



# **CONSTITUTION**

of

# **ESPERANCE BAY YACHT CLUB INC.**

## **Ver 2**

**Version Control**  
**Version 2 – AGM 27<sup>th</sup> June 2022**

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## 1. NAME

- 1.1 The name of the Club shall be 'Esperance Bay Yacht Club Inc.'

## 2. NOT FOR PROFIT

- 2.1 The property and income of the Club shall be applied solely towards the promotion of the objects of the Club 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.
- 2.2 The Clubhouse and other club facilities is to be provided and maintained from the joint funds of the Club and no person shall be entitled under these rules to derive any benefit or advantage from the Club which is not shared equally by every Member thereof.
- 2.3 Section 2.2 does not prevent:
- 2.3.1 the payment in good faith of remuneration to any officer, employee or Member in return for any services actually rendered to the Club or for goods supplied in the ordinary and usual course of business;
  - 2.3.2 the payment of interest at a rate not exceeding the prevailing market rate published by the Reserve Bank of Australia as the "Cash Rate Target" from time to time on money borrowed from any Member;
  - 2.3.3 the payment of reasonable and proper rent by the Club to a Member for premises leased by the Member to The Club; or
  - 2.3.4 the reimbursement of expenses incurred by any Member or any Committee Member on behalf of the Club.

## 3. DEFINITIONS

- 3.1 In reading this Constitution, unless the context or such otherwise indicates or requires:
- 3.1.1 "Act" means the *Associations Incorporation Act 2015*, its amendments and any other legislation that may come into force to replace or supplement this Act, and shall form part of these Rules.
  - 3.1.2 "AGM" means an Annual General Meeting.
  - 3.1.3 "Approved Manager" means a person approved under the Liquor Act to supervise and manage the conduct of business on the licensed premises of the Club.
  - 3.1.4 "ballot" means voting conducted in written form at a meeting on a motion of that meeting or to decide on an election.
  - 3.1.5 "By-Law" means the EBYC By-Laws as amended.
  - 3.1.6 "Club" and "EBYC" mean the 'Esperance Bay Yacht Club Inc.'
  - 3.1.7 "Constitution" means the EBYC Constitution as amended.
  - 3.1.8 "CPI" means the official Consumer Price Index as determined by the Australian Bureau of Statistics.
  - 3.1.9 "Director" means the Director of Liquor Licensing at Racing, Gaming and Liquor.
  - 3.1.10 "general meeting" means a meeting to which all Members are invited.
  - 3.1.11 'licensed premises' means the areas of the Club premises that are licensed

for the sale and consumption of alcohol.

- 3.1.12 "General Committee" means the group of persons that has the authority to exercise the powers and functions of the Club and to manage its affairs.
  - 3.1.13 "Liquor Act" means the *Liquor Control Act 1988*, its amendments and any other legislation that may come into force to replace or supplement this Act, and shall form part of these Rules.
  - 3.1.14 "quorum" means the minimum number of Members who must be present for the meeting to be legally effective.
  - 3.1.15 "SGM" means Special General Meeting.
  - 3.1.16 "Special Resolution" has the meaning given by S24 of the Act.
  - 3.1.17 "Voting Member" means a financial Senior Member or a Life Member.
  - 3.1.18 "Writing and written" includes printing, typing, e-mail, facsimile and any other means of producing words in a visible form including electronic means.
- 3.2 Interpretation
- 3.2.1 Words purporting the masculine gender shall include the feminine gender and words purporting the singular shall include the plural, unless the context otherwise requires it.
- 3.3 The interpretation of these rules and any by-laws of the Club shall, unless set aside by a general meeting called for that purpose, be in the sole determination of the General Committee whose decision shall be binding on all Members.

## **4. OBJECTS**

- 4.1 The principal objects are to establish, maintain and conduct a club for Yachting and Boating and to support the recreational, social, sporting, cultural and community dimensions of that interest.
- 4.2 To encourage Yachting and Boating in the Esperance regional area.
- 4.3 To encourage yacht racing and other boating activities by the promotion of Regattas and the giving of prizes and by any other means which may from time to time be determined by the Club.
- 4.4 To provide and maintain a Club House and facilities to provide social and recreational facilities for the Members of the Club.
- 4.5 To provide and maintain suitable support vessels for the purposes of conducting yacht racing events, starting, coaching, and marine rescue within the capability of the boat and the staff.

## **5. MEMBERSHIP CATEGORIES**

- 5.1 **Senior Member (S)**
  - 5.1.1 Any person aged 18 years and over on the first day of the Membership year may be nominated for Senior Membership.
  - 5.1.2 A Senior Member shall have voting rights at all Member meetings and in the election of officers of the Club.
  - 5.1.3 Senior Members are entitled to the full privileges, rights and obligations of Membership as defined in the By-Laws.
- 5.2 **Life Member (L)**

- 5.2.1 Members who are Members of the Club for not less than ten years and who have rendered outstanding service to the Club during the term of the Membership may on the recommendation of the Committee be elected as Life Members of the Club by Members at a General Meeting.
- 5.2.2 A Life Member shall have voting rights at all Member meetings and in the election of officers of the Club.
- 5.2.3 Life Members are entitled to the full privileges, rights and obligations of Senior Membership.
- 5.3 **Associate Member Sailing (AS)**
  - 5.3.1 Any person, as defined in the By-Laws, may apply for associate sailing Membership.
  - 5.3.2 An Associate Sailing Member shall not be entitled to vote at Member meetings or in the election of officers of the Club.
  - 5.3.3 Associate Sailing Members shall enjoy restricted privileges, rights and obligations as defined in the By-Laws.
- 5.4 **Associate Member Non-Sailing (A)**
  - 5.4.1 Any person, as defined in the By-Laws, may apply for associate non-sailing Membership.
  - 5.4.2 An Associate Non-Sailing Member shall not be entitled to vote at Member meetings or in the election of officers of the Club.
  - 5.4.3 Associate Non-Sailing Members shall enjoy restricted privileges, rights and obligations as defined in the By-Laws.
- 5.5 **Junior Member (J)**
  - 5.5.1 Any person aged 0 to 17 years on the first day of the Membership year may apply for junior Membership.
  - 5.5.2 A junior Member shall not be entitled to vote at Member meetings or in the election of officers of the Club.
  - 5.5.3 Upon attaining the age of 18 the Member may then become a Senior Member without paying any nomination fee or submitting themselves for election.
  - 5.5.4 This category of Member does not have the authority to invite guests to the Club.
  - 5.5.5 Junior Members shall enjoy restricted privileges, rights and obligations as defined in the By-laws.
- 5.6 **Outport Members (O)**
  - 5.6.1 Any person residing outside of the Shire of Esperance and not being the owner or part owner of a yacht or boat which is usually kept at EBYC grounds or sailed in the waters of Esperance Bay shall be eligible for election as an Outport Member.
  - 5.6.2 An Outport Member shall not be entitled to vote at Member meetings or in the election of officers of the Club.
  - 5.6.3 Outport Members shall enjoy restricted privileges, rights and obligations as defined in the By-laws.
- 5.7 **Social Introductory Member (I)**
  - 5.7.1 Any person over the age of 18 years who has not previously been a Member

