



**THE BOATING INDUSTRY ASSOCIATION OF WESTERN AUSTRALIA (INC)**

# **RULES AND CONSTITUTION**

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# THE BOATING INDUSTRY ASSOCIATION OF WESTERN AUSTRALIA (INC)

## RULES AND CONSTITUTION

### 1. NAME OF ASSOCIATION

The name of the Association is The Boating Industry Association of Western Australia (Inc) - in these rules and constitution called the "Association".

### 2. INTERPRETATION

#### 2.1 Definitions

"**Act**" means the Associations Incorporation Act 1987 as amended, modified or re-enacted from time to time.

"**Advisory Committee**" is a committee appointed as such by the Board.

"**Association**" means the Association referred to in Article 1.

"**Board**" means the committee of management of the Association referred to in Article 9

"**Board Member**" means a duly elected member of the Board.

"**Code of Practice**" means the Boating Industry Association of Western Australia Code of Practice comprising the Ethics, Obligations and other information contained in the document.

"**Constitution**" means this constitution.

"**Executive**" shall be the president, vice president and treasurer.

"**General Meeting**" means an Annual General Meeting or a special General Meeting of the Members of the Association convened under Rule 11.

"**General Manager**" shall be the person appointed as chief executive officer by the Board.

"**President**" shall be the person elected as president by the members at the Annual General Meeting.

"**Secretary**" means the Executive Officer of the Association.

"**Special Resolution**" means a resolution passed:

- (a) at a General Meeting of the Association of which 21 days notice, accompanied by notice of intention to propose the resolution as a special resolution, has been given to the Members in accordance with these Rules; and
- (b) by at least three quarters majority of those Members who, being entitled to vote, vote in person or by absentee vote at the meeting.

**“Rules”** means all rules, by laws or regulations or determinations made by the Board pursuant to this Constitution.

**“Treasurer”** shall be the person elected as treasurer by the members at the Annual General Meeting.

**“Vice President”** shall be the person elected as vice president by the members of the Board.

**“Written or In Writing”** shall include printed, typewritten and such other modes of representing or reproducing words in a visible form.

**“Year”** shall mean a calendar year.

## 2.2 **Plural and Gender Words**

In this Constitution all words imparting one gender shall include the other gender and all words imparting the singular number shall mean and include the plural number and visa versa.

## 2.3. **Interpretation**

Except where the contrary appears, words defined in the Interpretation Act (WA) as from time to time amended have the same meanings in this Constitution.

## 3. **OBJECTS**

The objects of the Association are to:

- (a) develop and promote boating and other related aquatic sports and pastimes in the State of Western Australia.
- (b) promote interest in safe boating and safe boating practices.
- (c) encourage all persons, companies and organisations who are actively involved in boating and other related aquatic sports to become members of the Association and operate in accordance with the Code of Practice.
- (d) campaign for the development of boating facilities and industry infrastructure and sustainability.
- (e) promote marine goods made in Australia by encouraging and assisting Australian manufacturers of marine goods in any way within the powers of the Association.
- (f) encourage a standard of manufacture of marine goods in Australia which is equal or superior to recognised standards for safety construction.
- (g) assist the development of industry training schemes that create sustainability and encourage continuous improvement of the skills base of the industry.
- (h) develop boating education programs for the community, and in particular young people, in conjunction with other industry groups and course providers.
- (i) organise and stage promotions and events and the like devoted to the extension of public interest in marine activities.

- (k) actively cooperate with other organisations having same or similar objects with whom it may seem expedient to affiliate, to pay affiliation fees, and appoint delegates to attend meetings and conferences with such powers and authorities as may from time to time be deemed expedient.
- (j) provide benefits to members to assist their individual development and sustainability.
- (m) undertake and do all things or activities which are necessary, incidental or conducive to the advancement of these objects.

