



**ROTTNEST CHANNEL SWIM
ASSOCIATION INC.**

CONSTITUTION



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1. **Name of the Association**

The name of the Association is **ROTTNEST CHANNEL SWIM ASSOCIATION INC.**

2. **Definitions**

In these rules, unless the contrary intention appears:

“a Rottnest Channel crossing” means successfully swimming from the mainland to Rottnest Island or from Rottnest Island to the mainland in accordance with the By-laws of the Association.

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

“Affiliate Member” means an organisation as defined under rule 7(1);

“annual general meeting” means the meeting convened under rule 19(2)(b)

“the Association” means the Association referred to in rule 1;

“the Board” means the Board of management of the Association referred to in rule 14;

“Board meeting” means a meeting referred to in rule 18(1);

“Director” means persons referred to in rule 14(1);

“the Executive Officer” means the individual or business employed by the Board to carry out the functions referred to in rule 16.

“financial year” means *the period of 12 months commencing on 1 May of each year and ending on 30 April of the following year*;

“member” means member of the Association in accordance with rule 7;

“ordinary resolution” means resolution other than a special resolution;

“the Past President” means the immediate past President preceding the current President.

“poll” means voting conducted in written form (as opposed to a show of hands);

“the President” means in relation to the proceedings at a Board meeting or general meeting the person presiding at the Board meeting or general meeting in accordance with rule 15.

“proxy” means the appointment in writing of another member to vote at a general meeting on behalf of the appointing member in accordance with rule 23;

“special resolution” has the meaning given by section 51 of the Act;

“the Vice-President” means the Vice-President referred to in rule 14(5)(b).



3. Interpretation

- (1) In this Constitution unless the context indicates a contrary intention:
 - (a) Words importing the singular include the plural (and vice versa), words denoting a given gender include all other genders, and words denoting individuals include corporations (and vice versa);
 - (b) Any words or expressions defined in the Act shall have the same meanings in this Constitution;
 - (c) A reference to any legislation or to any section or provision thereof includes any statutory modification or re-enactment or any statutory provision substituted for it, and ordinances, by-laws, local laws, regulations, and other statutory instruments issued there-under.

4. Objects of the Association

- (1) The objects of the Association are:
 - (a) To promote interest in swimming across the Rottnest Channel;
 - (b) To observe and authenticate persons who attempt a solo Rottnest Channel crossing;
 - (c) To promote the safety and welfare of swimmers attempting a Rottnest Channel crossing;
 - (d) To furnish information to and advise those intending to make a Rottnest Channel crossing attempt;
 - (e) To gather and preserve historical Rottnest Channel swimming data;
 - (f) To conduct at least one annual swim between the mainland and Rottnest Island.
- (2) The property and income of the Association shall be applied solely towards the promotion of the objects of the Association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to members, except in good faith in the promotion of those objects.

5. Powers of the Association

The powers of the Association shall be those as conferred on the Association by section 14 of the Act.

6. Sources of Funds and Application of Income

- (1) The funds of the Association may be derived from entrance fees, annual subscriptions, donations, fundraising activities, grants, interest and any other sources approved by the Board.



- (2) The property and income of the Association must be applied solely towards the promotion of the objects.
- (3) Except as prescribed in this Constitution:
 - (a) no part of that property or income may be paid or otherwise distributed directly or indirectly, to any member.
 - (b) no remuneration or other benefit in money or money's worth shall be paid or given by the Association to any member who holds any office.
- (4) Nothing contained in rules 6(2) or 6(3) shall prevent payment in good faith of or to any member of any Affiliated Association:
 - (a) the payment in good faith to the member as reasonable remuneration for any services provided to the Association, or for goods supplied to the Association, in the ordinary course of business; or
 - (b) the payment of interest, on money borrowed by the Association from the member, at a rate not greater than the cash rate published from time to time by the Reserve Bank of Australia; or
 - (c) the payment of reasonable rent to the member for premises leased by the member to the Association; or
 - (d) the reimbursement of reasonable expenses properly incurred by the member on behalf of the Association.

