

ASSOCIATIONS INCORPORATIONS ACT 2015- WESTERN AUSTRALIA



# **WESTERN AUSTRALIAN ATHLETICS COMMISSION INCORPORATED**

## **CONSTITUTION**

MARCH 2017

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**1 NAME OF THE ASSOCIATION**

- (a) The name of the Association is the Western Australian Athletics Commission (Inc) referred to in this Constitution as Athletics WA.
- (b) With Board approval, the Association may adopt a trading name without affecting the powers or interpretation of this Constitution.

**2 DEFINITIONS AND INTERPRETATION**

**2.1 Definitions**

In this Constitution, the following terms shall bear the meanings set out below:

**Absolute majority** means a total majority of persons entitled to be present and to vote, being the next whole number beyond half;

**Act** means the Associations Incorporation Act 2015 (Western Australia);

**Affiliated Club** means a club or organisation which meets the criteria set out in Rule 4.2;

**Annual General Meeting** is the meeting convened under Rule 22;

**Appointed Director** means a Director appointed under Rule 14;

**Athletics** means the general name for the sport of athletics which includes, but is not limited to, track and field athletics, cross country athletics, road running and walking, hurdling, steeplechasing, mountain running, road running, recreational running, jumping and pole vaulting, shot putting, discus, javelin, hammer and weight throwing;

**Athletics Australia** means the Company limited by guarantee incorporated in the State of Victoria under the name of Athletics Australia or any successor body;

**Board** means the Directors of Athletics WA acting collectively;

**Chair** means, in relation to proceedings at a Board meeting or at a General Meeting, the person presiding at the Board meeting or General Meeting;

**Chief Executive Officer** means the person who is appointed from time to time under this Constitution to carry out the duties set out in Rule 19, whether known as the Chief Executive Officer or otherwise;

**Commissioner** means the Commissioner for Consumer Protection exercising powers under the Act;

**Committee** means one of the committees appointed by the Board;

**Constitution** means this document;

**Corporations Law** means the Corporations Act 2001 (Cth);

**Delegate** means the person/s nominated by an Affiliated Club to represent that Affiliated Club at any Athletics WA meeting;

**Director/s** means appointed and elected directors referred to in Rule 11;

**Elected Director** means a Director elected under Rule 12;

**Electronic Mail** means the exchange of digital messages or other means of electronic transmission of data which can be stored as approved from time to time by the Board;

**Financial Year** means the period of 12 calendar months commencing on 1 July in each year;

**General Meeting** means an Annual General Meeting or Special General Meeting of Athletics WA;

**Individual Member** means a person as defined in Rule 4.3;

**Intellectual Property** means all rights or goodwill subsisting in copyright, business names, names, trade marks (or signs), logos, designs, patents or service marks (whether registered or registrable) relating to Athletics WA or any event, competition or activity of or conducted, promoted or administered by Athletics WA;

**Life Member** means a person appointed as a Life Member pursuant to Rule 4.4;

**Members** means the persons, organisations or Affiliated Clubs who are members of Athletics WA as defined in Rule 4;

**Policy** means a policy or policies established by Athletics WA;

**Poll** means voting conducted in written or electronic form (as opposed to a show of hands);

**Rules** means the Rules of Athletics WA as amended from time to time;

**Seal** means the Common Seal of Athletics WA;

**Special General Meeting** means a General Meeting other than an Annual General Meeting;

**Special Resolution** means a special resolution passed in accordance with the Act and requiring 75% majority vote of the Members present and eligible to vote at a General Meeting.

## 2.2 Interpretation

- (a) Words importing the singular number only shall include the plural number and vice versa. Words importing the masculine gender only shall include the feminine gender. Except where the context otherwise requires, words importing persons shall include incorporated and unincorporated bodies.
- (b) A reference to a clause is a reference to a clause of this Constitution.
- (c) Subject to the provisions of this clause, any words or expressions defined in the Act or any statutory modifications thereof in force at the date on which this Constitution becomes binding on Athletics WA shall, if not inconsistent with the subject or context, bear the same meanings in this Constitution.

## 3 OBJECTS AND POWERS

### 3.1 Athletics WA is established for the following objects:

- (a) to promote, encourage, improve, administer and co-ordinate Athletics in Western Australia at all levels according to the Constitution and the Rules for the benefit of its Members and of Athletics as a whole;
- (b) where necessary or desirable, to act as a representative body for Western Australia at both national and State government levels in all matters pertaining generally to Athletics;
- (c) to affiliate with any relevant bodies;
- (d) to sanction and stage events;
- (e) to provide funds in such manner as the Board may decide for the support and development of Athletics in Western Australia;
- (f) to secure as far as practicable a uniform policy in all matters affecting the administration and development of Athletics in Western Australia;

- (g) to liaise with all local, State and Commonwealth governments and all other bodies or entities involved with Athletics;
- (h) to accept responsibility for carrying out any functions which may be transferred from time to time to Athletics WA by any such bodies on such terms as may be then agreed between the donor of those functions and Athletics WA.

3.2 The powers conferred on Athletics WA are the same as those conferred by the Act so that, subject to the Act and any additions, exclusions or modifications inserted below, Athletics WA may do all things necessary or convenient for carrying out its objects and, in particular, may:

