

Explanatory Memorandum

The proposed new Rules of Association 2010 for The Scout Association of Australia, Western Australian Branch (Incorporated) is intended to replace the current Constitution of the WA Branch as the rules that bind the members of the WA Branch.

This Explanatory Memorandum provides an introduction to the proposal and a plain English interpretation for each section of the proposed new Rules of Association 2010. This interpretation is provided for the convenience of adult members of the WA Branch as they consider adoption of the proposed new Rules of Association 2010, and is not to substitute for that document as the Rules of the Branch.

The current Constitution of the WA Branch was adopted in 2002 and together with a set of associated Regulations has formed the rules of this association over what can be regarded as a critical period in the life of the WA Branch taking Scouting into the 21st century and over 100 years since scouting commenced in this state.

During the period from 2002, there has been a turnaround in membership with strong growth returning. Along the way, a review of governance has seen a number of changes introduced to the Regulations that cover in particular the arrangements and procedures of the Board of the WA Branch and of its various Committees. These changes in support of good governance are expected to flow into the future under a further set of Regulations to be adopted by the Board operating under the proposed new Rules of Association 2010.

The rules governing the WA Branch can be seen as having an important influence on the health and sustainability of our association, even though these rules are only ever going to be a contributory factor in harnessing the commitment and sincere effort of the adult leaders across the Branch for the successful delivery of the Scouting Program to an increasing number of youth members. It has therefore been considered timely to consider how well the rules that now govern the WA Branch might better serve its members into the future.

One driver has been an intention to over time achieve broad consistency in the rules that apply to members in Branches across Australia. The relatively new Constitution of the New South Wales Branch has therefore been utilised as a guide in formulating the proposed new Rules of Association 2010 for the WA Branch.

Close alignment of the rules between States is not feasible as each State or Territory Branch is incorporated under the laws of that State or Territory governing not-for-profit associations in that jurisdiction. In the case of the WA Branch, it is necessary for its Constitution or Rules of Association to comply with the Associations Incorporation Act (1987)(WA). With the generous assistance of Corrs Chambers Westgarth, solicitors to the WA Branch, the form and content of the proposed Rules of Association 2010 are designed to comply with that Act. It is necessary under that Act for any change adopted as a Special Resolution by Members to then be submitted for approval of the Commissioner for Consumer Protection before becoming effective.

This Explanatory Memorandum utilises the headings, clause numbers and definitions of the proposed new Rules of Association 2010. The reader should note however that the headings in the proposed new Rules of Association 2010 have no particular influence on the legal meaning of the clauses appearing under that heading and appear there merely to facilitate the reader's access to clauses relevant to specific subject areas.

Name, Powers, Objects and Rules of the Association

1. Name of the Association

Rule 1 gives the formal title of the Western Australian Branch ("Branch"). The Branch is the legally incorporated body covering all members of the Scouting Movement in WA. The Branch is "federated" with those of the other States and Territories to form the national body, The Scout Association of Australia, but the rules governing the Branch as an incorporated body are only those expressed in the Rules of Association ("Rules") of the Branch.

2. Objects of the Branch

The objects of the Branch are in broad terms the purpose for which the Branch exists. The Branch adopts the same objects and purpose as does The Scouts Association of Australia. Those objects and purpose may change from time to time, although it is expected that the Branch would have input, along with that of other States and Territories, in determining the nature and extent of any change.

Rule 2(2) to Rule 2(4) provide high-level statements for respectively, the Mission, Aim and Principles guiding The Scout Association of Australia. Any change adopted nationally for those statements would need to be reflected subsequently in amendment of these Rules governing the Branch.

Rule 2(5) constrains the Branch to utilise its property and income exclusively towards achievement of the specified objects of the Branch. This guards against diversion of these resources to other purposes and forms the principal instruction to the directors of the incorporated body (Board members), management and all other Members of the Branch as to the proper disposition of those resources whether raised at Branch, Formation or Group level.

