

**BMX SPORTS WESTERN AUSTRALIA
INCORPORATED**

Constitution

**ASSOCIATIONS INCORPORATION
ACT 2015 - WESTERN AUSTRALIA**

This is the annexure of 31 pages marked "A"
referred to in Form 5

signed by Warren Edwardes Director
dated 29 October 2018
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SUMMARY OF AMENDMENTS

This summary reflects the most recent amendments to the Constitution in accordance with the following BMX Sports Western Australia minutes:

MEETING	MINUTE ITEM NO	RULES AND REGULATIONS AMENDED
8 July 2013	7.1	Clause 39 – Distribution of Property on winding up – accepted DOCEP 15 August 2013
29 October 2018		Amend/updated as per the ACT2015 (approved 20.11.2018)

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ASSOCIATIONS INCORPORATION ACT 2015 (WA)**CONSTITUTION**

of

BMX SPORTS WESTERN AUSTRALIA INCORPORATED**PART 1- OBJECTS, POWERS AND INTERPRETATION****1. NAME OF ASSOCIATION**

The name of the Association is BMX Sports Western Australia Incorporated ("**Association**").

The head office of the Association is located in Perth, Western Australia.

2. OBJECTS OF THE ASSOCIATION

The Association is the peak body for the administration of BMX in Western Australia. The Association is established solely for the Objects. The Objects for which the Association is established and maintained are to:

- (a) conduct, promote, encourage and develop participation in BMX and related activities throughout Western Australia to deliver healthy and safer community;
- (b) actively grow the sport of BMX in Western Australia;
- (c) enhance the sustainability of the Association and its membership;
- (d) provide development, training and education for Officials, Coaches and staff;
- (e) have international UCI Class facilities and infrastructure;
- (f) deliver sustained national and international success and pathways for athletes, coaches and officials;
- (g) provide strong leadership, governance and management structures for BMX in Western Australia; and
- (h) increase the profile of BMX through innovation and development of key partnerships in Western Australia.

3. POWERS OF THE ASSOCIATION

Solely for furthering the Objects, the Association has, in addition to the rights, powers and privileges conferred on it under section 14 of the Act, the legal capacity and powers of a company limited by guarantee as set out under section 124 of the *Corporations Act 2001 (Cth)*.

4. DEFINITIONS AND INTERPRETATIONS

4.1 Definitions

In this Constitution unless the contrary intention appears these words shall have the following meanings:

Act means the *Associations Incorporation Act 2015 (WA)*.

AGM or Annual General Meeting means the Annual General Meeting of the Association required to be held by the Association in each calendar year.

Appointed Director means a Director appointed by the Board.

Association means BMX Sports Western Australia Incorporated.

BMX means the sport of Bicycle Motocross.

BMXA means BMX Australia Limited.

Board means the body consisting of the Directors.

Member Club means a BMX club which is a Member, or is otherwise affiliated with the Association.

Constitution means this Constitution of the Association.

Delegate means the person duly appointed in writing from time to time to act for and on behalf of a Club and to represent the Club at General Meetings.

Director means a member of the Board and includes any person acting in that capacity from time to time elected or appointed in accordance with this Constitution but does not include the Chief Executive Officer.

CEO (or other name) means the Chief Executive Officer of the Association for the time being appointed under this Constitution to carry out the duties set out in this Constitution. Where the Association does not have a CEO, the Association secretary or public officer will, subject to confirmation by the Board, assume the functions of the CEO under this Constitution.

Elected Director means a Director of the Association elected under **clause 23**.

Financial year means the year ending on 30 June each year.

General Meeting means a special general meeting of the Association.

Individual Member means a registered or licensed member of the Association or a Member Club including any rider, coach or other official who is so registered or licensed, for such time as he remains a financial member, or otherwise remains registered or licensed with the Association or Member Club under the membership or licensing requirements of the Association or Member Club.

Intellectual Property means all rights or goodwill subsisting in copyright, business names, names, trademarks (or signs), logos, designs, equipment including computer software, images (including photographs, videos or films) or service marks relating to

the Association or any BMX activity of or conducted, promoted or administered by the Association in Western Australia.

Life Member means an individual appointed as a Life Member of the Association under **clause 5.3**.

Member means a member for the time being of the Association under **clause 5**.

Objects means the objects of the Association in **clause 3**.

Poll means a count of votes.

Policy means a Policy established by the Association.

Regulations means any Regulations made by the Board under **clause 31**.

Seal means the common seal of the Association.

Special Resolution means a special resolution defined in the Act.

4.2 Interpretation

In this Constitution:

- (a) a reference to a function includes a reference to a power, authority and duty;
- (b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing any gender include the other genders;
- (e) references to persons include corporations and bodies politic;
- (f) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any legislative authority having jurisdiction); and
- (h) a reference to "writing" shall unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail.

4.3 Severance

If any provision of this Constitution or any phrase contained in it is invalid or unenforceable, the phrase or provision is to be read down if possible, so as to be valid and enforceable, and otherwise shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Constitution.

4.4 The Act

Except where the contrary intention appears, in this Constitution, an expression that deals with a matter under the Act has the same meaning as that provision of the Act. Model rules under the Act are expressly displaced by this Constitution.

4.5 Review

The Board will review this constitution every five years, or as the Board sees fit from time to time, after the endorsement of this Constitution. The terms of reference of such review shall be set by the Board to ensure the rules of the Association remain contemporary and compliant with the Act.

PART II – MEMBERSHIP

5. MEMBERS

5.1 Categories of Members

Subject to **clause 6.2**, the Association shall consist of the following membership:

- (a) Clubs;
- (b) Individual Members;
- (c) Life Members; and
- (d) such new categories of Members, created from time to time.

5.2 Member Clubs

Each Member Club shall:

- (a) be incorporated in Western Australia under the Act or similar legislation;
- (b) elect or appoint a delegate, who shall have the right to be present, debate and vote on behalf of the Member Club at General Meetings;
- (c) in order to be granted or retain membership, have a minimum number of registered members as set down by the Board from time to time;
- (d) take all necessary steps to ensure its Constitution and associated rules, clearly reflect the objects of the Association and are otherwise in a form acceptable to the Board;
- (e) ensure its documents are amended in conformity with future amendments made to this Constitution; and
- (f) be affiliated with the Association under **Rule 6**.