7. *Qualifications for Membership of the Association*

- (1) The membership types will be as follows:
 - (a) Member - any individual who has completed a solo Rottnest Channel crossing unaided and is a financial member.
 - (b) Director - any individual elected or appointed to the Board of the Association.
 - (c) Associate member - any individual supporter of the Association who has not completed a Rottnest Channel crossing and is a financial member.
 - (d) Life member - a special membership, confirmed at an Annual General Meeting, for meritorious service to the Association by Members or Directors.
 - (e) Affiliate Member - an organisation, business, club or incorporated body that supports the objectives of the Association and is approved by the Board of the Association.



8. *When membership of the Association commences*

- (1) A person's or entity's membership of the Association commences:
 - (a) For individuals:
 - (i) on the date of the Annual General Meeting immediately following the person's solo Rottnest Channel crossing, provided:
 - (ii) the Board has ratified the Rottnest Channel crossing; and
 - (iii) the person has paid the subscription in accordance with rule 11; or
 - (iv) when they are elected/appointed to the Board under rule 14; or
 - (v) when they pay the subscription in accordance with rule 11
 - (b) For Affiliate Members:
 - (i) on the date the Board approves the application for affiliation, provided:
 - (A) the incorporated body supports the objectives of the Association; and
 - (B) the incorporated body has paid the subscription in accordance with rule 11.

9. *Register of Members of the Association*

The Executive Officer shall, on behalf of the Association, keep and maintain the register of members in accordance with section 53 of the Act at the Association Headquarters. All members shall provide the Association with correct and up-to-date details of their postal address and email address.

10. *When membership of the Association ceases*

- (1) A person or an Affiliate Member ceases to be a member of the Association if:
 - (a) The person dies;
 - (b) Subject to rule 13(4), the person or Affiliate member fails to pay their subscription by the date in rule 11(3);
 - (c) The person resigns under rule 12(1);
 - (d) The person or Affiliate Member is expelled under rule 13(2);
 - (e) For individuals, 5 years have elapsed since the person's membership commenced under rule 8(1)(a), provided the Board has not extended the person's membership; or
 - (f) For Affiliate Members, the incorporated body dissolves, ceases to support the objects of the Association, or fails to meet other criteria as set by the Board, provided the Board has not made an exception.



11. Membership Fees

- (1) The Board shall determine the annual membership fees and any levies payable to Members or any categories (or subcategory) of Members, together with the due date for payment of the membership fees.
- (2) The annual membership year for Members shall be determined by the Board from time to time.
- (3) Each member shall pay to the Executive Officer within 90 days after the due date or such other date as the Board from time to time.
- (4) A member is a financial member for the purposes of these rules if their subscription is paid on or before the relevant date fixed by or under rule 11(3).

12. Resignation of Members of the Association

- (1) Any member who delivers notice in writing of their resignation from the Association to the Executive Officer or a Director ceases on that delivery to be a member.
- (2) A person who ceases to be a member under rule 12(1) remains liable to pay to the Association the amount of any subscription due and payable by that person to the Association but unpaid at the date of that cessation.

13. Expulsion of Members of the Association

- (1) If the Board considers that a member should be expelled from membership of the Association because their conduct is detrimental to the interests of the Association, the Board shall communicate, in writing, to the member –
 - (a) Notice of the proposed expulsion and of the time, date and place of the Board meeting at which the question of that expulsion will be decided; and
 - (b) Particulars of that conduct, not less than 30 days before the date of the Board meeting referred to in rule 13(1)(a).
- (2) At the Board meeting referred to in a notice communicated under rule 13(1), the Board may, having afforded the member concerned a reasonable opportunity to be heard by, or to make representations in writing to, the Board, expel or decline to expel that member from membership of the Association and shall, forthwith after deciding whether or not to expel that member, communicate that decision in writing to that member.
- (3) Subject to rule 13(5), a member who is expelled under rule 13(2) from membership of the Association ceases to be a member 14 days after the day on which the decision to expel them is communicated to them under rule 13(2).
- (4) A member who is expelled under rule 13(2) from membership of the Association shall, if they wish to appeal against that expulsion, give notice to the Executive Officer of their intention to do so within the period of 14 days referred to in rule 13(3).



