

“**Financial year**” means the year ending 30 June in each year.

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

“**Individual Member**” means a member of the Association under clause 12.

“**Independent Director**” means a Director of the Association appointed under **clause 31**.

“**Intellectual Property**” means all rights subsisting in copyright, business names, names, trade marks (or signs), logos, designs, equipment, images (including photographs, television, videos or films) or service marks (whether registered or registrable) relating to the Association or any championship, competition, series or event or surfing activity of or conducted, promoted or administered by the Association in Western Australia.

“**Interested Director**” means a Director of the Association elected under **clause 30**.

“**Life Member**” means an individual appointed as a Life Member of the Association under **Clause 12.2**.

“Member” means a member for the time being of the Association under **Part IV** of this Constitution.

“Objects” means the Objects provided under **clause 2** of this Constitution.

“President” means the President for the time being of the Association.

“SA” means Surfing Australia Incorporated.

“SA Constitution” means the constitution of Surfing Australia Incorporated as amended from time to time.

“Seal” means the common seal of the Association and includes any official seal of the Association.

“Special Resolution” means a resolution passed:

- (a) at a General Meeting of the Association of which 21 days notice, accompanied by notice of intention to propose a resolution as a special resolution, has been given to the Members in accordance with this Constitution; and
- (b) by at least three quarters of those Members who, being entitled to vote, vote in person at the meeting or by another form of visible or electronic communication approved by the Association from time to time.

“State” means and includes a State or Territory of Australia.

“State Affiliate” means an independent entity (including the Association) recognised by SA as the body administering surfing in its particular State.

“State Delegate” means the person appointed from time to time under **clause 29.4** to act for and on behalf of the Association and to represent the Association at general meetings of SA.

8.2 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 By-Laws 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.

8.3 Severance

If any provision of this Constitution or any phrase contained in them 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 this Constitution.

8.4 Objects and Powers

The specification of the Objects and the powers set out in **clause 3** of this Constitution, are not in any particular order and are not to be construed so as to lead to the construction that any object or power is more important than any other object or power nor that any object or power which is specified in detail is more important than any object or power which has not been specified in detail, and no particular object or power will be limited by reference to any other and the rule of construction known as the *ejusdem generis* rule shall not apply.

8.5 The Act

Except where the contrary intention appears, in this Constitution, an expression that deals with a matter under the Act, has the same meaning as that provision of the Act, and expressly displaces the model rules under the Act.

8.6 Sole Purpose

The Association is established solely for the Objects.

PART II - THE ASSOCIATION AS STATE AFFILIATE

9. STATUS AND COMPLIANCE OF ASSOCIATION

9.1 Recognition of Association

The Association is recognised as the official State Affiliate and controlling authority for surfriding in Western Australia and subject to compliance with this Constitution shall continue to administer surfriding in Western Australia in accordance with the Objects.

9.2 Compliance of Association as a State Affiliate

The Members acknowledge and agree the Association shall:

- (a) be or remain incorporated in Western Australia;
- (b) appoint a State Delegate annually to represent the Association at General Meetings of SA and inform SA of the details of that person;
- (c) nominate such other persons as may be required to be appointed to SA committees from time to time under this Constitution or the SA Constitution or otherwise;
- (d) forward to SA a copy of its constituent documents and details of its Board members
- (e) adopt the objects of SA (in whole or in part as are applicable to the Association) and adopt clauses or rules which reflect, and which are, to the extent permitted or required by the Act, generally in conformity with the SA Constitution;
- (f) apply its property and capacity solely in pursuit of the Objects;
- (g) do all that is reasonably necessary to enable the Objects to be achieved;
- (h) act in good faith and loyalty to ensure the maintenance and enhancement of surfing, its standards, quality and reputation for the benefit of the Members and surfing;
- (i) at all times act in the interests of the Members and surfing; and

9.3 Operation of Constitution

The Association and the Members acknowledge and agree:

- (a) that they are bound by this Constitution and that this Constitution operates to create uniformity in the way in which the Objects are to be conducted, promoted, encouraged, advanced and administered throughout Western Australia;
- (b) to ensure the maintenance and enhancement of surfriding, its standards, quality and reputation for the benefit of the Members and surfriding;
- (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 surfriding 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; and
- (e) to act in the interests of surfriding and the Members.