5.3 Individual Members

A natural person may join BMX Sports Western Australia as an individual member, who subject to this Constitution, may attend General Meetings but shall have no right to debate or to vote.

5.4 Life Members

- (a) The Board may recommend to the Annual General Meeting that any natural person who has rendered distinguished service to the Association or BMX, where such service is deemed to have assisted the advancement of BMX in Western Australia, be appointed as a Life Member.
- (b) A resolution of the Annual General Meeting to confer life membership (subject to **clause 5.4(c)**) on the recommendation of the Board must be a Special Resolution.
- (c) A person must accept or reject the Association's resolution to confer life membership in writing. Upon written acceptance, the person's details shall be entered upon the Register, and from the time of entry on the Register the person shall be a Life Member.
- (d) Life Members, subject to this Constitution, may attend General Meetings, but shall have no right to vote.

5.5 Creation of New Categories

The Board has the right and power from time to time to create new categories of membership with such rights, privileges and obligations as are determined applicable (other than voting rights), even if the effect of creating a new category is to alter rights, privileges or obligations of an existing category of members. No new category of members may be granted voting rights.

6. AFFILIATION

6.1 Application for Member Club Affiliation

- (a) An application for affiliation must be:
 - (i) in writing on the form prescribed from time to time by the Board (if any), from the applicant or its nominated representative and lodged with the Association;
 - (ii) accompanied by a copy of the applicant's constitution (which must be acceptable to the Association and must substantially conform to this Constitution) and the applicant's register of members; and
 - (iii) accompanied by the appropriate fee (if any) and by the due date.
- (b) An application for new membership by an Individual Member must be:
 - (i) in writing on the form prescribed by the Board (if any) from time to time and;
 - (ii) accompanied by the appropriate fee and must be received by the due date.

6.2 Discretion to Accept or Reject Application

- (a) The Association may accept or reject a membership application, including renewal. The Association shall not be required or compelled to provide any reason for such acceptance or rejection.

- (b) Where the Association accepts an application, the applicant shall, become a Member. Membership shall be deemed to commence upon acceptance of the application by the Association. The CEO shall amend the Register accordingly as soon as practicable.
- (c) Where the Association rejects an application the Association shall refund any fees forwarded with the application and the application shall be deemed rejected by the Association.

6.3 Re-Affiliation – Membership Renewal

Member Clubs shall:

- (a) re-affiliate annually with the Association in accordance with the procedures set down by the Association in Regulations from time to time;
- (b) upon re-affiliation, lodge with the Association an updated copy of its constitution (including all amendments) and must provide details of any change in its Delegate and any other information reasonably required by the Association. Each Member Club must ensure that its constitution is amended to conform to any amendments made to this Constitution and/or to the NSO constitution; and
- (c) pay the annual fees prescribed by the Association from time to time.

Individual Members shall:

- (d) renew their membership with the Association in accordance with the procedures applicable from time to time; and
- (e) pay the annual fees prescribed in accordance with the procedures applicable from time to time.

6.4 Compliance of Member Clubs

It is a condition of affiliation that each Member Club shall:

- (a) adopt the Objects and rules which reflect and which are in conformity in all material respects with this Constitution;
- (b) at all times act for the joint advantage of the Association, the Members and BMX;
- (c) do all that is reasonably necessary to enable the Objects to be achieved;
- (d) act in good faith and loyalty to maintain and enhance the Association and BMX, its standards, quality and reputation for the collective and mutual benefit of the Members and BMX; and
- (e) at all times act on behalf of and in the interests of the Members and BMX;

6.5 Deemed Membership

- a) All financial members which or who are, prior to the approval of this Constitution under the Act, members of the Association, shall be deemed Members from the time of approval of this Constitution under the Act.

- (a) Member Clubs shall provide the Association with such details as are reasonably required by the Association under this Constitution within one (1) month of the approval of this Constitution under the Act.
- (b) Any members of the Association prior to approval of this Constitution under the Act, who are not deemed Members under **clause 6.5(a)** shall be entitled to carry on such functions analogous to their previous functions as are provided for under this Constitution.

7. SUBSCRIPTIONS AND FEES

7.1 Club Fees

- (a) Each Member Club in each Financial Year shall pay to the Association, affiliation fees as prescribed by the Board from time to time.
- (b) The CEO will notify Member Clubs of the affiliation fees for the following financial year prior to the end of May each Financial Year.
- (c) Any Member Club which or who has not paid all monies due and payable by that Member Club to the Association may (subject to the Board's discretion) have all rights under the Constitution immediately suspended from the expiry of the time, prescribed for payment of those monies. Such rights will be suspended until such time as the monies are fully paid or otherwise in the Board's discretion.

7.2 Individual Member Fees

Each Individual Member shall pay each year membership fees being an amount prescribed by BMXA, the Association and their individual Member Club.

7.3 Life Member Fees

Life Members or other honorary members of the Association shall not pay any fees to the Association.

8. REGISTER OF MEMBERS

8.1 Association to keep register

The Association shall keep and maintain a register in which shall be entered such information as is required under the Act from time to time.

8.2 Inspection of register

- (a) The Register shall be kept at the principal place of administration of the Association. Having regard to the Act, confidentiality considerations and privacy laws, an extract of the register, excluding the address or other direct contact details of any Life Member or Director, shall be available for inspection or copying by Members, upon reasonable request.
- (b) A request by a Member to make a copy or take an extract from the register of Members under **clause 8.2(a)** is subject to the Member:
 - (i) providing the Board a statutory declaration that:

- (A) sets out the purpose for which the copy or extract is required; and
 - (B) declares that the purpose is connected with the affairs of the association; and
- (ii) paying the reasonable charge, as determined by the Board in accordance with the Act, of the cost of the Association complying with the request.

8.3 Use of register

Subject to the Act, confidentiality considerations and privacy laws, the register may be used to further the Objects, in such manner as the Board considers appropriate.