3. Definitions

The definitions are intended to be consistent with those used in the Act and where possible in the Policy and Rules (2008) of The Scout Association of Australia ("Policy and Rules"). It is expected that Regulations made under these Rules will adopt those same definitions and that all formal documents of the Branch, including policy statements, would over time move to the use of consistent terms and abbreviations.

4. Interpretation of the Rules

As a binding document once adopted by Members and approved under the Associations Incorporation Act (1987) (WA) ("Act"), the Rules do need to be specified as precisely as possible to avoid misunderstandings, and the interpretation instructions in Rule 4 are provided for that purpose.

5. Application of the Act

Rule 5 recognises the primacy of the Act and allows certain rules as set out in the Act to be utilised as additional rules where necessary. To the extent that these Rules are intended to be comprehensive, utilisation of replaceable rules is not expected to occur frequently if at all.

6. Exercise of Powers

Rule 6(1) provides that the Branch, including the Board, any Member of the Branch or person engaged to act for the Branch in any capacity, may do things that are properly authorised by the Rules.

Rule 6(2) provides firstly that the Board may make Regulations. Those Regulations must be necessary or convenient for the effective implementation of the Rules. As Regulations made under the Rules, the Members of the Branch are bound by those Regulations as they are bound by the Rules. Rule 44 sets out the scope of such Regulations and provides for the transition of existing Regulations to the extent they are consistent with these Rules of Association.

Rule 6(2) secondly provides that the Board may make a wide range of other directives concerning policies, rules, operating procedures, etc., again only if these are necessary or convenient for the effective implementation of the Rules. The extent that these latter directives are binding on Members should be clear from the terms of the particular directive. Members are protected from arbitrary directives by the requirement that all such directives must be consistent with the Rules and necessary or convenient for the implementation of them.

Rule 6(3) to Rule 6(5) provides for a degree of managerial and operational flexibility as it make clear when discretion may be exercised under a power provided by the Rules, that a power to do includes a power to undo or vary, and that a power to do includes a power to do in a qualified manner.

Rule 6(6) provides a degree of managerial flexibility as the power to appoint to any office or position may, subject to legislation covering contract of employment, be used to make acting appointments, to remove or suspend, or to appoint on a temporary basis.

Rule 6(7) to Rule 6(9) provide that powers or duties must be exercised or performed when the occasion requires and from time to time, and that there are certain constraints on delegation of that power or duty. Rule 6(9)(c) provides for a person receiving a delegation to perform the full role and requirements of a position to assume the title of Acting in that position.

7. Powers of the Branch

The Branch, as legal entity incorporated under the Act, must comply with that law and derive directly from that Act the powers that it needs to operate and pursue its objects and purposes. Rule 7(2) sets out specifically powers necessary for the Branch to manage its property and financial resources, and to enter contracts the branch considers necessary or desirable to achieve the stated objects of the Branch.

Rule 7(3) recognises that the Branch may in certain circumstances act as trustee in the holding of real and personal property, and seeks to protect the interests of the Scout Movement and Members by explicitly excluding the Branch in that circumstance from doing anything that contravenes the national Policy and Rules.

8. Rules of the Branch

Each Member of the Branch is obliged to comply with the terms of the Rules of Association. The Rules must therefore be accessible to each Member. The present practice of making a copy of the current document in English available for inspection at Branch Headquarters and for downloading from the Scouts WA website is understood to

satisfy the accessibility requirement set out in Rule 8(2). It is normal practice also for the Branch to provide Members with similar access to an up-to-date copy of the Regulations.

9. Amendment of Rules

Rule 9 governs the process for the making of any amendment of the Rules of Association. Referral of any amendment that has been adopted by Members to the Commissioner for Consumer Protection for approval provides Members with some assurance that proper governance arrangements remain in place for their association.

Membership

10. Who is a Member of Branch Council

Rule 10(1) specifies a wide constituency of persons as being Members of the Branch. Each of these Members is entitled to vote as Members of the principal governing body of the Branch, the Branch Council.