of the Club may apply for social introductory Membership on the following conditions;

- a. This Membership shall be for the duration of the financial year in which it is applied for.
- b. At the end of the period of the Membership a social introductory Member who wishes to continue their Membership can then become a Senior or Associate Member without paying nomination fee or submitting themselves for election.
- c. A Social Introductory Member shall not be entitled to vote at Member meetings or in the election of officers of the Club.
- d. Social Introductory Members shall enjoy restricted privileges, rights and obligations as defined in the By-Laws.

#### **5.8 Temporary Member (T)**

5.8.1 A person who is on any day visiting the Club as a Member or an official of another club or team, or a person assisting a Member or an official of another club or team to:

- a. Engage in a pre-arranged event with the Club as per the Club's objects;  
or
- b. Hold a pre-arranged function at the Club involving the use of the Club's sporting facilities.

5.8.2 Temporary Members shall not be entitled to be present at any meeting of the Members of the Club, nor have voting rights or any right, title or interest in or to any of the property of the Club.

#### **5.9 Honorary Member (H)**

5.9.1 The General Committee shall have the power to bestow Honorary Membership for any period up to twelve (12) months upon;

- a. Any dignitary and partner,
- b. Any Commodore/President/Office holder and partner of any like club,
- c. Any regular Member of the Australian Defence Force.

5.9.2 An Honorary Member shall not be entitled to vote at Member meetings or in the election of officers of the Club,

5.9.3 Honorary Members shall enjoy restricted privileges, rights and obligations as defined in the By-Laws.

#### **5.10 SailPass Member (SP)**

5.10.1 A person who wishes to experience sailing on a introductory or short term casual basis may apply for SailPass Membership.

5.10.2 A SailPass Member shall not be entitled to vote at Member meetings or in the election of officers of the Club.

5.10.3 SailPass Members shall enjoy restricted privileges, rights and obligations as defined in the By-laws.

## **6. APPLICATION TO BECOME A MEMBER**

6.1 Any person desiring to become a Member of the Club shall sign an application form provided and such form must bear the signatures of two Members of the Club who are entitled to voting rights.

- 6.1.1 When the application form and all subscriptions have been received, the person shall be a provisional Member of the Club and exercise all of the privileges of a Member excluding voting rights until such time as the next General Committee meeting.
- 6.1.2 At the next General Committee meeting, the applicant will then be accepted or denied Membership.
- 6.1.3 If Membership is denied, all subscriptions shall be refunded.
- 6.2 No person shall be entitled to exercise any of the privileges of a Member until they have paid all subscriptions due by them.
- 6.3 The Committee shall have the right to refuse to admit any person to Membership without assigning any reason for doing so.
- 6.4 On the election of each candidate, the Secretary shall notify the same to them, and they shall on payment of their subscription be enrolled as a Member of the Club, and become entitled to the privileges and be bound by its rules and by all consequences resulting from breach or non-performance thereof, and shall thereby absolve every person concerned in carrying out enforcing such rules from all personal responsibility or legal liability on such account.
- 6.5 **Life Member** – A Member may propose another Member for Life Membership to the General Committee in writing giving reasons that Life Membership should be granted.
  - 6.5.1 A General Meeting may, upon a 75% majority vote, confer Life Membership on a Member who has rendered special and outstanding services to The Club and been ratified for the privilege by the General Committee.
  - 6.5.2 The holder of a Life Membership shall be entitled to all privileges of an ordinary Member, be exempt from subscriptions but shall pay any levies and capitation fees.

## **7. MEMBERSHIP OBLIGATIONS, RIGHTS & PRIVILEGES**

- 7.1 The rights and privileges of every Member shall be personal and shall not be in any manner transferable by their own act or through any other person on their behalf or by operation of law.
- 7.2 Voting rights for each Membership category are as detailed in Section 5.
  - 7.2.1 Voting Members shall be Senior Members and Life Members of the Club.
- 7.3 Employees may become Members of the Club only upon application to the General Committee. Privileges of that Membership, if granted, shall be limited at the discretion of that Committee.
- 7.4 Existing Members may become employees of the Club with written permission from the General Committee, if granted, the privileges of their existing Membership may be limited by the Committee for the duration of their employment.
- 7.5 All Members, upon successful registration, will be supplied with an electronic copy of the Club constitution or will be directed to obtain a copy of the Club constitution from the Club's website.
- 7.6 Each person admitted to Membership shall be bound by the Constitution, By-Laws, Code of Conduct and any other rules, policies and procedures of the Club, as from time to time amended.
- 7.7 Each person admitted to Membership shall be liable for the payment of fees, levies and charges, applicable to their Membership category, as determined from time to

time.