9. EFFECT OF MEMBERSHIP

9.1 Binding on Members

- (a) Members acknowledge and agree that:
- (b) this Constitution constitutes a contract between each of them and the Association and that they are bound by this Constitution and the Regulations and the BMXA constitution and regulations;
- (c) they shall comply with and observe this Constitution and the Regulations and any determination, resolution or policy which may be made or passed by the Board or other entity with delegated authority;
- (d) by submitting to this Constitution and Regulations they are subject to the jurisdiction of the Association and BMXA;
- (e) this Constitution is made in pursuit of a common object, namely the mutual and collective benefit of the Association, the Members, the sport of BMX and its related disciplines;
- (f) this Constitution and regulations are necessary and reasonable for promoting the objects of the Association particularly the advancement and protection of the sport of BMX; and
- (g) they are entitled to all benefits, advantages, privileges and services of membership.

9.2 Operating Rules

It is a condition of membership that each Member agree:

- (a) that they are bound by this Constitution and that this Constitution operates to create uniformity in the way in which the objects of the Association and the sport of BMX are to be conducted, encouraged, promoted and administered in Western Australia;.
- (b) to act in good faith and loyalty to each other to ensure the maintenance and enhancement of BMX, its standards, quality and reputation for the collective and mutual benefit of the Members;

- (c) not to do or permit to be done any act or thing which might adversely affect or, derogate from the standards, quality and reputation of BMX or its related disciplines;
- (d) they will not become a party to any suit at law or equity, against the Association, any Director or any other person subject to this Constitution (including any other Member), until all remedies and avenues of appeal allowed by this Constitution have been exhausted, save with the written consent of the Association.

10. DISCONTINUANCE OF MEMBERSHIP

10.1 Notice of Resignation

- (a) Subject to this Constitution any Member having paid all arrears of fees payable to the Association and has no other liability (contingent or otherwise) may resign or withdraw from membership of the Association by giving one (1) months notice in writing to the Association of such intention to resign or withdraw and upon the expiration of that period of notice, the Member shall cease to be a Member. A Life Member of the Association may resign by notice in writing with immediate effect.
- (b) A Member Club may not resign, disaffiliate or otherwise seek to withdraw from the Association without approval by Special Resolution of the Member Club. A copy of the relevant minutes of the Member Club meeting showing that the Special Resolution has been passed by the Member Club must be provided to the Association.
- (c) If a Member Club ceases to be a Member under this Constitution, the Association membership of all Individual Members affiliated or registered with or through the Member Club shall not automatically cease at that time, but shall be dealt with in accordance with the Regulations.
- (d) Upon the Association receiving notice of resignation of membership given under **clauses 10.1(a)** and **(b)**, an entry in the register shall be made recording the date on which the Member who or which gave notice ceased to be a Member.

10.2 Termination of Membership

Subject this Constitution, a Member ceases to be a Member if:

- (a) being an individual, that Member dies;
- (b) membership is not renewed under this Constitution; or
- (c) membership is withdrawn by the Board as result of Disciplinary Action

10.3 Discontinuance for breach

- (a) Membership of the Association may be discontinued by the Board upon breach of any clause of this Constitution or the Regulations, including but not limited to the failure to pay any monies owed to the Association, failure to comply with the Regulations or any resolutions or determinations made or passed by the Board or any duly authorised committee;

- (b) Membership shall not be discontinued by the Board under **clause 10.3(a)** without the Board first giving the accused Member the opportunity to explain the breach and/or remedy the breach;
- (c) Where a Member fails, in the Board's view to adequately explain the breach, that Member's membership shall be discontinued under **clause 10.3(a)** by the Association giving written notice of the discontinuance to the Member. The register shall be amended to reflect any discontinuance of membership under this **clause 10.4** as soon as practicable.

10.4 Discontinuance for failure to re-affiliate (Member Club)

Membership of the Association may be discontinued by the Board if a Member Club has not re-affiliated with the Association within one month of re-affiliation falling due. The register shall be amended to reflect any discontinuance of membership under this **clause 10.4** as soon as practicable.

10.5 Member to Re-Apply

A Member whose membership has been discontinued under clauses 10.3 or 10.4:

- (a) must seek renewal or re-apply for membership in accordance with this Constitution; and
- (b) may be re-admitted at the discretion of the Board.

10.6 Forfeiture of rights

A Member who or which ceases to be a Member, for whatever reason, shall forfeit all rights in and claims upon the Association and its property and shall not use any property of the Association including Intellectual Property. Any Association documents, records or other property in the possession, custody or control of that Member shall be returned to the Association immediately. Where a Member Club ceases to be a Member it shall also forfeit all representation rights on the Board and at General Meetings.

10.7 Delegate position lapses

The position of Delegate shall lapse immediately on cessation of membership of a Member Club.

10.8 Membership may be reinstated

Membership which has been discontinued under this **clause 10** may be reinstated at the discretion of the Board, with such conditions as it deems appropriate.

10.9 Refund of Membership Fees

Membership fees or subscriptions paid by the discontinued Member may be refunded on a pro-rata basis to the Member upon discontinuance.

11. DISCIPLINE

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, the Regulations, the BMXA constitution or regulations 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 purposes and interests of the Association, BMXA and/or BMX; or
- (c) brought the Association, BMXA, any other Member, themselves or BMX into disrepute;

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 the appeal mechanisms of the Association set out in the Regulations.

As set out in the Regulations the Board may appoint a Judiciary Committee to deal with any disciplinary matter referred to it. Such a Judiciary Committee shall operate in accordance with the procedures expressed in the Regulations but subject always to the Act.

PART III – GENERAL MEETINGS

12. DELEGATES

12.1 Appointment of Delegates

Each Member Club may be represented by one (1) Delegate, who may vote on behalf of the Member Club. A Delegate must:

- (a) be an Individual Member over the age of 18 years of the Member Club and the Member Club must be a current financial member of the Association.
- (b) be appropriately empowered by the appointing Member Club to consider, making decisions and vote in proceedings so provided by this Constitution;
- (c) not be a Director;
- (d) not be an employee of the Association; and
- (e) not be a Delegate for more than one (1) Member Club;

12.2 Member to Advise

A Member Club shall advise the Association within seven (7) days of any change to their nominated Delegate. Notification should be in the approved form including the name, address and contact details of the Delegate.

13. GENERAL MEETINGS

13.1 General Meetings

An Annual General Meeting of the Association shall be held in accordance with the Act and this Constitution and on a date and at a venue to be determined by the Board, but shall be held no later than 31 October in each Financial Year.