All adult persons (18 years and older) who have had an application for membership accepted and not revoked by an authorised person and who have paid the required membership fee are Financial Members of the Branch. This cohort of Members includes Rovers 18 years and older, Leaders and Adult Supporters, and all Fellowship and Committee members across the Branch.

In addition, certain officeholders in positions not requiring payment of a membership fee are also Members. This additional group comprises the Chief Scout, Life members and Honorary Members of the Branch, and under Rule 10(2) up to 30 other persons then elected to Branch Council as Additional Supporters.

Youth Members of The Scout Association of Australia, Western Australian Branch, including Joeys, Cubs, Scouts, Venturers and Rovers (under 18 years of age) are therefore not Members of the Branch and are not entitled to attend/vote as Members of the Branch Council. As a consequence, those Youth Members are not bound by these Rules and all rights and obligations accruing to these Youth Members arise solely from the Branch according to them a certificate of membership of The Scout Association of Australia, Western Australian Branch and registering them as a member of the Scout Movement.

11. Liability and Entitlements of Members

Rule 11(1) requires that the rights and benefits of Members are only those specified in the Rules. Rule 11(2) provides that there is no limitation on the number of persons that may be Members of the Branch, aside from the number of elected Additional Supporters that is to be not more than thirty.

Rule 11(3) provides some protection of Members from financial and other liabilities of the Branch.

Rule 11(4) and Rule 11(5) permit the Branch to pay employees and others who are Members for goods or services supplied in the normal course of business, while property and income of the Branch is not otherwise to be distributed by way of dividend, bonus or otherwise to the Members. This requirement is consistent with the not-for-profit nature of this essentially volunteer association.

Rule 11(6) unequivocally states that each Member must comply not only with the Rules but also with the Policy and Rules. The Policy and Rules are issued by the National

Council of The Scout Association of Australia in accordance with a Royal Charter granted in 1967. The Policy and Rules reflect the principles upon which Scouting worldwide is based. The requirement for Members to comply also with the Policy and Rules is to ensure that scouting as conducted by the Branch remains consistent with the Mission for Scouting of the worldwide Scouting Movement. It has the further effect of obliging Members of the Board not to adopt Regulations or give policy, procedure or practice directives that are inconsistent with the policy and practices set out in Policy and Rules.

12. Cessation of Membership

Rule 12(1) provides means for a Member to withdraw from membership of the Branch. Rule 12(2) provides that in certain circumstances the Board may resolve to cancel a membership.

13. Membership not Transferable

Membership is personal and not transferable.

14. Membership Register

A Register of current Members is maintained at Branch Headquarters.

15. Resolving Disputes and Addressing Complaints and Concerns

Processes, procedures and practices for addressing disputes, complaints or concerns by Members and others must be in accord with considerations for natural justice, procedural fairness, impartiality and personal privacy in accordance with Policy and Rules. This Rule 15 applies also to any Regulations or any policy or procedural directives made by the Board on these matters.

Branch Council

16. Role and Composition of the Branch Council

Rule 16 to Rule 24 describe the functioning of the Branch Council of Members. The Branch Council is the governing body of the Branch, being comprised of all current Members as specified in Rule 16. As the governing body, the Branch Council may determine by resolution any matter for the Branch, including the giving of directions to the Board should it so resolve.

17. Branch Council Meetings

Rule 17 sets out requirements for convening an Annual General Meeting or a Special General Meeting.

The functioning of the Branch Council is similar to that of a meeting of shareholders in a typical corporation, with the Branch Council having an Annual General Meeting that amongst other things receives and considers the annual accounts of the Branch. Rule 16(2), Rule 16(3) and Rule 16(4) provide for the nomination and election of positions central to the operation of the Branch Council whenever a vacancy arises. The procedures for filling those positions of President, Vice-President(s) and Honorary Treasurer are set out in Rule 37, with the roles of those positions being set out in Rule 40 and Rule 39 respectively.