- 7.8 All fees, levies and charges shall be paid in accordance with the provisions of the Constitution and By-Laws.
- 7.9 Each person admitted to Membership shall be entitled to the rights, privileges and obligations of Membership according to the category of Membership to which admitted, as set out in the By-Laws.
- 7.10 **Subscriptions**
- 7.10.1 The nomination fee and annual subscription of the Club shall be set by majority vote of the General Committee from time to time.
- 7.10.2 Notice of the fees and subscriptions shall be notified to the Members via the Club notice board.
- 7.10.3 All subscriptions are due from the first day of July and are payable in advance, on or before the first day of September provided that:
- a. the Committee shall not declare a Member un-financial if at least half of the subscription is paid by the first day of September in the current year; and/or
  - b. the balance of the subscription is paid by the first day of November.
- 7.11 **Liability for Subscription**
- 7.11.1 Any Member who does not notify the Secretary in writing before the first day of September of their withdrawal from the Club shall be liable for the subscription for the current club year.
- 7.11.2 The Committee shall have the power by resolution to remove from the roll of Members the name of any new Member who fails to pay his or her subscription within two weeks from the date of his or her election.
- 7.11.3 Any Member whose subscription is in arrears after the first day of November shall cease to be a Member.

## **8. REGISTER OF MEMBERS**

- 8.1 The Secretary is responsible for the requirements imposed on the Association under section 53 of the Act to maintain the register of Members and record in that register any change in the Membership of the Association.
- 8.2 In addition to the matters referred to in section 53(2) of the Act, the register of Members must include the class of Membership (if applicable) to which each Member belongs and the date on which each Member becomes a Member.
- 8.3 The register of Members must be kept at the Club's premises and be continually available for inspection at the Club premises by authorised officers.
- 8.4 Upon request, a Member is able to inspect the Books of the Club at such time and place as is mutually convenient to the Club and the Member.
- 8.4.1 The Secretary shall ensure the safe custody of the Books, with the exception of the Finance Records, of the Club
  - 8.4.2 A Member must contact the Secretary to request to inspect the Member Register.
  - 8.4.3 The Member may make a copy of details from the Member Register but has no right to remove the Register for that purpose.
  - 8.4.4 A Member may make a request in writing for a copy of the Member Register.



- 8.4.5 The Club may charge a reasonable fee to the Member for providing a copy of the Member Register, the amount to be determined by the Committee from time to time.
- 8.4.6 A Member must not use or disclose the information on the Member Register:
- a. To gain access to information that a Member has deliberately denied them (that is, in the case of social, family or legal differences or disputes);
  - b. To contact, send material to the Club or a Member for the purpose of advertising for political, religious, charitable or commercial purposes, or
  - c. For any other purpose unless the use of the information is approved by the Committee and for a purpose:
    1. That is directly connected with the affairs of the Club; or
    2. Related to the provision of the information to the Commissioner in accordance with a requirement of the Act.
- 8.4.7 The Committee may require a Member who requests a copy of the Member Register to provide a statutory declaration setting out the purpose of the request and declaring that the purpose is connected with the affairs of the Club.

## **9. CESSATION OF MEMBERSHIP**

- 9.1 A person ceases to be a Member when any of the following takes place:
- 9.1.1 Notice of resignation, in writing, to the Secretary; or
  - 9.1.2 Non-payment by a Member of his or her fees, levies and charges in accordance with the provisions of the Constitution and By-Laws; or
  - 9.1.3 Expulsion of a Member in accordance with the Section 26; or
  - 9.1.4 Death; or
  - 9.1.5 The person ceases to be a Member under Section 7.10.
- 9.2 The Secretary will keep a record on file of the date on which the person ceased to be a Member; and
- 9.2.1 The reason why the person ceased to be a Member.
- 9.3 A Member may resign from Membership of the Club by giving written notice of the resignation to the *Secretary*:
- 9.3.1 The resignation takes effect when the Secretary receives the notice; or if a later time is stated in the notice, at that later time.
  - 9.3.2 A person who has resigned from Membership of the Club remains liable for any fees that are owed to the Club (the owed amount) at the time of resignation.
  - 9.3.3 The owed amount may be recovered by the Club in a court of competent jurisdiction as a debt due to the Club.

## **10. GENERAL COMMITTEE**

- 10.1 The management of the Club shall be vested in a General Committee consisting of 13 Committee persons elected for a one (1) year term.
- 10.1.1 The General Committee is responsible for the compliance of the Club, the Constitution and By-Laws with relevant laws of the State of Western Australia

and the Commonwealth of Australia.

- 10.1.2 The General Committee is responsible for the promotion and protection of the interests of the Club through formulation of policies, strategies, governance and management structures.
- 10.2 The General Committee shall comprise of 13 Members who are:
  - 10.2.1 Commodore
  - 10.2.2 Vice Commodore
  - 10.2.3 Rear Commodore
  - 10.2.4 Rear Commodore Dinghy
  - 10.2.5 Treasurer
  - 10.2.6 Secretary
  - 10.2.7 Six (6) General Members & One (1) ex-officio (Immediate Past Commodore)
- 10.3 Each Member of the General Committee shall have responsibility for the management of their designated or allocated portfolio as outlined in the By-Laws.

## **11. OFFICERS**

- 11.1 The elected officers of the Club are the Commodore, Vice Commodore, Rear Commodore, Rear Commodore Dinghies, Secretary, Treasurer and the General Members of the General Committee
- 11.2 The Commodore, Vice Commodore, Rear Commodore and Rear Commodore Dinghies shall be Flag Officers of the Club.
- 11.3 No Flag Officer may hold any one office for more than two consecutive full terms.
- 11.4 The Members at a General Meeting may on the recommendation of the General Committee from time to time appoint a Patron or Patrons of the Club who upon election shall be afforded the use of all Club facilities.
- 11.5 Ex-officio officer of the Committee is the immediate Past Commodore.

