

**CONSTITUTION
OF
THE CHARTER BOAT OWNERS &
OPERATORS ASSOCIATION
OF
WESTERN AUSTRALIA (Inc)**

As at 12 November 2003

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1. INTERPRETATION

(1) Definitions

In this Constitution, unless the context requires otherwise –

“Association” shall mean the Charter Boat Owners & Operators Association of Western Australia Inc.

“Executive Committee” shall mean the Executive Committee of the Association appointed in accordance with clause 6 of this constitution.

“Association year” shall mean the financial period from time to time specified by the Executive Committee, and until so specified, each period from the 1st day of July until the 30 day of June each year.

“Charter Boat Industry” shall mean any ocean and inland waterway vessel activity for hire, including:

- a. large river and ocean ferry services for the community and tourism sector;
- b. small harbour and river tours;
- c. licensed eco-tours catering to the community and tourism sectors;
- d. licensed fishing and diving tour operations for recreational fishers, including day and extended multiple day charters;
- e. catered charters for corporate and private parties;
- f. ferrying, hire-drive charters, delivery, training and security services.”

(2) Acts of Association

A reference to any action, which the Association may take, means an action resolved upon in accordance with this Constitution by a properly convened meeting of members of the Association.

(3) Acts of the Executive Committee

A reference to any action which the Executive Committee may take means an action resolved upon in accordance with this Constitution by a properly convened meeting of the Executive Committee.

(4) Extension of Meaning

In this Constitution, where necessary, the plural shall include the singular and the masculine shall include the feminine, and in each case, vice versa.

2. ESTABLISHMENT, CHANGE AND DISSOLUTION

(1) Name

The name of the Association shall be “The Charter Boat Owners & Operators Association of Western Australia Inc.”.

(2) Incorporation

The Executive Committee shall, at any time, cause the Association to incorporate under the Associations Incorporation Act 1987.

(3) Association to be Non – Profit

The property and income of the Association shall be applied solely and exclusively to the promotion of its objects, and no part may be applied or transferred, directly or indirectly, by way of pecuniary profit to a member.

(4) Members May be Paid for Services

Notwithstanding sub – clause (3), the Executive Committee may make a payment to a member for a service rendered by, or for property acquired from, that person, in a special or private capacity.

(5) Alteration to the Constitution

The Association may, by a resolution passed by not less than 75% of the members at a meeting, of which due notice of the proposed resolution has been given,

- (a) alter or add to this Constitution,
- (b) repeal this constitution and adopt a new constitution and a notice of such meeting shall refer to the draft alterations of the constitution by showing the changes in full.

(6) Validation of Act

Every act of the Association and the Executive Committee and every appointment made by each, shall be deemed to be fully valid and effective, notwithstanding any defect in the notice of the meeting, or in the meeting procedure, at which the same was resolved upon, except if annulled by an extraordinary general meeting of members called for that purpose within six weeks of the act or appointment concerned.

(7) Dissolution of Association

The Association may at any time, with the consent of a majority of three quarters of the members present at a General Meeting called for that purpose, be dissolved.

(8) Surplus Property after Dissolution

If, after the dissolution or winding up of the Association, there remains after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Association, but shall be distributed either to an incorporated association or donated for charitable purposes . Which association , institution or object shall be determined by the members of the Association, at or before the time of dissolution or winding up, or in default thereof, or if and insofar as effect cannot be given to such determination, then such payment or distribution shall be determined by a judge of the Supreme Court.

3. MISSION, OBJECTS AND POWERS

(1) Mission

CBOOAWA's mission is to promote a legislative, administrative, economic and social environment which facilitates a safe, environmentally responsible and profitable charter boat transport industry in Western Australia.

(2) Objects

The objects of the Association are:

- (a) to provide an organisation, property and facilities through which persons involved in the Western Australian Charter Boat Industry may collectively pursue the best conditions which the economy of Australia will permit;
- (b) to promote and develop an efficient and safe charter boating industry within Western Australia;

- (c) to promote efforts within the industry for the solving of common problems and unite all sections of the Charter Boat Industry for their common benefit;
- (d) to present the views of a cohesive Charter Boat Industry at State and Commonwealth levels of Government, act as adviser to, or intermediary between industry and Government, key stakeholder groups and the community and to appoint or nominate representatives to various bodies;
- (e) to encourage strong regional industry 'user groups' and support regional representation.