18. Notice of Meetings of the Branch Council

Rule 18 provides detailed instructions concerning the giving of notice, which in all cases the notice period must be 21 days or more. An extended notice period of at least 60 days is specified under Rule 18(5) for the consideration of a Special Resolution to amend these Rules. It should be noted in this context that in accordance with the definition of Special Resolution in Rule 3, passage of a Special Resolution to amend these Rules requires support of more than 75 percent of those voting at a Special General Meeting having a minimum quorum of 40 Members present in person or by proxy.

19. Quorum at Branch Council General Meetings

Rule 19 specifies that a quorum of 40 Members present in person or by proxy is required for conduct of business at any General Meeting of the Branch Council, and sets out procedures to be followed should a quorum not be present.

20. Presiding Over Meetings

Rule 20 sets out an order of precedence in determining a Chairperson for any meeting of the Branch Council.

21. Conduct of General Meetings

Rule 21 establishes the authority of the Chairperson to determine the manner in which a General Meeting or an adjourned General Meeting of Branch Council conducts its business.

22. Decisions at Meetings

Rule 22 to Rule 24 establish rules for deciding resolutions according to vote or poll, as appropriate. Rule 22 sets out in detail processes for the requiring of a poll, as opposed to a vote by show of hands, to be conducted.

There is under Rule 22(1) no casting or deciding vote for the Chairperson of a meeting of the Branch Council. Accordingly any normal resolution having received an equal number of votes for and against by Members present in person or by proxy would be lost. Also, as Special Resolution is defined in Rule 3, any Special Resolution to amend these Rules having received less than 75 percent of votes for the resolution by Members present in person or by proxy and entitled to vote and do vote, would be lost.

It is noted that abstentions from voting on either a normal resolution or a Special Resolution could reduce the absolute number of Members required to vote for that resolution for it to be passed. The obligation on the Chairperson under Rule 23 to vote as directed any proxy from Members addresses this issue by reducing the potential for unintended abstention.

23. Member's Voting Rights

Rule 23 specifies that a Member present in person or by proxy is entitled to only a single vote. A procedure is set out to handle an objection to the qualification of a person to vote as a Member.

24. Representation at Meetings

Rule 24 qualifies the entitlement of a Member to vote in person, and is silent on the right to attend a meeting of the Branch Council. The Member would not be entitled to vote in person on a resolution at a meeting if that Member had given, and not validly withdrawn, a proxy to the Chairperson in respect of the particular resolution.

Board

25. The Role of the Board

Rule 25 expresses the role of the Board as being broadly strategic in nature and as exercising oversight of the management of the affairs of the Branch. That role includes in particular the making of appointments or the nomination of persons to be appointed to certain principal position. Those positions include that of the Chief Commissioner. Under Rule 38(1) the Board may resolve to appoint a Chief Executive Officer and that person may or may not be the Chief Commissioner. The Board under Rule 38(3) must appoint an Executive Manager.

26. Board Charter

Rule 26 requires the Board to prepare a Board Charter that the Board may amend from time to time. The Board Charter must set out matters contributing to the proper and effective operation of the Board and of its Committees. The Board must operate in accordance with that document. The Branch Council, as the governing body, may direct the Board to amend the Board Charter.

It is expected that a Board Charter will document a Committee structure suited to the role performed by the Board, consolidate under it a number of existing standing orders of the Board, and provide a reference point against which the Board may assess its own operating performance.

27. Membership of the Board

Rule 27 sets out in some detail the composition of the membership of the Board and the manner in which the positions of Board Member are to be filled.

Rule 27(1) is specific in identifying a representative make-up for the Board. The number of Board Member positions is limited to 14 in total and must not be less than 12.

The first 4 positions listed must be occupied by persons from various defined categories of the Uniformed Members of the Branch, including the Chief Commissioner.

The fifth position is intended for a past Rover under 30 years of age at appointment, but may alternatively be a current Rover. A past Rover appointed to this fifth position may also be a Uniformed Member.

