

South West Catchments Council (Inc.)

Constitution

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DIVISION 1 – ASSOCIATION

1. NAME OF THE ASSOCIATION

- 1.1. The name of the Association is South West Catchments Council (Inc.).
- 1.2. The Association's financial year will be the period 12 months beginning on 1 July and ending on 30 June of each year.

2. DEFINITIONS AND INTERPRETATIONS

- 2.1. In these rules, unless the contrary intention appears:

“**Act**” means the *Associations Incorporation Act 2015 (WA)* and any later amendment.

“**Annual General Meeting**” means the meeting convened under Rule 25(6)(i), Rule 25.8(ii) and Rule 25.9 where the meeting shall be conducted annually within six months after the Financial Year, or a longer period approved by the Commissioner, as referred to in section 50 of the Act.

“**Association**” means the South West Catchments Council (Inc.) as defined under Rule 1.1, that may be referenced as “SWCC” in other organisational documents.

“**Audit, Risk and Remuneration Committee Chair**” means the Board Director duly elected as the residing Chair of the Audit, Risk and Remuneration Committee undertaking the functions defined by Rule 18.2.

“**Board of Management**” or “**Board**” means the governing entity where its Board Directors are elected or appointed by the mechanisms outlined under Rule 8, 9 and 10 respectively, as referred to in section 38 of the Act as the ‘Management Committee’.

“**Board Director**” means a duly elected or appointed person residing on the governing Board of Management as referred to in section 38 of the Act and referred to in Division 1 of the Act as a ‘Member of the Management Committee’.

“**Board Meeting**” means all Board meetings convened under Rule 25;

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

- (i) the Register of Members;
- (ii) the Register of Board Directors;
- (iii) the Financial Records, Financial Statements or Financial Reports, however compiled, recorded or stored;
- (iv) any document carrying the Association's name; and
- (v) any other record of information pertaining to the Association.

“**By-laws**” means an additional rule other than stated in the Constitution that has been made by the Association to regulate the actions of the Association, its Board Directors, Members and officers.

“**Casual Vacancy**” means a short-term position that has become available for a Board Director on the Board due to an event detailed under Rule 10.1.

“**Chair**” means the Board Director duly elected or acting under Rule 9 or Rule 10.2 to the Board leadership role of the Association undertaking the responsibilities defined under Rule 14.

“Chief Executive Officer” means the Association’s executive officer appointed by the Board undertaking the responsibilities defined under Rule 16.

“Commissioner” means the duly Minister-appointed person designated as the Commissioner under section 153 of the Act.

“Conflict of Interest” means a conflict between a Board Director, Member or officer and their role in the Association due to a real or perceived loss of independence by fact of a separate private or personal interest.

“Constitution” means this document and any amendment or variation of it, as referred to in Part 3 of the Act as the ‘Rules of Incorporated Association’.

“Deputy Chair” means the Board Director duly elected or appointed under Rule 9 or Rule 10.3 to the Board leadership role of the Association undertaking the responsibilities defined under Rule 15.

“Financial Records” includes —

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

“Financial Report” means Association reports pertaining to the financial year as referred to in section 62 of the Act.

“Financial Statement” means the financial statement of the Associations as referred to in section 62 of the Act.

“Financial Year” means the period commencing 1 July and ending on the 30 June in the following year.

“General Meeting” means a Member meeting convened under Rule 25.5.

“In-Person” means in attendance by fact of:

- (i) physically being present at the meeting, or
- (ii) being able to communicate by using any Board pre-approved technology that reasonably allows the person to participate fully in discussions as they happen in the meeting and in making decisions, provided that their participation is made known to the other attendees.

“Member” means a non-profit organisation recognised under Australian law that has satisfied the conditions of Membership as identified under Rule 19.

“Membership” means the collective organisations of approved Member organisations listed on the Register of Members referred to under Rule 20.

“Member Authorised Nominee” means a person designated by a Member organisation to represent their interests and vote on their behalf, who is listed by name on the Register of Members referred to under Rule 20, and shall be the main contact for the Association’s correspondence to, and between, that Member organisation.

“**Natural Resource Management**” or “**NRM**” means the environmentally sustainable management of the land, water and biodiversity resources (the ‘environment’) for the benefit of existing and future generations, including any landcare activities, and for the maintenance of the life support capability of the biosphere.

“**Notice**” means an official communication of the Association.

“**Officeholder**” means a Board Director having additional role and responsibilities, either as a Chair or Deputy Chair.

“**Public Fund**” means the South West Environment Fund that the Association operates as a separate, but related, public fund entity to administer gifts of money or property for use consistent with its principal purpose in accordance with Section 30-265 (2) of the *Income Tax Assessment Act 1997 (Cth)* and *Taxation Ruling 95/27*. The Public Fund provides Deductible Gift Recipients (DGR) status recognised by the Australian Taxation Office to attract tax deductible donations.

“**Register of Board Directors**” means a list of current Board Directors and combines with other employee records of other office holders or trustees of the Association to comply with Part 4 Division 6 of the Act, as collectively referred to as the ‘Record of Office Holders’.

“**Register of Delegations**” means a list of delegated authorities where responsibilities are allocated as set out by the Board or by the Chief Executive Officer, that is approved by the Board.

“**Register of Environmental Organisations**” means a list of registered environmental organisations and their related public funds that is administered by the Government and established under the *Income Tax Assessment Act 1997 (Cth)*.

“**Register of Members**” means a list of current Member organisations, and their Member Authorised Nominees, as referred to in Division 5 of the Act as the ‘Register of Members’.

“**Special General Meeting**” means a Member meeting convened under Rule 25.6(iii).

“**Special Resolution**” means a resolution carried by at least seventy-five percent of Members as represented by the Member Authorised Nominees or proxies present In-Person (subject to any special instructions for voting), at an Association meeting set for that purpose or specifically including that purpose.

“**Standing Committee**” means a permanent group of persons, whether associated with Members of the Association or otherwise, appointed by the Board in accordance with Rule 18 for the purposes of delegated responsibilities and advice to the Board Directors, according to its terms of reference set by the Board.

- 2.2. In interpreting the meaning of any rule or words in this Constitution, regard may be had to the provisions of the *Interpretation Act 1984 (WA)*, as if this Constitution were a written law within the meaning of the Act.

