

# Constitution

**Margaret River Busselton Tourism Association (Inc)**

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# Constitution

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Date: 21 October 2020

## Operative provisions

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### 1. Name

The name of the Association is Margaret River Busselton Tourism Association (Inc).

### 2. Rules

This constitution sets out the Association's rules for the purposes of Part 3 of the Act.

### 3. Defined terms

Capitalised terms used in this constitution are defined in rule 24.

### 4. Objects

- (a) The objects of the Association are:
  - (i) to promote the Region as a tourist destination;
  - (ii) to provide tourist services and attractions;
  - (iii) to engage in such commercial activities as are from time to time deemed appropriate for the purpose of raising and attracting funds to assist the Association in the achievement of its objects;
  - (iv) to undertake all reasonable measures to protect, preserve and maintain the natural environment of assets under the management and care of the Association; and
  - (v) to do or be concerned in any other matters or things which may tend to benefit the residents of, commercial interests in and visitors to the Region but subject always to rule 4(b).
- (b) The property and income of the Association shall be applied solely towards the promotion of the Objects of the Association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to Members except in good faith in the promotion of those objects.
- (c) The Association shall operate in a manner that will have due regard to its Members' interests.

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### 5. Eligibility & Admission for Membership

- (a) Subject to this rule 5 and to acceptance by the Board, any person other than an employee of the Association that supports the objects of the Association and meets the membership criteria set out in the By-laws as set by the Board from time to time, is eligible to apply to be a Member of the Association.
- (b) An application for membership of the Association is to be made:

- (i) in writing in a form approved by the Board; and,
  - (ii) accompanied by such documents or evidence as to qualification for membership, including any criteria as the Board determines in its sole and absolute discretion.
- (c) The application for membership must include:
  - (i) the name and contact details of the applicant.
  - (ii) a statement of support for the objects of the company.
  - (iii) an unqualified agreement to be bound by the terms of this Constitution.
  - (iv) an unqualified agreement to be bound by the By-laws as determined by the Board from time to time.
- (d) An application for membership must be determined in accordance with the membership criteria in the By-laws by the Board.
- (e) An application for membership will be considered at the first Board meeting after its receipt.
- (f) Determinations of membership applications by the Board are final and binding. The Board does not need to provide any reasons to any person for accepting or rejecting an application for membership.
- (g) If an application for membership is rejected, the Public Officer must notify the applicant in writing of that fact within a reasonable time period and refund the applicant any annual subscription paid by the applicant.
- (h) If an application for membership is accepted, the Public Officer must notify the applicant of the admission in such a form as the Board may determine from time to time and the name and the details of the applicant must be entered in the Register of Members.
- (i) An applicant that is accepted for membership becomes a member when the applicant's name is entered in the register and all fees and subscriptions have been paid in full.
- (j) A natural person, corporation, partnership, incorporated association or an authority may become a Member. Where a Member is not a natural person, the Member shall nominate a natural person (**Representative**) in the notice referred to in rule 5(a), to act on its behalf in the affairs of the Association.
- (k) A Member may change its Representative, by giving notice to the Board in writing.
- (l) A Representative nominated by a Member under rule 5(c) or rule 5(d) shall be deemed for all purposes to be the Member's agent with the authority to exercise all of the Member's rights as a Member of the Association until the Member gives the Board notice in writing of the revocation of the Representative's appointment.
- (m) The Association consists of Ordinary Members, Life Members and any Associate Members provided for under rule 5(g).
- (n) The Association may have any class of associate membership approved by resolution at a General Meeting, including honorary membership.
- (o) A person can only be an Ordinary Member, Life Member or belong to one class of associate membership.

- (p) An Ordinary Member has full voting rights and any other rights conferred on members by this constitution or approved by resolution at a General Meeting.
- (q) An Associate Member has the rights referred to in rule 5(i) other than the right to vote at any meeting of the members of the Association.
- (r) The number of members of any class is not limited unless otherwise approved by resolution at a General Meeting.