10. ASSOCIATION'S CONSTITUTION

10.1 Constitution of the Association

The constituent documents of the Association will clearly reflect the objects of SA, subject to any requirements in the Act, and at least to the extent of:

- (a) the objects of SA;
- (b) the structure and membership categories of SA;
- (c) recognising SA as the national peak body for surfriding in Australia, in accordance with the SA Constitution;
- (d) recognising SA as the final arbiter on matters pertaining to surfriding in Australia.

with such incidental variations as are necessary having regard to the Act.

10.2 Operation of SA Constitution

- (a) The Association will take all steps necessary to ensure its Constitution is in conformity with the SA Constitution at least to the extent set out in **clause 10.1** and in respect of those matters set out in **clause 10.1** shall ensure the Association's Constitution is amended in conformity with future amendments made to the SA Constitution, subject to any prohibition or inconsistency in the Act.

- (b) The Association shall provide to SA a copy of its Constitution and all amendments to this document.

PART III - THE CLUBS

11. STATUS AND COMPLIANCE OF CLUBS

11.1 Compliance of Affiliated Clubs

The Clubs acknowledge and agree that each of them shall:

- (a) be or remain incorporated in Western Australia;
- (b) nominate a Club Delegate annually at a general meeting of the Club to attend General Meetings and sub-committee meetings of the Association as required, and shall inform the Association of the details of that person accordingly;
- (c) recognise the Association as the authority for surfriding in Western Australia and SA as the national authority for surfriding; and
- (e) generally, have regard to the Objects and in particular the purpose to create a single uniform entity for the conduct, promotion, encouragement and administration of surfriding in Western Australia.

11.2 Constitution of Clubs

- (a) The constituent documents of a Club will clearly reflect the Objects and will conform with the Constitution, subject to any requirements in the Act, and at least to the extent of:
 - (i) the Objects;
 - (ii) recognising SA as the national peak body for surfriding in Australia;
 - (iii) recognising SA as the final arbiter on matters pertaining to surfriding in Australia;
 - (iv) such other matters as are required to give full effect to the Constitution;

with such incidental variations as are necessary having regard to the Act.

- (b) The Club will take all steps necessary to ensure its constitution is in conformity with the Constitution at least to the extent set out in **clause 11.2** and in respect of those matters set out in **clause 11.2** shall ensure the Club's constitution is amended in conformity with future amendments made to the Constitution, subject to any prohibition or inconsistency in the Act.
- (c) The Club shall provide to the Association a copy of its constitution and all amendments to these documents. The Club acknowledges and agrees that the

Association has power to veto any provision in its constitution which, in the Association's opinion, is contrary to the Objects.

11.3 Availability of Club Constitution

The constituent documents of each Club shall, at the earliest available opportunity, but within two years of the commencement of this Constitution, recognise the Association as the authority for surfriding in Western Australia and SA as the national authority for surfriding in Australia, and their respective objects.

11.4 Club Register

Each Club shall maintain, in a form acceptable to the Association, a register of all Individual Members at the Club. Each Club shall provide a copy of the register at a time and in a form acceptable to the Association, and shall provide prompt and regular updates of the register to the Association.

PART IV - MEMBERSHIP

12. MEMBERS

12.1 Classes of Members

The Members of the Association shall consist of:

- (a) Clubs, which subject to this Constitution, shall be represented by a Club Delegate, and who shall have the right to be present and debate on behalf of the Club at General Meetings, but shall have no voting rights;
- (b) Life Members, who subject to this Constitution, shall have the right to be present, debate and vote at General Meetings;
- (c) Individual Members – Senior, persons aged 18 years and over who, subject to this Constitution, shall have the right to be present, debate and vote at General Meetings.
- (d) Individual Members – Junior, persons under the age of 18 years who, subject to this Constitution, shall have the right to be present but not debate or vote at General Meetings.
- (e) Other Categories - such new classes of Members created by the Board from time to time.

12.2 Life Members

- (a) The Board may recommend to the Annual General Meeting that any natural person who has rendered distinguished service to surfing, where such service is deemed to have assisted the advancement of surfing in Western Australia be appointed as a Life Member.
- (b) A resolution of the Annual General Meeting to confer life membership (subject to **clause 12.2**) 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.

12.3 Application for Individual Membership

Application of a person for membership of the Association shall be made in writing in a form as required by the Board from time to time and shall be lodged with the General Manager of the Association.