All General Meetings other than the Annual General Meeting shall be Special General Meetings and shall be held in accordance with this Constitution.

13.2 Entitlement to Attend General Meeting

Notwithstanding any other rule, no Member shall be represented at, or take part in a General Meeting, unless all monies then due to the Association are paid.

14. NOTICE OF GENERAL MEETINGS

- (a) The CEO shall be responsible for giving notice of General Meetings to all Directors, Member Clubs and any other Members entitled to receive notice at the address appearing in the register kept by the Association. No other person shall be entitled to receive notices of General Meetings.
- (b) Notice of the General Meeting shall be given at least six (6) weeks prior to the meeting and shall specify the place, the day and hour of the General Meeting.
- (c) The CEO shall at least fourteen (14) days prior to the General Meeting, distribute 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.

15. BUSINESS

15.1 Business of General Meetings

- (a) The business to be transacted at the Annual General Meeting includes the consideration of accounts and the reports of the Board and auditors, the election of Directors under this Constitution and the appointment of the auditors, and confirmation of Life Membership;
- (b) All business that is transacted at a General Meeting, and also all that is transacted at the Annual General Meeting, with the exception of those matters set out in **clause 15.1(a)** shall be special business.

15.2 Business Transacted

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

16. SPECIAL GENERAL MEETINGS

16.1 Special General Meetings May be Held

The Board may, whenever it thinks fit, convene a Special General Meeting of the Association and, where, but for this clause more than fifteen (15) months would elapse between Annual General Meetings, shall convene a Special General Meeting before the expiration of that period.

16.2 Requisition of Special General Meetings

Requisition of Special General Meetings

- (a) The CEO shall on the requisition in writing of not less than twenty percent (20%) of voting Members convene a Special General Meeting.
- (b) The requisition for a Special General Meeting shall state the object(s) of the meeting, shall be signed by the Members making the requisition and be sent to the Association and may consist of several documents in a like form, each signed by one or more of the Members making the requisitions.
- (c) If the CEO does not cause a Special General Meeting to be held within one (1) month after the date on which the requisition is sent to the Association, the Members making the requisition, or any of them, may convene a Special General Meeting to be held not later than three (3) months after that date.
- (d) A Special General Meeting convened by Members under this Constitution shall be convened in the same manner, or as nearly as possible as that, in which meetings are convened by the Board.

17. PROCEEDINGS AT GENERAL MEETINGS

17.1 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 General Meetings shall be one third of all Member Clubs represented by their Delegates.

17.2 Notices of Motion

Members entitled to vote may submit notices of motion for inclusion as special business at a General Meeting. All notices of motion must be submitted in writing to the CEO not less than thirty-five (35) days (excluding receiving date and meeting date) prior to the General Meeting.

17.3 Unsuccessful notice of Motion

A motion which due notice has been given, if unsuccessful, cannot be resubmitted, nor may any other motion having similar effect be moved at a subsequent General Meeting for a period of 12 months.

17.4 Chairperson to preside

The President shall, subject to this Constitution, preside as chair at every General Meeting except:

- (a) in relation to any election for which the chairperson is a nominee; or
- (b) where a conflict of interest exists.

If the President is not present, or is unwilling or unable to preside the Directors present shall appoint another Director to preside as chairperson for that meeting only.

17.5 Adjournment of Meeting

- (a) If within thirty (30) minutes from the time appointed for the meeting, a quorum is not present the meeting shall be adjourned to such other day, such other time and place as may be determined.

- (b) When any General Meeting lapses for want of a quorum, the CEO shall convene a second meeting within a period of twenty-one (21) days. If at the adjourned meeting a quorum is not present within thirty (30) minutes from the time appointed for the meeting, no business shall be transacted.
- (c) The chairperson may, with the consent of any 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 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 **clause 17.5(d)** it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

17.6 Voting Procedure

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

- (a) the chairperson; or
- (b) a simple majority of Delegates on behalf of their Members.

17.7 Recording of Determinations

Unless a Poll is demanded under **clause 17.6**, a declaration by the chairperson 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 that effect in the book containing the minutes of the proceedings of the Association shall be conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution.

17.8 Where Poll Demanded

If a Poll is duly demanded under **clause 17.6** it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairperson directs and the result of the Poll shall be the resolution of the meeting at which the poll was demanded.

17.9 Minutes

- (a) The CEO shall ensure that minutes of the resolutions and proceedings of each General meeting are kept in books provided for that purpose, together with a record of names of persons present at all meetings
- (b) Within one (1) calendar month after each general Meeting the CEO shall supply to the Member Clubs, a copy of the minutes of the General Meeting.

18. VOTING AT GENERAL MEETINGS

18.1 Entitlement to Vote

Subject to this Constitution, each Member Club shall be entitled to one (1) vote at General Meetings which, subject to this clause shall be exercised by the Member Club's Delegate. No other Member shall be entitled to vote but shall subject to this Constitution have, and be entitled to exercise, those rights set out in **clause 5**. All votes shall be given personally or by mail. All Directors have debating rights at General Meetings.

18.2 Chairperson May Exercise Casting Vote

Where voting at General Meetings is equal the chairperson may exercise a casting vote. If the chairperson does not exercise a casting vote the motion will be lost.

19. PROXY VOTING PERMITTED

19.1 Proxy Voting Permitted

Proxy voting shall be permitted at all General Meetings provided a proxy form in the form set out or as otherwise approved by the Board from time to time which has been duly completed and executed, is lodged with the CEO at or before the commencement of the meeting. No Member entitled to vote shall exercise more than (one) 1 proxy vote at any (one)1 time.

19.2 Proxy

The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. A delegate shall be entitled to instruct his proxy to vote in favour of or against any proposed resolutions. Unless otherwise instructed the proxy may vote as the proxy thinks fit.

PART IV - THE BOARD

20. POWERS OF THE BOARD

Subject to the Act and this Constitution, the business of the Association shall be governed, and the powers of the Association shall be exercised, by the Board. In particular, the Board as the controlling authority of BMX in Western Australia shall be responsible for acting on all State and local issues in accordance with the Objects of the Association and shall operate for the collective and mutual benefit of the Association and the sport of BMX throughout Western Australia. The Board, subject to the Act and this Constitution shall have full power, jurisdiction and authority to do all things necessary to carry out the business, the affairs and the objects of BMXWA.