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## **6. Life Members**

- (a) The Association may nominate a Member to be a Life Member of the Association.
- (b) A Life Member of the Association is not required to pay any Subscription fees, but has all of the rights of an Ordinary Member of the Association.

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## **7. Cessation of Membership**

A Member will cease to be a Member of the Association if:

- (a) having given one month's notice in writing of the Member's intention to resign, that notice expires;
- (b) the Member dies or ceases to exist;
- (c) the Member becomes an employee of the Association;
- (d) the Member fails to pay the prescribed Subscription within 30 days of the due date, and fails to remedy that failure within 30 days of receiving notice from the Association of its intention to terminate the membership; or
- (e) the Board, after proper investigation, provided the Member is given the opportunity to be heard, decides to expel or suspend a Member pursuant to rule 18.

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## **8. Subscriptions**

- (a) Subscriptions for membership in the Association shall be fixed from time to time by the Board.
- (b) In fixing the Subscriptions, the Board may fix different Subscriptions and payment terms for different classes of members.
- (c) Subscriptions shall be due for payment on the date to be determined by the Board.

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## **9. Register of Members**

The Public Officer of the Association shall keep and maintain in an up to date condition, a register of the members of the Association with:

- (a) the Member name and if applicable, the name of the Representative nominated in accordance with sub-rule 5(c);
- (b) the class of membership to which each Member belongs; and
- (c) the postal addresses of each Member; and

upon request of a Member of the Association, shall make the register available for the inspection of the Member and the Member may make a copy of or take an extract from the

register but shall have no right to remove the register or use the information contained in the register for any purpose other than in connection with the affairs of the Association.

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## 10. Board

- (a) The affairs of the Association shall be managed by a Board (which is to be the committee of the Association for the purposes of section 38 of the Act) consisting of 9 Board Members comprising:
  - (i) at least 6 elected Board Members, each of whom is to be an Eligible Member or an Eligible Member Representative and, subject to rule 10(h), is to be elected for a term of 3 years at an Annual General Meeting; and
  - (ii) up to 3 appointed Board Members, who may or may not be Eligible Members (or Eligible Member Representatives), who are appointed, from time to time, for a term not exceeding 3 years by a majority of the Board where that majority includes at least 4 elected Board Members.
- (b) Subject to rule 10(h), elections to fill vacancies for elected Board Members shall arise with respect to a third of the Board Members successively year by year to ensure that, during each three year period elections arise with respect to all elected Board Members.
- (c) Only Ordinary Members who have been Financial Members for at least the 12 consecutive months immediately prior to the election and whose Representative (if the Ordinary Member is not a natural person), is a principal of the Ordinary Member, a spouse of a principal of the Ordinary Member or an employee of the Ordinary Member (**Qualified Representative**), or their Qualified Representatives, shall be eligible for nomination to fill a vacancy for an elected Board Member caused by the effluxion of time.
- (d) There is no limit to the number of times a Board Member may be elected, or appointed, to the Board.
- (e) A person may be reappointed as an appointed Board Member only by a majority of the Board where that majority includes at least 4 elected Board Members.
- (f) An elected Board Member shall cease to be a Board Member if the elected Board Member:
  - (i) dies or becomes permanently incapacitated;
  - (ii) ceases to be a Financial Member of the Association or, if the elected Board Member is a Representative, the Member of the Association which he or she represents ceases to be an Eligible Member;
  - (iii) resigns by notice in writing delivered to the Public Officer;
  - (iv) is convicted of an offence under the Act;
  - (v) is absent for 3 scheduled Board meetings in any 12-month period without reasonable cause notified to the Public Officer prior to the meeting; or
  - (vi) is a Representative and the elected Board Member ceases to be the Representative nominated by the Ordinary Member whose Representative the elected Board Member was when the elected Board Member was last elected to the Board or ceases to be a Qualified Representative of that Ordinary Member.