## **12. ELIGIBILITY AND ELECTION FOR GENERAL COMMITTEE**

- 12.1 Candidates for the General Committee shall be current Senior or Life Members of the Club.
  - 12.1.1 No candidate for General Committee shall have any fees or monies outstanding at the commencement of the AGM or their nomination will be invalid.
- 12.2 The Secretary shall call for nominations for officers and General Committee Members with the notice for the AGM at which the elections shall take place.
- 12.3 All candidates for positions on the General Committee must be nominated by two (2) Members who are eligible to vote on the prescribed form which shall be returned to the Secretary no later than 7 days prior to the date of the AGM.
  - 12.3.1 The nominations shall be exhibited on the notice board or electronically posted at least three (3) days prior to the AGM.
- 12.4 If the number of persons nominated in accordance with 12.3 for election to the General Committee does not exceed the number of vacancies to be filled:
  - 12.4.1 the Secretary, or nominated officer, shall report accordingly to the AGM

concerned; and

- 12.4.2 the chairperson shall declare those persons to be duly elected as Members of the General Committee.
- 12.5 If no nomination for a vacant position is received by the due date, then a nomination may be requested from the floor at the AGM by the chairperson.
  - 12.5.1 If such nominations from the floor do not exceed the number of vacancies the chairperson must declare those persons to be duly elected as Members of General Committee.
  - 12.5.2 Where the number of nominations from the floor exceeds the remaining number of vacancies on the General Committee, elections for those positions must be conducted.
- 12.6 Members of the General Committee, other than the Members elected unopposed in accordance with 12.4 and 12.5, shall be elected by Members eligible to vote at the AGM.
  - 12.6.1 All votes shall be cast at the AGM.
- 12.7 If there shall be insufficient nominations to fill the whole of the vacancies of the list of officers, those nominated shall be declared elected and shall have power to fill the vacancies and any casual vacancies that may occur.

### **13. CEASING TO BE A GENERAL COMMITTEE MEMBER**

- 13.1 A casual vacancy occurs in the office of a Committee Member and that office becomes vacant if the Committee Member:
  - 13.1.1 dies;
  - 13.1.2 ceases to be a Member;
  - 13.1.3 becomes disqualified from holding a position under the Act as a result of bankruptcy or conviction of a relevant criminal offence;
  - 13.1.4 becomes permanently incapacitated by mental or physical ill-health;
  - 13.1.5 resigns from office;
    - a. a Committee Member may resign from the Committee by written notice given to the secretary or, if the resigning Member is the secretary, given to the chairperson.
  - 13.1.6 is absent from more than:
    - a. three consecutive Committee Meetings without a good reason; or
    - b. three Committee Meetings in the same Financial Year without tendering an apology to the person presiding at each of those Committee Meetings,
  - 13.1.7 Is removed from office by resolution at a General Meeting of the Club if a majority of the Members present and with voting rights at the meeting vote in favour of the removal.
    - a. The Committee Member who faces removal from the Committee must be given a full and fair opportunity at the General Meeting to decide the proposed resolution, to state his or her case as to why the Member should not be removed from his or her position on the Committee.
    - b. If all Committee Members are removed by resolution at a General Meeting, the Members must, at the same General Meeting, elect an

interim Committee.

- c. The interim Committee must, within two months, convene a General Meeting of The Club for the purpose of electing a new Committee.

### **13.2 Committee Vacancies**

13.2.1 Any vacancy occurring in the Committee as per Section 13 may be filled at a meeting of the Committee when a Member may be elected to fill such a vacancy until the next election provided the Member elected at such Committee meeting shall hold office in the place of, and upon the same terms and conditions as their predecessor, had the latter continued in the office.

13.2.2 If vacancies in the Management Committee result in the number of Committee Members being less than the number fixed under Section 14.1, the continuing Committee Members may act to only:

- a. increase the number of Members on the Committee to the number required for a quorum; or
- b. convene a General Meeting of the Club

## **14. GENERAL COMMITTEE MEETING PROCEEDINGS**

14.1 A quorum of General Committee shall be seven (7) voting Members.

14.2 The General Committee meetings shall be held at least twelve (12) times per year.

14.2.1 The time between each meeting shall not exceed 45 days.

14.2.2 The time and date shall be at the discretion of the Commodore.

14.3 The General Committee at its first meeting after the AGM shall appoint Club Members to the Sailing Committee all of whom shall continue in office until the following AGM unless their Membership ceases under Section 9.

14.4 The Commodore shall chair the meetings of the Committee unless the Commodore requests, and the Committee approves, another Member of the Committee to chair the meeting.

14.5 If the Commodore is unable to attend any meeting of the General Committee the Vice Commodore shall chair that meeting unless the Vice Commodore requests, and the General Committee approves, another Member of the General Committee to chair the meeting.

14.6 Each Member of the General Committee shall have one deliberative vote.

14.6.1 If the votes are divided equally on a question, the chairperson of the meeting has a second or casting vote.

14.7 Unless the question relates to a proposed change to the By-Laws, a question arising at the General Committee meeting shall be decided by a simple majority of votes.

14.8 Under section 42 of the Act a Member of the Committee who has a material personal interest in a matter being considered at a Committee meeting must:

14.8.1 As soon as he becomes aware of that interest, disclose the nature and extent of their interest to the Committee;

14.8.2 Disclose the nature and extent of the interest at the next general meeting of the Club.

14.8.3 Under section 43 of the Act a Member who has a material personal interest in a matter being considered at a meeting must not be present while the

matter is being considered at the meeting or vote on the matter.

- 14.9 Section 14.8 does not apply in respect of a material personal interest that:
- 14.9.1 exists only because the Committee Member belongs to a class of persons for whose benefit the Club is established; or
  - 14.9.2 the Committee Member has in common with all, or a substantial proportion of, the Members of the Club.
- 14.10 Every disclosure made in accordance with 14.8 by a Member of the General Committee shall be recorded in the minutes of the meeting at which it is made.
- 14.11 The Committee must ensure that minutes are taken and kept of each Committee meeting.
- 14.12 The minutes must record the following —
- (a) the names of the Committee Members present at the meeting;
  - (b) the name of any person attending the meeting under rule 43(5);
  - (c) the business considered at the meeting;
  - (d) any motion on which a vote is taken at the meeting and the result of the vote.
- 14.13 The minutes of a Committee meeting must be entered in the Club's minute book within 30 days after the meeting is held.
- 14.14 The chairperson must ensure that the minutes of a Committee meeting are reviewed and signed as correct by —
- (a) the chairperson of the meeting; or
  - (b) the chairperson of the next Committee meeting.
- 14.15 When the minutes of a Committee meeting have been signed as correct they are, until the contrary is proved, evidence that —
- (a) the meeting to which the minutes relate was duly convened and held; and
  - (b) the matters recorded as having taken place at the meeting took place as recorded; and
  - (c) any appointment purportedly made at the meeting was validly made.