3. OBJECTS OF THE ASSOCIATION

- 3.1 The objects of the Association are to:
- (i) protect and enhance the natural resources in the South West of Western Australia, and:
 - (ii) promote and support their sustainable use.

4. NON-PROFIT BODY

- 4.1. The Association shall maintain a public fund to be called the South West Environment Fund, for the specific purpose of supporting the environmental objects of the Association. The Fund is to receive

gifts of money or property for this purpose and any money received because of such gifts must be credited to its bank account. The Fund must not receive any other money or property into its account, and it must comply with subdivision 30-E of the *Income Tax Assessment Act 1997*.

- 4.2. The property and income of the Association shall be applied solely towards the promotion of 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 the promotion of those objects or purposes.
- 4.3. A payment may be made to a Member out of the funds of the Association only if it is:
 - (i) payment in good faith as reasonable remuneration for any services provided to the association, or for goods supplied to the association, in the ordinary course of business, or
 - (ii) payment of interest, on money borrowed by the Association from the Member, at a rate not greater than the cash rate published from time to time by the Reserve Bank of Australia; or
 - (iii) payment of reasonable rent to the Member organisation for premises leased by the Member to the Association; or
 - (iv) reimbursement of reasonable expenses properly incurred by the Member on behalf of the Association.

5. POWERS OF THE ASSOCIATION

- 5.1 The powers conferred on the Association are the same as those conferred by section 14 of the Act, and are subject to the Act and any additions, exclusions or modifications to those defined below.
- 5.2 The Association may do all things necessary or convenient for carrying out its objects and purposes, and in particular shall:
 - (i) acquire, hold, deal with, and dispose of any real or personal property;
 - (ii) open and operate bank accounts;
 - (iii) invest its money in any:
 - (a) security in which trust monies may lawfully be invested; and
 - (b) other manner authorised by the Constitution;
 - (iv) borrow money upon such terms and conditions as the Association thinks fit;
 - (v) give such security for the discharge of liabilities incurred by the Association as the Association thinks fits;
 - (vi) appoint agents to transact any business of the Association on its behalf;
 - (vii) enter into any other contract it considers necessary or desirable.

DIVISION 2 – BOARD OF MANAGEMENT

6. BOARD COMPOSITION AND POWERS

- 6.1. The Board shall be comprised of five (5) to eight (8) non-executive Directors, including:
- (i) the Officeholders of the Association; and
 - (ii) three (3) to six (6) other Board Directors.
- 6.2. The Officeholders of the Association are:
- (i) the Chair;
 - (ii) the Deputy-Chair.
- 6.3. The Board Directors are the persons who, as the management committee of the Association, have the power, including those set out under Rule 5, to manage the affairs of the Association.
- 6.4. The Board, subject to the Act, these rules and any Member resolution passed, has the power to do all things necessary or convenient to be done for the proper management of the affairs of the Association.
- 6.5. The Board shall take all reasonable steps to ensure that the Association complies with the Act, all related legislation, these rules, the By-laws and any other Member resolution passed.

7. REGISTER OF BOARD DIRECTORS

- 7.1. The Chief Executive Officer shall keep, maintain and make available a Register of Board Directors in accordance with Part 4 Division 6 of the Act.

8. ELECTION OF BOARD OF DIRECTORS

- 8.1. Unless the Casual Vacancy provision under Rule 10.3 applies, the term of appointment for a Board Director shall be four years, and the Board Director may be re-elected to serve a maximum of two consecutive four-year terms (eight years in total), subject to the selection process outlined in Rule 8.2 and the Board Election Guidelines.
- 8.2. A selection panel is to recommend in writing, following public advertisement, one or more eligible persons as candidates for the Board Director role(s), with the selection panel being formed with consideration to the inclusion of:
- (i) The Chair of the Board, or other Board Director where the Chair is seeking re-election
 - (ii) A Board Director;
 - (iii) An independent person nominated by the Association Member organisations, with board governance skills and experience, or other experience identified by the Board as appropriate to the process at that time, and;
 - (iv) The Chief Executive Officer as an ex-officio member.
- 8.3. A set of selection criteria for Board Director(s) shall follow the provisions under Rule 8.4 and 8.5.
- 8.4. No person shall be entitled to hold a position on the Board if the person:

- (i) is under the age of eighteen; or
- (ii) is permanently incapacitated by mental or physical ill-health; or
- (iii) is an undischarged bankrupt or their affairs are under insolvency laws; or
- (iv) has been convicted of, or imprisoned in the previous five years for an offence in relation to the promotion, formation or management of an organisation recognised under Australian law; or
- (v) has been convicted of, or imprisoned in the previous five years for an offence involving fraud or dishonesty punishable on conviction by imprisonment for a period of not less than three months; or
- (vi) has been convicted of an offence under Part 4 Division 3 or section 127 of the Act; or
- (vii) has been expelled under Rule 12.

8.5. Board Director election or appointment requires that the candidate:

- (i) has the required knowledge, skills or experience as defined in the Board Election Guidelines agreed to by the Board of Management;
- (ii) does not hold office or membership at the time of election or appointment as a Director, that allows voting rights on the main decision-making committee of any organisation that represents a competing interest to the Association in respect of funding or promotion.
- (iii) has not previously served as a Board Director for the longer period of either two terms or eight years; and
- (iv) is not otherwise ineligible to be a Board Director, pursuant to section 39 of the Act.

8.6. Subject to appointment by the Casual Vacancy provision under Rule 10.3, the Membership shall elect a Board Director at an Annual General Meeting or Special General Meeting for that purpose, carried by at least seventy-five percent of Members as represented by the Member Authorised Nominees or proxies present In-Person (subject to any special instructions for voting).

8.7. The Chief Executive Officer shall notify the Member Authorised Nominees within fourteen days of the appointment(s).

9. ELECTION OF OFFICEHOLDERS

Chair

- 9.1 Any current Board Director may nominate, or be nominated, for the Chair position, and can only be appointed by their own acceptance of the role.
- 9.2 The role of Chair is for a two-year term or to the second Annual General Meeting within the term, whichever occurs first.
- 9.3 The current serving Chair is eligible to nominate, or be nominated, for a maximum of four consecutive two-year terms (eight years in total). In the case of re-nomination this may be for a mutually agreed period not exceeding two years.
- 9.4 Subject to a Casual Vacancy under Rule 10.2 or a suspension or expulsion under Rule 12, the election of the Chair is managed by the Board by majority vote of the Board Directors at the first Board Meeting as soon as practicable after the Annual General Meeting or Special General Meeting where Board Directors are elected.