12.4 Discretion to Accept or Reject Individual Members

- (a) The Association may accept or reject an application whether the applicant has complied with the requirements in **clause 12.3** or not and shall not be required or compelled to provide any reason for such acceptance or rejection.
- (b) Where the Association accepts an application, the General Manager shall, upon payment of the first year's annual subscription, enter the applicant's name in the register of Members and upon the name being so entered, the applicant becomes an Individual Member of the Association.
- (c) Where the Association rejects an application the Association shall refund any fees forwarded with the application and the application shall be deemed rejected by the Association.

13. SUBSCRIPTIONS AND FEES

The annual membership subscription (if any) and fees payable by Members to the Association, the time for and manner of payment shall be as determined by the Board and are payable in advance of each membership year.

14. AFFILIATION

14.1 Clubs

- (a) To be eligible for membership, a club must be incorporated or in the process of incorporation, which process shall be complete within 2 years of applying for membership under this Constitution.

- (b) For such time as the Club is not incorporated, the secretary of any such unincorporated Club shall be deemed to be the Member (on behalf of the unincorporated Club), 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 Clubs, to the extent that this is possible.
- (c) Any dispute or uncertainty as to the application of this Constitution to an unincorporated Club shall be resolved by the Board in its sole discretion.
- (d) Failure to incorporate within the period stated in **clause 14.1(a)** shall result in the expulsion of the secretary (acting on behalf of the unincorporated Club) from membership. The unincorporated club shall not be entitled to re-apply for membership until such time as it is incorporated.

14.2 Application for Affiliation

An application for affiliation by a club (“applicant”) 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 constitution (which must be acceptable to the Association and be substantially in conformity with this Constitution) and register of members; and
- (c) accompanied by the appropriate fee, if any.

14.3 Discretion to Accept or Reject Application

- (a) The Association may accept or reject an application whether the applicant has complied with the requirements in **clauses 14.1** and **14.2** or not and shall not be required or compelled to provide any reason for such acceptance or rejection.
- (b) Where the Association accepts an application, the applicant shall become a Club. Membership of the Association shall be deemed to commence upon acceptance of the application by the Association. The General Manager shall amend the Register accordingly as soon as practicable.
- (c) Where the Association rejects an application the Association shall refund any fees forwarded with the application and the application shall be deemed rejected by the Association.

14.4 Re-Affiliation

Clubs must re-affiliate with the Association in accordance with the procedures set down by the Association in By-Laws from time to time.

14.5 Deemed Membership

- (a) All Members which or who are, prior to the approval of this Constitution under the Act, members of the Association shall be deemed Members, and thus Members of the Association from the time of approval of this Constitution under the Act.
- (b) The Clubs shall provide the Association with such details of the Club as are required by the Association under this Constitution within one month of the approval of this Constitution under the Act.

15. REGISTER OF MEMBERS

15.1 General Manager to Keep Register

The General Manager shall keep and maintain a Register in which shall be entered (as a minimum):

- (a) the full name, address, class of membership and date of entry of the name of each Member; and
- (b) the full name, address and date of entry of the name of each Board Member.

15.2 Inspection of Register

Having regard to confidentiality considerations and privacy laws, an extract of the Register, excluding the address or other direct contact details of any Member or Board Member shall be available for inspection (but not copying) by Members, upon reasonable request.

15.3 Use of register

Subject to confidentiality considerations and privacy laws, the Register may be used by the Association to further the Objects, as the Board considers appropriate.

16. EFFECT OF MEMBERSHIP

Members acknowledge and agree that:

- (a) this Constitution constitutes a contract between each of them and the Association and that they are bound by this Constitution and the By-Laws;
- (b) they shall comply with and observe this Constitution 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 this Constitution and By-Laws they are subject to the jurisdiction of the Association;
- (d) the Constitution and By-Laws are necessary and reasonable for promoting the object of the Association and particularly the advancement and protection of surfing in Victoria; and
- (e) they are entitled to all benefits, advantages, privileges and services of Association membership.

17. DISCONTINUANCE OF MEMBERSHIP

17.1 Notice of Resignation

- (a) A Member, having paid all arrears of fees payable to the Association, may resign or withdraw from membership of the Association by giving notice in writing to the Association and SA of such resignation or withdrawal.
- (b) Upon the Association receiving notice of resignation of membership given under **clause 17.1(a)**, an entry in the Register shall be made recording the date on which the Member who or which gave notice ceased to be a Member.