- (a) accept, hold, acquire, maintain, deal with and dispose of land, buildings and real or personal property;
- (b) invest the money of Athletics WA not immediately required for the purpose of carrying out the objects of Athletics WA;
- (c) borrow money from any person or body corporate for the purpose of carrying out any of Athletics WA's objects;
- (d) enter into any negotiation, contract and engagement in relation to the conduct and management of the affairs of Athletics WA and to rescind and vary any contract entered into and do anything which might be considered by the Board to be expedient for or in relation to any of those matters for the purpose of Athletics WA;
- (e) enter into partnership or to collaborate with or otherwise enter into any arrangement for the sharing of information, union of interests, cooperation, joint venture, reciprocity, concession or otherwise with any other person, body corporate, sports organisation, sporting club or government authority carrying on or engaged in or about any transaction or activity which Athletics WA is authorised to carry on or engage in
- (f) raise funds for the purposes of Athletics WA by any lawful means and to provide such securities as the Board may think fit to secure those funds;
- (g) disseminate knowledge of Athletics to the advancement of the public interest;
- (h) promote awareness of and participation in Athletics;
- (i) form and promote the formation of committees and sub-committees of Athletics WA;
- (j) engage, contract or employ by any means the services of persons in any manner;
- (k) enter into any arrangement with any government or other authority or any other person that may be conducive to the attainment of Athletics WA's objects or any one of them;
- (l) open and operate on any current account at any bank or to conduct any other lawful activity with any bank;
- (m) draw, make, accept, endorse, discount, execute and issue bills of exchange, drafts or any other negotiable or transferable instruments;
- (n) receive funds from any other source whether public or private and to expend the same;
- (o) act as trustee of any trust;
- (p) sue or be sued in its corporate name;



- (q) institute and maintain a bureau of information and records covering all phases and branches of Athletics;
- (r) establish and maintain in Western Australia a uniform test of eligibility and uniform laws for the conduct of Athletics;
- (s) deal promptly with any abuses of Athletics;
- (t) hear and adjudicate upon appeals from the decisions of Affiliated Clubs or officials thereof;
- (u) suspend, disqualify, fine or otherwise deal with any Affiliated Club or Individual Member which or who has committed any breach of the Constitution of Athletics WA or the rules or bylaws made thereunder or practised, counselled or sanctioned thereunder whether or not arising out of or in connection with Athletics which conduct is, in the opinion of Athletics WA, unfair, unbecoming or contrary to the interests of Athletics or which may bring into disrepute Athletics WA;
- (v) manufacture, market, distribute or sell textiles, apparel, clothing, merchandise, souvenirs and the like to promote the objects of Athletics WA and to authorise other parties to do so on such terms and conditions as Athletics WA may think fit;
- (w) support (by making donations of Athletics WA's funds or otherwise) and aid the support of any body (whether corporate or not) having objects similar (but so that the same are charitable in law) to those of Athletics WA and whose rules or memorandum of association prohibits the division of its income and property amongst its members;
- (x) make representations to governments and to government, municipal, local and other authorities in relation to any matters affecting the interests of Athletics;
- (y) require Affiliated Clubs to furnish any information desired by Athletics WA upon matters falling within the scope of their activities; and
- (z) to do all such things as are incidental or conducive to the attainment of Athletics WA's objects.

#### **4 MEMBERSHIP**

##### **4.1 Members**

Members of Athletics WA shall be:

- (a) Affiliated Clubs;
- (b) Individual Members;
- (c) Life Members;
- (d) Such new categories of Members, created in accordance with sub-rule XX.

##### **4.2 Affiliated Clubs**

Athletics WA may affiliate a duly incorporated association of an athletics related discipline that is constituted to represent a group of its members for the purposes of delivering localised co-ordination, administration and development of athletics in accordance with the objects of Athletics WA. Affiliated Clubs have the right to vote at Athletics WA General Meetings and shall:

- (a) be an incorporated entity;

- (b) elect or appoint two (2) Delegates who shall have the right to be present and debate but only one (1) Delegate may vote on behalf of the Affiliated Club at General Meetings;
- (c) take all necessary steps to ensure its constitution and associated policies clearly reflect the objects of Athletics WA and are otherwise in a form acceptable to the Board;
- (d) ensure its constitution and policies are amended to conform with any amendments made to this Constitution;
- (e) lodge with Athletics WA its name, audited financials, assets schedule and colours or any change thereof as per any Policy of Athletics WA in effect from time to time. The name and colours of each Affiliated Club shall be subject to the approval of the Chief Executive Officer;
- (f) In accordance with the financial reporting requirements under the Act, provide a copy of the appropriate financial reports following the Affiliated Club's Annual General Meeting and the Board shall have the right at any time to investigate the financial affairs of any Affiliated Club.

#### **4.3 Individual Members**

- (a) Individual Member means:
  - (i) an individual (whether an athlete, official or coach) who is a registered financial member of Athletics WA; or
  - (ii) an individual who is registered with an Affiliated Club.
- (b) Individual Members, subject to this Constitution, may attend General Meetings, but shall have no right to debate or vote.

#### **4.4 Life Members**

- (a) Life members will be appointed in accordance with the criteria and procedure set out from time to time by the Board in any Policy. Any conditions, obligations or privileges of life membership shall be as prescribed in the Policy.
- (b) Life Members, subject to this Constitution, may attend General Meetings but shall have no right to debate or vote.

#### **4.5 Resignation**

Any Member may resign at any time by notice in writing to the Chief Executive Officer.

#### **4.6 Voting Rights**

Affiliated Clubs shall be entitled to carry a number of votes for Athletics WA business based on the size of their club membership (as determined by Athletics WA) as follows:

Membership	Number of votes
5-75	1
76-150	2
Over 151	3

## **5 REGISTER OF MEMBERS OF THE ASSOCIATION**

### **5.1 Register of Members**

- (a) The Chief Executive Officer, on behalf of Athletics WA, must comply with the Act by keeping and maintaining in an up to date condition a secure register of Members and their contact details as prescribed in the Act.
- (b) Upon the request of a Member, Athletics WA shall make the register available for the inspection of the Member and the Member may make a copy of or take an extract from the register but shall have no right to remove the register for that purpose.
- (c) In accordance with the Act, Athletics WA may charge a fee for the provision of accessing the register of Members. Athletics WA may also require a member who wishes to obtain a copy of the register of Members to provide a statutory declaration setting out the purpose for which the application is made.
- (d) The register must be kept at the principal place of administration of Athletics WA.
- (e) The Chief Executive Officer must cause the name of a person who dies or who ceases to be a Member to be deleted from the register of Members.
- (f) Subject to confidentiality considerations and the Privacy Act (if applicable), the register may be used by Athletics WA to further the objects of Athletics WA as the Board considers appropriate.