#### **4. POWERS**

The powers conferred on the Association by Section 13 of the Act are:

- (a) To acquire, hold, deal with, and dispose of any real or personal property.
- (b) To open and operate bank accounts.
- (c) To invest its money -
  - (i) in any security in which trust moneys may be invested; or
  - (ii) in any other manner authorised by the rules of the Association.
- (d) To borrow money on such terms and conditions as the Association thinks fit.
- (e) To give such security for the discharge of liabilities incurred by the Association as the Association thinks fit.
- (f) To appoint agents to transact any business of the Association on its behalf.
- (g) To enter into any other contract the Association considers necessary or desirable.

#### **5. INCOME AND PROPERTY**

The income, property and funds of the Association shall be used 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, by way of a dividend, bonus or otherwise by way of profit to the Members of the Association, except in good faith in the promotion of those objects.

Notwithstanding the provisions above, the Board may make payment in good faith to a Member by way of remuneration to that Member for service rendered by the Member or in respect to property acquired from that Member and may make payment to a Member, of interest on money borrowed from a Member.

## 6. MEMBERSHIP

### 6.1 Eligibility

Membership is open to any person, company or organisation that derives their income wholly or partly from the marine industry and who wishes to further the interests of the Association.

### 6.2 Application

- a) Any person, company or organisation seeking membership shall make application, on the required form, to the Board.
- b) The Board shall determine whether the application is accepted or not in its absolute discretion.
- c) Applicants denied membership shall be advised in writing of the decision, but not the reasons.
- d) There will be no right to appeal the decision.
- e) Applicants are not entitled to be afforded natural justice.
- f) Each person, company or organisation admitted to membership shall be:
  - (i) bound by the Constitution, By-laws and Code of Practice of the Association;
  - (ii) liable for such fees and subscriptions, in accordance with Rule 8 hereof, within the prescribed time;
  - (iii) entitled to the advantages and privileges of membership afforded under the relevant membership category, and
  - (iv) subject to a probationary period of up to 12 months after which the Board may, after review, extend the probationary period for up to a further 12 months

### 6.3 Membership Categories

- (a) ORDINARY MEMBERSHIP shall be open to bona fide manufacturers, wholesalers and retailers of marine craft, trailers or associated equipment or any, company or organisation or registered business that derives the majority of their income from the marine industry.
- (b) AFFILIATE MEMBERSHIP shall be open to boating, fishing, sailing, diving, and water sports clubs and associations, educational institutions, and other organisations whose aims and objectives are deemed to be compatible with the interests of the Association. An Affiliate Member shall not be eligible for election to the Board.
- (c) HONORARY LIFE MEMBERSHIP may, on the recommendation of the Board by a special resolution, be conferred on an individual or the representative of a company or organisation who has rendered outstanding service to the Association.

- (d) PROBATIONARY MEMBERSHIP means a member subject to a probationary period in accordance with the provisions of sub-rule 6.2(e)(iv) and shall be classified as a 'Probationary Member'. A Probationary Member shall have no voting rights.

#### 6.4 **Expulsion**

- (a) Any Member who -
  - (i) makes a false, misleading or inaccurate statement in the member's application, to an officer of the Association or to the Board;
  - (ii) breaches any rule, regulation or By-law of the Association;
  - (iii) whose conduct is deemed not to be in accordance with the Code of Practicemay:
  - (iv) be suspended from the Association for such period as the Board may in its absolute discretion deem appropriate, or
  - (v) have its membership converted to a Probationary Membership for such period as the Board may in its absolute discretion deem appropriate, or
  - (vi) be expelled from the Association.
- (b) There is no obligation on the Board to allow the member to be heard either on the matter in question or on penalty.
- (c) There is no obligation on the Board to afford the member natural justice in relation to the matter in question or punishment.
- (d) The Member shall be informed of the Board's decision (but not its reasons) in writing.
- (e) Any member who is suspended or expelled may give to the Secretary, within fourteen (14) days of being notified of the suspension, change in membership status or expulsion, written notice of their intention to appeal against the Board's decision to a special General Meeting convened by the Secretary in accordance with sub-rule 11.2(c).