17.2 Discontinuance by Breach

- (a) Membership of the Association may be discontinued by the Board upon breach of any clause of this Constitution, 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 Board or board.
- (b) Membership shall not be discontinued by the Board under **clause 17.2(a)** without the Board first giving the accused Member the opportunity to explain the breach and/or remedy the breach.
- (c) Where a Member fails, in the Board's view to adequately explain to remedy the breach, that Member's membership shall be discontinued under **clause 17.2(a)** by the Association giving written notice of the discontinuance.

17.3 Failure to re-Affiliate

If a Club has not re-affiliated with the Association within two months of re-affiliation falling due, that Club's membership will be deemed to have lapsed from that time. The Register shall be amended to reflect any lapse of membership under this **clause 17.3** as soon as practicable.

17.4 Member to Re-Apply

A Member whose membership has been discontinued or has lapsed under **clause 17.3**:

- (a) must seek renewal or re-apply for membership in accordance with this Constitution; and
- (b) may be re-admitted at the discretion of the Board.

17.5 Forfeiture of Rights

A Member which ceases to be a Member, for whatever reason, shall forfeit all rights in and claims upon the Association and its property and shall not use any surfing equipment or any other property of the Association including Intellectual Property. Any Association documents, records or other property in the possession, custody or control of that Member shall be returned to the Association immediately.

17.6 Delegate Position Lapses

The position of Club Delegate shall lapse immediately on cessation of membership of the Club.

17.7 Membership may be Reinstated

Membership which has been discontinued under this **Clause 17** may be reinstated at the discretion of the Board, with such conditions as it deems appropriate.

17.8 Refund of Membership Fees

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

18. DISCIPLINE

18.1. Disciplinary Committee

- (a) 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 Board; or
 - (ii) acted in a manner unbecoming of a Member, or prejudicial to the purposes and interests of the Association and/or surfing; or
 - (iii) brought the Association, SA, any other State Affiliate or surfing 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 the appeal mechanisms of the Association.

- (b) The Board may appoint a Judiciary Committee to deal with any disciplinary matter referred to it. Such a Judiciary Committee shall operate under the

principles and in accordance with the procedures as set down by the Board from time to time.

PART V - GENERAL MEETINGS

19. ANNUAL GENERAL MEETING

- (a) An Annual General Meeting of the Association shall be held in accordance with the provisions of the Act and on a date and at a venue to be determined by the Board.
- (b) All General Meetings other than the Annual General Meeting shall be Special General Meetings and shall be held in accordance with this Constitution.

20. NOTICE OF GENERAL MEETING

20.1 Notice of General Meetings

- (a) Notice of every General Meeting shall be given to every Member entitled to receive notice at the address appearing in the Register kept by the Association. The auditor, General Manager and Board Members shall also be entitled to notice of every General Meeting, which shall be sent to their last notified address. No other person shall be entitled as of right to receive notices of General Meetings.
- (b) A notice of a General 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 21 days' notice of a General Meeting shall be given to those Members entitled to receive notice, together with:
 - (i) the agenda for the meeting;
 - (ii) notification of availability and inspection of motions received from Members (except in the case of Special Resolutions where notice will be provided in accordance with the Act); and

21. BUSINESS

21.1 Business of General Meetings

- (a) The business to be transacted at the Annual General Meeting includes the consideration of accounts and the reports of the Board and auditors, the election of Board Members under this Constitution and the appointment and fixing of the remuneration of the auditors.
- (b) All business that is transacted at a General Meeting, and also all that is transacted at an Annual General Meeting, with the exception of those matters set down in **clause 21.1(a)** shall be special business.

21.2 Business Transacted

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

22. NOTICES OF MOTION

22.1 Notices of Motion to be Submitted

Members shall be entitled to submit notices of motion for inclusion as special business at a General Meeting. All notices of motion must be submitted in writing to the General Manager not less than 42 days (excluding receiving date and meeting date) prior to the General Meeting.

22.2 Unsuccessful Notice of Motion

A motion of which due notice has been given, if unsuccessful, cannot be resubmitted, nor may any other motion having a similar effect be moved at a subsequent General Meeting for a period of (not less than) twelve (12) months.