### **5.2 Transitional Provisions**

All entities who were Affiliated Clubs or Individual Members of Athletics WA prior to the time of adoption of this Constitution under the Act shall retain their membership category and will be entitled to such benefits as are conferred on the membership category by Athletics WA until required by this Constitution to renew their membership.

## **6 SUBSCRIPTIONS AND FEES**

### **6.1 Affiliated Club Fees**

- (a) The annual membership subscription, fees and any levies payable by Affiliated Clubs to Athletics WA, the basis of, the time for and manner of payment shall be as determined by the Board from time to time.
- (b) The Chief Executive Officer shall notify Affiliated Clubs of the affiliation and membership fees for the following Financial Year prior to the 30th day of April in each Financial Year.
- (c) Any Affiliated Club that has not paid all monies due and payable by that Affiliated Club to Athletics WA may (subject to the Board's discretion) have all rights under this Constitution immediately suspended. Rights will be suspended until such time as the monies are fully paid or as otherwise determined in the Board's discretion. In the meantime, the Affiliated Club shall have no automatic right to resign from Athletics WA and shall be dealt with at the Board's discretion which includes the right to expel, suspend, disqualify, fine, discipline or retain that Affiliated Club as an Affiliated Club or impose other conditions or requirements as the Board considers appropriate.

**6.2 Other Member Fees**

- (a) Each Individual Member, through its Affiliated Club, where appropriate, shall pay each year to Athletics WA, membership fees, being an amount that shall be determined by the Board from time to time.
- (b) Life Members of Athletics WA shall not pay any fees to Athletics WA.

**7 TERMINATION OF MEMBERSHIP OF ATHLETICS WA**

Membership of Athletics WA may be terminated upon:

- (a) receipt by Athletics WA of a notice in writing from a Member of their resignation from Athletics WA. Such Member remains liable to pay to Athletics WA the amount of any subscription due and payable by that Member to Athletics WA but unpaid at the date of termination; or
- (b) non-payment by a Member of their Member fees within three months of the date fixed by Athletics WA for subscriptions to be paid, unless the Board decides otherwise; or
- (c) expulsion of a Member in accordance with Rule 9.

**8 SUSPENSION OR EXPULSION OF MEMBERS OF ATHLETICS WA**

- (a) If the Board considers that a Member should be suspended or expelled from membership of Athletics WA because of conduct detrimental to the interests of Athletics WA, the Board must communicate in writing to the Member:
  - (i) notice of the proposed suspension or expulsion and of the time, date and place of the Board meeting at which the question of that suspension or expulsion will be decided; and
  - (ii) particulars of that conduct, not less than thirty (30) days before the date of the Board meeting referred to in Rule 8(a)(i).
- (b) At the Board meeting referred to in a notice communicated under Rule 8(a) the Board may, having afforded the Member concerned a reasonable opportunity to be heard by or to make representations in writing to the Board, suspend or expel or decline to suspend or expel that Member from membership of Athletics WA and must, after deciding whether or not to suspend or expel that Member, communicate that decision in writing to that Member.
- (c) A Member has their membership suspended or ceases to be a member fourteen (14) days after the day on which the decision to suspend or expel a Member is communicated to them under Rule 8(b).
- (d) A Member who is suspended or expelled under Rule 8(b) must, if they wish to appeal against that suspension or expulsion, give notice in writing to the Board of their intention to do so within the period of fourteen (14) days.
- (e) When notice is given under Rule 8(d):
  - (i) Athletics WA, in a General Meeting, must either confirm or set aside the decision of the Board to suspend or expel the Member after having afforded the Member who gave that notice a reasonable opportunity to be heard by or to make representations in writing to Athletics WA at the General Meeting;

- (ii) the Member who gave that notice is not suspended or does not cease to be a Member unless and until the decision of the Board to suspend or expel them is confirmed under this sub-rule; and
- (iii) any decision shall be recorded in the minutes of each relevant Board meeting.

## **9 DISCIPLINE OF MEMBERS**

Where the Board is advised or considers that a Member has allegedly:

- (a) breached, failed, refused or neglected to comply with a provision of this Constitution, a Policy or any resolution or determination of the Board or any duly authorised committee; or
- (b) acted in a manner unbecoming of a Member or prejudicial to the objects and interests of Athletics WA and/or Athletics; or
- (c) brought Athletics WA or Athletics:

the Board may commence or cause to be commenced disciplinary proceedings against that Member and that Member will be subject to, and submits unreservedly to, the jurisdiction, procedures, penalties and appeal mechanisms of Athletics WA as set out in the relevant Athletics WA's Policy.

## **10 POWERS OF THE BOARD**

### **10.1 Powers**

- (a) Subject to the Act and this Constitution, the governance of Athletics WA shall be exercised by the Board. In particular, the Board as the controlling authority of Athletics WA shall be responsible for acting on all issues in accordance with the objects of Athletics WA and shall operate for the collective and mutual benefit of Athletics WA and Athletics throughout Western Australia.
- (b) The Board, subject to the Act and this Constitution, shall have the power, jurisdiction and authority to do all things necessary to carry out the business affairs and objects of Athletics WA.
- (c) The Directors shall comply with Athletics WA Policy detailing it's Board Charter, including but not limited to the following actions:
  - (i) a duty of care and diligence;
  - (ii) a duty to act in good faith in the best interests of Athletics WA and for a proper purpose;
  - (iii) a duty to not use their position and not misuse information obtained through the position to gain an advantage for self or someone else or to cause detriment to Athletics WA.
- (d) The duties outlined in Rule X will also apply to other officers of Athletics WA, which include persons who:
  - (i) participate in making decisions that affect a whole or substantial part of Athletics WA operations;
  - (ii) have the capacity to significantly affect Athletics WA's financial standing; and
  - (iii) with whose instruction the Board is accustomed to act.