Deputy Chair

- 9.5 Any current Board Director may nominate, or be nominated, for the Deputy Chair position, and can only be appointed by their own acceptance of the role.
- 9.6 The role of Deputy Chair is for a one-year term or to the first Annual General Meeting within the term, whichever occurs first.
- 9.7 The current serving Deputy Chair is eligible to nominate, or be nominated, for re-election.
- 9.8 Subject to a Casual Vacancy under Rule 10.3, or a suspension or expulsion under Rule 12, the election of the Deputy Chair is managed by the Board by majority vote of the Board Directors at the first Board Meeting as soon as practicable after the Annual General Meeting or Special General Meeting where Board Directors are elected.

10. CASUAL VACANCIES ON THE BOARD OF MANAGEMENT

- 10.1 The office of a Board Director shall be considered to be vacant where the residing Board Director is:
 - (i) terminated under Rule 11; or
 - (ii) suspended or expelled under Rule 12; or
 - (iii) chooses to resign from the Board of Management under Rule 11.1 (iii).
- 10.2 Where the Chair position becomes vacant, the Deputy Chair shall take the role as an acting position, or where they are unavailable or unwilling, the Board Directors may elect a willing Board Director by majority vote to act in the role. Such person will be referred to as the 'Acting Chair'.
- 10.3 Where a Board Director Casual Vacancy exists, other than the Chair:
 - (i) A temporary replacement can be appointed directly by a unanimous decision of the Board in accordance with the conditions laid out under Rules 8.4 and 8.5 for the purposes of filling a Casual Vacancy or securing a specific and required skill set within the Board, where:
 - (i) a temporary appointment made by the Board in accordance with 10.3(i) shall be ratified by the Members within six months of the appointment being made at a General Meeting as defined under rule 25.5;
 - (ii) a temporary appointment cannot exceed twelve months in duration, unless the Membership agrees, at a General Meeting as defined under rule 25.5, to have the person carry the remaining term of a replaced Board Director; and
 - (iii) the temporary appointment is entitled to seek election in accordance with Rule 8 at the next available opportunity.
- 10.4 The Chief Executive Officer shall notify the Board Directors and Members within fourteen days of any appointment.

11. TERMINATION OF A BOARD DIRECTOR

- 11.1 A Board Director shall cease to be a Board Director if the person:
 - (i) dies, or becomes permanently incapacitated by mental or physical ill-health;
 - (ii) becomes disqualified by events under Rule 8.4;

- (iii) resigns from office that becomes in effect at the time of the written resignation being delivered to the Chair;
- (iv) is removed from office, temporarily or permanently under Rule 12; or
- (v) is absent from more than:
 - (a) three consecutive Board Meetings without good reason; or
 - (b) three Board Meetings in the same Financial Year without tendering an apology to the person presiding at each of those Board Meetings and without good reason, where the Board Director received the Notice of the meetings, and the Board has resolved to declare the office vacant.

11.2 On termination, a Board Director shall return all records and property of the Association within fourteen days.

11.3 The Chief Executive Officer shall notify the Board Directors and Members within fourteen days of any termination.

12. SUSPENSION OR EXPULSION OF A BOARD DIRECTOR

12.1 The Board of Management or the Association retains the right to suspend or expel a Board Director if:

- (i) their actions are detrimental to the interest and / or reputation of the Association;
- (ii) on refusal or neglect to comply with these rules; or
- (iii) where they have breached, or are under investigation of a serious breach, of their duties; or
- (iv) have become temporarily incapacitated by mental or physical ill-health.

12.2 If a Board Director is suspended or expelled and holds an Officeholder role, they shall also be suspended or expelled as an Officeholder.

12.3 A Board Director may be suspended only as an Officeholder and remain as a Board Director by not fulfilling their Officeholder duties at an appropriate performance level.

12.4 Where the Board or Association moves to suspend or expel a Board Director or Officeholder it shall communicate the intent to suspend or expel, in writing, to the Board Director not less than fourteen days before the date of the Board or Member meeting for which the expulsion will be considered, giving:

- (i) Notice of the proposed suspension or expulsion and of the time, date and place of the Board or Member meeting at which the question of that suspension or expulsion will be decided; and
- (ii) particulars of the conduct in question.

12.5 A Board Director or Officeholder shall be suspended or expelled, after being given the opportunity to provide a written statement to disclaim or make comment against the conduct in question that will be issued to attendees at the meeting prior to voting, carried by at least seventy-five percent of the other Board Directors at a Board meeting, or carried by at least seventy-five percent of the Member Authorised Nominees or proxies at a Member meeting.

12.6 A decision made under Rule 12.5 shall be recorded in the meeting minutes and kept as a record, an entry in the Register of Boards Directors is to be made, and the person suspended or expelled shall be informed in writing within fourteen days of the decision.

- 12.7 A decision made under Rule 12.5 shall be updated when the suspension period has passed within fourteen days of the date.
- 12.8 A Board Director or Officeholder that has been suspended cannot exercise any rights or privileges as a Board Director or Officeholder, including all voting rights, during the period they are suspended.
- 12.9 A Board or Member decision to suspend or expel a Board Director or Officeholder is final.
- 12.10 The Chief Executive Officer shall notify the Board Directors and Member Authorised Nominees within fourteen days of any suspension or expulsion.