23. SPECIAL GENERAL MEETINGS

23.1 Special General Meetings May be Held

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

23.2 Requisition of Special General Meetings

- (a) The General Manager shall on the requisition in writing of not less than 20% of Members 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 Members 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 Members making the requisitions.
- (c) If the General Manager does not cause a Special General Meeting to be held within one month after the date on which the requisition is sent to the Association, the Members making the requisition, or any of them, may convene a Special General Meeting to be held not later than three months after that date.
- (d) A Special General Meeting convened by Members 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.

24. PROCEEDINGS AT GENERAL MEETINGS

24.1 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 the Association shall be 10 Members.

24.2 President to Preside

The President shall, subject to this Constitution, preside as Chairman at every General Meeting of the Association except:

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

If the President is not present, or is unwilling or unable to preside the Board Members present shall appoint one of their number to preside as chairman for that meeting only.

24.3 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 Chairman 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 Chairman 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 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 **clause 24.3(c)** it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

24.4 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:

- (a) by the Chairman; or
- (b) a simple majority of Members.

24.5 Recording of Determinations

Unless a poll is demanded under **clause 24.4**, a declaration by the Chairman 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.

24.6 Where Poll Demanded

If a poll is duly demanded under **clause 24.4** it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chairman directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

25. VOTING AT GENERAL MEETINGS

25.1 Members Entitled to Vote

Each Individual or Life Member shall be entitled to vote at General Meetings which, subject to this Constitution, shall be exercised by him or her. Only those Directors who are Members of the Association shall have the right to vote at General Meetings (excluding the Chairman who shall have no deliberative vote). The General Manager shall have the right to attend and debate, but not vote, at General Meetings.

25.2 Chairman May Exercise Casting Vote

Where voting at General Meetings is equal the Chairman may exercise a casting vote. The Chairman has no deliberative vote.

26. PROXY VOTING

26.1 Proxy Voting Not Permitted

Proxy voting shall not be permitted at any General Meetings

PART VI - THE BOARD

27. EXISTING BOARD MEMBERS

- (a) The members of the committee of the Association in place immediately prior to approval of this Constitution shall be deemed to be the Directors of the Association under this Constitution.
- (b) The person known and appointed to the position of the General Manager (or similar title) of the Association immediately prior to approval of this Constitution under the Act shall continue in that position following such

approval, subject to contractual arrangements.

28. POWERS OF THE BOARD

Subject to the Act and this Constitution, 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 State authority for surfing in Western Australia shall be responsible for acting on State and local issues in accordance with the Objects and shall operate for the benefit of the Members and the community throughout Western Australia and shall govern surfing in Western Australia in accordance with the Objects.

29. COMPOSITION OF THE BOARD

29.1 Composition of the Board

The Board shall comprise:

- (a) five (5) Interested Directors, all of whom must be Individual Members and who shall be elected under **clause 30**. The Board shall comprise representatives of the following key stakeholder groups affiliated with Surfing WA;

- * Long Board Riders
- * Short Board Riders
- * Body Board Riders
- * Female Participation
- * Judging

- (b) In addition to the 5 Interested Directors, up to five (5) Independent Directors who shall be appointed under **clause 31**.

29.2 Portfolios

If the Board considers it appropriate, in order to further the Objects of the Association, it may allocate Board Members to specific portfolios, with specific responsibilities, as determined in the discretion of the Board.

29.3 Election of President

The position of President shall be appointed by the Board from amongst its number as soon as practicable after each Annual General Meeting. The appointee will hold the position of President until the conclusion of the next Annual General Meeting following their appointment. A Director may be re-appointed as President.

29.4 Appointment of State Delegate

The Board shall, from amongst its Members appoint a State Delegate to attend General Meetings of SA for a term of one year, in accordance with the SA Constitution. The person may be re-appointed in any subsequent year.

30. ELECTION OF INTERESTED DIRECTORS

30.1 Terms of Office of Interested Directors

The Interested Directors shall be elected in accordance with this Constitution, and subject to this Constitution, shall hold office from the conclusion of the Annual General Meeting at which they were elected until the conclusion of the 2nd following Annual General Meeting. Interested Directors may be re-elected.