- (g) An appointed Board Member shall cease to be a Board Member:
  - (i) if the Board Member dies;
  - (ii) if the Board Member resigns by notice in writing delivered to the Public Officer;
  - (iii) if the Board Member is convicted of an offence under the Act;
  - (iv) if the Board Member is absent for 3 scheduled Board meetings in any 12-month period without reasonable cause notified to the Public Officer prior to the meeting; or
  - (v) if the Board Member's appointment is terminated by way of a motion to that effect passed by at least 4 of the elected Board Members at a Board meeting.
- (h) If a casual vacancy for an elected Board Member occurs:
  - (i) the Board may appoint an Eligible Member (or an Eligible Member Representative) to fill the vacancy until the next Annual General Meeting;
  - (ii) the person filling the vacancy is to be regarded for all purposes as an elected Board Member; and
  - (iii) at the next Annual General Meeting, nominations for election to fill the vacancy are to be called from eligible Members in accordance with rule 10(j), except that the requirement of 6 weeks' notice in rule 10(j) may be reduced where this is not possible or practicable as a result of when the casual vacancy occurred.
- (i) If a casual vacancy for an elected Board Member occurs and the term of that elected Board Member was not due to expire at the next Annual General Meeting, a Board Member elected at that Annual General Meeting to fill that vacancy for the duration of the remaining term (i.e. up to 2 years).
- (j) Nominations for election to the Board shall be called from Eligible Members by the Public Officer six weeks before the Annual General Meeting, by notice in writing to each Eligible Member.
- (k) Nominations must be made on the form accompanying the notice, signed by the nominator who must be an Eligible Member and signed by the nominee who must consent to the nomination and include a brief credential statement. The nominator and nominee may be the same person.
- (l) Nominations shall close 2 weeks after being called, whereupon the Public Officer in the week next following, shall circulate a list of the nominees with a copy of their credentials and if the number of nominations exceeds the number of vacancies, a ballot form to each Eligible Member.
- (m) If the same number of nominations as there are vacancies or less are received, the Chairperson of the Annual General Meeting or in the case of a casual vacancy, the Chairperson of the next succeeding Board meeting, shall declare the persons so nominated duly elected as members of the Board.
- (n) If more nominations than vacancies are received, the Public Officer shall cause a ballot to be held to elect Board Members to fill the vacancies and the Chairperson of the Annual General Meeting or in the case of a casual vacancy, the Chairperson of the next succeeding Board meeting, shall declare sufficient persons receiving a simple majority of the votes, duly elected as members of the Board.

- (o) If less nominations than there are vacancies are received, each vacancy unfilled shall be filled by the Board at its first meeting following the Annual General Meeting as if it were a casual vacancy, as provided in rule 10(h).

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## **11. Powers of the Board**

- (a) Subject to the powers of the Members at General Meetings under this constitution and the Act, the Board shall have all such powers and do all such things as are necessary to carry out the objects referred to in rule 4 and the day to day management of the Association.
- (b) The Board may delegate specific powers to persons employed in the service of the Association and may revoke or vary such powers.
- (c) The Board may form sub-committees to which specific powers are delegated other than:
  - (i) the power of delegation; and
  - (ii) a function or power which is a duty imposed on the Board by the Act or any other law.
- (d) The Board may cancel the appointment of the sub-committee so formed at any time.
- (e) A sub-committee may have in its composition Financial Members, advisers or employees of the Association in addition to Board Members, provided that Financial Members shall not be in a minority at its meetings and a Board Member shall be Chairperson.
- (f) The Board may make, amend or revoke By-laws:
  - (i) for the regulation of the conduct of persons at the Association's premises or at tourist attractions managed or conducted by the Association including the price of admission, the issuance of free passes, the times and dates of opening Association premises and attractions. Such By-laws may include the power to refuse entry to or eject from the premises or attractions, any person whose presence or actions may not be conducive to the attainment of the objects in rule 4; or
  - (ii) which provide for any other matter which the Board considers necessary or convenient to be dealt with in the By-laws.
- (g) A By-law is of no effect to the extent that it is inconsistent with the Act, the Regulations or this constitution.
- (h) At the request of a Member, the Association must make a copy of the By-laws available for inspection by the Member.
- (i) The Board may resolve to pay an honorarium or stipend to any Board Member, provided that such payment is approved by resolution at a General Meeting.
- (j) The Board may resolve to pay a Board Member out of the funds of the Association for any out-of-pocket expenses for travel and accommodation properly incurred in the following circumstances:
  - (i) in attending a Board Meeting;
  - (ii) in attending a General Meeting; or



- (iii) otherwise in connection with the Association's business.
- (k) The Board may appoint a Chief Executive Officer of the Association from time to time.