(3) Powers

The Association may exercise any or all of the powers herein set out in pursuit of its objects:

- (a) To purchase, take on lease or hire, or otherwise acquire and maintain, any real or personal property.
- (b) To sell, exchange, lease, mortgage, hire, dispose of, or otherwise deal with all, or any part of, the real and personal property of the Association.
- (c) To borrow, or raise, or secure the payment of money in such manner as the Association may think fit, with power to grant mortgages, charges, or any security upon, or charging all or any, of the property of the Association whether real or personal, and to redeem or pay off any existing or future security.
- (d) To invest and deal with the monies of the Association, not immediately required for the purposes of the Association, in such manner as may from time to time be determined.
- (e) To affiliate and co-operate with any other association having objects wholly, or in part, similar to those of the Association.
- (f) To employ or contract such secretaries, clerks and managers as required and to suspend or dismiss the same and pay them for services rendered;
- (g) To develop for member consideration and endorsement such Industry self-regulatory mechanisms as may benefit the Industry and its sectors. Such mechanisms may take the form of , but shall not be limited to, Codes of Practice or Conduct, Quality and Operational Procedures and establishment of appropriate industry accreditation and quality control systems as may be deemed appropriate;
- (h) To do all such things as are incidental or conducive to the attainment of the objects of the Association.

4. MEMBERSHIP

Types of Membership

There shall be three (3) types of membership, namely:

- (a) ordinary members;
- (b) associate members; and,
- (c) life members.

(2a) Eligibility to Apply for Ordinary Membership

Any person, partnership, or company, carrying on a business which operates a charter vessel, or charter vessels, registered under the provisions of the Western Australian Marine Act, may apply for ordinary membership of the Association, but so that there shall be a maximum of only one ordinary member in respect of each such business.

(2b) Eligibility to Apply for Associate Membership

Any person, being in a business that is involved in the operation of a charter vessel or any person being in a business that is able to provide support to the Western Australian charter boat industry, may apply for associate membership of the Association.

(3) Application for Ordinary and Associate Membership

Any eligible person seeking ordinary or associate membership of the Association shall apply in writing in the form from time to time prescribed by the Executive Committee.

The Executive Committee may refuse an application for membership if it is deemed that the person is not a fit and proper person, provided that any person so refused is advised in writing of the reasons and is given an opportunity to make a personal appeal to the Executive Committee for further consideration.

Membership accepted under this clause shall be subject to the approval of the Executive Committee and the payment of any fees that are at the time prescribed by the Executive Committee.

(4) Lapse of Ordinary or Associate Membership

A membership shall lapse if that member's fees are not paid within thirty (30) days of the date which the member has been advised that the fees are due. When a membership has lapsed in such circumstances the Executive Committee may approve an extension of membership until the member's fees are paid.

A membership shall lapse if a member can no longer satisfy the eligibility criteria for ordinary or associate membership, unless the Executive Committee gives approval for continued membership pending that member's ability to again satisfy the eligibility criteria. Any such approval by the Executive Committee shall be reviewed within three (3) months.

(5) Privileges of all members

Any financial member, except as otherwise provided within this clause may,

- (a) receive (at the last postal or electronic address given to the Association) any notice of any general meeting of members of the Association.
- (b) attend any general meeting of members of the Association. Only ordinary and life members may exercise one vote in respect of any motion put to a vote at any such meeting.
- (c) nominate in writing for another person to attend and represent that member at any general meeting including the exercise of any voting right which that member may hold.
- (d) be nominated and elected in accordance with the Constitution to be a member of the Executive Committee, provided that such nominations are limited only to ordinary and life members.
- (e) attend, or participate in, such functions events or activities for members as the Association, or the Executive Committee may organise for members generally, and
- (f) utilise such facilities as are made available for members of the Association to utilise generally.

(6) Discipline of Members

If a member

- (a) willfully breaches a provision of the Constitution, or a condition of membership which he is bound to observe, or,
- (b) acts in a manner, in the opinion of the Executive Committee contrary to the interest and objects of the Association, then the Executive Committee, or a Sub – Committee of the Executive Committee appointed for the purpose, may, upon
 - (a) its own motion, or
 - (b) a written complaint, accompanied by a Statutory Declaration setting out all the relevant facts, by another member, and only after affording the member complained of an opportunity to hear or read the charge and defend or explain, in person or in writing, his conduct, in its absolute discretion,
 - (a) reprimand,
 - (b) suspend for a fixed period, or
 - (c) expel that member from membership. Upon suspension or termination of the membership of any member pursuant to this clause, the Secretary shall give notice in writing thereof to the member concerned. Within fourteen (14) days after receipt of such notice, the person to

whom the notice was addressed may give to the Secretary notice in writing of his intention to appeal against such determination to a special general meeting of members, and upon receipt of such notice, the Secretary shall convene a special general meeting of members to be held not less than (21) nor more than twenty eight (28) days after the date upon which he received such notice for the purpose of considering the appeal, and notice of such meeting shall be given in accordance with the provisions of sub - clause 5(6).