13. BOARD DIRECTOR DUTIES

- 13.1 A Board Director shall comply with their duties outlined under Part 4 Division 3 of the Act, and exercise their powers and discharge their duties with:
 - (i) a degree of care and due diligence that a reasonable person would exercise in the circumstances; and
 - (ii) independently and in good faith in the best interests of the Association and for a proper purpose.
- 13.2 A Board Director, or former Board Director, shall not improperly use information obtained because he or she is a Board Director, or was a Board Director, to:
 - (i) gain an advantage for themselves or another person; or
 - (ii) cause detriment to the Association.
- 13.3 A Board Director, or former Board Director, shall not improperly use their position to:
 - (i) gain an advantage for themselves or another person; or
 - (ii) cause detriment to the Association.
- 13.4 A Board Director having any real or perceived Conflict of Interest in a matter being considered at a Board Meeting or Member meeting shall, as soon as they become aware of that interest, disclose the nature and extent of their interest to the Chair, and, unless otherwise agreed by a majority vote of remaining Directors present in person:
 - (i) not be present while the matter is being considered at the Board Meeting or a Member meeting;
 - (ii) not issue any related documentation that would be deemed confidential or in conflict with their interest; and
 - (iii) rescind from voting on the matter.
- 13.5 The Board minutes shall record every disclosure made by a Board Director under Rule 13.4 where the disclosure is made.
- 13.6 With the exception of authorised personnel under Rule 14.3 and including an Acting Chair under Rule 10.2, no Board Director shall make any public statement or comment or cause to be published any words or article, including on social media, 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.

14. CHAIR DUTIES

- 14.1. The Chair shall preside at all Board Meetings and Member meetings; and where they are unable to perform their functions, then the role is delegated to the Deputy Chair; or otherwise in their absence:
- (i) another Board Director appointed for that meeting by majority of the Board Directors for a Board Meeting; or
 - (ii) where relating to presiding over a Member meeting, another Board Director or Member Authorised Nominee appointed for that meeting by the Membership.
- 14.2. The Chair shall ensure that the agenda for Board Meetings and Member meetings is prepared, with consideration to:
- (i) authorised attendees providing potential agenda items in writing to the Chair no less than ten days prior to the date of the meeting; and
 - (ii) the inclusion of urgent items being placed on the agenda up to, and including, at the meeting provided that a majority of attendees present so agree.
- 14.3. The Chair shall act as the Association's primary spokesperson, and may authorise any Board Director, Member Authorised Nominee or officer to act as spokesperson on any specific matter or on any specific occasion.
- 14.4. The Chair shall encourage full and balanced participation in meetings and seek decision by consensus wherever possible.
- 14.5. The Chair shall ensure the rules of this Constitution are followed in leading the Board and other Member meetings.
- 14.6. The Chair shall present a Chair's Annual Report at the Annual General Meeting.

15. DEPUTY CHAIR DUTIES

- 15.1. The Deputy Chair shall assume the duties of Chair in their absence, including any required leave of absence.

16. CHIEF EXECUTIVE OFFICER DUTIES

- 16.1. The Chief Executive Officer is responsible to the Board of Management for supporting the administrative and management functions required of it, including:
- (i) ensuring that authorities delegated by the Board are recorded in the Register of Delegations;
 - (ii) for all meetings of the Association, providing notices of meetings, preparing the business for meetings, and ensuring that meetings comply with the Act where relevant;
 - (iii) maintaining the Register of Members and Board Directors, and an up to date copy of this Constitution.
- 16.2. The Chief Executive Officer is responsible for providing executive leadership and management of the Association, including:
- (i) operating within the delegated authorities of the Board, as recorded in the Register of Delegations;

- (ii) undertaking administrative and operational functions and processes pursuant to ensuring the effective and efficient functioning of the Association and in accordance with legislative and policy requirements relevant to the Association;
 - (iii) appropriately maintaining and ensuring the safe custody of all Books of the Association as required of the Act.
- 16.3. The Chief Executive Officer is responsible for the appropriate financial management of the Association, including:
- (i) ensuring that amounts paid to the Association are collected and credited to appropriate accounts, and amounts paid by the Association are authorised;
 - (ii) ensuring the Association complies with the relevant requirements of Part 5 of the Act;
 - (iv) appropriately maintaining such accounting records that explain the financial transactions and financial position of the Association and that will enable the true and fair accounts of the Association to be conveniently and properly audited;
 - (v) ensuring preparation of a financial report in accordance with Part 5 of the Act and submission of the report to the Members at an Annual General Meeting of the Association.

17. BOARD DIRECTOR PAYMENTS

- 17.1. Board Directors may be entitled to be paid a stipend from the funds of the Association by virtue of their position and as remuneration for duties undertaken as a Director, subject to Rule 17.2.
- 17.2. The rates for stipends shall be initially set or increased only by a resolution of the Members but may be reduced in accordance with operational budget requirements of the Association at any time with the approval of the Board of Management.
- 17.3. The Board Directors are entitled to be reimbursed for reasonable expenses properly incurred by a Board Director on behalf of the Association.
- 17.4. On termination under Rule 11 a Board Director shall cease to receive a stipend from the funds of the Association.

18. STANDING COMMITTEES

- 18.1. The Board of Management shall maintain Standing Committees which are advisory to the Board of Management and assist in the governance functions, including:
- (i) An Audit, Risk and Remuneration Committee;
 - (ii) Any other Standing Committee approved by the Board of Management.
- 18.2. Standing Committees shall be operated in accordance with a defined terms of reference approved by the Board.

DIVISION 3 – MEMBERSHIP

19. QUALIFICATION AND COMMENCEMENT OF MEMBERSHIP

- 19.1. Membership to the Association is open to any non-profit organisation recognised under Australian law that protects, enhances, promotes, or supports the sustainable management of natural resources within the South West of Western Australia.
- 19.2. Membership commences on the approval of the Member carried by at least seventy-five percent of Members as represented by the Member Authorised Nominees or proxies present In-Person (subject to any special instructions for voting), at a Member meeting.
- 19.3. Members are required to appoint a 'Member Authorised Nominee' at the time of Member application, or as and when the person changes, who is given the authority to:
- (i) represent the Member organisation's interests as a Member;
 - (ii) receive and coordinate correspondence with, and between, the Association and Member organisation; and
 - (iii) attend and vote at Member meetings as a duly authorised person of the Member organisation.
- 19.4. Members shall receive or be given access to the Constitution.

20. REGISTER OF MEMBERS

- 20.1. The Chief Executive Officer shall keep, maintain and make available a Register of Members in accordance with Part 4 Division 5 of the Act.

21. MEMBERSHIP FEES

- 21.1. Any Member fees shall be set by the Members by simple majority vote at a Member Meeting.
- 21.2. The Membership may be charged an:
- (i) entrance fee;
 - (ii) subscription fee; and / or
 - (iii) any other Member fee that the Membership deems fit to charge from time to time.