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## **12. Chairperson**

- (a) The Chairperson and Vice-Chairperson of the Board are each:
  - (i) to be elected by, and from, the Board Members by way of a motion passed by at least 4 of the elected Board Members at a Board meeting; and
  - (ii) to hold office from their election until the first meeting of the Board after the next Annual General Meeting.
- (b) The Chairperson and Vice-Chairperson may be elected:
  - (i) at the first meeting of the Board after the Annual General Meeting by, and from, the elected Board Members; or
  - (ii) at any meeting of the Board by, and from, the elected and appointed Board Members.
- (c) The Chairperson, or in his or her absence, the Vice-Chairperson, shall preside over all meetings of the Association and the Board.
- (d) Should both the Chairperson and the Vice-Chairperson be absent from a meeting, the Members or Board Members (as appropriate) then present shall elect one of their number to be Chairperson for that meeting.

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## **13. Public Officer**

- (a) Unless otherwise determined by the Board, the Association's Chief Executive Officer shall be the Public Officer.
- (b) The Public Officer shall be responsible for:
  - (i) maintenance of an office at the principal place of business of the Association and lodging with the Commissioner, a notice of an address for the service of any process, notice or other document on the Association.
  - (ii) giving notice to Members, in accordance with these rules, of the date, time and place of General and Board meetings.
  - (iii) the preparation and presentation of minutes of General and Board meetings.
  - (iv) the preparation and presentation of the annual accounts to the Annual General Meeting.
  - (v) preparation and presentation of reports to the Board, on the operation of the Association.
  - (vi) preparation and maintenance of the Register of Members.
  - (vii) maintenance of an up to date copy of the rules and By-laws of the Association.

- (viii) maintenance of an up to date copy of the record of office holders of the Association containing the names and residential or postal addresses of the persons who hold the offices of the Association. Upon the request of a Member, the Public Officer shall make the record of office holders available for the inspection of the Member and the Member may make a copy of or take an extract from the record but shall have no right to remove the record for that purpose.
- (ix) maintenance and safekeeping of all records, books of account and securities and the carrying out of such other matters as are prescribed by the rules.
- (x) acting as Returning Officer, for the determination of the numbers of votes cast in ballots called under this constitution.

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## **14. Meetings of the Board**

- (a) The Board shall meet at least once every 2 months for conducting the business of the Association, at a time and place fixed by the Board provided that, subject to rule 14(g), at least 7 days' notice of such meeting must be given to Board Members.
- (b) A quorum of 5 Board Members shall be present before the meeting can commence.
- (c) If there is no quorum present within 30 minutes of the time fixed for the Board meeting, the meeting shall be abandoned and the Public Officer, under the direction from the Chairperson, shall give Board Members at least seven days' notice of the next meeting.
- (d) Matters before the Board shall be decided by majority vote but where there is an equality of votes, the Chairperson shall have a casting vote in addition to the deliberative vote only if all Board Members able to vote have voted.
- (e) A Board Member with a conflict of interest with respect to a matter under Board consideration must declare their conflict and abstain from voting on the matter.
- (f) Members may attend a Board meeting under such conditions as the Board may fix from time to time. Having fixed the conditions for attendance at the Board meetings, the Board shall as soon as practicable, advise Board Members of the conditions so fixed.
- (g) An exceptional Board meeting may be convened by the Chairperson, or by 4 or more Board Members, to deal with matters requiring urgent attention when and at such place and time as he, she or they think fit (as applicable), by giving each Board Member not less than 24 hours' notice of the meeting.