21. EXISTING DIRECTORS

- (a) The members of the administrative or governing body (by whatever name called) of the Association in office immediately prior to approval of this Constitution under the Act shall continue in those positions until the next Annual General Meeting following such adoption of this Constitution. After this Annual General Meeting the positions of Directors shall be filled, vacated and otherwise dealt with in accordance with this Constitution.

- (b) The person known and appointed to the position of CEO (or similar title) immediately prior to approval of this Constitution under the Act shall continue in that position following such approval, subject to any contractual arrangements.

22. COMPOSITION OF THE BOARD

The Board shall comprise:

- (a) five (5) Elected Directors, of which one will be the President elected in accordance with **clause 23** and
- (b) up to two (2) Appointed Directors; in accordance with **clause 24**.

23. ELECTED DIRECTORS

23.1 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 Policy the rules.
- (b) Elected Directors should have knowledge of BMX disciplines, its strategic direction, its stakeholders and a commitment to the development of the sport of BMX.
- (c) Nominees for Elected Director positions on the Board must declare any position they hold in a Member Club or Association with similar objects, including as an office bearer, director or paid employee.
- (d) No person who has served as a Director (whether Elected or Appointed) for a period of eight (8) consecutive years shall be eligible for election as an Elected Director until after the expiration of twelve (12) months following the date of conclusion of most recent term as a Director.
- (e) A Director cannot also be a Delegate.
- (f) A Director/Board Member cannot also be an employee of the Association.
- (g) No Director shall hold more than one (1) office at any one time.

23.2 Elections of Elected Directors

- (a) The CEO shall call for nominations six (6) weeks before the date of the Annual General Meeting. All Affiliated Member Clubs shall be notified of the call for nominations.
- (b) A nominee shall be an Individual Member and be over the age of 18 years.
- (c) Nominations for Elected Directors must be:
 - (i) in writing
 - (ii) on the prescribed form provided for that purpose;

- (iii) signed by two (2) authorised committee representatives of that person's Member Club who shall also be Individual Members and over the age of 18 years; and
- (iv) certified by the nominee expressing a willingness to accept the position for which they have applied.

A nomination shall be rejected if not signed by both the nominee and both the nominators.

- (d) Nominations must be received by the CEO at least twenty one (21) days prior to the Annual General Meeting.
- (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 nominated shall only be duly elected.
- (f) If the number of nominations exceeds the number of vacancies to be filled, a secret ballot shall be taken in such usual and proper manner as provided by the Constitution.
- (g) The voting shall be conducted by preferential voting, the procedure for which will be detailed.
- (h) If there are insufficient nominations received to fill all vacancies on the Board, any remaining vacant positions are to be taken as casual vacancies, to be dealt with in accordance with **clause 26.1**.

23.3 Term of Appointment for Elected Directors

- (a) Elected Directors elected under this **clause 23** shall be elected for a term of two (2) years. Subject to provisions in this Constitution relating to earlier retirement or removal of Directors, elected Directors shall remain in office from the conclusion of the Annual General Meeting at which the election occurred until the conclusion of the second Annual General Meeting following.
- (b) Three (3) elected Directors shall retire in each odd year and two (2) elected Directors shall retire in each even year.
- (c) The sequence of retirements under **clause 23.3(c)** to ensure rotational terms shall be determined by the Board. If the Board cannot agree it will be determined by lot.
- (d) A Board member shall be eligible to be re-elected to the Board at the completion of his/her term of office.
- (e) No Board member shall serve on the Board for more than eight (8) consecutive years.

Following the adoption of this Constitution, no person who has served as an elected Director for a period of four (4) consecutive full terms shall be eligible for election as an elected Director until the next Annual General Meeting following the date of conclusion of his last term as an elected Director.

24. APPOINTED DIRECTORS

24.1 Appointment of Appointed Directors

The Elected Directors may appoint up to two (2) Appointed Directors as soon as practicable after the Annual General Meeting.

24.2 Qualifications for appointed Directors

- (a) The Appointed Directors may have specific skills in commerce, finance, marketing, law or business generally or such other skills which complement the Board composition, but need not have experience in or exposure to BMX. They do not need to be Individual Members but must be natural persons. Appointed Directors can not also be a Delegate.
- (b) No person who has served as an Appointed Director for a period of six (6) consecutive years or an Elected Director for eight (8) years 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 a Director.

24.3 Term of Appointment

- (a) Appointed Directors may be appointed by the elected Directors under this Constitution for a term of one (1) year, which shall commence from the first Board meeting after the Annual General Meeting until the next Annual General Meeting following.
- (b) Appointed Directors may be appointed to ensure rotational terms that coincide with the elected Directors' rotational terms. One Appointed Director shall be appointed in each year of odd number and one Appointed Director shall be appointed in each year of even number.
- (c) Any adjustment to the term of appointed Directors appointed under this Constitution necessary to ensure rotational terms under this Constitution, shall be determined by the Board.

25. LEAVE OF ABSENCE

25.1 Grant Leave of Absence

The Board may grant a leave of absence to a Director for such period as it sees fit, and in the accordance with **clause 25.2**, on the submission of a written application for such leave to the Association.

25.2 Discretion as to a 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 Association provided:

- (a) if such period is less than six (6) months, the Board may appoint a temporary replacement from amongst the Membership;
- (b) if, in the case of an Elected Director, such period is six 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 are of the view that granting the leave of absence would frustrate the Board in its role, the Appointed Directors term may be ended and a replacement Director appointed, and:
- (d) in no circumstances shall the leave of absence exceed the remaining term of office of the applicant Director.

26. VACANCIES OF BOARD MEMBERS

26.1 Casual Vacancies

- (a) In the event of a casual vacancy of an Elected Director the Board may identify a successor, within the parameters of **clause 23.1**, and appoint a suitable person for the remainder of the vacating Directors natural term.
- (b) In the event of a casual vacancy of an Appointed Director the Board may identify a successor from amongst appropriately qualified persons, with due consideration to **clause 24.2**, and appoint a suitable person for the remainder of the vacating Directors natural term.

Any casual vacancy occurring in the position of Director may be filled by the remaining Directors from among appropriately qualified persons. Any casual vacancy may only be filled for the remainder of the Director's term under this Constitution.