#### 6.5 **Cessation of Membership**

Membership shall cease upon:

- (a) a written resignation being received at the office of the Association;
- (b) a Member being expelled from the Association under sub-rule 6.4;
- (c) the failure to renew Membership by paying the prescribed Membership fee within six (6) months after the same falls due.

## 7. REGISTER OF MEMBERS

The Secretary shall be responsible for the maintenance of the register of Members in accordance with Section 27 of the Act and that register shall be kept and maintained at the office of the Association.

## 8. SUBSCRIPTION OF MEMBERS

- 8.1 The nomination fee and annual subscription of the Association shall be set by the Board.
- 8.2 Each Member shall pay the amount of the subscription annually.
- 8.3 A Member is a Member for the purpose of these rules if their subscription is paid on or before the relevant date fixed or within six (6) months of the due date being the 1<sup>st</sup> of January.

## 9. BOARD

### 9.1 Composition

- (a) Management of the Association shall be vested in the Board and shall comprise of:
- (i) Executive:
- President
- Vice President
- Treasurer
- (ii) Six (6) Board Members
- all of whom shall be Members of the Association elected by the Members at the Annual General Meeting except where insufficient nominations are received to fill all positions. In this instance, the position is declared a casual vacancy and executed as per Clause 9.5(b).
- The first Board Election following the adoption of these changes to the Rules and Constitution will be conducted at an Annual General Meeting to be held in March 2006.
- (b) No person shall hold more than one position on the Board at any one time.

### 9.2 Term of Office:

- (a) Each Executive Member and Board Member shall hold office for a period of three years.
- (b) Each Executive Member and Board Member shall stand down after three years in office and will be eligible for re-election.

### 9.3 **Committee Portfolios**

Board members may nominate or volunteer to undertake portfolio positions as determined by the Board from time to time as deemed expedient.

The membership of portfolios shall be determined and confirmed by the Board.

### 9.4 **Advisory Committees**

The Board may from time to time appoint a committee to act in an advisory capacity to address or meet a specific purpose, project or task. This shall be called an "Advisory Committee" and shall comprise of a minimum of one Board Member, the General Manager and whosoever the Board sees as fit to undertake a position or role within the Committee.

### 9.5 **Election**

- (a) All Members shall be notified of the election twenty-one (21) days prior to the Annual General Meeting, in accordance with Clause 11.1(b)
- (b) Each Member is eligible to nominate one (1) candidate from the Ordinary Member, or Honorary Life Member categories for the Board. Affiliate members shall not be eligible for election to the Board.
- (c) Nominations of candidates for the Board shall be:
  - (i) made in writing, on the prescribed form, proposed and seconded by two (2) Members of the Association and accompanied by the written consent of the candidate (which may be endorsed on the form of nomination).
  - (ii) delivered to the office of the Association not less than seven (7) days before the date fixed for the holding of the Annual General Meeting.
- (d) If insufficient nominations are received to fill all vacancies on the Board, the candidates nominated shall be deemed to be elected and further nominations shall be received at the Annual General Meeting.
- (e) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated shall be deemed to be elected and a ballot will not be held.
- (f) If the number of nominations exceeds the number of vacancies to be filled, a ballot shall be held by show of hands or by secret ballot if such is requested by two or more members..
- (g) The ballot for the election of Members of the Board shall be conducted at the Annual General Meeting .
- (h) All members shall upon election or on nomination act in the best interests of the Association.



## 9.6 **Casual Vacancies**

- (a) A casual vacancy occurs on the Board when a Board Member:
- (i) resigns by notice in writing to the President, or if the Board Member is the President, to the Vice President.
  - (ii) is not a financial member or the company organisation he/she is employed by is no longer a financial member.
  - (iii) no longer derives the majority of their income from the marine industry.
  - (iv) is convicted of an offence under the Act.
  - (v) is permanently incapacitated by mental or physical ill health.
  - (vi) is absent from more than three (3) consecutive Board Meetings, of which he received notice, without tendering an apology acceptable to the Board.
- (b) When a casual vacancy occurs in the membership of the Board, the Board may appoint a person from a Member Organisation to fill that vacancy until the next Annual General Meeting.