22. MEMBER AUTHORISED NOMINEES

- 22.1. Members may change their Member Authorised Nominee at any time with notice in writing to the Chief Executive Officer of the Association, providing details of the person appointed.
- 22.2. The Association may require that the Member change their Member Authorised Nominee where:
- (i) the Member Authorised Nominee's personal actions are detrimental to the interest and / or reputation of the Association;
 - (ii) the Member Authorised Nominee personally refuses or neglects to comply with these rules.
- 22.3. A Member Authorised Nominee shall cease to represent a Member if the person:
- (i) resigns as the Member Authorised Nominee that becomes in effect at the time of the written resignation being delivered to the Chief Executive Officer;

- (ii) dies, or becomes permanently incapacitated by mental or physical ill-health; or
- (iii) is replaced by the Member with another person.

23. TERMINATION OF MEMBERSHIP

23.1. A Member shall cease to be a Member of the Association if the entity:

- (i) is expelled under Rule 24.4;
- (ii) fails to pay any due Membership Fees under Rule 21 after a six-month period of the invoice date;
- (iii) ceases to be qualified for Membership under Rule 19.1;
- (iv) resigns as a Member from the Association that becomes in effect at the time of the written resignation being delivered to the Chair;
- (v) is found guilty of an offence under the Act or similar statute regulating proper business conduct;
- (vi) declares bankruptcy, insolvency or goes into voluntarily administration; or
- (vii) winds up or ceases to function or exist.

24. SUSPENSION OR EXPULSION OF MEMBERS

24.1. The Association retains the right to suspend or expel a Member if:

- (i) their actions are detrimental to the interest and / or reputation of the Association;
- (ii) they refuse or neglect to comply with these rules; or
- (iii) they fail to pay any due Membership Fees under Rule 21 after a three-month period of the invoice date.

24.2. Where the Association moves to suspend or expel a Member organisation it shall provide Notice of the intent to suspend or expel, in writing, to the Member Authorised Nominee and the Member organisation's Chief Executive Officer or their representative, not less than twenty-eight days before the date of the Member meeting for which the expulsion will be considered, detailing:

- (i) the proposed suspension or expulsion and of the time, date and place of the Member meeting at which the question of that suspension or expulsion will be decided; and
- (ii) particulars of the conduct in question.

24.3. At the Member meeting referred to in the Notice communicated under Rule 24.2, the Association shall:

- (i) give the Member Authorised Nominee, the Member organisation's Chief Executive Officer, or their representative, a full and fair opportunity to state their case orally; or
- (ii) give due consideration to any written statement submitted by the Member Authorised Nominee, the Member organisation's Chief Executive Officer, or their representative; and

- (iii) determine whether or not carried by at least seventy-five percent of the Members as represented by the Member Authorised Nominees or proxies present In-Person (subject to any special instructions for voting), the Member organisation should be:
 - (a) suspended from Membership, and if so, the period that the Member should be suspended from the Membership; or
 - (b) expelled from the Association.
- 24.4. A Member who is expelled under Rule 24.3 (iii) (b) ceases to be a Member on the day on which the decision to expel the Member is communicated in accordance with Rule 36.2.
- 24.5. The decision of the Association to suspend or expel a Member is final.
- 24.6. The Chief Executive Officer shall notify the Board Directors and Member Authorised Nominees within fourteen days of any suspension or expulsion.

DIVISION 4 – MEETINGS

25. MEETING TYPES AND NOTICE REQUIREMENTS

Board Meetings

- 25.1. The Board shall meet for Board Meetings at least four times per year but may meet as often as it deems necessary.
- 25.2. Notice of a Board Meeting shall be issued to all Board Directors listed on the Register of Board Directors.
- 25.3. The Chair shall give at least seven days' Notice of a Board meeting unless agreed unanimously by Board Directors to deal with urgent business.
- 25.4. The Notice convening a Board meeting shall specify:
- (i) the names of the expected attendees;
 - (ii) the place, date and time of the meeting; and
 - (iii) the particulars and order of the business to be conducted at the meeting.

Member Meetings

- 25.5. Member Meetings include Annual General Meetings, General Meetings and Special General Meetings, and all Members have the right to attend and vote at all of these meetings.
- 25.6. The Membership shall meet for:
- (i) an Annual General Meeting of the Association once a year, within six months after the Financial Year, or a longer period approved by the Commissioner;
 - (ii) a General Meeting of the Association at least once a year; and
 - (iii) Special General Meetings only as required for Special Resolution matters.
- 25.7. Notice of Member Meetings will be issued to all Member Authorised Nominees listed on the Register of Members.
- 25.8. The Chief Executive Officer shall give at least:
- (i) fourteen days' Notice of a General Meeting to each Member;
 - (ii) twenty-one days' Notice of an Annual General Meeting;
 - (iii) twenty-one days' Notice of a Special General Meeting where a Special Resolution is proposed.
- 25.9. The Notice convening a Member meeting shall specify:
- (i) the type of Member meeting;
 - (ii) the place, date and time of the Member meeting;
 - (iii) the particulars and order of the business to be conducted at the meeting; and

- (iv) if a Special Resolution is proposed to be moved at the Member meeting, the proposed Special Resolution Statement.

25.10. At each Annual General Meeting, the Association:

- (i) shall receive and confirm the Minutes of the last preceding Annual General Meeting and any other Member meeting held since that meeting if the meeting minutes of that Member meeting have not yet been confirmed;
- (ii) shall receive the annual Financial Report prepared to the extent required under Part 5 of the Act;
- (iii) if applicable, shall appoint an auditor to prepare the audit report in the subsequent year;
- (iv) if applicable, shall consider any changes to this Constitution or By-laws of the Association;
- (v) if applicable, to confirm or vary any Member Entrance Fee, Annual Fee or Other Fee to be paid by Members;
- (vi) shall ratify the Board recommendation of the number of Board Directors that shall comprise the Board, no less than five (5) nor exceeding eight (8), for the year to the next Annual General Meeting
- (vii) if applicable, shall elect Board Director(s), and if any unfilled positions remain vacant, they shall be managed by the Selection Panel which will make a new recommendation to a Special General Meeting within four months, after which if any unfulfilled positions remain vacant they shall be managed as Casual Vacancies under Rule 10;
- (viii) deal with any other business of which Notice has been given within two weeks of the meeting date; and
- (ix) deal with any other business that the Members in attendance at the Annual General Meeting, by majority, may decide to deal with.