The sixth position listed is that occupied ex-officio by the Honorary Treasurer, who is a person appointed by the Branch Council at its AGM. This person may also be a Uniformed Member, although this is less likely given the requirements of the Honorary Treasurer's role as set out in Rule 39.

The seventh to twelfth positions, being 6 in total, must be filled by persons that are not for the duration of their appointment serving Adult Leaders. That is, any serving Adult Leader who is appointed to one of these 6 positions must have their Certificate of Leadership set aside for the duration of their appointment as a Board Member.

Rule 27(2) provides for 2 additional Board Members appointed by the Board in its discretion. Persons appointed to these positions must again not be serving Adult Leaders for the duration of their appointment.

As a consequence of the positions as specified in Rule 27(1) and Rule 27(2), it is likely that the number of Uniformed Members on the Board will be 5 and the number of Members or other persons who are not serving Adult Leaders at the time will range from 7 to 9.

This represents a change from the position under the current Constitution where the number of Board positions must be at least 11, with only a single position, that of the Chief Commissioner, being occupied by persons that are serving Adult Leaders at the time.

Rule 27(3) sets out the intended tenure for each of the various positions on the Board. The provisions are designed to ensure overlap within both the Uniformed Members and those Members and others who are not serving Adult Members at the time, and regular opportunity for renewal at the Board level.

Rule 27(4) specifies that all appointments to the Board are subject to ratification by Branch Council at the next occurring AGM.

Rule 27(5) and Rule 27(6) provide respectively for appointment to vacancies at the AGM and for appointment to casual vacancies during the year by the Board.

Rule 27(7) specifies that the Executive Manager, appointed by the Board under Rule 38(3), is not a member of the Board although having a right to attend meetings of the Board. Anticipating that a person appointed as Executive Manager may at some time be simultaneously appointed or hold tenure as a Board Member in one of the positions listed in Rule 27(1) or Rule 27(2), Rule 27(7) explicitly recognises that the person's rights and responsibilities as a Board Member would not be diminished by appointment of that person as Executive Manager.

28. Retirement of Board Members

Rule 28 specifies tenure constraints for the various listed positions on the Board. In doing so it seeks to augment Rule 27(3) in ensuring renewal at Board level.

29. Casual Vacancy of Board Member

Rule 29 specifies circumstances that create a casual vacancy within a position on the Board. It refers to the power of the Board under Rule 27(6) to fill such a casual vacancy.

30. Board Proceedings

Rule 30 specifies details of Board process and procedure. This detail constrains the Board in terms of determining such matters within the Board Charter as outlined in Rule 26 and in otherwise determining its own procedures.

Rule 30(1) obliges the Board concerning its meeting schedule, Rule 30(2) and Rule 30(3) specify a quorum in relation to the positions as identified in Rule 27(1) and Rule 27(2), and Rule 30(4) and Rule 30(5) authorise meetings conducted remotely by means of communications technology.

Rule 30(6) and Rule 30(7) specify that a Board Member has a right to a single vote and that decisions are taken by majority vote.

Rule 30(8) and Rule 30(9) authorise the Board to determine certain aspect of its meeting procedure and the assignment of positions of Chairperson, Deputy Chairperson and Board Secretary, from amongst its members.

Rule 30(10) provides that the Board may make a decision without holding a formal meeting if all Board Members entitled to vote on that decision sign a document in favour of that decision.

31. Declaration of Interest and Partiality

Rule 31 sets out obligations on Board Members as regards declaring in a timely manner of any pecuniary or other interest that could reasonably be construed as having an adverse influence on the proper, objective and impartial performance of the Board Member's duties as a Board Member. The provisions of Rule 31(1) and Rule 31(3) are designed to satisfy the relevant sections of the Act in respect of contracts, and of Rule 31(2) and Rule 31(4) to reflect good governance practice. These provisions are essentially similar to those adopted by the Board under the current Constitution.