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## **15. Independent local tourism organisation**

- (a) The Association shall at all times operate as an independent local tourism organisation.

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## **16. Meetings of the Association**

- (a) Subject to rule 16(c), the Annual General Meeting of the Association shall be held each year between 1 July and 31 October.
- (b) Members shall receive at least 21 days' notice in writing to the address appearing in the Register of Members, of the date, time and place of the Annual General Meeting, together with a statement showing the number of vacancies to be filled in the Board and a nominations form.

- (c) At least 2 weeks before the Annual General Meeting, Members shall be provided with a statement showing the number of vacancies, a copy of the credentials supplied by each nominee, notice of any motion to be put to the Annual General Meeting and detail of any special matter to be raised by the Chairperson.
- (d) A total of 20 Eligible Members and Life Members shall be a quorum and, if that number is not present within 30 minutes of the advertised time for the meeting, the meeting shall be abandoned and a new date advertised, even though the date is not within the time prescribed by rule 16(a).
- (e) Except as is otherwise provide for in this constitution voting on any matter before the meeting shall be by a show of hands, with the matter being determined by a simple majority. The Chairperson shall declare the result.
- (f) In the event of at least 6 Ordinary Members disagreeing with the declaration by the Chairperson, the matter shall be decided by poll in a manner to be determined by the Chairperson. The Chairperson shall have a deliberative and casting vote.
- (g) An Ordinary Member may appoint in writing a representative, who is a natural person, to be the proxy of the appointing Ordinary Member and to attend, and vote on behalf of the appointing Ordinary Member at, any General Meeting. The proxy appointment must be in the form approved by the Board from time to time.
- (h) Proxy appointments must be received in writing by the Public Officer at least 72 hours before the commencement of the General Meeting.
- (i) Except at the first Annual General Meeting of the Association, no Member shall be entitled to vote, whether by show of hands, proxy, ballot or poll, unless that Member is an Ordinary Member who is a Financial Member and has been a Financial Member for at least 3 months, or is a Life Member.
- (j) A Member entitled to vote on any matter before a General Meeting, who is unable to attend, may vote via distributed ballots or by written proxy to another person who is able to attend and that person may cast a vote on behalf of the Member.
- (k) Non-Financial Members and Associate Members may attend an Annual General Meeting, may speak on any matter before the meeting but shall not be entitled to vote in determining the matter.
- (l) Persons not being Members may attend an Annual General Meeting on such conditions as the Chairperson may prescribe but in any event, shall not speak on any matter before the meeting unless so requested by the Chairperson.
- (m) The order of business for an Annual General Meeting shall be:
  - (i) Welcome;
  - (ii) Apologies;
  - (iii) Minutes of the last Annual General Meeting;
  - (iv) Minutes of any Special General Meetings held during the year;
  - (v) Matters arising from those minutes;
  - (vi) Chairperson's report;
  - (vii) Financial Statements; and
  - (viii) General Business.

- (n) Minutes of the last Annual General Meeting, minutes of any Special General Meetings held during the year and the Financial Statements to be presented to an Annual General Meeting shall be made available on request to Members, at the principal place of business of the Association during the week immediately prior to the Annual General Meeting.
- (o) Special General Meetings of the Association may be called for by the Board or by at least 20% of Eligible Members giving a request to the Public Officer, indicating the matter to be decided.
- (p) In either event, the Public Officer shall arrange for a Special General Meeting to be held within 45 days of the request, by giving appropriate notice to the Members as prescribed in rule 16(b).
- (q) The other provisions of this rule, relating to Annual General Meetings, shall be applied with suitable modification to a Special General Meeting, provided that no matter other than that described in the request may be dealt with.
- (r) Any resolution by Members at an Annual General Meeting or a Special General Meeting, which seeks to amend this constitution, or which seeks to effect a winding up of the Association, shall not be valid unless notice has been given that the resolution is to be a Special Resolution.