30.2 Qualifications for Interested Directors

- (a) Nominees for Interested Director positions on the Board must be members of the Association and meet the qualifications as prescribed from time to time by the Board and set out in this Constitution or in the By-laws.
- (b) Interested Directors should have a knowledge of the Association and its stakeholders and a commitment to the development of the Association.

30.3 Nominations of Candidates

- (a) Two (2) Interested Directors shall be elected to the Board each year.
- (b) Should any adjustment to the term of Interested 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 these Rules with approximately one half of the Interested Directors retiring each year.
- (c) Nominations shall be called for by the General Manager at least fifty-six days prior to the Annual General Meeting. When calling for nominations the General Manager shall also provide details of the necessary qualifications and job descriptions for the positions. Qualifications and job descriptions shall be as determined by the Board from time to time.
- (d) Nominations of candidates for election as Interested Directors (including the President) shall be:
 - (i) made in writing, signed by two Members and accompanied by the written consent of the nominee (which may be endorsed on the form of nomination); and
 - (ii) delivered to the Association not less than 28 days before the date fixed for the holding of the Annual General Meeting, and the Association shall post a list of the nominations, in alphabetical order, in a conspicuous place in the registered office of the Association, or on the Association website for at least 21 days immediately preceding the Annual General Meeting.
- (e) If insufficient nominations are received to fill all available vacancies on the Board:

- (i) the candidates nominated shall, subject to declaration by the Chairman, be deemed elected; and
 - (ii) further nominations may in the Chairman's discretion be received at the Annual General Meeting.
- (f) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated shall be deemed to be elected.
- (g) 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.

30.4 Voting procedures

The election of Interested Directors shall be conducted in accordance with such method of voting that the Board deems appropriate from time to time.

31. APPOINTMENT OF INDEPENDENT DIRECTORS

31.1 Qualifications of 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 Association. They do not need to be Members of the Association.

31.2 Appointment Terms of Independent Directors

- (a) The Interested Directors shall appoint up to five (5) Independent Directors who shall be appointed for a term of two (2) years.
- (b) 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 with this Constitution with approximately half the Independent Directors retiring each year.
- (c) No Independent Director shall serve more than 3 consecutive terms in office.

32. VACANCIES OF BOARD MEMBERS

32.1 Grounds for Termination of Office of Board Member

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

- (a) dies;
- (b) becomes bankrupt or makes any arrangement or composition with his creditors generally;
- (c) is legally determined to be 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 his office in writing to the Association;
- (e) is absent without the consent of the Board from two (2) consecutive meetings of the Board held during a period of 6 months;
- (f) without the prior consent or later ratification of the Members in General Meeting holds any office of profit under the Association;
- (g) is directly or indirectly interested in any contract or proposed contract with the Association and fails to declare the nature of his interest;
- (h) is removed by Special Resolution;
- (i) has been expelled or suspended from membership (without further recourse under this Constitution or the SA Constitution); or
- (j) would otherwise be prohibited from being a director of a corporation under the *Corporations Act*.

32.2 Remaining Board Members May Act

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

32.3 Casual Vacancy

In the event of a casual vacancy in the office of any Interested Director, the Board may appoint an Individual Member to the vacant office and the person so appointed may continue in office up to the conclusion of the Annual General Meeting at which the term of the previous appointee would have expired. In the case of a casual vacancy in the office of an Independent Director, the Board may appoint any person to the vacant office, provided such person has qualifications consistent with those required of Independent Directors under this Constitution

33. MEETINGS OF THE BOARD

33.1 Board to Meet

The Board shall meet as often as is deemed necessary in every calendar year for the dispatch of business (and shall be at least as often as is required under the Act) and subject to this Constitution may adjourn and otherwise regulate its meetings as it thinks fit. Four Directors may at any time, and the General Manager shall on the requisition of Four Directors, convene a meeting of the Board within reasonable time.

33.2 Decisions of Board

Subject to this Constitution, questions arising at any meeting of the Board shall be decided by a majority of votes and a determination of a majority of Directors shall for all purposes be deemed a determination of the Board. All Directors (except the Chairman) shall have one vote on any question. The Chairman shall have a casting vote where voting is equal, but shall have no deliberative vote.