At such special general meeting, the person whose membership has been terminated or suspended shall be entitled to give in answer to the allegations against him such evidence and explanations as he may desire and as may be relevant to the issue, and any member shall have the like right. By a motion passed by a majority of those present and voting at the meeting, the appeal may be upheld or dismissed. Until the final determination of his appeal the appellant shall be deemed to have been suspended, but shall be entitled to vote at the special general meeting. In the event of the upholding of the appeal, the appellant's membership shall be restored forthwith.

(7) Life Members

The Executive Committee may nominate a person, who satisfies eligibility criteria prescribed in By-Laws of the Association, to be a Life Member of the Association. Any member, or members so nominated, shall be subject to election by a majority of three quarters of the members present at the next ensuing Annual General Meeting, and any member so elected shall be entitled to all privileges of an Ordinary Member without being obliged to pay the Annual Membership Fee.

5. MEETINGS OF MEMBERS

(1) One Annual General Meeting

The Association shall hold one Annual General Meeting during each Association year in accordance with this part of the Constitution. Any other general meetings of members held shall be Extraordinary General Meetings.

(2) Time and Place of Annual General Meeting

The Executive Committee shall convene the Annual General Meeting at such place, on such day and at such time as the Executive Committee decides, except that the Executive Committee shall convene each Annual General Meeting not more than fifteen (15) months after the date of the preceding Annual General Meeting.

(3) Period of Notice of the Annual General Meeting

The Executive Committee shall give Notice (in accordance with the provisions of the Constitution relating to Notices) of the Annual General Meeting at least one month before the date of the Annual General Meeting. A notice for an Annual General Meeting shall declare any vacancies and call nominations for the election of members to the Executive Committee.

(4) Business of the Annual General Meeting

At the Annual General Meeting the Association shall transact the following business in the following order:-

- (a) Reading of the Notice of the meeting.
- (b) Recording of apologies.
- (c) Reading and confirmation (by resolution) of the minutes of the previous Annual General Meeting.
- (d) Reading and confirmation (by resolution) of the minutes of all Extraordinary General Meetings (if any) since the previous Annual General Meeting.
- (e) Reading a report of the President to the Association on the activity of the Association during the preceding Association Year.
- (f) Reading or tabling, and adoption or other disposal (by resolution) of, the accounting reports described in sub - clause 7(10) of this Constitution.
- (g) Election of members of the Executive Committee in place of those retiring.

- (h) Any special business of which fourteen (14) days prior written notice has been given.
- (i) Any general business.

(5) Extraordinary General Meeting

The Executive Committee may, upon its own motion, or upon the written requisition of five (5) members of the Association, shall, by fourteen (14) days prior notice, convene a general meeting of members of the Association to conduct the business stated in the notice convening the meeting.

(6) Notices of Meetings of Members

Except as provided in clause 5(3) notices of any general meeting of members shall be posted or sent electronically (by fax or email), at least fourteen (14) days before any meeting, to all members who have given the Association an address.

(7) Quorum of Meetings of Members

A quorum at the Annual General Meeting and at any Extraordinary General Meeting shall be ten (10) financial ordinary, or life members present in person.

(8) Procedure if no Quorum

If within fifteen (15) minutes from the meeting time appointed no quorum shall be present -

- (a) at the Annual General Meeting or at an Extraordinary General Meeting for which due notice has been given, it shall be adjourned until the same time on the same day of the following week.
- (b) at an Extraordinary General Meeting convened upon a requisition of the members, then it shall lapse.

(9) Chairman of General Meetings of Members

The President of the Association, or in his absence the Vice President, or in his absence a member of the Executive Committee elected by the Executive Committee, shall act as Chairman of any General Meeting of members of the Association.