- (5) When notice is given under rule 13(4):
 - (a) The Association in a general meeting may, after having afforded the member who gave that notice a reasonable opportunity to be heard by, or to make representations in writing to, the Association in the general meeting, confirm or set aside the decision of the Board to expel that member; and
 - (b) The member who gave that notice does not cease to be a member unless and until the Board's decision to expel them is confirmed under this rule.

14. Board of the Association

- (1) The affairs of the Association shall be managed exclusively by a Board consisting of:
 - (a) Five (5) Elected Directors elected in accordance with rule 14(3); and
 - (b) Up to four (4) Appointed Directors shall be appointed in accordance with rule 14(12)
 - (c) Past President
 - (i) The position of Past President will be a member of the Board if passed by a simple majority of Board Members elected under rule 14(1)(a) and appointed under rule 14(1)(b).
- (2) Each Elected Director will serve a two-year term with the terms to be staggered such that at least two and no more than three elected Board positions become vacant each year.
- (3) Except in the case of the Past President, at least 42 days before the date of the Annual General Meeting (excluding the meeting date) in each year, a notice seeking nominations shall be given to each member, notifying each member of the positions on the Board for which an election is to be held and calling upon members to nominate persons for election to the Board. The procedure for each position will be:
 - (a) Nominations must be received by the Executive Officer on the prescribed form at least 28 days prior to the relevant Annual General Meeting (excluding the meeting date).
 - (b) If the number of eligible nominations received for the Board:
 - (i) is insufficient to fill all available vacancies on the Board, candidates nominated will be deemed to be elected, and further nominations shall be received at the Annual General Meeting.
 - (ii) is equal to the number of vacancies to be filled, the persons nominated will be deemed to be elected.



- (iii) is more than the number of vacancies to be filled, then those nominations received shall be voted on by a ballot of the members present.
- (4) Except in the case of Past President, when a casual vacancy within the meaning of rule 17 occurs in the membership of the Board:
 - (a) The Board may appoint an individual member or person to fill that vacancy; and
 - (b) An individual member or person appointed under this rule shall:
 - (i) hold office until the commencement of; and
 - (ii) be eligible for election to membership of the Board at the next Annual General Meeting.
- (5) Office Holders
 - (a) The Directors must elect a Director to be President of the Rottnest Channel Swim Association who will hold office for the balance of the term they have been elected or appointed as a Director.
 - (i) The President may be an Elected Director or an Appointed Director.
 - (ii) If a vacancy occurs in the office of President, the Directors must elect a Director to fill the vacancy. The elected President will hold office for the balance of the term they have been elected or appointed as a Director.
 - (b) The Directors must elect a Director to be the Vice President of the Rottnest Channel Swim Association who will hold office for the balance of the term they have been elected or appointed as a Director.
 - (i) The Vice President may be an Elected Director or an Appointed Director.
 - (ii) If a vacancy occurs in the office of Vice President, the Directors must elect a Director to fill the vacancy. The elected Vice President will hold office for the balance of the term they have been elected or appointed as a Director.
- (6) All Directors of the Rottnest Channel Swim Association are guaranteed entry into the Rottnest Channel Swim on the basis of 2 years of guaranteed entry for every completed year on the Board. The guaranteed entry is for a maximum of 6 years (after 3 years on the Board) and is backdated to the Board elected in May 2003.
- (7) Subject to rule 14(8), a Director is not entitled to be paid out of the funds of the Association.
- (8) A Director is entitled to be paid out of the funds of the Association for any out-of-pocket expenses properly incurred:



- (a) In attending a Board meeting or
 - (b) In attending a general meeting; or
 - (c) Otherwise in connection with the Association's business, provided that the payment is approved by resolution of the Board.
- (9) Subject to rule 14(9)(a) and 14(11), a Director may serve a maximum continuous term of eight (8) years on the Board.
- (a) A Director who has served the maximum term may serve an additional term of four (4) years subject to the following:
 - (i) the Board resolving to approve the additional term prior to the commencement of the additional term by two thirds majority of the Board.
 - (ii) the Board's resolution to approve the additional term not occurring more than 12 months before the expiry of the maximum term.
 - (iii) the Board's approval of the additional term will be valid for the duration of the additional term.
 - (iv) The Director's position on the Board is subject to the election of Members pursuant to rule 14(3).
- (10) Subject to rule 14(9) a Director may serve on the Board for a maximum of 12 years in any continuous 15 year period.
- (11) The position of Past President may be held for a maximum of two (2) years commencing on the date he or she ceases to become President. This term does not contribute to or count towards the term limits set out in rule 14(9) and rule 14(10).
- (12) The Board shall appoint up to four Appointed Directors.
- (a) The Appointed Directors may have specific skills in commerce, finance, marketing, law or business generally or such other skills which complement the Board composition and support the strategic direction of the Association.
 - (b) Appointed Directors will be appointed for a two-year term.
- (13) The Board may from time to time appoint Sub-committees to undertake certain tasks as determined by the Board. Sub-committees shall be comprised of suitably skilled persons as determined by the Board. The terms of reference for each Sub-committee shall be determined by the Board.



15. President

- (1) Subject to this rule, the President shall preside at all general meetings and Board meetings.
- (2) In the event of the absence from:
 - (a) A general meeting of:
 - (i) the President, the Vice-President or
 - (ii) both the President and the Vice-President, a member elected by the other members present at the general meeting:

or

- (b) A Board meeting of:
 - (i) the President, the Vice-President or
 - (ii) both the President and the Vice-President, a Director elected by the other Directors present,

shall preside at the general meeting or Board meeting, as the case requires.

16. Executive Officer

- (1) The Executive Officer shall:
 - (a) Be entitled to receive the agenda and minutes of, participate in and speak at Board meetings as an Ex-Officio member of the Board (and therefore is not entitled to vote at Board meetings);
 - (b) Subject to the Act, this Constitution and any directive of the Board, the Executive Officer has the power to perform all such things as appear necessary or desirable for the proper management and administration of the Association.
 - (c) Co-ordinate the correspondence of the Association;
 - (d) Keep full and correct minutes of the proceedings of the Board and of the Association;
 - (e) Comply on behalf of the Association with:
 - (i) Division 5 Part 4 of the Act in respect of the register of members of the Association;
 - (ii) Division 3 Part 3 of the Act in respect of the rules of the Association; and
 - (iii) Division 6 Part 4 of the Act in respect of the record of the officeholders, and any trustees, of the Association;



- (f) Have custody of all books, documents, records and registers of the Association, including those referred to in rule 16(1)(d)
- (g) Perform other such duties as directed by the Board from time to time; and
- (h) Perform such other duties as are imposed by these rules on the Executive Officer.

17. *Casual vacancies in membership of the Board*

- (1) A casual vacancy occurs in the office of a Director and that office becomes vacant if the Director:
 - (a) Dies;
 - (b) Resigns by notice in writing delivered to the President or, if the Director is the President, to the Vice-President;
 - (c) Is convicted of an offence under the Act or otherwise becomes ineligible to be a Director under section 39 of the Act;
 - (d) Is permanently incapacitated by mental or physical ill-health;
 - (e) Is absent from more than:
 - (i) 3 consecutive Board meetings; or
 - (ii) 3 Board meetings in the same financial year, of which they have received notice without tendering an apology to the person presiding at each of those Board meetings; or
 - (f) Ceases to be a member of the Association in accordance with rule 11.

18. *Proceedings of the Board*

- (1) The Board shall meet together for the dispatch of business not less than 4 times per calendar year, and the President may at any time convene a meeting of the Board.
- (2) Each Director has a deliberative vote.
- (3) A question arising at a Board meeting shall be decided by a majority of votes, but if there is an equality of votes, the person presiding at the Board meeting shall have a casting vote in addition to their deliberative vote.
- (4) At a Board meeting, four (4) Directors constitute a quorum.
- (5) Subject to these rules, the procedure and order of business to be followed at a Board meeting shall be determined by the Directors present at the Board meeting.
- (6) A Director having any direct or material personal interest referred to in section 42 or 43 of the Act shall comply with that section.