32. Committees and Delegates

Rule 32 provides authority for the Board to delegate any of its powers for purposes of achieving proper control, management and advancement of the Branch. Such delegation must be in writing. Any committee to which such powers are to be delegated must have terms of reference, duties and responsibilities prescribed in the Board Charter. Delegation is not permitted when the duty to perform the relevant function is imposed on the Board by the Act or any other law.

It is noted that the Board has formed a number of committees under the current Constitution to assist in achieving proper control, management and advancement of the Branch. The Board has adopted detailed Regulation as the means to formalise the terms of reference, composition and responsibilities of those committees.

33. Validity of Acts

Rule 33 provides that the validity of acts done by the Board is not open to challenge based on certain specified deficiencies in the status of one or more Board Members.

34. Remuneration

Rule 34 provides that Board Members don't get paid for performance of their duties as Board Members, but may be reimbursed for reasonable expenses incurred in so doing.

This provision seeks to maintain Board Members as being volunteers of a not-for-profit association and thereby having such protection from personal liability as is provided by the relevant legislation in WA covering volunteers.

35. National Executive Committee

Rule 35 reflects an intended working relationship of the Branch with the National Council and National Executive Committee. That relationship is further cemented by commitment where relevant in these Rules of Association to the Policy and Rules. The National Executive Committee has under Rule 35 no vote on either the Branch Council or the Board.

Officers Bearers and Auditors

36. Chief Commissioner

Rule 36(1) provides that an appointment to the position of Chief Commissioner in the Branch (or of Acting Chief Commissioner) be recommended to the Chief Scout of Australia for appointment.

Rule 36(2) obliges the Board to make the relevant Regulations specifying the role and responsibilities of the position and the process for selecting and recommending a nominee. That process must be consistent with an open and merit-based process as prescribed in Rule 36(3).

Rule 36(4) provides that the Chief Commissioner may delegate any function or power of that position (up to and including all such functions and powers) but for no longer than three months on any one occasion. This would not prevent such a delegation being given to the same or another person on the expiry of the current term of delegation.

37. Offices of the Branch Council

Rule 37 prescribes three offices of (or positions within) the Branch Council. These are the President, Vice-President(s) and the Honorary Treasurer. Rule 37 sets out procedures for appointments to be made by a General Meeting of the Branch on nominations provided in the first instance by the Board. Appointees have tenure until the next AGM.

38. Executive Management

Rule 38(1) provides that the Board may appoint (ie the appointment is discretionary) a Chief Executive Officer. Any such appointment must be from amongst members of the Board (including the Executive Manager if that person is a member of the Board in another capacity) other than the Honorary Treasurer, Chairperson, Deputy Chairperson and Board Secretary.

The constraint in Rule 38(1) on persons who may be appointed as Chief Executive Officer ensures that the composition of the Board is not expanded or diminished by such an appointment made at the discretion of the Board. It is intended that any person appointed to the Chief Executive Officer position would retain that position only so long as they have tenure as a member of the Board. Tenure could include as a Board appointee to a casual vacancy on the Board, with continuance of tenure then being subject to election at the next occurring AGM.

Rule 38(2) requires the Board to specify the role and responsibilities of the Chief Executive Officer, but only if the Board has resolved that this position is to be filled.

The Rules do not specify whether a person, if any, appointed to the Chief Executive Officer position is to be paid or otherwise remunerated to perform the role and responsibilities specified by the Board. Such a consideration would need to take into account the interaction of this position with the role and responsibilities specified for the Executive Manager position in the context of the Branch as an incorporated entity having a number of paid employees.

Rule 38(3) provides that the Board must appoint an Executive Manager.

While the Rules do not specify that the person appointed to the Executive Manager position is to be a paid employee of the Branch, this is the accustomed outcome given the scale and scope of responsibilities typically assigned to this position as the senior employed officer of the Branch in the absence of an appointment being made to a Chief Executive Officer position.