Special General Meeting Request by Members

25.11. A quorum of fifty percent of Member organisations may request in writing to the Chair that the Association convene a Special General Meeting for the purpose specified in that request and the Association shall, within twenty-eight days of receiving that request, convene such Special General Meeting for the purpose specified in that request.

25.12. The Members making a request referred to under Rule 25.11 shall:

- (i) state in that request the purpose for which the Special General Meeting concerned is required; and
- (ii) sign that request.

25.13. If a Special General Meeting is not convened within the relevant period of twenty-eight days referred to under Rule 25.11, the Member Authorised Nominees who made the request may themselves convene a Special General Meeting as if they were the Association.

25.14. When a Special General Meeting is convened under Rule 25.13:

- (i) the Association shall ensure that the Member Authorised Nominees convening the Special General Meeting are supplied free of charge with particulars of all Members, or otherwise invites are exercised by coordination of invites with the Chief Executive Officer;
- (ii) the Association shall give at least seven days' Notice, in writing, of the dates of the Special General Meeting to the Member Authorised Nominees, and such Notice shall specify the

particulars of the business to be transacted at the meeting, the order in which that business is to be transacted and specify when and where the meeting is to be held; and

- (iii) the Board shall pay the reasonable expenses of convening and holding the Special General Meeting.

26. MEETING QUORUMS

Board Meetings

- 26.1. Subject to Rule 26.2, the quorum for a Board shall be fifty percent plus one of the Board Directors.
- 26.2. If a quorum is not present within thirty minutes after the notified commencement time of a Board Meeting, the meeting, at the discretion of those Board Directors present, can be cancelled or adjourned to:
 - (i) the same time and day in the following week; and
 - (ii) the same place, unless the Chair specifies another place at the time of the adjournment or later written Notice of another place is given to the Board Directors before the day to which the meeting is adjourned.
 - (iii) Then if:
 - (a) a quorum is not present within thirty minutes after the commencement time of a Board Meeting notified under Rule 26.2(i), and;
 - (b) at least two Board Directors are present at the meeting, then:
those Board Directors present are taken to constitute a quorum.
 - (c) Unless the Chair is present, such other persons will appoint a Chair to preside over the meeting; and
 - (d) the Chair shall ensure a meeting minute record is kept.

Member Meetings

- 26.3. Subject to Rule 26.4, the quorum of a Member meeting shall be fifty percent plus one of the Membership, represented by their Member Authorised Nominee or authorised proxy (subject to any special instructions for voting).
- 26.4. If a quorum is not present within thirty minutes after the notified commencement time of a Member meeting:
 - (i) in the case of a Special General Meeting, the meeting lapses; otherwise:
 - (ii) in the case of the Annual General Meeting or General Meeting the meeting is adjourned to:
 - (a) the same time and day in the following week; and
 - (b) the same place, unless the Chair specifies another place at the time of the adjournment or written Notice of another place is given to the Members before the day to which the meeting is adjourned.
 - (iii) Then if:

- (a) a quorum is not present within thirty minutes after the commencement time of an Annual General Meeting or General Meeting held under Rule 26.4(ii)(a), and;
- (b) at least two Members are present at the meeting, then
those Members present are taken to constitute a quorum.
- (c) Unless the Chair is present, such other persons will appoint a Chair to preside over the meeting; and
- (d) the Chair shall ensure a meeting minute record is kept.

27. MEETING MINUTES

- 27.1. The Chair shall cause proper minutes of all proceedings of all Board and Member meetings of the Association within fourteen days of the meeting date, and they shall record at least all names of persons present at each meeting, and any resolutions.
- 27.2. The Chair, or whom duly is delegated to preside over the meeting, shall ensure that the minutes of the meeting are verified and signed as being a true record of the proceedings at the next succeeding meeting.
- 27.3. When minutes have been entered, and signed as correct under this rule, they shall, until the contrary is proved, be evidence that:
 - (i) the meeting of the Association to which they relate was duly convened and held;
 - (ii) all proceedings recorded as having taken place did in fact take place at the meeting;
 - (iii) all appointments, resolutions or actions purporting to have been made at the meeting have been validly made.
- 27.4. All minutes are retained as a record of the Association.

28. VOTING RIGHTS

Board Meetings

- 28.1. No formal resolutions are to be passed at a Board meeting where a quorum is not achieved. This does not prevent items for noting or discussion progressing with a record of the proceeding being kept.
- 28.2. Any decisions shall be approached with the intent of achieving general consensus.
- 28.3. Subject to any suspension under Rule 12, or where a Conflict of Interest has been recognised under Rule 35, each Board Director shall have one deliberate vote.
- 28.4. Where a vote is required:
 - (i) all eligible Board Directors present In-Person (subject to any special instructions for voting) shall vote;
 - (ii) unless otherwise required under this Constitution or the Act, all resolutions are to be carried by a simple majority; and
 - (iii) the Chair, or other such person presiding at the meeting, shall also, in the case of a tied vote, have a casting vote.

Member Meetings

- 28.5. No formal resolutions are to be passed at a Member meeting where a quorum is not achieved. This does not prevent items for noting or discussion progressing with a record of the proceeding being kept.
- 28.6. Any decisions shall be approached with the intent of achieving general consensus.
- 28.7. Subject to any suspension under Rule 24, or where a Member organisation has not paid any Member fees due within a six-month period of such fees being due, each Member Authorised Nominee shall have one deliberate vote.
- 28.8. Board Directors by virtue of their Board Director positions are not entitled to vote at a Member meeting.
- 28.9. Member organisation votes are carried out by their Authorised Member Nominee or proxy.
- 28.10. Where a vote is required:
 - (i) all eligible Authorised Member Nominees or proxies, present In-Person (subject to any special instructions for voting) shall be entitled to one deliberate vote;
 - (ii) Special Resolutions must be carried by at least seventy-five per cent of Members eligible to vote in accordance with Rule 28.9
 - (iii) unless otherwise required under this Constitution or the Act, all other resolutions are to be carried by a simple majority; and
 - (iv) the Chair, or other such person presiding at the meeting, shall also, in the case of a tied vote, have a casting vote.