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## **17. Finance**

- (a) All financial arrangements undertaken by or for the Association shall conform with legal requirements and good accounting and business practice.
- (b) All payments by the Association and to the Association shall be recorded in appropriate books of account, with receipts given for all monies received and cheques or remittance advices written for all monies paid.
- (c) All monies received by the Association shall be deposited or electronically transferred into a cheque account at a trading bank.
- (d) Payments made by the Association may only be drawn on deposited funds or within overdraft limits set for operational purposes pursuant to a prior commitment authorized by budget or a Board resolution and signed by the Public Officer and a Board Member specifically named for that purpose.
- (e) Remittances in payment of Board Members' Travel Trust Account balances due shall be signed by the Public Officer and one senior employee of the Association designated by the Board.
- (f) Funds in excess of normal operating requirements may be invested in a nominated bank account or other authorized trustee securities.
- (g) The books of account shall be kept in such a manner as will enable true and fair accounts of the Association to be prepared and audited from time to time.
- (h) The accounts presented to the Annual General Meeting shall consist of an income and expenditure account and a balance sheet duly audited by a person qualified for that purpose. The auditor shall be appointed by the Board at the first meeting of the Board next following the Annual General Meeting.
- (i) The Board is not empowered to enter into a lease of property or contract or contracts for the development of a project which in total will cost the Association an amount equal to more than 25% of its previous year's gross revenue, without the prior approval of Ordinary Members.

- (j) The Financial Year shall commence on July 1st.

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## **18. Disciplinary action**

- (a) A Member commits an Offence if:
- (i) the Member contravenes any of these rules or the By-laws; or
  - (ii) the Member acts detrimentally to the Association's reputation or the achievement of the Association's objects.
- (b) Where the Public Officer forms a reasonable opinion that a member either directly or through the acts of omissions of its representative, is in contravention of any provision of this constitution, the By-laws or as acted detrimentally to the Association's reputation or the achievement of the Association's objects, the Public Officer may do any of the following:
- (i) send a written warning to the member
  - (ii) by notice in writing, temporarily suspend the membership of that member until the Board can make a determination under Rule 18(c).
- (c) The Public Officer must notify the Board within seven (7) days of any act performed pursuant to 18(b).
- (d) Subject to rules 18(e), 18(f), 18(g) and 18(h), upon receipt of a notification under 18(c), the Board may resolve in its absolute and sole discretion:
- (i) to take no further action regarding the matter;
  - (ii) to suspend the member's right and privileges of membership for a period of up to 12 months commencing on the date of the resolution; or
  - (iii) to expel the member from the Association.
- (e) At least fourteen (14) days before the Board meeting at which the at which a resolution under Rule(d) will be considered, the Public Officer must notify the member in writing:
- (i) that the Board are considering a resolution to warn, suspend or expel the member;
  - (ii) the date, time and location of that meeting;
  - (iii) the allegations against the member and any other information relevant to the matter;
  - (iv) the nature of the resolution that has been proposed; and
  - (v) that the member may provide an explanation to the Board, and details of how to do so.
- (f) Before the Board passes any resolution under Rule 18(d), the member must be given the opportunity to make representations at the meeting by:
- (i) sending the Board a written explanation, which must be tabled at that Board meeting; and/or
  - (ii) speaking at the meeting.

- (g) Before the Board passes any resolution under Rule 18(d), the Board must consider the nature of the allegations, any information they deem relevant to the matter and the representations of the member (if any) made under Rule 18(f).
- (h) The Public Officer must give written notice to the member of any decision under Rule 18(d) as soon as reasonably practicable.
- (i) Disciplinary procedures under this rule must be completed within a reasonable time.
- (j) The Association, each of the Directors and the Public Officer has no liability for any loss or damage the member suffers arising as a consequence of, or in connection with, a decision under this rule 18.
- (k) During the period a Member's membership is suspended, the Member:
  - (i) loses any rights (including voting rights) arising as a result of membership; and
  - (ii) is not entitled to a refund, rebate, relief or credit for membership fees paid, or payable, to the Association.
- (l) When a Member's membership is suspended, the Public Officer must record in the Register of Members:
  - (i) that the Member's membership is suspended; and
  - (ii) the date on which the suspension takes effect; and
  - (iii) the period of the suspension.
- (m) When the period of the suspension ends, the secretary must record in the Register of Members that the Member's membership is no longer suspended.