## **15. POWERS OF GENERAL COMMITTEE**

- 15.1 The business of the Club shall be managed by the General Committee who may exercise all powers of the Club, except those required to be exercised by the Club at a General Meeting.
- 15.2 Without prejudice to the powers conferred by the last preceding rule, the Committee shall, subject to the by-laws, have power to do the following things:
- 15.2.1 To determine fees and subscriptions payable by Members, provided that the annual subscription fee for Senior Members shall not be increased by more than CPI plus 5% year on year without the approval of the Members at the next General Meeting called for that purpose.
  - 15.2.2 To determine such levies, fines and charges as deemed necessary and advisable and to enforce payment thereof.
- 15.3 To purchase or otherwise acquire any books, newsletters or periodicals and dispose of them as it may see fit.
- 15.4 To determine from time to time the conditions on which and time when, Members may use the property of the Club or any part or parts thereof, and when and under what conditions the premises of the Club or any part or parts thereof, shall be used by Members.

- 15.5 To determine what person, if any, not being Members of the Club shall be permitted to use the premises of the Club or any part or parts thereof and during what time and under what conditions and when and at what times and places and under what conditions such persons shall be supplied with refreshments and accommodation.
- 15.6 To appoint any officials or servants of the Club and to remove them as occasions may require at their discretion and to define their respective duties. Persons appointed to paid positions shall be engaged under a contract, award or classification of work in the Registered and Licensed Clubs Award (2020) and its amendments.
- 15.7 To delegate, subject to such conditions as it thinks fit any of its powers to sub Committees consisting of such Members of the Committee and other Members of the Club co-opted for the purpose as it may determine and to make such regulations as to the proceedings of such sub Committees as may be thought desirable.
- 15.8 To regulate and control their own meeting and the transaction of business.
- 15.9 To reimburse expenses of any servant of the Club for faithful and diligent service as deemed fit.
- 15.10 In accordance with the rules, to suspend, or expel any Member.
- 15.11 To enter into or accept any lease or tenancy of the premises where on the Club shall conduct its affairs or of any furniture, goods and effects, which may be required for the use of the Club on such terms and on such conditions as the Club, may deem expedient.
- 15.12 To take and defend all legal proceedings by or on behalf of the Club and to appoint all necessary Attorneys for any such purpose.
- 15.13 To borrow, raise or secure the payment of money, and to sell and dispose of the assets of the Club up to \$30,000.
- 15.14 To make, alter and repeal by-laws not inconsistent with these rules regulating the use and management of the Club premises, the admission of Members and the conduct of the Club and its affairs generally.
- 15.15 To do and perform any other act, matters and things in connection with or relative to the management of the Club as shall not by these rules require to be done by the Club in General Meetings.
- 15.16 To appoint such number of delegates to sporting bodies and associations with which the Club may from time to time be affiliated as may be required by the rules thereof and such delegates shall hold office in accordance with the rules of such sporting bodies and associations respectively.
- 15.17 Every Member of the Committee shall be indemnified against any loss, expenses or liability incurred by reason of any act or deed performed by him/her in good faith on behalf of the Committee and the Committee may use the funds of the Club for any such purpose required, together with any reasonable expenses incidental to Committee activities.

## **16. SUB-COMMITTEES**

- 16.1 The General Committee may delegate to a Committee or sub-Committee, consisting of such Member or Members of the Club as the General Committee thinks fit, the exercise of such functions of the General Committee as are specified in the delegation other than:

- 16.1.1 the power of delegation; and
- 16.1.2 a function which is a duty imposed on the General Committee by the Act or any other law.
- 16.2 Any delegation under 16.1 may be subject to such conditions and limitations as to the exercise of that function or as to time and circumstances as are specified in the written delegation and the General Committee may continue to exercise any function delegated.
- 16.3 The existence of Committees and sub-Committees does not diminish the responsibilities of the General Committee.

## **17. ANNUAL FINANCIAL REVIEW**

- 17.1 The General Committee shall nominate an individual, or firm of accountants, to perform a Review Engagement as per "Standard on Review Engagements ASRE 2400 Reviews of Financial Reports Performed by an Assurance Practitioner Who is Not the Auditor of the Entity", and any successive Standards of the Auditing and Assurance Standards Board; [AASB]. The nominee shall hold qualifications as per Part 5 Division 7 of the Act. This nomination shall be approved at the AGM. The General Committee may request an Audit, as governed by the AASB.
- 17.2 Should the nomination not be approved by the Members at the AGM, the General Committee shall appoint at its first meeting following the AGM;
- 17.3 A nomination appointed under clause 17.2 shall not be subject to ratification by the Members;
- 17.4 A Review or Audit of the Club's financial transactions and procedures shall be conducted in accordance with general accepted professional practice, and in accordance with the scope of work agreed between the independent professional and the General Committee;
- 17.5 Financial Review to be conducted at least annually;
- 17.6 A Financial Review report shall be prepared at the end of each financial year, documenting an opinion on the financial affairs of the Club, to be included with the annual reports presented to the Members at the AGM.

## **18. GENERAL COMMITTEE MEETINGS**

- 18.1 All General Committee Meetings of the Club shall be held on Club premises.
- 18.2 All Members must apply in writing to attend General Committee Meetings.
- 18.3 No visitor shall be permitted to attend any General Committee Meeting without the sanction of the Members of the meeting being first obtained.
- 18.4 The Secretary, or a nominated officer, shall take minutes of all proceedings of all General Committee Meetings.
- 18.5 The chairperson must ensure that the minutes taken of a General Committee Meeting are checked and signed as correct by the chairperson of the General Committee Meeting to which those minutes relate or by the chairperson of the next General Committee Meeting, as the case requires.
- 18.6 Minutes of General Committee Meetings shall be made available for Members to inspect upon written request.