## 9.7 **Terms of Reference**

The Board shall carry out the day-to-day running of the Association and shall have the power to:

- (a) Administer the finances, appoint bankers and direct the opening of bank accounts for specific purposes and to transfer funds from one account to another or to close any such account.
- (b) Fix the manner in which such banking accounts shall be operated upon, providing all payments are passed by the Board.
- (c) Fix fees and subscriptions payable by Members and decide such levies, fines and charges as is deemed necessary and advisable and to enforce payment thereof.
- (d) Adjudicate on all matters brought before it which in any way affect the Association.
- (e) Make, amend and rescind the By-laws of the Association.
- (f) Appoint sub-committees for such purposes as it shall deem fit. A sub-committee's decisions, recommendations or reports shall require adoption by the Board before implementation by the Association.
- (g) Co-opt additional Members or persons onto the Board for special purposes. Such persons shall have no voting rights.
- (h) Invite additional Members or persons to Meetings for special purposes. Such invitees shall have no voting rights.

- (i) Employ a person or persons to carry out certain duties required by the Association, at salaries or remuneration and for such period of time as may be deemed necessary.
  - (j) Appoint an officer/s or agent of the Board to have custody of the Association's records, documents and securities.

#### 9.8 **Proceedings - Board Meetings**

- (a) The Board shall meet as often as may be required to conduct the business of the Association and in any event not less than every two (2) months and the President or two (2) Board Members shall have the power to convene a meeting of the Board.
- (b) Notice of Meetings shall be given at the previous Board Meeting or by seven (7) days written notice to all Board Members, or in any emergency such other notice as the Board shall ratify at the next Board Meeting regularly called.
- (c) A quorum of the Board shall be three of its members who are present in person at the meeting or participating in accordance with Clause 9.9.
- (d) Each Board Member shall have one (1) deliberative vote. 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.
- (e) Any Board Member who has a direct or indirect pecuniary interest referred to in Section 21 and 22 of the Act shall comply with that section.
- (f) The Executive of the Board may from time to time as considered necessary, call a special meeting to discuss matters of urgency in the instance that a full Board cannot be gathered.

#### 9.9 **Resolutions Not In Meetings**

- (a) A resolution in writing, signed or assented to by telegram, facsimile, or other visible or electronic communication by all Board Members for the time present in Australia shall be as valid and effectual as if it had been passed at a meeting of Board Members duly convened and held. Any such resolution may consist of several documents in like form each signed by one (1) or more of the Board Members.
- (b) Without limiting the power of the Board to regulate their meetings as they think fit, a meeting of the Board may be held where one (1) or more Board Members are not physically in the meeting, provided that:
  - (i) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously whether by means of telephone or teleconference or other form of communication;
  - (ii) notice of the meeting is given to all the Board Members entitled to notice in accordance with the usual procedures agreed upon or laid down from time to time by the Board or these Rules and such notice specifies that Board Members are not required to be present in person;

- (iii) in the event that a failure in communications prevents condition (i) from being satisfied by that number of Board Members which constitutes a quorum, and none of the such Members are present at the place where the meeting is deemed by virtue of the further provisions of the Rule to be held, then the meeting shall be suspended until condition (i) is satisfied again. If such condition is not satisfied within 15 minutes from the interruption the meeting shall be deemed to have terminated or adjourned: and

any meeting held where one (1) or more of the Board Members is not physically present shall be deemed to be held at the place specified in the notice of the meeting provided a Board Member is there present and if no Board Member is there present the meeting shall be deemed to be held at a place where the Chairman of the meeting is located.

#### **9.10 Conflict of Interest**

A Board Member shall declare his interest in any contractual, selection and appointments, disciplinary or other matter in which a conflict of interest arises or may arise, and shall absent himself from discussions of such matter and shall not be entitled to vote in respect of such matter. In the event of an uncertainty as to whether it is necessary for a Member to absent himself from discussion or refrain from voting, the issue should be immediately determined by vote of the Board, or if this is not possible, the matter shall be adjourned or deferred.