## **10.2 Committees of the Board**

The Board may from time to time appoint committees to undertake certain tasks as determined by the Board. Committees shall be comprised of suitably skilled persons as determined by the Board. A Director shall be appointed Chair of any such committee. The terms of reference for each committee shall be determined by the Board.

## **10.3 Payments**

Directors and members of committees appointed by the Board are entitled to be paid out of the funds of Athletics WA for any out-of-pocket expenses for travel and accommodation properly incurred:

- (a) in attending a board/ committee meeting; or
- (b) in attending a general meeting; or
- (c) otherwise in connection with the business of Athletics WA.

## **11 COMPOSITION OF THE BOARD**

- (a) The Board shall comprise:
  - (i) Two (2) Elected Directors elected in accordance with Rule 12;
  - (ii) Seven (7) Appointed Directors who shall be appointed in accordance with Rule 13.
- (b) Subject to this Rule, the Chair must preside at all General Meetings and Board meetings. In the event of the absence from a General Meeting or a Board meeting of the Chair:
  - (i) a Director elected by those Directors present at the General Meeting must preside at the General Meeting; or
  - (ii) in the event of the absence of the Chair from a Board meeting, a Director appointed by the other Directors present at the Board meeting must preside at the Board meeting.

## **12 ELECTED DIRECTORS**

### **12.1 Qualifications for Elected Directors**

- (a) Nominees for Elected Director positions on the Board must meet the qualifications as prescribed from time to time by the Board and set out in the relevant Athletics WA's Policy.
- (b) Elected Directors should have a knowledge of athletics or its strategic direction, its stakeholders and a commitment to the development of the Athletics.
- (c) Nominees for Elected Director positions on the Board must declare any position they hold in Athletics WA or an Affiliated Club including as an office bearer, director or a paid employee.
- (d) A nominee who is subsequently elected as a Director shall immediately retire/resign from any position they hold as an office bearer, director or a paid employee of Athletics WA.
- (e) No person who has served as a Director for a period of three (3) consecutive two (2) year terms shall be eligible for election as a Director until after the expiration

of twelve (12) months following the date of conclusion of their most recent term as a Director.

## **12.2 Elections of Elected Directors**

- (a) 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 Affiliated Club notifying the positions on the Board for which an election is to be held and calling upon Affiliated Clubs to nominate persons for election to the Board.
- (b) A nominee must be a Member over the age of 18 years.
- (c) Nominations for Elected Directors must be:
  - (i) in writing on the prescribed form provided for that purpose;
  - (ii) signed by an Affiliated Club President/Chairperson and Secretary and;
  - (iii) signed by the nominee expressing a willingness to accept the position for which they have nominated and may, if desired by the nominee, be accompanied by a written statement of not more than 350 words specifying background information, qualifications, skills and experience of the nominee and particulars of why the nominee has nominated for election.
- (d) Nominations must be received by the Chief Executive Officer at least 28 days prior to the relevant Annual General Meeting (excluding the meeting date).
- (e) If the number of nominations received for the Board is equal to the number of vacancies to be filled or if there are insufficient nominations received to fill all vacancies on the Board, then those persons nominated shall be duly elected.
- (f) If the number of nominations exceeds the number of vacancies to be filled, a ballot shall be taken as follows:
  - (i) At least 21 days prior to the Annual General Meeting, each Affiliated Club entitled to vote will be forwarded a notice specifying the nominees for election and a voting form. The notice specifying the nominees for election and the voting form shall be in a format approved by the Board.
  - (ii) The notice specifying the nominees for election will contain:
    - (A) the number of positions on the Board for which an election is required;
    - (B) the names of each nominee and
    - (C) if provided, the written statement supplied in accordance with Rule 16.3.
- (g) Each Affiliated Club desiring to vote in the election will complete and return the voting form to the offices of Athletics WA by no later than 5pm, 7 days prior to the Annual General Meeting (excluding the day of the meeting).
- (h) The voting shall be conducted by absolute majority vote.
- (i) If there are insufficient nominations received to fill all Elected Director vacancies on the Board, any remaining vacant positions shall be dealt with in accordance with Rule XX.

- (j) At the Annual General Meeting the Chair shall announce the result of the election.

**12.3 Term of Appointment**

- (a) Subject to the transitional provisions contained in Rule 20, Elected Directors shall be elected in accordance with this Constitution for a term of two (2) years, which shall commence from the conclusion of the Annual General Meeting at which the election occurred and continue until the conclusion of the second Annual General Meeting following.
- (b) Should any adjustment to the term of Directors elected under this Constitution be necessary to ensure rotational terms in accordance with this Constitution, the adjustment shall be determined by the Board. Elections to subsequent Boards shall then proceed in accordance with the procedures in this Constitution with half of the Elected Directors positions being declared vacant each year.

**13 Appointment of Chair**

- (a) The Directors must, at the first Board meeting following the Annual General Meeting, elect a Chair who will hold office until the next Annual General Meeting.
- (b) The maximum term of appointment of any person as Chair shall be four (4) years.

**14 APPOINTED DIRECTORS**

The Board shall fill the vacant Appointed Directors positions as soon as practicable, after the Annual General Meeting.

**14.1 Qualifications for Appointed Directors**

The Appointed Directors may have specific skills as required by the Board in commerce, finance, marketing, law or business generally or such other skills that complement the Board composition. An Appointed Director does not need to be a Member.

**14.2 Term of Appointment**

- (a) Subject to the transitional provisions contained in Rule XX, Appointed Directors shall be appointed by the Board in accordance with this Constitution for a term of two (2) years, commencing from their date of appointment and concluding at the conclusion of the following Annual General Meeting.
- (b) Four (4) Appointed Directors shall be appointed in each year of an even number and three (3) Appointed Directors shall be appointed in each year of an odd number.
- (c) No person who has served as an Appointed Director for a period of three (3) consecutive two (2) year terms shall be eligible for appointment as an Appointed Director until after the expiration of twelve (12) months following the date of conclusion of their most recent term as an Appointed Director.