## **19. ANNUAL GENERAL MEETING (AGM)**

- 19.1 The Committee must determine the date and time of the AGM.
- 19.2 If it is proposed to hold the AGM more than 6 months after the end of the Clubs financial year, the secretary must apply to the Commissioner for permission under section 50(3)(b) of the Act within 4 months after the end of the financial year.
- 19.3 The secretary shall provide at least twenty-one (21) days' written notice of the AGM to each member at their email address on the register of members.
  - 19.3.1 Members without an email address shall be posted a copy of the notice of the AGM to their address on the register of members.
- 19.4 The notice of the AGM shall include a request for Notices of Motion and for Nominations for Office, the procedures for such Notices or Nominations and the final date for the lodgement of those Notices and Nominations.
  - 19.4.1 Time and place
  - 19.4.2 Agenda
  - 19.4.3 Nominations of candidates for election
  - 19.4.4 Notices of Motion
- 19.5 The quorum at the AGM shall be twenty-one (21) voting Members.
  - 19.5.1 If at the end of thirty (30) minutes after the time appointed there be no quorum, the meeting will stand adjourned for one week. If at such further meeting there is no quorum, those Members present shall constitute a quorum.
- 19.6 The business of the meeting shall be to:
  - 19.6.1 Reading notice of meeting.
  - 19.6.2 Reading minutes of the last AGM and any other General Meeting not yet confirmed and confirming or amending same.
  - 19.6.3 Receive and approve the annual report;
  - 19.6.4 Receive and approve the audited financial report;
  - 19.6.5 Elect General Committee Members;
  - 19.6.6 Approve any increase in subscription fees or charges that require Member endorsement under this Constitution;
  - 19.6.7 Approve the General Committee's appointment of a financial reviewer or auditor if required;
  - 19.6.8 Approve the General Committee's appointment of a patron or patrons;
  - 19.6.9 Approve the General Committee's nomination for Life Membership, if appropriate. 75 % of eligible voters need to vote in favour.
  - 19.6.10 Consider any notices of motion lodged in accordance with the requirements of the Constitution;
  - 19.6.11 consider any other business that may be considered appropriate by the chairperson.

## **20. SPECIAL GENERAL MEETING (SGM)**

- 20.1 The General Committee may at any time call a Special General Meeting.
  - 20.1.1 Twenty-one (21) shall form a quorum.
  - 20.1.2 In the case of insufficient Members to form a quorum being present after 30



minutes following the advertised start time, the meeting shall automatically adjourn to re-convene at the same time seven days later and shall proceed with or without a quorum.

- 20.2 A Special General Meeting shall also be called by the Committee on a requisition signed by no less than 20% of Members with voting rights, stating in detail the purpose of the meeting.
- 20.2.1 If the Committee does not convene a Special General Meeting within 28 days of the date of the requisition being received, any signatory of the requisition shall have the power to convene the meeting as per 20.3.
- 20.2.2 Twenty-one (21) shall form a quorum.
- 20.2.3 In the case of insufficient Members to form a quorum being present after 30 minutes following the advertised start time, the meeting shall automatically lapse.
- 20.3 The Secretary or, in the case of an SGM convened under 20.2.1 the Members convening the meeting, shall provide at least twenty-one (21) days' written notice of the SGM to each member at their email address on the register of members, stating clearly the business for which the SGM has been called.
- 20.3.1 Members without an email address shall be posted a copy of the notice of the SGM to their address on the register of members, stating clearly the business for which the SGM has been called.

## **21. VOTING AT GENERAL MEETINGS (AGM & SGM)**

- 21.1 Each voting Member is entitled to one vote.
- 21.2 The chairperson may call for scrutineers at a General Meeting.
- 21.3 Voting on general business shall be by a show of hands.
- 21.4 Voting on election of General Committee Members shall be by secret ballot where a vote is required.
- 21.5 Voting on an item of general business may be by ballot if demanded by a simple majority of Members present and eligible to vote.
- 21.6 All results of voting or ballot at any general meeting is by simple majority, unless a Special Resolution is required. In which case the motion shall be passed only by the affirmative vote of not less than 75% of Members eligible to vote
- 21.7 If votes are divided equally on a question, the chairperson of the meeting has a second and casting vote.
- 21.8 At any general meeting unless a poll is requested by at least 3 Members with voting rights, a declaration by the Chair that a resolution has been carried or lost, and an entry to that effect in the minutes of the Club shall be sufficient evidence of the decision.

## **22. FINANCE**

- 22.1 The Club financial year shall commence on the first day of May in each year.
- 22.2 All funds of the Club shall be deposited into the designated Club accounts, at such bank or recognised financial institution as the General Committee may determine.
- 22.3 A statement showing the financial position of the Club shall be tabled at each General Committee meeting by the Treasurer or a designated Committee Member.

- 22.4 Statements of profit and loss, and assets and liabilities shall be submitted to the AGM.
- 22.5 Payments from the funds of the Club shall be made with the authority of a General Meeting or of the General Committee, with all cheques, drafts, bills of exchange, promissory notes and other negotiable instruments of the Club signed by two (2) signatories as determined by the General Committee.
- 22.5.1 The authorised signatories of the Club shall be drawn from;
- a. Commodore
  - b. Vice Commodore
  - c. Treasurer,
  - d. Secretary,
  - e. Active Life Members,
  - f. Two (2) nominated General Committee Members
  - g. Club Manager
- 22.6 The Treasurer shall ensure the safe custody of the Financial Records of the Club.

## **23. COMMON SEAL AND EXECUTION OF DOCUMENTS**

- 23.1 The Club shall not have a Common Seal.
- 23.2 The Club shall execute a document if the document is signed by:
- 23.2.1 any two Committee Members; or
  - 23.2.2 one Committee Member and a person authorised by the Committee.

## **24. LIQUOR ACT**

- 24.1 The Club will maintain a club license under the current Liquor Act and its amendments.
- 24.2 The Club shall ensure an Approved Manager is on the licensed premises for the purposes of observing liquor licensing requirements and regulations, as required under the Liquor Act.
- 24.3 No liquor shall be sold or supplied for consumption other than on the Club's premises, unless the Member purchasing it removes such liquor from the premises of the Club. No payment or part payment to the treasurer or Secretary, or other Officer or servant of the Club, shall be made by way of commission or allowance from or upon the receipts of the Club for liquor supplied.
- 24.4 No liquor shall be sold or supplied to any juvenile (i.e. any person under the age of 18).
- 24.5 The Club shall only be open for the sale of liquor during such hours as the General Committee shall from time to time determine and as permitted under the Liquor Act.
- 24.6 The Club may seek an Extending Trading Permit – Associations to add local Associations as users of the Club facility to hold their functions.
- 24.7 No stranger shall be permitted to use the Club premises and no Member or other person shall admit any stranger to use the Club premises.