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## 19. Disputes

- (a) The procedure set out in this section (the **Grievance Procedure**) applies to disputes:
  - (i) between Members; or
  - (ii) between one or more Members and the Association other than a matter the subject of disciplinary action under rule 18.
- (b) The parties to a dispute must attempt to resolve the dispute between themselves within 14 days after the dispute has come to the attention of each party.
- (c) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 19(b), any party to the dispute may start the Grievance Procedure by giving written notice to the Public Officer of:
  - (i) the parties to the dispute; and
  - (ii) the matters that are the subject of the dispute.
- (d) Within 28 days after the Public Officer is given the notice, a Board meeting must be convened to consider and determine the dispute.
- (e) The Public Officer must give each party to the dispute written notice of the Board meeting at which the dispute is to be considered and determined at least 7 days before the meeting is held.

- (f) The notice given to each party to the dispute must state:
  - (i) when and where the Board meeting is to be held; and
  - (ii) that the party, or the party's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the dispute.
- (g) If:
  - (i) the dispute is between one or more Members and the Association; and
  - (ii) any party to the dispute gives written notice to the Public Officer, prior to the date of the Board meeting, stating that the party:
    - A. does not agree to the dispute being determined by the Board; and
    - B. requests the appointment of a mediator under rule 20,

the Board must not determine the dispute.
- (h) At the Board meeting at which a dispute is to be considered and determined, the Board must:
  - (i) give each party to the dispute, or the party's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the dispute; and
  - (ii) give due consideration to any submissions so made; and
  - (iii) determine the dispute.
- (i) The Board must give each party to the dispute written notice of the Board's determination, and the reasons for the determination, within 7 days after the Board Meeting at which the determination is made.
- (j) A party to the dispute may, within 14 days after receiving notice of the Board's determination under sub-rule 19(h)(iii), give written notice to the Public Officer requesting the appointment of a mediator under rule 20.
- (k) If notice is given under rule 19(j), each party to the dispute is a party to the mediation.

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## 20. Mediation

- (a) This rule 20 applies if written notice has been given to the Public Officer requesting the appointment of a mediator by a party to a dispute under rule 19(j), or under rule 18(f).
- (b) If this rule 20 applies, a mediator must be chosen or appointed under rule 20(c) or rule 20(d).
- (c) The mediator must be a person chosen by agreement between the parties to the dispute.
- (d) If there is no agreement for the purposes of rule 20(c), then, subject to rules 20(e) and 20(f), the Board must appoint the mediator.

- (e) The person appointed as mediator by the Board must be a person who acts as a mediator for another not-for-profit body, such as a community legal centre.
- (f) The person appointed as mediator by the Board may be a Member or former Member of the Association but must not:
  - (i) have a personal interest in the matter that is the subject of the mediation; or
  - (ii) be biased in favour of or against any party to the mediation.
- (g) The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.
- (h) Each party to the mediation must give the mediator a written statement of the issues that need to be considered at the mediation at least 5 days before the mediation takes place.
- (i) In conducting the mediation, the mediator must:
  - (i) give each party to the mediation every opportunity to be heard; and
  - (ii) allow each party to the mediation to give due consideration to any written statement given by another party; and
  - (iii) ensure that natural justice is given to the parties to the mediation throughout the mediation process.
- (j) The mediator cannot determine the matter that is the subject of the mediation.
- (k) The mediation must be confidential, and any information given at the mediation cannot be used in any other proceedings that takes place in relation to the matter that is the subject of the mediation.
- (l) The costs of the mediation are to be paid by the party or parties to the mediation that requested the appointment of the mediator (and if more than one, in equal shares).
- (m) If mediation takes place because a Member whose membership is suspended or who is expelled from the Association gives notice under this rule, and as the result of the mediation, the decision to suspend the Member's membership or expel the Member is revoked, that revocation does not affect the validity of any decision made at a Board meeting or General Meeting during the period of suspension or expulsion.