**15 LEAVE OF ABSENCE**

The Board may, in its discretion, grant leave of absence to a Director following consideration of an application submitted in writing to the Board provided:



- (a) if such period is less than six (6) months, the Board may appoint a temporary replacement;
- (b) if, in the case of an Elected Director, such period is six (6) months or more, that Director is taken to have resigned their position and a casual vacancy arises, but the Director shall be entitled to seek re-election at the Annual General Meeting at which their term of office would otherwise have expired;
- (c) if, in the case of an Appointed Director, the remaining Directors decide that granting the leave of absence would impede the Board in its role, the Appointed Director's term may be ended and a new Director appointed; and,
- (d) the leave of absence cannot exceed the remaining term of office of the Director.

## **16 VACANCIES OF THE BOARD**

### **16.1 Grounds for Termination of a Director**

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

- (a) dies;
- (b) becomes bankrupt or is required to make any arrangement or composition with creditors generally;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in anyway under the law relating to mental health;
- (d) resigns in writing to Athletics WA;
- (e) is absent without the consent of the Board from three (3) consecutive meetings of the Board;
- (f) takes up any office of salaried employment of Athletics WA;
- (g) without the prior consent or later ratification of the Affiliated Clubs in a General Meeting holds any position of remuneration under Athletics WA;
- (h) is directly or indirectly interested in any contract or proposed contract with Athletics WA and fails to declare the nature of that interest;
- (i) is found to be an undischarged Bankrupt and does not declare their Bankruptcy to the Board or offer their resignation;
- (j) is removed from office by Special Resolution under Rule XX;
- (k) would otherwise be prohibited from being a director of a corporation under the Corporations Act or is disqualified from office under the Act;
- (l) breaches Board confidentiality such that the breach poses serious and indefensible circumstances with regards the Director's fiduciary duty to Athletics WA or the Board's good governance of Athletics WA; or
- (m) brings Athletics into disrepute.

### **16.2 Removal of a Director**

- (a) The Affiliated Clubs in a Special General Meeting may by Special Resolution remove any Elected Director before the expiration of their term of office. If an Elected Director is removed in accordance with this Rule the office of the Elected Director becomes vacant and shall be filled as a casual vacancy in accordance with Rule 16.3(a).

- (b) The Board, by a majority vote, may remove any Appointed Director, before the expiration of their term of office. If an Appointed Director is removed in accordance with this Rule the office of the Director becomes vacant and shall be filled as a casual vacancy in accordance with Rule 16.3(b).
- (c) Where the Director to whom a proposed resolution referred to in sub-rule 16.2(a) makes representations in writing to the Chief Executive Officer and requests that such representations be notified to the Members, the Chief Executive Officer may send a copy of the representations to each Affiliated Club or, if they are not so sent, the Director may require they be read out at the Special General meeting referred to in Rule 16.2(a), and the representations shall be so read.
- (d) Any written communication must be of reasonable length and must not contain any illegal, offensive or defamatory material.
- (e) At the Special General Meeting referred to in Rule 16.2(a) the person whose removal is proposed shall have the right to address the meeting.
- (f) Removal of any Director shall be without prejudice to any legal claim the Director may have against Athletics WA or that Athletics WA may have against the Director in respect of matters arising before or after such removal.

### **16.3 Casual Vacancies**

- (a) In the event of a casual vacancy of an Elected Director the Board shall identify a replacement Director, in accordance with Rule 12, and appoint a suitable person for the remainder of the vacating Director's term.
- (b) In the event of a casual vacancy of an Appointed Director the Board shall identify a replacement Director from among appropriately qualified persons, in accordance with Rule 14, and appoint a suitable person for the remainder of the vacating Appointed Director's term.

### **16.4 Remaining Directors May Act**

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

## **17 MEETINGS OF THE BOARD**

### **17.1 Board to Meet**

The Board shall meet at least six (6) times between each Annual General Meeting of Athletics WA at such place and times as the Board may determine for the dispatch of business. The Chief Executive Officer shall, on the requisition of two Directors, convene a meeting of the Board within 5 days.

### **17.2 Decisions of Board**

Subject to this Constitution, each Director has a deliberative vote. Questions arising at any meeting of the Board shall be decided by a majority of votes but if there is no majority, the Chair at the Board meeting will have a casting vote in addition to his or her deliberative vote. All questions so decided shall for all purposes be deemed a determination of the Board.

**17.3 Resolutions not in Meeting**

- (a) A resolution in writing, signed, assented to or endorsed by Electronic Mail or other form of reproducible record by all the Directors shall be as valid and effectual as if it had been passed at a meeting of Directors duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more of the Directors.
- (b) For purposes of clarity, a majority vote of Directors shall be sufficient to pass a resolution not in meeting as referred to in Rule 17.3(a).
- (c) 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 or more of the Directors is not physically present at the meeting, provided that;
  - (i) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously, whether by means of telephone or other form of physical or electronic communication;
  - (ii) notice of the meeting is given to all the Directors entitled to notice in accordance with the usual procedures agreed upon or laid down from time to time by the Board and such notice does not specify that Directors are required to be present in person; and
  - (iii) in the event that a failure in communications prevents condition (i) from being satisfied by that number of Directors which constitutes a quorum and none of the Directors are present at the place where the meeting is deemed by virtue of the further provisions of this Rule to be held, then the meeting shall be suspended until 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.

**17.4 Quorum**

- (a) At meetings of the Board the number of Directors whose presence or participation is required to constitute a quorum is four (4) Directors.
- (b) When a Board meeting lapses due to lack of a quorum, the Chief Executive Officer shall convene a second Board meeting within a period of 14 days.