26.2 Grounds for Termination of 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 makes any arrangement or composition with their 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 from office in writing to the Association;
- (e) is absent without the consent of the Board from three (3) consecutive meetings of the Board;
- (f) holds any office of employment with the Association;
- (g) is directly or indirectly interested in any contract or proposed contract with the Association and fails to declare the nature of her interest;
- (h) in the opinion of the Board (but subject always to this Constitution):
 - (i) has acted in a manner unbecoming or prejudicial to the Objects and interests of the Association; or
 - (ii) has brought the Association into disrepute;
- (i) is removed by Special Resolution; or

- (j) would otherwise be prohibited from being a director of a corporation under the *Corporations Act*.
- (k) breaches Board confidentiality such that the breach poses serious and indefensible circumstances with regards the Directors fiduciary duty to the Association or the Boards good governance of the Association.

26.3 Board May Act

In the event of a casual vacancy or vacancies in the office of a Director or Directors, 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 Director to a number sufficient to constitute such a quorum.

27. MEETINGS OF THE BOARD

27.1 Board to Meet

The Board shall meet as often as is deemed necessary in every calendar year for the dispatch of business (and shall be at least as often as is required under the Act) and subject to this Constitution may adjourn and otherwise regulate its meetings as it thinks fit. A Director may at any time convene a meeting of the Board within a reasonable time.

27.2 Decisions of Board

Subject to this Constitution, questions arising at any meeting of the Board shall be decided by a majority of votes and a determination of a majority of Directors shall for all purposes be deemed a determination of the Board.

All Directors shall have one (1) vote on any question. Where voting is equal, the chairperson may exercise a casting vote. If the chairperson does not exercise a casting vote, the motion will be lost.

27.3 Resolutions not in Meeting

- (a) A resolution in writing, signed or assented to or by other form of visible or other electronic communication by all the Directors for the time being present in Australia 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 (1) or more of the Directors.
- (b) The vote will only be carried by unanimous consensus of eligible Directors;
- (c) Without limiting the power of the Board to regulate its meetings as it thinks fit, a meeting of the Board may be held where one (1) 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 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 or this Constitution and such notice specifies that Directors are not required to be present in person;

- (iii) if a failure in communications prevents clause (c)(i) from being satisfied by that number of Directors which constitutes a quorum, and none of such 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 **clause 27.3(c)(i)** is satisfied again. If such condition is not satisfied within fifteen (15) minutes from the interruption the meeting shall be deemed to have terminated or adjourned; and
- (iv) any meeting held where one (1) or more of the Directors is not physically present shall be deemed to be held at the place specified in the notice of meeting provided a Director is there present and if no Director is there present the meeting shall be deemed to be held at the place where the chairperson of the meeting is located.

27.4 Quorum

At meetings of the Board the number of Directors whose presence (or participation under **clause 27.3(c)**) is required to constitute a quorum is four (4) Directors. When a Board Meeting lapses for want of a quorum, the CEO may convene a second Board Meeting within a period of fourteen (14) days.

27.5 Notice of Board Meetings

Unless all Directors agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their apology or presence not less than fourteen (14) days written notice of the meeting of the Board shall be given to each Director. The agenda shall be forwarded to each Director not less than four (4) days prior to such meeting.

27.6 Validity of Board Decisions

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

27.7 Chairperson

The President shall preside at every meeting of the Board. If the President 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 President is granted a leave of absence by the Board a single Chair may be elected by the remaining directors for the duration of the absence.

28. CONFLICTS

28.1 Directors' Interests

A Director is disqualified by holding any place of profit or position of employment in the Association or in any company or incorporated association in which the Association is a shareholder or otherwise interested or from contracting with the Association either as vendor, purchaser or otherwise except with express resolution of approval of the Board. Any such contract or any contract or arrangement entered into by or on behalf

of the Association in which any Director is in any way interested will be void unless approved by the Board.

28.2 Conflict of Interest

A Director shall declare his interest in any:

- (a) contractual matter;
- (b) selection matter;
- (c) disciplinary matter;
- (d) sponsorship matter: or
- (e) other financial matter;

in which a conflict of interest arises or may arise, and shall, unless otherwise determined by the Board, absent themselves from discussions of such matter and shall not be entitled to vote in respect of such matter. If the Director votes the vote shall not be counted. In the event of any uncertainty as to whether it is necessary for a Director to absent himself 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.

28.3 Disclosure of Interests

The nature of the interest of such Director must be declared by the Director at the meeting of the Board at which the relevant 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 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.

All disclosed interests must also be disclosed to each Annual General Meeting in accordance with the Act.

28.4 General Disclosure

A general notice that a Director is a member of any specified firm or company and is to be regarded as interested in all transactions with that firm or company is sufficient declaration under **clause 28.3** as regards such Director and the said transactions. After such general notice it is not necessary for such Director to give a special notice relating to any particular transaction with that firm or company.

28.5 Recording Disclosures

Any declaration made, any disclosure or any general notice given by a Director in accordance with **clauses 28.3** and **28.4** must be recorded in the minutes of the relevant meeting.

29. CHIEF EXECUTIVE OFFICER

29.1 Appointment of CEO

A CEO may be appointed by the Board for such terms and on such conditions as the Board thinks fit. The CEO shall be entitled to notice of, attend and participate in debate at all meetings of the Board, but shall have no entitlement to vote.

29.2 CEO to act as Secretary and Public Officer

The CEO shall act as and carry out the duties of Secretary and Public Officer of the Association and shall administer and manage the Association in accordance with the Act and this Constitution.

29.3 Specific Duties

The CEO shall:

- (a) as far as practicable attend all Board meetings and all General Meetings;
- (b) in conjunction with the President prepare the agenda for all Board and all General Meetings;
- (c) record and prepare minutes of the proceedings of all Board meetings and General meetings, and shall use his best endeavours to distribute those minutes as required Directors promptly from the date of the meeting;
- (d) regularly report on the activities of, and issues relating to, the Association; and
- (e) have custody of all documents belonging to the Association.

29.4 Board Power to Manage

Subject to the Act, this Constitution, the Regulations and any policy directive of the Board, the CEO has power to perform all such things as appear necessary or desirable for the proper management and administration of the Association. No resolution passed by the Association in General Meeting shall invalidate any prior act of the CEO or the Board which would have been valid if that resolution had not been passed.