(10) Chairman's Powers

The Chairman of all general meetings of members of the Association shall

- (a) have a casting vote (in addition to his own vote) in the case of an equality of votes;
- (b) decide the order of business (other than as is set out in the Constitution),
- (c) decide all points of order,
- (d) decide whether a vote (except for an election of members to the Executive Committee) shall be on voices alone or also on show of hands, except that any one member may demand a written ballot.

(11) Voting at General Meetings of Members

When it is practicable to do so, every financial ordinary, or life member may exercise their right to vote, either in person, or by proxy where a member has given written authorisation for another person to attend a general meeting on his behalf, or by postal vote. No other person shall be entitled to vote at a general meeting.

Any resolution at a general meeting shall, except where otherwise provided in this Constitution be carried, if voted for by a simple majority of those entitled and able to vote.

The Chairman of a general meeting shall appoint a person to be responsible for counting all eligible votes.

(12) Evidence of Proceedings

Minutes of the proceedings of every general meeting (Annual and Extraordinary) shall be entered and kept in a Minute Book, and such minutes when signed, shall be conclusive evidence that the proceedings minuted therein were regular and actually took place as minuted at a meeting duly convened and held, and shall be binding on all members of the Association, except as to any irregular proceedings as declared and annulled at an Extraordinary Meeting called for that purpose, and held within three (3) months after the holding of such Annual or Extraordinary Meeting.

A copy of the minutes shall be communicated to all members within fourteen (14) days subsequent to any general meeting.

6. THE EXECUTIVE COMMITTEE

(1) Composition of the Executive Committee

The Executive Committee shall consist of the following office bearers, elected at each Annual General Meeting.

- (a) The President.
- (b) The Vice President.
- (c) The Secretary.
- (d) The Treasurer.
- (e) Not less than two committee members.

(2) Election of Executive Committee

The following provisions shall apply to the election of office bearers at the Annual General Meeting:

- (a) A total of six (6) executive Committee office bearers shall include a President, a Vice President, a Treasurer a Secretary and two (2) general Executive Members;
- (b) The six (6) Office Bearers shall be elected to serve a two (2) year term each, with staggered expiry dates to ensure continuity of experience on the Committee. To effect the staggered expiry dates for the introductory years a schedule shall of one and two year elected terms will be developed.
- (c) Additional members may be elected or co-opted to the executive Committee for one (1) year terms.
- (d) All office bearers may serve an unlimited number of consecutive terms.
- (e) Nominations for election as a member of the Executive Committee shall be proposed and seconded by members in writing and lodged with the Association not less than fourteen (14) days before the Annual General Meeting.
- (f) A separate election shall be held for each office bearer described in sub – clause 6(1), in that order.
- (g) An office bearer shall be deemed to have retired before the meeting for the purpose of the elections referred to in this sub – clause, but for all other purposes shall be deemed to hold office until the close of the Annual General Meeting, or until the new candidates are declared elected, whichever is the later.
- (h) Each retiring member of the Executive Committee shall be eligible for re – election.
- (i) If the number of nominations does not exceed the number of vacancies, the Chairman of the Annual General Meeting shall declare the nominated candidates duly elected.
- (j) In the event that there are more candidates than vacancies, a written ballot shall be held at the Annual General Meeting at which the vacancies have occurred.
- (k) Voting shall be by the preferential voting method. That is, candidates shall be numbered in preference by the voter and shall be eliminated in the order in which they receive the least number of first preferences, with the remaining preferences on the eliminated candidates ballot papers being distributed amongst the remaining candidates, until all candidates except the number requiring to be elected remain.
- (l) The Executive Committee shall appoint a member to act as the returning officer for the election, and he shall have an absolute discretion to regard any discrepancy in procedure

which he regards as insubstantial. Upon completion of the election he shall convey the results to the Chairman of the Annual General Meeting, (whether or not the meeting shall have concluded) and the Chairman shall declare the poll.

(3) Vacancies

If a casual vacancy occurs on the Executive Committee then the Executive Committee may, at an Executive Committee meeting, appoint a member of the Association to fill the vacancy.

- (a) In the event of a Director resigning earlier than four (4) months prior to the expiry of the term of office, the Board of Directors shall have the power to co-opt a person to serve out the remainder of the current year. If the resignation is within four (4) months of the expiry of the Director's term no replacement will be sought. At the next Annual General Meeting the position shall be declared vacant and a new Director elected for the remainder of the original term.
- (b) Any person appointed by the Executive Committee in accordance with the Constitution to fill a casual vacancy amongst the elected members of the Executive Committee shall be deemed, for election purposes, to have also served the term of the person whose vacancy he filled.