**17.5 Notice of Board Meetings**

Unless all Directors agree to hold an extraordinary meeting at shorter notice (which agreement shall be sufficiently evidenced by their presence) not less than seven (7) days oral or written notice of the meeting of the Board shall be given to each Director by the Chief Executive Officer. The agenda shall be forwarded to each Director not less than three working days prior to such meeting.

**17.6 Validity of Board Decisions**

A procedural defect in decisions taken by the Board shall not result in such decisions being invalidated.

**17.7 Chair of Board Meeting**

The Chair shall preside at every meeting of the Board. If the Chair is not present, or is unwilling or unable to preside, the Directors shall choose one of their number present to preside as Chair for that meeting only. Where the Chair is granted a leave of absence by the Board a replacement Chair may be elected for the duration of the absence.

**18 CONFLICTS****18.1 Directors' Interests**

A Director is disqualified from holding any position of profit or position of employment in any company or incorporated association in which Athletics WA is a shareholder or otherwise interested or from contracting with Athletics WA either as a vendor, purchaser or otherwise except pursuant to an express resolution of approval of the Board. Subject to this Rule, any contract or arrangement entered into by or on behalf of Athletics WA in which any Director is in any way interested will be voided for such reason.

**18.2 Conflict of Interest**

A Director shall declare an interest in any:

- (a) contractual matter;
- (b) selection matter;
- (c) judicial or disciplinary matter;
- (d) sponsorship matter;
- (e) material personal interest; or
- (f) other financial matter;

in which a conflict of interest arises or may arise and shall absent themselves from discussions of such matter and shall not be entitled to vote in respect of such matter. In the event of any uncertainty as to whether it is necessary for a Director to absent themselves from discussions and 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.

**18.3 Disclosure of Interests**

- (a) The nature of the interest of such Director must be declared by the Director at the meeting of the Board at which the contract or other matter is first taken into consideration if the interest then exists or in any other case at the first meeting of the Board after the acquisition of the interest. If a Director becomes interested in a contract or other matter after it is made or entered into, the declaration of the interest must be made at the first meeting of the Board held after the Director becomes so interested.
- (b) Conflicts of interest shall be a standing agenda item at meetings of the Board and it is the duty of the Chief Executive Officer to ensure that any declaration made or any general notice given by a Director is recorded in the minutes.
- (c) Conflicts of interest registered by Directors will also be declared at the Annual General Meeting.

**19 CHIEF EXECUTIVE OFFICER****19.1 Appointment of Chief Executive Officer**

The Chief Executive Officer shall be appointed by the Board on such conditions as it may determine. The Chief Executive Officer shall be entitled to notice of, attend and participate in debate at all meetings of the Board, but shall have no entitlement to vote. The role, responsibilities and duties of the Chief Executive Officer shall be in accordance with the job description as determined and approved by the Board from time to time.

**19.2 Chief Executive Officer as Public Officer**

The Chief Executive Officer shall act as and carry out the duties of the Public Officer of Athletics WA and shall administer and manage Athletics WA in accordance with this Constitution, Athletics WA Policy and the Act.

**19.3 Specific Duties**

The Chief Executive Officer shall:

- (a) as far as practicable, attend all Board meetings and General Meetings;
- (b) in conjunction with the Chair, prepare the agenda for all Board meetings and all General Meetings;
- (c) ensure that minutes of the proceedings of all meetings of the Board and Athletics WA are both prepared and recorded; and
- (d) regularly report on the activities and issues relating to the conduct and business of Athletics WA.

**19.4 Broad Power to Manage**

Subject to the Act, this Constitution, Athletics WA Policy, any directive of the Board, the Chief Executive Officer has power to perform all such things as appear necessary or desirable for the proper management and administration of Athletics WA.

**19.5 Chief Executive Officer may Employ**

The Chief Executive Officer may employ staff as deemed necessary from time to time and such appointments shall be for a period and on conditions determined by the Chief Executive Officer.

**20 TRANSITIONAL PROVISIONS**

**20.1 Transitional Board**

Upon the adoption of this Constitution, the Board appointed at the Annual General Meeting preceding the adoption (the transitional Board) will continue as the Board of Athletics WA with each Director serving out the remainder of their term. The transitional Board shall, consistent with this Constitution, do such things and act in such manner as is necessary to further the objects of Athletics WA during its term. The quorum for a meeting of the transitional Board shall be four (4) Directors.

**20.2 Chair During Transitional Period**

The Chair shall preside at every meeting of the transitional Board. If the Chair is not present, unwilling or unable to preside, the Directors shall choose one of their number present to preside as Chair for that meeting only.

**20.3 Transitional Board Vacancies**

At the first Annual General Meeting held following the adoption of this Constitution, two (2) Elected Director positions will be filled with the terms allocated being two years and one year.

## **21 DELEGATES**

### **21.1 Appointment of Delegates**

Each Affiliated Club may be represented by two (2) Delegates, however only one (1) Delegate may vote the Affiliated Club number of entitled votes on behalf of the Affiliated Club.

A Delegate must:

- (a) be a member over the age of 18 years of the Affiliated Club;
- (b) be appropriately empowered by the appointing Affiliated Club to consider, make decisions and vote in proceedings as per this Constitution,
- (c) not be a Director of Athletics WA,
- (d) not be an employee of Athletics WA; and
- (e) not be a Delegate for more than one (1) Affiliated Club.

## **22 GENERAL MEETINGS**

### **22.1 Holding of General Meetings**

- (a) An Annual General Meeting of Athletics WA shall be held in accordance with the provisions of the Act and this Constitution on a date and at a venue to be determined by the Board in every calendar year within four (4) months after the end of Athletics WA's Financial Year or such longer period as may in a particular case be allowed by the Commissioner.
- (b) All General Meetings other than the Annual General Meeting shall be Special General Meetings and shall be held in accordance with this Constitution.

### **22.2 Entitlement to Attend General Meeting**

Notwithstanding any other Rule, no Affiliated Club shall be represented at or take part in a General Meeting unless all monies in accordance with Rule XX, then due and payable to Athletics WA are paid.