## **25. GUESTS**

- 25.1 Members may introduce guests to the Club at any time provided that:

- 25.1.1 The number of guests shall not exceed the maximum number as contained in Section 48(4)(b) of the Liquor Act..
- 25.1.2 A guest shall not be supplied with liquor in the Club premises except on the invitation and in the company of the Member.
- 25.1.3 A guest shall be supplied with liquor to be consumed on the Club premises only.
- 25.1.4 The Member introducing the guest shall be responsible for the proper conduct of the guest whilst on Club premises.
- 25.1.5 Any person who has been refused Membership of the Club, or who shall be under suspension or expulsion from the Club, shall not be admitted as a guest by any Member of the Club.
- 25.1.6 Any Member, entitled to do so by Membership category, may hold private and business functions without limit to number of guests, subject to occupancy restrictions, provided that the sale of liquor shall be:
  - a. ancillary to a meal supplied at the Club by or on behalf of the Club to a Member and to each of the guests of that Member being guests of whose attendance was given prior notice to the Club; or
  - b. to a Member, for consumption by the guests of that Member at a function held by or on behalf of that Member at the Club.

## **26. SUSPENSION OR EXPULSION OF MEMBERS**

- 26.1 The Committee shall have the power to reprimand, suspend or expel any Member of The Club.
- 26.2 The Commodore, Committee or Approved Manager in receiving a complaint from the Approved Manager or Approved Bar Staff, of a Member's behaviour which is considered a serious breach of the Liquor Act or acceptable Member behaviour or where police involvement is required, may suspend a Member for a period of time until disciplinary action under Section 26.6 can be taken.
- 26.3 The Committee is required to exempt any Member of that Committee from hearing a charge in which he or she has an interest.
- 26.4 If a responding Member or a representative of the responding Member does not attend within 30 minutes of the time stated on the hearing notice, the hearing may start without that Member or his or her representative and determination will be made at the hearing.
- 26.5 The Committee shall apply the power to reprimand, suspend or expel any Member of The Club who:
  - 26.5.1 fail in the observance or commit any breach of any rule of the Club, Members Code of Conduct, or any by-law of the Club or of any order or direction of the Management Committee or of any General Meeting; and/or
  - 26.5.2 in the sole judgement of the Committee have been guilty in or out of the Club's premises of any act, conducted matter or thing calculated to bring discredit on the Club or its Members, or to impair or affect the enjoyment of the Club by other Members.
- 26.6 Any Member charged with misconduct as above shall be furnished with a written copy of the charge and summoned before the Committee with no less than seven (7) days' notice.
  - 26.6.1 The Committee shall after hearing the accuser and accused and taking such

- evidence as they may consider proper, if they find the charge proved, inflict a penalty of suspension from all or any of the privileges of Membership.
- 26.6.2 If the Committee consider that on a charge of gross misconduct suspension as above is insufficient, they may call on the Member to resign, and if he or she neglects to resign within ten (10) days they may declare him or her to be expelled.
- 26.6.3 If a Member is suspended or expelled under Section 26.6, the person may appeal the Committee's decision through a Special General Meeting by giving written notice to the Secretary within fourteen (14) days of receiving notice of the Committee's decision under Section 26.6.
- 26.7 Members are not permitted to have legal representation attend any disciplinary matters, but may bring another Member to act in a support capacity only.
- 26.8 If a Member's Membership is suspended under Section 26.6, the Secretary must record in the Register:
- 26.8.1 the name of the Member that has been suspended from Membership;
- 26.8.2 the date on which the suspension takes effect; and
- 26.8.3 the length of the suspension as determined by the Committee under Section 26.6
- 26.9 During the period a Member's Membership is suspended, the Member —
- 26.9.1 loses any rights (including voting rights) arising as a result of Membership;
- 26.9.2 is not entitled to a refund, rebate, relief or credit for Membership fees paid, or payable, to the Club; and
- 26.9.3 Cannot attend the Club as a Guest of a Member, unless prior written authorisation is received by the Management Committee.
- 26.10 Upon the expiry of the period of a Member's suspension, the Secretary must record in the Register that the Member is no longer suspended.
- 26.11 If the Committee's decision to suspend or expel a Member is revoked under these Rules, any act performed by the Committee or Members in a General Meeting during the period that the Member was suspended or expelled from Membership under Section 26.6, is deemed to be valid, notwithstanding the Member's inability to exercise their rights or privileges of Membership, including voting rights, during that period.

## **27. RESOLVING DISPUTES**

- 27.1 Disputes Arising under the Rules
- 27.1.1 Section 27.1 applies to:
- a. Disputes between Members; and
- 27.1.2 Disputes between the Club and one or more Members that arise under the rules or relate to the rules of the Club. This does not include disciplinary matters undertaken with club Members, which are covered only under Section 26 of the Club constitution.
- 27.1.3 The parties to a dispute must attempt to resolve the dispute between themselves within fourteen (14) days of the dispute coming to the attention of each party.
- 27.1.4 If the parties are unable to resolve the dispute, any party to the dispute may

initiate a procedure under this rule by giving written notice to the of the parties to, and details of, the dispute.

27.1.5 The Secretary must convene a Committee Meeting within twenty-eight (28) days after the Secretary receives notice of the dispute under Section 27.1.4 for the Committee to determine the dispute.

27.1.6 At the Committee Meeting to determine the dispute, all parties to the dispute must be given a full and fair opportunity to state their respective cases orally, in writing or both.

27.1.7 The Secretary must inform the parties to the dispute of the Committee's decision and the reasons for the decision within seven (7) days after the Committee Meeting referred to in Section 27.1.5.

27.1.8 If any party to the dispute is dissatisfied with the decision of the Committee, they may elect to initiate further dispute resolution procedures as set out in the Rules.