19. General Meetings of the Association

- (1) All members have the right to attend general meetings.
- (2) The Board:
 - (a) May at any time convene a special general meeting;
 - (b) Shall convene annual general meetings within the time limits provided for the holding of annual general meetings by section 50 of the Act; and
 - (c) Shall, within 30 days of –
 - (i) receiving a request in writing to do so from not less than one percent (1%) of members, convene a special general meeting for the purpose specified in that request; or
 - (ii) the Executive Officer receiving a notice under rule 13(4), convene a special general meeting for the purpose of dealing with the appeal to which that notice relates.
- (3) The members making a request referred to in rule 19(2)(c)(i) shall:
 - (a) State in that request the purpose for which the special general meeting concerned is required; and
 - (b) Sign that request.
- (4) If a special general meeting is not convened within the relevant period of 30 days referred to:
 - (a) In rule 19(2)(c)(i), the members who made the request concerned may themselves convene a special general meeting as if they were the Board; or
 - (b) In rule 19(2)(c)(ii), the member who gave the notice concerned may themselves convene a special general meeting as if they were the Board.
- (5) When a special general meeting is convened under rule 19(4):
 - (a) The Board shall ensure that the members or member convening the special general meeting are supplied free of charge with particulars of all members; and
 - (b) The Association shall pay the reasonable expenses of convening and holding the special general meeting.
- (6) Subject to rule 19(10), the Executive Officer shall give to all members not less than 14 days notice of a general meeting and of any motions to be moved at the general meeting at the time of notice.
- (7) A notice given under rule 19(6) shall specify:
 - (a) The member's rights to attend and vote at the general meeting;



- (b) When and where the general meeting concerned is to be held; and
 - (c) Particulars of the business to be transacted at the general meeting concerned and of the order in which that business is to be transacted.
- (8) In the case of an Annual General Meeting, the order in which business is to be transacted is:
- (a) First, the consideration of the accounts and reports of the Board;
 - (b) Second, the election of Directors to replace outgoing Directors; and
 - (c) Third, any other business requiring consideration by the Association in a general meeting.
- (9) In the case of an annual general meeting, each outgoing Director will be entitled to vote for the full duration of the meeting.
- (10) The Executive Officer shall give all members not less than 14 days' notice of a general meeting at which a special resolution is to be proposed and of any other motions to be moved at that general meeting at the time of notice.
- (11) The Executive Officer may give a notice under rule 19(6) or 19(10) by:
- (a) Serving it on a member personally; or
 - (b) Sending it by post or email to a member at the address of the member appearing in the register of members kept and maintained under section 27 of the Act.
- (12) When a notice is sent by post or email under rule 19(11)(b), sending of the notice shall be deemed to be properly effected if the notice is sufficiently addressed and posted to the member concerned by ordinary prepaid mail or sent by email to the email address last provided by the member to the Association (unless the Association receives actual notice that such mail or email has not been delivered to the member) and the Association is not required to take any further steps to give notice to the member concerned.

20. *Quorum and Proceedings at General Meetings of the Association*

- (1) At a general meeting 10 members present in person or by proxy constitute a quorum.
- (2) If within 30 minutes after the time specified for the holding of a general meeting in a notice given under rule 19(6) or 19(10):
 - (a) As a result of a request or notice referred to in rule 19(2)(c) or as a result of action taken under rule 19(4) a quorum is not present, the general meeting lapses; or
 - (b) Otherwise than as a result of a request, notice or action referred to in rule 20(2)(a),



the general meeting stands adjourned to the same time on the same day in the following week and to the same venue.