33.3 Resolutions not in Meeting

- (a) A resolution in writing, signed or assented to by telegram, cablegram, radiogram, facsimile, telex or other form of visible or other electronic communication by all the Directors for the time being present in Australia 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 or more of the Directors.
- (b) Without limiting the power of the Board to regulate their meetings as they think fit, a meeting of Board may be held where one 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 this Constitution and such notice specifies that Directors are not required to be present in person;
 - (iii) in the event that a failure in communications prevents **clause 33.3(b)(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 **clause 33.3(b)(i)** is satisfied again. If such condition is not satisfied within fifteen minutes from the interruption the meeting shall be deemed to have terminated or adjourned; and
 - (iv) any meeting held where one 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 Chairman of the meeting is located.

33.4 Quorum

At meetings of the Board the number of Board Members whose presence is required to constitute a quorum is four Directors.

33.5 Notice of Board Meetings

Unless all Board Members agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their apology or presence) not less than seven days written notice of the meeting of the Board shall be given to each Board Member.

34. CONFLICT OF INTEREST

34.1 Director's 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 voided for such reason.

34.2 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 arrangement 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 arrangement 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.

34.3 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 **clause 34.2** 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.

34.4 Recording Disclosures

It is the duty of the General Manager to record in the minutes any declaration made or any general notice as aforesaid given by a Director in accordance with **Rule 34.2** and **34.3**.

34.5 Conflicts

- (a) A Director, notwithstanding the interest, may be counted in the quorum present at any meeting but shall absent himself from discussions in respect of

any contract or arrangement in which the Director is interested and shall not be entitled to vote in respect of such matter. If the Director votes, the vote shall not be counted.

- (b) In the event of an uncertainty as to whether it is necessary for a Director to absent himself from discussion or 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.

35. GENERAL MANAGER

35.1 Appointment of General Manager

The General Manager shall be appointed by the Board for such term and on such conditions as it thinks fit.

35.2 General Manager to Act as Public Officer

The General Manager shall act as and carry out the duties of Public Officer of the Association and shall administer and manage the Association in accordance with this Constitution.

35.3 Specific Duties

The General Manager shall:

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

35.4 Broad Power to Manage

Subject to the Act, this Constitution, the By-Laws and any policy directive of the Board, the General Manager 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 General Meeting shall invalidate any prior act of the General Manager or the Board which would have been valid if that resolution had not been passed.

35.5 General Manager may Employ

The General Manager 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 Board determines.

PART VII - MISCELLANEOUS

36. DELEGATIONS

36.1 Board may Delegate Functions

The Board may by instrument in writing create or establish or appoint from amongst its own members, Club Delegates, Individual Members, or otherwise, special committees, sub-committees, boards, individual officers and consultants to carry out such duties and functions, and with such powers, as the Board determines.

36.2 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 General Manager by the Act or any other law, or this Constitution or by resolution of the Association in General Meeting.

36.3 Delegated Function Exercised in Accordance With Terms

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

36.4 Procedure of Delegated Entity

The procedures for any entity exercising delegated power shall, subject to this Constitution and with any necessary or incidental amendment, be the same as that applicable to meetings of the Board under **clause 33** above. The entity exercising delegated powers shall make decisions in accordance with the Objects of the Association, and shall promptly provide the Association with details of all material decisions and shall provide any other reports, minutes and information as the Association may require from time to time.

36.5 Delegation may be Conditional

A delegation under this clause 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.

36.6 Revocation of Delegation

The Board may by instrument in writing, revoke wholly or in part any delegation made under this clause, and may amend or repeal any decision made by such body or

person under this clause.

37. BY-LAWS

37.1 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 purposes of the Association and Surfing in Western Australia as it thinks necessary or desirable. Such By-Laws must be consistent with the Constitution, the SA Constitution, any By-Laws made by SA and any policy directives of the Board.

37.2 By-Laws Binding

All By-Laws made under this clause shall be binding on the Association and Members.

37.3 By-Laws Deemed Applicable

All clauses, rules, by-laws and By-Laws of the Association in force at the date of the approval of this Constitution insofar as such clauses, rules by-laws and By-Laws are not inconsistent with, or have been replaced by this Constitution, shall be deemed to be By-Laws under this clause.

38. RECORDS AND ACCOUNTS

38.1 General Manager to Keep Records

The General Manager 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 General Meeting.

38.2 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 General Manager.

38.3 Association to Retain Records

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

38.4 Board to Submit Accounts

The Board shall submit to the Members at the Annual General Meeting the Statements of Account of the Association in accordance with this Constitution.