### **10. FINANCE**

- (a) All funds of the Association shall be deposited into the Association's accounts at such bank or recognised financial institution as the Board may determine.
- (b) All accounts and payments due by the Association shall be approved by the Board and paid as directed at the time of approval.
- (c) Transfers of monies between accounts or otherwise shall require two (2) signatures of authorised signatories .
- (d) The financial year of the Association shall commence on July 1 each year.
- (e) The accounts, books and all financial records of the Association shall be audited each year.
- (f) A statement showing the financial position of the Association shall be tabled at each Board Meeting by the Treasurer.
- (g) A statement of Income and Expenditure and Assets and Liabilities shall be submitted to the Annual General Meeting. The Auditor's Report shall be attached to such financial report.
- (h) All reimbursement of travel and other expenses by the Board incurred by them in connection with the business of the Association shall require prior approval by the Board and shall only be paid upon presentation of receipts.

## 11. GENERAL MEETINGS

### 11.1 Annual General Meeting

- (a) The Annual General Meeting of the Association shall be held within four (4) months of the end of the Association's financial year.
- (b) All Members shall be given not less than twenty one (21) days written notice of a Annual General Meeting.
- (c) All financial Members may attend the Annual General Meeting.
- (d) The agenda for the Annual General Meeting shall be:
  - Opening of Meeting
  - Apologies
  - Confirmation of Minutes of previous Annual General Meeting
  - Lodgment of absentee votes
  - Presentation of Annual Report
  - Adoption of Annual Report
  - Presentation of Audited Financial Statements
  - Election of Board
  - Appointment of Auditor
  - Notice/s of Motion
  - General Business
  - Closure
- (e) Agenda items for general business shall be accepted up to seven (7) days prior to the meeting and no other business other than that arising from the agenda will be entered into at the meeting.

### 11.2 General Meetings

- (a) General Meetings may be called by the Board or at the request of the President and either the Vice President or Treasurer and one other Board Member or on the written request of five (5) Members of the Association.
- (b) The Secretary shall give Members at least fourteen (14) days notice, in writing, of the date of the General Meeting. The Notice of General Meeting shall set out clearly the business for which the meeting has been called. No other business shall be dealt with at that General Meeting.
- (c) The Secretary on receiving the notice under sub-rule 6.4(b) shall convene a General Meeting for the purpose of dealing with the appeal to which the notice relates. Such appeal shall be decided upon by a simple majority of Members present after first hearing from the Member concerned and from a representative of the Board.

## **12. QUORUM AND ADJOURNMENT OF GENERAL MEETINGS**

- 12.1 A quorum at a General Meeting shall be a minimum of fifteen (15) percent of the membership.
- 12.2 If within thirty (30) minutes after the time specified for the holding of the General Meeting a quorum is not present the General Meeting stands adjourned to the same time on the same day within two weeks to the same venue.
- If within thirty (30) minutes of the time appointed for the resumption of the adjourned General Meeting a quorum is not present, the Members which are present in person or by absentee vote may proceed with the business of the General Meeting.
- 12.3 There shall not be transacted at an adjourned General Meeting any business other than business left unfinished or on the agenda at the time the General Meeting was adjourned.

## **13. MINUTES OF MEETINGS**

- 13.1 The Board shall ensure that proper minutes of all proceedings of General Meetings and Board Meetings be taken and a copy entered within thirty (30) days after the holding of each meeting in the computer file and then a signed, confirmed, hard copy entered in a minute file kept for that purpose together with originals or copies of any relevant reports, correspondence or documentation presented at the meeting.
- 13.2 The President shall ensure that the minutes taken at the General Meeting or Board Meeting are checked and signed at the next meeting to which the minutes relate except where there is a dispute of the transcript in which case the records will be checked and necessary amendments executed and presented at the next meeting for confirmation and signing.