## **23 NOTICE OF GENERAL MEETINGS**

### **23.1 Notice of Annual General Meetings**

The Chief Executive Officer shall be responsible for;

- (a) giving notice of the Annual General Meeting to all Directors, Affiliated Clubs and Life Members;
- (b) notice of the Annual General Meeting shall be given at least 21 days prior to the meeting and shall specify the place, the day and time of the Annual General Meeting, and
- (c) distributing, at least 7 days prior to the Annual General Meeting, an agenda for the meeting stating the business to be transacted together with any notice of motion received or forms applicable to the intended business.

### **23.2 Notice of General Meetings**

The Chief Executive Officer shall be responsible for:

- (a) giving notice of General Meetings to all Directors and Affiliated Clubs;

- (b) notice of the General Meeting shall be given at least 21 days prior to the meeting and shall specify the place, the day and time of the General Meeting; and
- (c) distributing, at least 7 days prior to the General Meeting, an agenda for the meeting stating the business to be transacted, together with any notice of motion received or forms applicable to the intended business.

## **24 BUSINESS**

### **24.1 Business of General Meetings**

- (a) The business to be transacted at the Annual General Meeting includes the presentation of annual accounts, reports of the Board (including the activities of Athletics WA during the preceding Financial Year and activities of the Board), auditors report and the confirmation of Elected Directors and Life Membership.
- (b) All business that is transacted at both a General Meeting and at the Annual General Meeting, with the exception of those matters set out in Rule \* shall be special business.

### **24.2 Business Transacted**

No business other than that stated on the notice of meeting or agenda shall be transacted at a General Meeting.

## **25 SPECIAL GENERAL MEETINGS**

- (a) Excluding the Annual General Meeting, the Board may, whenever it thinks fit, convene Special General Meetings on dates and at venues to be determined by the Board.
- (b) The Board shall on the requisition in writing by no less than 20 % of Affiliated Clubs convene a Special General Meeting.
- (c) The requisition for a Special General Meeting shall state the objective(s) of the meeting; shall be sent to Athletics WA and shall be signed by the Affiliated Clubs making the requisition.
- (d) If the Board does not cause a Special General Meeting to be held within two (2) months after the date on which the requisition is sent to Athletics WA, the Affiliated Clubs making the requisition may convene a Special General Meeting to be held not later than one (1) month after that date.
- (e) A Special General Meeting convened under this Constitution shall be convened in the same manner in which meetings are convened by the Board. No business except that for which the meeting has been called shall be transacted at such Special General Meeting.
- (f) In accordance with the Act, should the Commissioner direct that a Special General Meeting be held, it will be conducted in accordance with this Constitution.

**26 PROCEEDINGS AT GENERAL MEETINGS****26.1 Quorum**

No business shall be transacted at any General Meeting unless a quorum is present at the time when the meeting proceeds to business. A quorum for a General Meeting of Athletics WA shall be a minimum of thirty (30) per cent of Affiliated clubs eligible to vote.

**26.2 Conduct of Meeting**

Without limiting the power of the Board to regulate a meeting as they think fit, a General Meeting may be held where one or more of the Delegates is not physically present at the meeting provided that:

- (a) prior notification of requirements to satisfy Rule 26.1 are communicated to the Chief Executive Officer;
- (b) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously, whether by means of telephone or other form of physical or electronic communication;
- (c) notice of the meeting is given to all Affiliated Clubs entitled to notice; and
- (d) in the event that a failure in communications prevents the condition in Rule 26.1 from being satisfied by that number of participants which constitutes a quorum and insufficient Delegates are present at the place where the meeting is deemed by virtue of the further provisions of this Rule to be held, then the meeting shall be suspended until the condition at Rule xx is satisfied again. If such condition is not satisfied within fifteen (15) minutes from the interruption, the meeting shall be deemed to have terminated.

**26.3 Chair of General Meetings**

The Chair shall, subject to this Constitution, preside as Chair at every General Meeting of Athletics WA. If the Chairperson is not present, is unwilling or unable to preside, the Directors shall choose one of their number present who shall, subject to this Constitution, preside as Chair for that meeting only.

**26.4 Adjournment of Meeting**

- (a) If within thirty (30) minutes from the time appointed for the General Meeting, a quorum is not present, the meeting shall be adjourned to such other day, such other time and place as may be determined under sub-rule 26.4(b).
- (b) When any General Meeting lapses due to lack of a quorum, the Chief Executive Officer shall convene a second meeting within a period of fourteen (14) days. If at the adjourned meeting a quorum is not present within thirty (30) minutes from the time appointed for the meeting, the business shall be transacted provided that the number of Affiliated Clubs then present is not less than half the number required for a quorum.
- (c) The Chair may, with the consent of any General Meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (d) When a General Meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.



- (e) Except as provided in sub-rule 26.4(d) it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

**26.5 Voting Procedure**

At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hand unless a Poll is (before or on the declaration of the result of the show of hands) demanded:

- (a) by the Chair; or
- (b) by at least three (3) Affiliated Clubs present in person at the meeting.

**26.6 Voting Entitlements**

- (a) Subject to this Constitution; Affiliated Clubs shall be entitled to vote at General Meetings.
- (b) Subject to this Constitution, Affiliated Clubs votes shall be exercised by the Delegates. No other Member shall be entitled to vote.
- (c) All votes shall be given personally or by mail, as provided in sub-rule xx.

**26.7 Recording of Determinations**

Unless a Poll is demanded under Rule 26.5, a declaration by the Chair that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or lost and an entry to the minutes of the proceedings of Athletics WA shall be conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution.

**26.8 Where Poll Demanded**

If a Poll is duly demanded under Rule 26.5 it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chair directs and the result of the Poll shall be the resolution of the meeting at which the Poll was demanded.

**26.9 Resolutions at General Meetings**

Except where a Special Resolution is required, all motions at General Meetings shall be determined by a majority vote of eligible Affiliated Clubs.