29.5 CEO may employ

The CEO may in consultation with the Board, as appropriate, employ such personnel as are deemed necessary or appropriate from time to time and such appointments shall be for such period and on such conditions as the CEO determines.

PART V – COMMITTEES

30. DELEGATIONS

30.1 Board may Delegate Functions

The Board may by instrument in writing create or establish or appoint special committees, individual officers and consultants to carry out such duties and functions, and with such powers, as the Board determines from time to time. An instrument

under this provision shall indicate the duration of the committee, which may be of a fixed term or of an enduring nature.

30.2 Delegation by Instrument

The Board may in the establishing instrument delegate such functions as are specified in the instrument, other than:

- (a) this power of delegation; and
- (b) a function imposed on the Board or the CEO by the Act or any other law, or this Constitution or by resolution of the Association in General Meeting.

30.3 Delegated Function Exercised in Accordance With Terms

A function, the exercise of which has been delegated under this clause 31.2, may whilst the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.

30.4 Procedure of Delegated Entity

- (a) The procedures for any entity exercising delegated power shall, subject to this Constitution and with any necessary or incidental amendment, be the same as that applicable to meetings of the Board under **clause 27** above. The Quorum shall be determined by the committee, but shall be no less than the majority of the total number of committee members.
- (b) Notwithstanding the specific construct of a committee, the President and the CEO shall be ex-officio members of any committee so appointed, in a non-voting capacity.
- (c) Within fourteen (14) days of any meeting of a committee, the committee shall provide a copy of the minutes and any supporting documents to the CEO.

30.5 Delegation may be Conditional

A delegation under this clause may be made subject to such conditions or limitations as to the exercise of any function or at the time or circumstances as may be specified in the delegation.

30.6 Revocation of Delegation

The Board may by instrument in writing, at any time revoke wholly or in part any delegation made under this clause, and may amend or repeal or veto any decision made by such body or person under this clause.

30.7 Right to Co-opt

It is expressly acknowledged the Board of Directors shall have the right to co-opt any person with appropriate experience or expertise to assist a Board committee or the Board, in respect of such matters and on such terms as the Board of Directors thinks fit. Any person so co-opted shall not exercise the rights of a Committee member or Director, but shall act in an advisory role only.

PART VI – MISCELLANEOUS

31. REGULATIONS AND POLICIES

31.1 Board to Formulate Regulations and Policies

The Board may (by itself or by delegation to a committee) formulate, approve, issue, adopt, interpret, and amend such policies, regulation, and guidelines for the proper advancement, management and administration of the Association, the advancement of the objects of the Association and the sport of BMX as it thinks necessary or desirable. Such Regulations and Policies must be consistent with this Constitution.

31.2 Regulations Binding

All Regulations and Policies made under this **clause 31** shall be binding on the Association and its membership.

31.3 Regulations Deemed Applicable

All Policies, Regulations and other guidelines of the Association in force at the date of the approval of this Constitution under the Act insofar as such policies, regulations and guidelines are not inconsistent with, or have been replaced by this Constitution, shall be deemed to be Regulations and/or Policies under this Rule.

31.4 Notices Binding on Members

Amendments, alterations, interpretations or other changes to Regulations or Policies shall be advised to the membership by means of notices approved by the Board and prepared and issued by the CEO. Clubs shall be obliged to draw such notices to the attention of their respective members. Notices are binding upon membership and the associate members.

32. RECORDS AND ACCOUNTS

32.1 Records

The Association shall establish and maintain proper records and minutes concerning all transactions, business, meetings and dealings of the Association and the Board and shall produce these as appropriate at each Board or General Meeting.

32.2 Records Kept in Accordance with Act

Proper accounting and other records shall be kept in accordance with the Act. The books of account shall be kept in the care and control of the CEO. The Association shall retain such records for seven (7) years after the completion of the transactions or operations to which they relate.

32.3 Board to Submit Accounts

The Board shall submit to the Members at the Annual General Meeting the statements of account of the Association in accordance with this Constitution and the Act.

32.4 Accounts Conclusive

The statements of account when approved or adopted by an Annual General Meeting shall be conclusive except as regards any error discovered in them within three months (3) after such approval or adoption.

32.5 Negotiable Instruments

All cheques, promissory notes, bankers, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Association, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be by two (2) persons appointed in writing by the Board.

33. AUDITOR

- (a) A properly qualified auditor or auditors shall be appointed and the remuneration of such auditor or auditors fixed by the Board. The auditor's duties shall be regulated in accordance with the Act, or if no relevant provisions exist under the Act, in accordance with the *Corporations Act* and generally accepted principles, and/or any applicable code of conduct. The auditor may be removed by the Association in General Meeting.
- (b) The accounts of the Association shall be examined and the correctness of the profit and loss accounts and balance sheets ascertained by an auditor or auditors at the conclusion of each Financial Year.

34. NOTICE

34.1 Manner of Notice

- (a) Notices may be given by the Association to any person entitled under this Constitution to receive any notice by sending the notice by pre-paid post or facsimile transmission or where available, by electronic mail, to the Member's registered address or facsimile number or electronic mail address.
- (b) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting the notice. Service of the notice is deemed to have been effected three (3) days after posting.
- (c) Where a notice is sent by facsimile transmission, service of the notice shall be deemed to be effected upon receipt of a confirmation report confirming the facsimile was sent to/or received at the facsimile number to which it was sent.
- (d) Where a notice is sent by electronic mail, service of the notice shall be deemed to be effected the next business day after it was sent.

35. SEAL

35.1 Safe Custody of Seal

The Association shall have a Seal upon which its corporate name shall appear in legible characters.

35.2 Affixing Seal

The Seal not be used without the express authorisation of the Board, and every use of the Seal shall be recorded in the minute books of the Associations. The affixing of the Seal must be witnessed by two (2) Directors or a Director and the CEO.

35.3 Directors Interest

A Director may not sign a document to which the Seal of the Association is fixed where the Director is interested in the contract or arrangement to which the document relates.

36. ALTERATION OF CONSTITUTION

This Constitution shall not be altered except by Special Resolution.