38.5 Accounts Conclusive

The Statements of Account when approved or adopted by an Annual General Meeting shall be conclusive except as regards any error discovered in them within three months after such approval or adoption.

38.6 Negotiable Instruments

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

39. AUDITOR

- (a) A properly qualified auditor or auditors shall be appointed by the Association in General Meeting and the remuneration of such auditor or auditors fixed. 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* and generally accepted principles, and/or any applicable code of conduct. The auditor may be removed by the Association in General Meeting.
- (b) The accounts of the Association shall be examined and the correctness of the profit and loss accounts and balance sheets ascertained by an auditor or auditors at the conclusion of each Financial Year.

40. NOTICE

40.1 Manner of Notice

- (a) Notices may be given by the General Manager to any person entitled under this Constitution to receive any notice by sending the notice by pre-paid post or facsimile transmission or where available, by electronic mail, to the Member's registered address or facsimile number or electronic mail address, or in the case of a Club 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 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.

40.2 Notice of General Meeting

Notice of every General Meeting shall be given in the manner authorised in this Constitution.

41. SEAL

41.1 Safe Custody of Seal

The General Manager shall provide for safe custody of the Seal.

41.2 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 two Board Members or one Board Member and the General Manager.

42. ALTERATION OF CONSTITUTION

- (a) This Constitution shall not be altered except by Special Resolution in accordance with the Act, and in compliance with all other procedures under the Act (if any).
- (b) In addition, there shall be no alteration or amendment to **clauses 44 or 45** without the consent of the relevant Minister or other authorised person under the Act.

43. INDEMNITY

43.1 Board Members to be Indemnified

Every Board Member, officer, auditor, manager, employee or agent of the Association shall be indemnified out of the property or assets of the Association against any liability incurred by him in his capacity as Board Member, officer, auditor or agent in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or in connection with any application in relation to any such proceedings in which relief is, under the Act, granted to him by the Court.

43.2 Association to Indemnify Board Members

The Association shall indemnify its Board Members, officers, managers and employees against all damages and costs (including legal costs) for which any such Board Member, officer, manager or employee may be or become liable to any third party in consequence of any act or omission except wilful misconduct:

- (a) in the case of a Board Member or officer, performed or made whilst acting on behalf of and with the authority, express or implied of the Association; and
- (b) in the case of an employee, performed or made in the course of, and within the scope of his employment by the Association.

44. DISSOLUTION

Subject to **clauses 6 and 7**, the Association may be wound up in accordance with the provisions of the Act.

45. AUTHORITY TO TRADE

The Association is authorised to trade in accordance with the Act.

46. GRIEVANCE PROCEDURES

Where a Member of the Association has a grievance with another Member or with the Association (but not being any of the grounds set out in **clause 18**) and that Member considers the grievance warrants investigation and action by the Association that Member shall follow the following procedure.

46.1 Grievances Officer

The Member shall contact, either by telephone or in writing, the Association's Grievances Officer, (GO). The GO is appointed by the Board and shall be the General Manager, (unless otherwise determined by the Board. Members of the Association with a grievance they wish to discuss should notify the nominated Grievances Officer by written notice. Where a grievance is to be submitted in writing it should be addressed clearly to the Grievances Officer and marked "Private & Confidential".

46.2 Action by Grievances Officer

- (a) Where a grievance has been received by the Grievances Officer she or he shall, as soon as practicable, meet with, or discuss the grievance with the aggrieved Member. The Grievances Officer may take whatever steps and conduct whatever investigations necessary to determine whether the grievance is legitimate.
- (b) Where the Grievances Officer determines the grievance is legitimate she or he shall take all reasonable steps to resolve the grievance.
- (c) Where the Grievances Officer determines the grievance is not legitimate she or he shall advise the aggrieved Member accordingly. If the aggrieved Member is not satisfied with the Grievances Officer's determination they may take whatever further action they consider necessary or appropriate.
- (d) Where the Grievances Officer is unable to resolve a grievance or considers the grievance of a very serious nature they shall report the grievance to the Secretary and/or the Board for action.

- (e) All grievances received by the Grievances Officer, and all information surrounding the circumstances of a grievance which is discovered by the Grievances Officer on investigation shall be confidential and may be communicated only to the Secretary and/or the Board.

SURFING WESTERN AUSTRALIA (INCORPORATED)

CONSTITUTION

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