29. PROXIES

- 29.1. A Board Director cannot be represented by a proxy.
- 29.2. A Member may appoint a proxy to attend a Member meeting in the place of the Member Authorised Nominee listed on the Register of Members.
- 29.3. A Member may appoint the Chair of the Board of Management as their proxy in writing prior to the Member meeting(s) they are to attend, and;
- 29.4. Appointment must be requested on a form decided by the Board of Management that clearly defines the period or the specific events the proxy will be authorised for.
- 29.5. A proxy appointed under Rule 29.3 may, in the absence of the Member Authorised Nominee, exercise the same powers (including voting rights) as the Member Authorised Nominee.

DIVISION 5 – MANAGEMENT PROCESSES

30. AMENDMENT OF CONSTITUTION

- 30.1. The Constitution rules bind every Board Director and Member of the Association to the same extent as if every organisation and person has signed and sealed those rules and agreed to be bound by all their provisions.
- 30.2. The Association may alter or rescind any of the rules in this Constitution only by Special Resolution and by complying with Part 3 Division 2 of the Act, providing each Member is given Notice in writing of the intent of the proposed change or changes in accordance with normal meeting invitation times, or otherwise by exercising section 200 of the Act.
- 30.3. If a Special Resolution amending the Rules is passed, the required documents shall be lodged with the Commissioner within twenty-eight days after the Special Resolution is passed in accordance with section 30(3) of the Act.
- 30.4. Subject to Rule 30.3, an amendment to the rules does not take effect until section 30(3) of the Act is complied with, or otherwise when the Commissioner has approved the alteration where required.
- 30.5. Where the Commissioner approves the alteration, the Chief Executive Officer shall give Notice to the Board Directors and Member Authorised Nominees.

31. COMMON SEAL

- 31.1. The Association shall have a common seal on which its corporate name shall appear in legible characters.
- 31.2. The common seal of the Association shall not be used without the express authority of the Board and every use of the common seal shall be recorded in the minutes.
- 31.3. Any two of the Chair, the Deputy Chair or another Board Director shall witness the affixing of the common seal of the Association.
- 31.4. The common seal shall be kept in the custody of the Chief Executive Officer of the Association.

32. FINANCIAL RECORDS

- 32.1. All financial records shall be retained for at least seven years after the transaction covered by the records are complete, in accordance with section 67 of the Act.
- 32.2. Officeholders shall comply to the Commissioner for any request of information in accordance with section 59 of the Act.

33. ACCESS TO RECORDS

- 33.1. A Board Director shall be given access to all records that relate to the function of being a Board Director and shall maintain their confidentially as required by virtue of their position. Where such information is not by normal Board proceedings, requests shall be made through the Chair to the Chief Executive Officer.
- 33.2. Unless issued to the Board Director as normal business, a Board Director has no right to remove any official records of the Association, however may be given a copy and shall maintain the confidentiality of such records.

- 33.3. Any Member Authorised Nominee, or a Member organisation's Chief Executive Officer, shall be able to review any meeting minutes or any document presented at the Annual General Meeting during their Membership period, and shall request such in writing directly through the Chief Executive Officer, subject to Rule 33.4.
- 33.4. The right of any inspection by a Member of the minutes of the Board or of a committee is subject to any decision the Board or committee has made about the minutes or confidential components of minutes of a specific meeting being available for inspection by Members.

34. ACCESS TO REGISTERS

- 34.1. Any Member shall be able to inspect the Register of Members or the Register of Board Directors free of charge, at such time and place as is mutually convenient to the Association and the Member, and use the information only for the purpose directly connected with the Association in accordance with section 57 of the Act;
- 34.2. A Member shall contact the Chief Executive Officer to request to inspect the Register of Members or Register of Board Directors.
- 34.3. The Member has no right to remove the Register of Members or Register of Board Directors.
- 34.4. Where a Member wishes to receive a copy of, or an extract from, either or both of the Register of Members and the Register of Board Directors:
- (i) the Member is required to submit a statutory declaration setting out the purpose of the request and declaring that the purpose is connected with the affairs of the Association;
 - (ii) the Chair or the Board shall approve the release of the copy or extract, and specify the level of disclosure required to satisfy the requirement of the purpose;
 - (iii) the Association may charge a reasonable fee to the Member for providing such copy or extract, the amount of which is determined by the Board from time to time; and
 - (iv) if the Board denies a Member's request for a copy of the Register of Members, a Member may appeal the decision under Rule 39.
- 34.5. Where the Commissioner requests a copy of the Register of Members or the Register of Board Directors, or any other list of Association officers, it shall be provided within fourteen days of receiving the request in accordance with section 55 of the Act.

35. CONFLICT OF INTEREST

- 35.1. Conflict of Interest related to the Board shall be managed:
- (i) consistent to the provision of section 42 of the Act;
 - (ii) as part of the selection process by the Selection Panel;
 - (iii) on a Conflict of Interest Register, reviewed annually;
 - (iv) on an agenda item that is believed to be applicable, identified by any Board Director or Chief Executive Officer;
 - (v) at the release of an agenda where meeting participants become aware of the real or perceived conflict of interest by the agenda items; and
 - (vi) during the meeting where a Board Director identifies a real or perceived conflict.

- 35.2. Rule 30.1 does not apply in respect to a material personal interest that:
- (i) exists only because the Board Director belongs to a class of persons for whose benefit the Association is established; or
 - (ii) the Board Director has in common with all, or a substantial proportion of, the Board Directors or Members of the Association.
- 35.3. Conflict of Interest related to any Member shall be managed:
- (i) as part of the application process for Membership;
 - (ii) on an agenda item that is believed to be applicable, identified by any Board Director, Member or Chief Executive Officer;
 - (iii) at the release of an agenda where meeting participants become aware of any real or perceived conflict of interest related to the agenda items;
 - (iv) in the consideration of any joint venture, tender or contract where the Member and the Association is a party, by the Association; and
 - (v) by the Member Authorised Nominee in considering any Association matter under discussion.