- (3) If within 30 minutes of the time appointed by rule 20(2)(b) for the resumption of an adjourned general meeting, a quorum is not present; the members who are present in person or by proxy may nevertheless proceed with the business of that general meeting as if a quorum were present.
- (4) The Chairperson may, with the consent of a general meeting at which a quorum is present, and shall, if so directed by such a general meeting, adjourn that general meeting from time to time and from place to place.
- (5) There shall not be transacted at an adjourned general meeting any business other than business left unfinished or on the agenda at the time when the general meeting was adjourned.
- (6) When a general meeting is adjourned for a period of 30 days or more, the Executive Officer shall give notice under rule 19 of the adjourned general meeting as if that general meeting were a fresh general meeting.
- (7) All members are entitled to vote at general meetings.
- (8) At a general meeting:
 - (a) An ordinary resolution put to the vote shall be decided by a majority of votes cast on a show of hands; and
 - (b) A special resolution put to the vote shall be decided in accordance with section 51 of the Act.
- (9) A declaration by the Chairperson at a general meeting that a resolution has been passed as an ordinary resolution thereat shall be evidence of that fact unless, during the general meeting at which the resolution is submitted, a poll is demanded in accordance with rule 20(10).
- (10) At a general meeting, a poll may be demanded by the Chairperson at the general meeting or by five (5) or more members present in person or by proxy and, if so demanded, shall be taken in such manner as the Chairperson directs.
- (11) If a poll is demanded and taken under rule 20(10) in respect of an ordinary resolution, a declaration by the Chairperson of the result of the poll is evidence of the matter so declared.
- (12) A poll demanded under rule 20(10) on the election of a person to preside over a general meeting or on the question of an adjournment shall be taken forthwith on that demand being made.

21. *Minutes of meetings of the Association*

- (1) The Executive Officer shall cause proper minutes of all proceedings of all general meetings and Board meetings to be taken and retain such minutes in an appropriate holder kept for that purpose.



- (2) The Chairperson of a general meeting or Board meeting shall ensure that the minutes taken at that meeting under rule 21(1) are checked by members as correct and signed as correct by the Chairperson at the succeeding general meeting or Board meeting, as the case requires.
- (3) When minutes have been entered and signed as correct under this rule, they shall, until the contrary is proved, be evidence that:
 - (a) The general meeting or Board meeting to which they relate (in this rule called 'the meeting') was duly convened and held;
 - (b) All proceedings recorded as having taken place at the meeting did, in fact, take place thereat; and
 - (c) All appointments or elections purporting to have been made at the meeting have been validly made.

22. *Voting rights of members of the Association*

- (1) Subject to these rules, each member present in person or by proxy at a general meeting is entitled to a deliberative vote.
- (2) A member which is a body corporate, including Affiliate Member, may appoint in writing a natural person, whether or not he or she is a member, to represent it at a particular general meeting or at all general meetings.
- (3) An appointment made under rule 22(2) shall be so made by a resolution of the Board or other governing body of the body corporate concerned –
 - (a) Which resolution is authenticated under the common seal of that body corporate; and
 - (b) A copy of which resolution is lodged with the Executive Officer.
- (4) A person appointed under rule 22(2) to represent a member which is a body corporate, including Affiliated Member, shall be deemed for all purposes to be a member until that appointment is revoked by the body corporate or, in the case of an appointment in respect of a particular general meeting, which appointment is not so revoked, the conclusion of that general meeting.

23. *Proxies of Members of the Association*

- (1) A member (in this rule called 'the appointing member') may appoint in writing another member who is a natural person to be the proxy of the appointing member and to attend and vote on behalf of the appointing member at any general meeting.
- (2) Where a member appoints another member to be their proxy at a meeting, the appointing member will notify the Executive Officer in writing three and a half hours prior to the meeting, of their proxy nomination. Both the appointing member and the proxy member must sign the nomination as confirmation of the appointment.



- (3) A maximum of one proxy vote will be recognised for each member attending a general meeting.

24. *Rules of the Association*

- (1) The Association may alter or rescind these rules, or make rules additional to these rules, in accordance with the procedure set out in sections 30, 31, 32 and 33 of the Act.
- (2) These rules bind every member and the Association to the same extent as if every member and the Association had signed and sealed these rules and agreed to be bound by all their provisions.