(4) Meetings of the Executive Committee

The Executive Committee may meet at such place and at such times as it shall think fit, and any two (2) members of the Executive Committee may convene a meeting of the Executive Committee by seven (7) days written notice.

(5) Special Meetings of the Executive Committee

The President, and in his absence the Vice President, may convene a Special Meeting of the Executive Committee and fix the date and place of such meeting.

(6) Quorum at Meetings of the Executive Committee

Four (4) committee members of the Executive Committee shall form a quorum at any meeting of the Executive Committee.

(7) Procedure at Executive Committee Meetings

The procedure upon lack of quorum, chairmanship, chairman's powers, voting, and minute provisions applicable to a general meeting of members shall apply to meetings of the Executive Committee with such changes as may be necessary.

(8) Recording of Procedures at Executive Committee Meetings

Any business decided at an Executive Committee meeting shall be recorded and communicated to all members within fourteen (14) days after the meeting.

7. MANAGEMENT OF THE ASSOCIATION

(1) Association Managed by Executive Committee

The Executive Committee shall manage and control all of the business of the Association except that which shall in accordance with the Constitution be dealt with by general meetings of members.

(2) Powers of the Executive Committee

The Executive Committee may exercise all of the powers exercisable by the Association under the Constitution.

(3) By-Laws of the Association)

The Executive Committee may from time to time make and rescind alter modify or add to By-Laws of the Association in respect of the whole or any part of the conduct of the activity of the Association. A record of such By-Laws will be kept as a "Schedule of By-Laws of the Association" and shall form an attachment to this Constitution.

(4) By-Laws the Association to be Constitutional

All By-Laws made under the preceding clause shall be consistent with the provisions of this Constitution.

(5) Appointment of Sub Committees Etc.

The Executive Committee may constitute committees, Sub – Committees, Boards or other bodies under such titles as the Executive Committee sees fit, consisting of such members of the Association, or others, as the Executive Committee sees fit, for the purpose of carrying out any function of Executive Committee. The Chairman or his nominee shall be an ex-officio member of any such bodies.

Standing Sub Committees may include, but not be limited to:

- (a) Maritime;
- (b) Fishing and Eco Tourism;
- (c) Access and Environment;
- (d) Business and Industry;
- (e) Promotion and Benefits;
- (f) Finance and Management.

(6) Delegation of Functions

The Executive Committee may delegate, in whole or in part, any power or function of the Executive Committee to any employee or consultant engaged for the purpose or any committee or sub – committee or other body constituted by the Executive Committee for that purpose under the preceding sub - clause.

(6) Property

The Association shall acquire and hold all property (real or personal) in its own name.

(8) Common Seal

The Association shall have a Common Seal and the Secretary shall provide for custody and use of it, as deemed appropriate by the Executive Committee.

(9) Affixing of Seal

Any deed or instrument to be executed under seal by the Association shall be executed by having the Common Seal affixed thereto pursuant to a resolution of the Executive Committee so to do in the presence of two (2) members of the Executive Committee who shall all attest the affixing.

(10) Accounts

The Executive Committee shall cause all records to be kept and, at least once after the completion of each Association year in respect of that Association Year, cause accounting reports to be made, or several separate accounts to be made, of all the property, financial transactions and affairs of the Association in such a manner as the Executive Committee thinks fit, but so that the same shall be capable of being audited in such manner as the Auditor referred to in Clause 8 may from time to time recommend.

(11) Annual Accounts

Until otherwise decided by the Executive Committee such accounting reports shall include a statement of all receipts and expenditure during each Association Year, and a statement of all of the property and liabilities of the Association at the end of that Association Year, with such reconciliation as may be necessary, both of which shall be submitted to the Annual General Meeting for approval.

8. APPOINTMENT OF AUDITOR

(1) Auditor

The Association shall at the first Annual General Meeting, and thereafter at each Annual General Meeting, as necessary, appoint an Auditor of such recognised standing as the Association shall think fit for such period, and on such terms as the Association shall think fit.

(2) Audit

The Executive Committee shall submit, as required, the statements referred to in sub – clause 7 (11) to the Auditor of the Association to be audited once in each year prior to the Annual General Meeting, and shall attach the report of the Auditor to the accounts when tabling the same at the Annual General Meeting.