36. LEGAL NOTICES

- 36.1. A Notice or other communication connected with these rules has no legal effect unless it is in writing, recognised by Association letterhead, title, Australian Business Number or logo, and given as follows:
- (i) delivered by hand to the nominated address of the addressee; or
 - (ii) sent by post to the nominated postal address of the addressee; or
 - (iii) sent by e-mail or any other method of electronic communication to the nominated electronic address of the addressee.
- 36.2. Any Notice given to a Member organisation under these rules, shall be sent to:
- (i) the Member Authorised Nominee's address as set out in the Register of Members; and / or
 - (ii) the Member Authorised Nominee's email address as set out in the Register of Members.
- 36.3. Any Notice given to a Board Director under these rules, shall be sent to:
- (i) the Board Director's address as set out in the Register of Board Directors; and / or
 - (ii) the Board Director's email address as set out in the Register of Board Directors.

37. DISSOLUTION AND DISTRIBUTION OF PROPERTY ON WINDING UP

- 37.1. The dissolution of the Association may be decided by an order of a competent court of law, or by Special Resolution passed by three quarters of the Member Authorised Nominees voting at a meeting convened for that purpose.

- 37.2. If, on the winding up of the Association, any property of the Association remains after satisfaction of the debts and liabilities of the Association and the costs, charges and expenses of that winding up, that property and any assets shall be distributed:
- (i) to any association incorporated under the Act with similar purposes, which is not carried on for the profit or gain of its person members; and
 - (ii) where there is Public Fund monies, to a similar association incorporated under the Act that is also a registered fund listed in the 'Register of Environmental Organisations'.

DIVISION 6 – DISPUTES

38. GENERAL

- 38.1. In this rule, a 'Member' includes any current or former Member organisation whose membership ceased not more than six months before the dispute occurred.

39. RESOLVING DISPUTES

- 39.1. The grievance procedure set out in this rule applies to disputes under these rules between:
- (i) a Member and another Member;
 - (ii) a Member and the Association; or
 - (iii) if the Association provides services to non-members, those non-members who receive services from the Association, and the Association.
- 39.2. The parties to the dispute shall meet and discuss the matter in dispute, and, if possible, resolve the dispute within fourteen days after the dispute comes to the attention of the parties.
- 39.3. If the parties are unable to resolve the dispute between themselves, or if a party fails to attend a meeting, then the parties shall, within twenty-one days, attend a meeting in the presence of a committee specially formed consisting of the Chair, one other Board Director and one Association Member Organisation Chair not involved in the dispute; or if the Chair is a party to the dispute, two other Board Directors and one Association Member Organisation Chair not involved in the dispute.
- 39.4. The committee shall hold a meeting at which a dispute is to be considered and determined, and shall:
- (i) give each party to the dispute, or the party's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the committee about the dispute; and
 - (ii) give due consideration to any submissions so made; and
 - (iii) determine the dispute.
- 39.5. The committee shall give each party to the dispute written Notice of the committee's determination, and the reasons for the determination, within seven days after the committee meeting at which the determination is made.
- 39.6. A party to the dispute may, within fourteen days after receiving Notice of the committee's determination under Rule 39.5, give written Notice to the Chair requesting the appointment of an external mediator.

40. MEDIATION

- 40.1. If Notice is given under Rule 39.6, each party to the dispute is a party to the mediation.
- 40.2. The mediator shall be:
- (i) a person chosen by agreement between the parties who has no personal interest in the matter or bias against any party; or

- (ii) a person recommended by the Law Society of Western Australia.
- 40.3. The mediator cannot be previously associated with a party to the dispute.
- 40.4. The parties to the dispute shall, in good faith, attempt to settle the dispute by mediation.
- 40.5. The mediator, in conducting the mediation, shall:
 - (i) act independently, fairly and with good intentions toward all parties;
 - (ii) give the parties to the mediation process all reasonable opportunity to be heard;
 - (iii) allow due consideration by all parties of any written statement submitted by any party; and
 - (iv) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- 40.6. The mediator shall not determine the dispute, and the parties shall attempt to resolve the dispute by coming to a reasonable agreement.
- 40.7. The mediation shall be confidential and without prejudice.
- 40.8. The costs of the mediation are to be apportioned to be paid in equal amounts by the parties to the mediation.
- 40.9. If the mediation process does not result in the dispute being resolved, 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.

DIVISION 7 – PUBLIC FUND

41. PUBLIC FUND RULES

- 41.1. The objective of the Fund is to support the Association's environmental purposes.
- 41.2. Members of the public can be invited to make gifts of money or property to the Fund for the environmental purposes of the organisation.
- 41.3. Money from the interest on donations, income derived from donated property, and money from the realisation of such property is to be deposited into the Fund.
- 41.4. A separate bank account must be operated to deposit money donated to the Fund, including interest accruing thereon, and gifts to it must be kept separate from other funds of the Association.
- 41.5. Receipts are to be issued in the name of the Fund and proper accounting records and procedures must be kept and used for the Fund.
- 41.6. The Fund will be operated on a not-for-profit basis.
- 41.7. A Committee of Management of no fewer than three persons will administer the Fund.
- 41.8. The Committee will be appointed by the Board. A majority of the Members of the Committee are required to be 'responsible persons' as defined by the Guidelines to the Register of Environmental Organisations.

42. ENVIRONMENTAL ORGANISATION PUBLIC FUND OBLIGATIONS

- 42.1 The Association must inform the Department responsible for the Environment as soon as possible if:
 - (i) it changes its name or the name of the Public Fund;
 - (ii) there is any change to the membership of the Management Committee of the Public Fund;
or
 - (iii) there has been any departure from the model rules for public funds located in the Guidelines to the Register of Environmental Organisations.
- 42.2 The Association agrees to comply with any rules that the Treasurer and the Minister with responsibility for the Environment may make to ensure that gifts made to the fund are only used for its principle purpose.
- 42.3 Any allocation of funds or property to other persons or organisations will be made in accordance with the established purposes of the Association and not be influenced by the preference of the donor.
- 42.4 In the case of the winding-up of the Fund, any surplus assets are to be transferred to another fund with similar objectives that is on the Register of Environmental Organisations.
- 42.5 Statistical information requested by the Department on donations to the Public Fund will be provided within four months of the end of the financial year.
- 42.6 An audited financial statement for the Association and its Public Fund will be supplied with the annual statistical return. The statement will provide information on the expenditure of the Public Fund monies and the management of Public Fund assets.