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## 21. Amendments

- (a) This constitution, including the name of the Association, may be amended only by a Special Resolution of the Association.
- (b) Amendment of this constitution shall commence by way of notice of meeting giving precise detail of the amendment sought and a brief statement setting out the reason for the amendment.
- (c) Copies of the up to date constitution shall be available for inspection by Members at the principal place of business of the Association. Members are entitled to a free copy of the constitution on becoming a Member of the Association and whenever there is a change of the constitution. Other copies may be made available to Members at a cost.



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## 22. Common Seal

- (a) The Association shall have a common seal on which its corporate name shall appear in legible characters.
- (b) The common seal of the Association must not be used without the express authority of the Board. Every use of the common seal shall be recorded in the minutes of the Board meeting following its use and in the Register, which is kept for that purpose.
- (c) The affixing of the common seal of the Association shall be witnessed by the Chairperson of the meeting authorising its use and either one other Board Member specifically named for that purpose or the Public Officer. If the Chairperson is unable to attend the affixing of the seal, then the Public Officer shall obtain Board approval for one of the Board Members to so act.
- (d) The common seal of the Association shall be kept in the custody of the Public Officer.

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## 23. Winding Up or Cancellation of Incorporation

- (a) Upon winding up or dissolution, or the cancellation of the incorporation, any surplus property must be given or transferred to another association incorporated under the Act which has similar objectives, 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.

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## 24. Definitions

In this constitution:

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

**Annual General Meeting** means a meeting convened under rule 16 (a) and (b).

**Associate Member** means a Member with the rights referred to in rule 5(j).

**Association** means the Margaret River Busselton Tourism Association (Inc).

**Board** means the board of the Association constituted pursuant to rule 10.

**Board Member** means a member of the Board.

**By-laws** means the by-laws of the Association from time to time, made under rule 11(f).

**Chairperson** means the person performing the functions described in rule 12 or rule 1.

**Chief Executive Officer** means the person appointed in accordance with rule 11(k).

**Commissioner** means the person designated as the Commissioner under section 153 of the Act.

**Eligible Member** means an Ordinary Member who is a Financial Member.

**Eligible Member Representative** means the Representative of an Eligible Member which is not a natural person.

**Financial Member** means a Member who has paid the Subscription or is a Life Member.

**Financial Year** means a period commencing 1 July and ending on 30 June in the following year.

**General Meeting** means a meeting to which all Members of the Association are invited.

**Grievance Procedure** means the procedures set out in rule 19.

**Life Member** means a Member with the rights referred to in rule 6(b).

**Member** means a person (including a body corporate) who is an Ordinary Member, Life Member or an Associate Member of the Association.

**Offence** has the meaning given in rule 18(a).

**Ordinary Member** means a Member with the rights referred to in rule 5(i).

**Public Officer** means the person appointed in accordance with rule 13(a).

**Region** means the area within the boundaries of the City of Busselton and the Shire of Augusta Margaret River, and such other areas as are determined by the Board from time to time having regard to the geographic spread of Financial Members.

**Register of Members** means the register of Members kept by the Association in accordance with rule 9.

**Regulations** means the Associations Incorporation Regulations 2016 and any other regulations made under the Act.

**Representative** means a natural person appointed by a Member who is not a natural person to act as its representative in accordance with rule 5.

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

**Special Resolution** means a resolution passed by a majority of not less than three-quarters of the Members who are entitled under this constitution to vote, in attendance (either in person or by proxy) at a General Meeting of which notice specifying the intention to propose the resolution as a special resolution was given in accordance with this constitution.

**Subscription** means the fee payable for membership of the Association in accordance with rule 8.

**Vice-Chairperson** means a vice-chairperson referred to in rule 12.