## 27.2 Mediation

27.2.1 Section 27.2 applies:

- a. where a person is dissatisfied with a decision made by the Committee under Section 26.6 or Section 27.1 or
- b. where a dispute arises between a Member or more than one Member and the Club and any party to the dispute elects not to have the matter determined by the Committee.

27.2.2 Where the dispute relates to a proposal for the suspension or expulsion of a Member this rule does not apply until the procedure under Section 26.6 in respect of the proposed suspension or expulsion has been completed.

27.2.3 If the parties to a dispute are unable to resolve the dispute between themselves within the time required by Section 27.1.3, or a party to the dispute is dissatisfied with a decision made by the Committee under Section 27.1.8 a party to a dispute may:

- a. Provide written notice to the Secretary of the parties to, and the details of, the dispute;
- b. Agree to, or request the appointment of, a mediator.

27.2.4 Party, or parties requesting the mediation must pay the costs of the mediation.

27.2.5 The mediator must be:

- a. a person chosen by agreement between the parties; or
- b. in the absence of agreement:
  1. if the dispute is between a Member and another Member – a person appointed by the Committee; or
  2. if the dispute is between a Member or more than one Member and the Club, the Committee or a Committee Member then an independent person who is a mediator appointed to, or employed with, a not for profit organisation.

27.2.6 A Member can be a mediator, but the mediator cannot be a Member who is a party to the dispute.

27.2.7 The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.

- 27.2.8 The parties are to exchange written statements of the issues that are in dispute between them and supply copies to the mediator at least five (5) days before the mediation session.
- 27.2.9 The mediator, in conducting the mediation, must:
- a. give the parties to the mediation process every opportunity to be heard;
  - b. allow all parties to consider 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.
- 27.2.10 The mediator must not determine the dispute and the mediation must be confidential. Information provided by the parties in the course of the mediation cannot be used in any other legal proceedings that may take place in relation to the dispute.
- 27.3 Inability to Resolve Disputes
- 27.3.1 If a dispute cannot be resolved under the procedures set out in the Rules, any party to the dispute may apply to the State Administrative Tribunal to determine the dispute in accordance with the Act or otherwise at law.

## **28. ALTERATIONS TO THE CONSTITUTION AND BY-LAWS**

- 28.1 Alteration, repeal or addition to the Constitution shall not be made except by a Special Resolution at an AGM or a SGM called for that purpose. The following conditions will apply:
- 28.1.1 Written notice of motion to alter, repeal or add to the Constitution by Special Resolution, by individual Members, or the General Committee, must be in the hands of the Secretary no later than 45 days prior to the AGM or SGM at which it is to be put.
- 28.1.2 Each notice of motion for Special Resolution must be signed by a proposer and seconder who are both financial Members and eligible to vote.
- 28.1.3 All Members eligible to vote must be notified of any notice of motion for Special Resolution at least 21 days prior to the meeting.
- 28.1.4 A Special Resolution to Alter, Repeal or Add to the Constitution shall be passed only by the affirmative vote of not less than three-fourths of Members eligible to vote.
- 28.1.5 Within one month after the making of any amendment or addition to the rules of the Club, passed by special resolution, the General Committee shall submit the required documents to the Commissioner. No effect will be given to the amendments without the approval of the Commissioner.
- 28.2 Alterations to the By-Laws can only be made at General Committee meetings when 14 days' notice has been given. The following conditions apply:
- 28.2.1 By-Laws are valid for a minimum period of twelve (12) months after the General Committee meeting at which they are voted upon before they may be altered or repealed unless they are unable to satisfy obligations as determined by law, in which case they shall be amended at the next General Committee meeting.
- 28.2.2 Two (2) financial Members may apply in writing, to the General Committee, for an alteration to be considered.

- 28.2.3 The Secretary shall give each General Committee Member fourteen (14) days' notice of the proposed alteration.
- 28.2.4 A motion to alter, repeal or add to the By-laws shall be passed only by the affirmative vote of a minimum of seventy-five percent (75%) of the elected Members of the General Committee voting in person.
- 28.2.5 Alterations to the By-laws shall be advised to the Members at the first General Meeting of Members held following the change. Additional notice to Members will be in accordance with the By-law relevant to this matter.
- 28.3 An up-to-date copy of the Constitution and By-Laws of the Club shall be made available to Members.

## **29. DISSOLUTION**

- 29.1 The Club may cease its activities and have its incorporation cancelled in accordance with Part 10 of the Act:
  - 29.1.1 after the Committee has determined the Club is able to pay or meet its debts and liabilities; and
  - 29.1.2 the Members resolve by Special Resolution that the Club will:
    - a. apply to the Commissioner for cancellation of its incorporation; or
    - b. appoint a liquidator to wind up its affairs.
- 29.2 The Club shall be wound up in accordance with Part 9 of the Act if:
  - 29.2.1 the Committee has determined the Club is unable to pay or meet its debts and liabilities; or
  - 29.2.2 the Committee or Members determine by special resolution to wind up the Club as a result of financial difficulty resulting in or from:
    - a. being party to any current legal proceedings; or
    - b. any other outstanding legal obligations
- 29.3 Upon cancellation or winding up of the Club, the Surplus Property must only be distributed to one or more of the following:
  - 29.3.1 an incorporated association under the Act;
  - 29.3.2 a body corporate that at the time of the distribution is the holder of a licence under the charitable collections legislation in Western Australia;
  - 29.3.3 a company limited by guarantee that is registered as mentioned in section 150 of the Corporations Act 2001 (Cwth);
  - 29.3.4 a company holding a licence that continues in force under section 151 of the Corporations Act 2001 (Cwth);
  - 29.3.5 a body corporate that:
    - a. is a member or former member of The Club; and
    - b. at the time of the Surplus Property is distributed, has rules that prevent the property being distributed to its members;
  - 29.3.6 a trustee for a body corporate referred to in [Section 29.3.5](#); or
  - 29.3.7 a co-operative registered under the Co-operatives Act 2009 that, at the time of the distribution, is a non-distributing co-operative as defined in that Act.

### **30. PREVIOUS ARTICLES**

- 30.1 All previous articles of Constitution are repealed.
- 30.2 All previous acts and appointments legal and valid under previous articles of Constitution shall be subject to this Constitution and remain legal and valid.