**26.10 Minutes**

- (a) The Chief Executive Officer shall ensure that the resolutions and proceedings of each General Meeting are minuted together with a record of the names of persons present at all meetings.
- (b) Any Member of Athletics WA, on giving reasonable notice to the Chief Executive Officer, may inspect the minutes of any General Meeting.
- (c) Within 14 days after each General Meeting, the Chief Executive Officer shall supply to each Affiliated Club a copy of the minutes of the General Meeting.

**27 PROXY AND MAIL VOTING**

**27.1 Proxy Voting Not Permitted**

Proxy voting shall not be permitted at General Meetings.

**27.2 Mail Voting**

- (a) Should an issue arise between General Meetings which requires a decision or ratification by Affiliated Clubs, the Board may at its discretion submit a proposed motion to a mail vote in such manner as it considers necessary.
- (b) Any such mail vote shall be in accordance with the following procedure:
  - (i) The Chief Executive Officer shall, upon receipt of the directive, as soon as practicable, dispatch a copy of the proposed resolution to each Affiliated Club eligible to vote.
  - (ii) Such dispatch shall be, at the discretion of the Chair, either by post or by Electronic Mail and shall be accompanied by a notice stating the date on which the voting shall close and indicating whether voting is by post or electronic mail.
  - (iii) The dispatch of the proposed resolution and notice shall be deemed to have been received by each Affiliated Club;
    - (A) in the case of dispatch by post - five (5) working days after posting;
    - (B) in the case of dispatch by Electronic Mail – on successful delivery to the entities nominated electronic mail address.
- (c) All votes shall be received by the Chief Executive Officer in the case of:
  - (i) mail votes – within 14 days of dispatch of the proposed motion and notice, unless otherwise advised;
  - (ii) Electronic Mail - (e-mail) no later than midday on the normal working day preceding the date upon which the voting shall close.
- (d) Upon the close and counting of voting, a scrutineer appointed by the Board shall examine the votes as tallied and advise each Affiliated Club of the result.
- (e) A vote on any proposed motion captured by authenticated electronic voting system/s via an independent registered organisation on behalf of Athletics WA shall be valid and binding in all respects.

**28 RULES AND CONSTITUTION OF ATHLETICS WA**

- (a) In accordance with the procedure set out in the Act, the Constitution shall be reviewed at least every two years.
- (b) Athletics WA may make alter or rescind any Rules.

**29 COMMON SEAL**

The Common Seal of Athletics WA engraved with the name of Athletics WA shall be kept in the care of the Chief Executive Officer. The seal shall not be used or affixed to any deed or other document except pursuant to a resolution of the Board in the presence of the Chair and another Director.

**30 DISPUTES AND MEDIATION**

- (a) The grievance procedure set out in Athletics WA Member Protection Policy May 2016 (as amended from time to time) applies to disputes under this Constitution between-
  - (i) a Member and another Member; or
  - (ii) a Member and Athletics WA;
- (b) 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.
- (c) 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 in accordance with Athletics WA Policies.
- (d) If a dispute between Members that relates to a rule of Athletics WA cannot be resolved through this process it will be possible to make an application for the matter to be heard by the State Administrative Tribunal. It is open to the State Administrative Tribunal to refer the dispute or any aspect of it for mediation or make orders for the resolution of the dispute.
- (e) In limited circumstances ,the Commissioner will be able to apply to the State Administrative Tribunal for the appointment of a statutory manager to administer the affairs of Athletics WA.

**31 NON-PROFIT**

The income and property of Athletics WA wheresoever derived shall be applied solely towards the promotion of the objects of Athletics WA and no portion thereof shall be paid, transferred or distributed directly or indirectly to the Members otherwise than in accordance with such directions of the Board and then only in good faith in pursuit of the objects of Athletics WA as specified in this Constitution provided that nothing herein shall prevent the payment in good faith of remuneration to any officers or servants of Athletics WA or to any person or organisation other than a Member in return for any services actually rendered or facilities or goods actually provided to Athletics WA.

**32 DISTRIBUTION OF SURPLUS PROPERTY ON WINDING UP OF ATHLETICS WA**

If upon the winding up or dissolution of Athletics WA there remains after satisfaction of all its debts and liabilities any property whatsoever, the same must not be paid to or distributed among the Members or former Members. The surplus property must be given or transferred to another body or organisation incorporated under the Act which has similar objects and which is not carried out for the purposes of profit or gain to its individual members and which shall be determined by majority resolution of the Affiliated Clubs.

**33 RULES AND POLICIES**

**33.1 Board to Formulate Rules and Policies**

The Board may (by itself or by delegation to a committee) formulate, approve, issue, adopt, interpret and amend such Rules and Policies for the proper advancement, management and administration of Athletics WA, the advancement of the objects of Athletics WA and

Athletics as it thinks necessary or desirable. Such Rules and Policies must be consistent with this Constitution.

**33.2 Rules and Policies Binding**

All Policies and Rules shall be binding on Athletics WA and its Members.

**33.3 Policies Deemed Applicable**

All By-Laws, regulations, Rules and Policies of Athletics WA in force at the date of the approval of this Constitution under the Act in so far as such by-laws, regulations, Rules and Policies are not inconsistent with, or have been replaced by this Constitution, shall be deemed to be Rules and Policies.

**33.4 Notices Binding on Members**

Amendments, alterations, interpretations or other changes to Rules and Policies shall be advised to Members by means of notices approved by the Board and prepared and issued by the Chief Executive Officer. Affiliated Clubs shall be obliged to draw such notices to the attention of their respective members. Notices are binding upon all members.

**34 ATHLETICS AUSTRALIA**

All events conducted or sanctioned by Athletics WA shall where appropriate or required, be conducted in accordance with and not inconsistent with the Memorandum and Articles of Association, Bylaws and Rules of Athletics Australia in force from time to time.