25. *By-Laws of the Association*

The by-laws of the Association can be amended by the Board at a Board meeting or by the members at a general meeting following the procedures as set out in rule 20. Notification of a proposal to make an amendment to the by-laws must be submitted in writing to the members no less than fourteen (14) days prior to the Board meeting or general meeting.

26. *Common seal of the Association*

- (1) The Association shall have a common seal on which its corporate name shall appear in legible characters.
- (2) The common seal of the Association shall not be used without the express authority of the Board and every use of that common seal shall be recorded in the minute book referred to in rule 21.
- (3) The affixing of the common seal of the Association shall be witnessed by any 2 of the President, the Vice President and the Executive Officer.
- (4) The common seal of the Association shall be kept in the custody of the Executive Officer or of such other person as the Board from time to time decides.

27. *Inspection of records, etc. of the Association*

- (1) A member may at any reasonable time inspect without charge the books, documents, records, register of members and securities ('the Records') of the Association.
- (2) The Board shall ensure that full up to date copies of all Records of the Association both in paper format and electronic format where applicable, are held at the Association Headquarters, wherever that may be from time to time.

28. *Distribution of surplus property on winding up of the Association*

- (1) The members of the Association may at a special general meeting duly convened for that purpose resolve upon the dissolution of the Association by a resolution passed by at least three-fourths of the votes held by the members present at such meeting and subsequently confirmed by a similar majority at a



second meeting held not less than twenty-one days nor not more than thirty-five days after the first meeting.

- (2) If such resolution shall be duly passed and confirmed, the members present at the second meeting shall appoint two or more members of the Association to be trustees for the purpose of winding up the business of the Association.
- (3) Thereafter the Association shall be deemed to exist only for the purpose of winding up the business of the Association and distributing the assets as hereinafter provided.
- (4) 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 shall be distributed to the Western Australian Swimming Association Inc. with the request that the property be used to promote open water swimming in Western Australia.

29. Disputes and mediation

- (1) The grievance procedure set out in this rule applies to disputes under these rules between:
 - (a) A member and another member; or
 - (b) A member and the Association; or
 - (c) If the Association provides services to non-members, those non-members who receive services from the Association, and the Association.
- (2) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within fourteen (14) days after the dispute comes to the attention of all of the parties.
- (3) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within ten (10) days, hold a meeting in the presence of a mediator.
- (4) The mediator must be:
 - (a) A person chosen by agreement between the parties; or
 - (b) In the absence of agreement:
 - (i) in the case of a dispute between a member and another member, a person appointed by the Board;
 - (ii) in the case of a dispute between a member, or a relevant non-member (as defined by rule 29(1)(c) and the Association, a person appointed by the Board who is a trained mediator appointed to or employed with a not-for-profit organisation.
- (5) A member of the Association can be a mediator.



- (6) The mediator cannot be a member who is a party to the dispute.
- (7) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (8) The mediator, in conducting the mediation, must:
 - (a) Give the parties to the mediation process every opportunity to be heard;
 - (b) Allow due consideration by all parties of any written statement submitted by any party; and
 - (c) Ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- (9) The mediator must not determine the dispute.
- (10) The mediation must be confidential and without prejudice.
- (11) If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

30. *Limitations on liability*

- (1) All members of the Board, the Board Chairpersons (if any) and all other persons acting with and under the express authority of the Board shall be indemnified by the Association at all times against all costs, losses and expenses which that person may incur or be liable to pay by reason of any contract entered into or act or deed done lawfully by him in the discharge of his duties.
- (2) No person referred to in rule 30(1) above shall be liable for the accounts, receipts, neglects or defaults or any other such person, or for joining in any receipt or other act, or the insufficiency or deficiency of any securities in or upon which any of the monies of the Association shall be invested or for the loss or damage arising from bankruptcy, insolvency, or wrongful acts of any person with whom any monies, securities or effects shall be deposited, or from any loss, damage or misfortune whatever which shall happen in the execution of the duties of his office, and in relation thereto, unless the same happens through his own willful act or default.