## **14. VOTING RIGHTS OF MEMBERS**

Voting powers at the Annual General Meeting and General Meetings shall be:

- (a) The President shall be entitled to a deliberative vote and, in the event of a tied vote the President shall exercise a casting vote.
- (b) An Ordinary Member shall be entitled to one (1) vote at any General Meeting provided the Member is a Financial Member.
- (c) A Member under probation shall have no voting rights including on any winding up of the Association, but provided a probationary Member is a Financial Member, the Affiliate Member shall be entitled to attend and speak on the resolutions before any General Meeting of the Association.
- (d) An Affiliate Member shall have no voting rights, including on any winding up of the Association, but provided an Affiliate Member is a Financial Member, the Affiliate Member shall be entitled to attend and speak on the resolutions before any General Meeting of the Association.
- (e) An Honorary Life Member shall be entitled to one (1) vote at any General Meeting.

**15. PROXY AND ABSENTEE VOTING**

No proxy voting shall be allowed at any Annual General Meeting, General Meeting, Board Meeting or Sub-Committee Meeting. All members that are of a membership category that is eligible to vote, may do so by direct vote using electronic and/or postal means where such an option is offered by the board; and shall be lodged with the Secretary seven (7) days prior to Annual General meetings and General meetings only.

**16. COMMON SEAL**

The Common Seal of the Association shall be kept in the care of the Secretary. The Seal shall not be used or affixed to any deed or other document except pursuant to a resolution of the Board and in the presence of at least the President and two members of the Board, both of whom shall subscribe their names as witnesses. Any use of the Common Seal shall be recorded in a register kept for that purpose.

**17. AUDITOR**

The Members shall appoint an Auditor at the Annual General Meeting for each financial year, not being a Member of the Association, who is qualified to, and shall, audit the accounts of the Association annually and shall present to the Annual General Meeting a report of the financial position of the Association.

**18. ALTERATION TO THE RULES AND CONSTITUTION AND BY- LAWS**

- (a) No alteration, repeal or addition shall be made to the Constitution except at a General Meeting, called for that purpose, and notice of all motions to alter, repeal or add to the Constitution shall be given to Members at least twenty-one (21) days prior to the Annual General Meeting or at least fourteen (14) days prior to a General Meeting called for such purpose.
- (b) The Secretary shall forward such notices of motion to each Board Member at least twenty-one (21) days prior to the Annual General Meeting or at least fourteen (14) days prior to a General Meeting.
- (c) Alterations to the By-laws shall be made only at Board Meetings provided notice of the proposed alteration/s, have been duly notified to Board Members.
- (d) All motions, or any part thereof, to alter the Constitution and Rules and By-laws shall be of no effect unless passed by a seventy five (75) percent majority (Special Resolution) of those present and entitled to vote at the Annual General Meeting, a General Meeting or a Board Meeting, as the case may be.
- (e) Within one month of the passing of a Special Resolution, the Secretary shall notify the relevant Government Ministry of the amendment.

## **19. INSPECTION OF RECORDS OF THE ASSOCIATION**

A Member may at any reasonable time inspect, without charge, the books, documents, records and securities of the Association. Prior notice of intention to inspect must be given to the Secretary who will arrange a mutually suitable time.

## **20. DISSOLUTION**

- 20.1 The Association may be wound up by a special resolution.
- 20.2 The dissolution of the Association shall be approved by seventy five (75) percent of the total number of Members present and entitled to vote.
- 20.3 If, in the winding up of the Association, any property of the Association that remains after satisfaction of the debts and liabilities of the Association and the costs, charges and expenses of that winding up, the property shall not be distributed to the members of the Association but shall be distributed to another incorporated Association having objects similar to those of the Association, or for charitable purposes, which incorporated Association or purposes, as the case requires shall be determined by resolution of the Members when authorising and directing the Board under Section 33(3) of the Act to prepare a distribution plan for the distribution of surplus property of the Association.