37. INDEMNITY

37.1 Directors to be indemnified

Every Director and employee of the Association shall be indemnified out of the property and assets of the Association against any liability incurred by them in their capacity as Director or employee in defending any proceedings, whether civil or criminal, in which judgement is given in their favour or in which they are acquitted or in connection with any application in relation to any such proceedings in which relief is granted by the Court.

37.2 Association to Indemnify

The Association shall indemnify its Directors and employees against all damages and losses (including legal costs) for which any such Director or employee may be or become liable to any third party in consequence of any act or omission except wilful misconduct:

- (a) in the case of a Director, performed or made whilst acting on behalf of and with the authority, express or implied of the Association; and
- (b) in the case of an employee, performed or made in the course of, and within the scope of their employment by the Association.

38. WINDING UP

38.1 Winding up of the Association

Subject to this Constitution the Association may be wound up in accordance with the Act.

38.2 Liability of Members

The liability of the Members of the Association is limited.

Every Member undertakes to contribute to the assets of the Association if it is wound up while a Member, or within one year after ceasing to be a Member, for payment of the debts and liabilities of the Association contracted before the time at which it

ceases to be a Member and the costs, charges and expenses of winding up the Association, such an amount not exceeding one dollar (\$1.00).

39. DISTRIBUTION OF PROPERTY ON WINDING UP

If upon the winding up or dissolution of the Association 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 association 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 association shall be determined by resolution of the members.

40. APPLICATION OF INCOME

40.1 Income and Property Applied to Objects

The income and property of the Association shall be applied solely towards the promotion of the Objects, as set out in this Constitution.

40.2 No Income to Members

Except as prescribed in this Constitution or the Act:

- (a) no portion of the income or property of the Association shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any Member; and
- (b) no remuneration or other benefit in money or money's worth shall be paid or given by the Association to any Member who holds any office of the Association.

40.3 Payment in Good Faith

Nothing in **clause 40.2** shall prevent payment in good faith of or to any Member for:

- (a) any services actually rendered to the Association whether as an employee, Director or otherwise;
- (b) goods supplied to the Association in the ordinary and usual course of operation;
- (c) interest on money borrowed from any Member;
- (d) rent for premises demised or let by any Member to the Association;
- (e) any out-of-pocket expenses incurred by the Member on behalf of the Association;
- (f) any other reason;

provided that any such payment shall not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction.

41. STATUS AND COMPLIANCE OF ASSOCIATION

41.1 Recognition of Association

The Association is a member of BMXA and is recognised by BMXA as the controlling authority for BMX in Western Australia and subject to compliance with this Constitution and the BMXA constitution shall continue to be so recognised and shall administer BMX in Western Australia in accordance with the Objects.

41.2 Compliance of Association

The Members acknowledge and agree the Association shall:

- (a) be or remain incorporated in Western Australia;
- (b) apply its property and capacity solely in pursuit of the Objects and BMX;
- (c) do all that is reasonably necessary to enable the Objects to be achieved;
- (d) act in good faith and loyalty to ensure the maintenance and enhancement of BMX, its standards, quality and reputation for the benefit of the Members and BMX;
- (e) at all times act in the interests of the Members and BMX;
- (f) not resign, disaffiliate or otherwise seek to withdraw from BMXA without approval by Special Resolution; and
- (g) abide by the BMXA constitution and the rules of BMX.

41.3 Operation of Constitution

The Association and the Members acknowledge and agree:

- (a) that they are bound by this Constitution and that this Constitution operates to create uniformity in the way in which the Objects and BMX are to be conducted, promoted, encouraged, advanced and administered throughout Western Australia and;
- (b) to ensure the maintenance and enhancement of BMX, its standards, quality and reputation for the benefit of the Members and BMX;
- (c) not to do or permit to be done any act or thing which might adversely affect or derogate from the standards, quality and reputation of BMX and its maintenance and enhancement;
- (d) to promote the economic and community service success, strength and stability of each other and to act interdependently with each other in pursuit of their respective objects;
- (e) to act in the interests of BMX and the Members;
- (f) that should a Member have administrative, operational or financial difficulties the Association may act to assist the Member in whatever manner the Association considers appropriate.

42. STATUS AND COMPLIANCE OF CLUBS

42.1 Compliance

Member Clubs acknowledge and agree that they shall:

- (a) be or remain incorporated in Western Australia;
- (b) nominate a Delegate annually to attend General Meetings, and shall inform the Association of the details of that person accordingly;
- (c) recognise the Association as the authority for BMX in Western Australia and BMXA as the national authority for BMX;
- (d) adopt and implement such communications and Intellectual Property policies as may be developed by the Association from time to time; and
- (e) have regard to the Objects in any matter of the Member Club pertaining to BMX.

42.2 Member Club Constitutions

- (a) The constituent documents of Member Clubs will clearly reflect the Objects and will conform to this Constitution.
- (b) Member Clubs will take all reasonable steps necessary to ensure their constituent documents conform to this Constitution.
- (c) Member Clubs shall provide to the Association a copy of their constituent documents and all amendments to these documents. Member Clubs acknowledge and agree that the Association has power to veto any provision in a Member Club constitution which, in the Association's opinion, is contrary to the Objects.
- (d) The constituent documents of each Member Club shall, at the earliest available opportunity, but within one year of the commencement of this Constitution, recognise the Association as the authority for BMX in Western Australia and BMXA as the national authority for BMX in Australia.

42.3 Register

Member Clubs shall maintain, in a form acceptable to the Association, a register of all Members of the Club. Each Member Club shall provide a copy of the register at a time and in a form acceptable to the Association.

43. PATRONS AND VICE PATRONS

The Association at its Annual General Meeting may appoint annually on the recommendation of the Board a Chief Patron and such number of Patrons as it considers necessary, subject to approval of that person or persons.

44. AUTHORITY TO TRADE

The Association is authorised to trade in accordance with the Act.

45. GRIEVANCE PROCEDURE

- (a) The grievance procedure set out in this clause applies to disputes under this Constitution between a Member and:
 - (i) another Member; or
 - (ii) the Association.
- (b) The parties to the dispute must meet (which may, if agreed by the parties, take place by using any technology that allows the parties to clearly and simultaneously communicate with each other) and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all 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 may, within 10 days, refer the dispute to a suitably qualified dispute resolution association.
- (d) The Board may prescribe additional grievance procedures in a Regulation or Policy consistent with this **clause 45**.