Rule 38(4) lists some of the services that the Executive Manager is to provide to the Branch Council specifically. Those particular services are similar to those that would normally be provided by a Secretary to the Branch Council. There would be a substantially wider list of services to be provided to the Branch and to the Board. It is a responsibility of the Board to determine the procedure for selection of a person to be employed under contract into this position.

39. Honorary Treasurer

Rule 39(1) states that the Honorary Treasurer shall be appointed by the Branch Council.

Rule 39(2) states that the Honorary Treasurer is responsible for the management of the finances and accounts of the Branch. It also lists a number of accounting functions for which the Honorary Treasurer has an oversight or superintendent responsibility. These functions include submission at each AGM a Statement of Accounts that has been approved by the Board and audited by the external Auditor.

Rule 39(3) makes the Honorary Treasurer responsible for the provision to the Board on request a report, balance sheet or financial statement in respect of the financial accounts of the Branch.

40. President and Vice-Presidents

Rule 40 requires these offices of the Branch Council to be responsive to the needs of the Branch Council as these may be determined to be from time to time.

41. Auditors and Accounting Standards

Rule 41 provides for the Board to appoint external Auditors. It further requires that the financial statements and accounts of the Branch must be prepared in accordance with appropriate accounting standards. This requirement concerning standards is a direction that the Board and the Honorary Treasurer must observe on a continuing basis, whilst the Branch's performance against this requirement is assessed annually by the Auditor.

42. Honorary and Life Membership Appointments

Rule 42 specifies 4 categories of honorary appointments. The criteria and privileges are left for the Branch to determine, although only the categories of Life Member and Honorary Member are included in the list of Members under Rule 10(1) and therefore the only categories that would have an entitlement to attend and vote at a General Meeting.

43. Property

Rule 43 states the requirements of the Act in respect of holding and dealing with property.

44. Regulations

Rule 44(1) outlines certain things that are within the scope of Regulations that the Board may make, change or rescind under a power given to the Board under Rule 6(2).

Rule 44(2) provides for transition of existing Regulations that were made under the current Constitution to continue on as Regulations under the Rules of Association. It provides that the continuing Regulations are only those parts of the existing Regulations as are consistent with the Rules of Association. On the coming into effect of these Rules of Association, the Board would need to recognise an appropriately amended set of existing Regulations.

Under current practice of the Department of Commerce, the agency responsible for administration of the Act, both the continuing Regulations and the Regulations as may subsequently be amended or replaced by decision of the Board, would not be required to be submitted for approval by the relevant authority.

Rule 44(3) ensures that the meaning of Regulations must always be interpreted in a manner that is consistent with these Rules of Association.

45. Indemnity

The Branch must under Rule 45 provide to Officers an indemnity against civil liability. Rule 45 reflects the terms of that indemnity as set out in relevant WA legislation. Officers is defined in Rule 3 to include only Adult Leaders and Board Members. Other Members and volunteers generally who do work for the Branch are indemnified by the Branch under the provisions of the Volunteers and Food and Other Donors (Protection from Liability) Act (2002)(WA). Indemnity for employees of the Branch is addressed under relevant employment legislation in WA. The Branch carries Public Liability insurance to help manage the risk of such indemnities to the Branch.

Minutes and Records

46. Minutes of Meetings

Rule 46 specifies that it is a responsibility of the Executive Officer to ensure that both minutes of General Meetings of the Branch Council and minutes of meetings of the Board and of its committees are recorded in a timely manner. In the case of the Board and its committees, it may be appropriate for the Board to adopt under reference in the Board Charter certain policy and procedures that support the Executive Manager in this matter.

47. Minutes of Resolutions Passed without a Meeting

Rule 47 makes Board Members collectively responsible for recording in a timely manner resolutions passed without a meeting as permitted under Rule 30(10).

48. Signing of Minutes

Rule 48(1) requires that after minutes of the Board and of its committees are confirmed they are to be signed by the person chairing that or the next occurring meeting of the Board or of the relevant committee. The timing obligation in Rule 46 concerning the recording of minutes not more than 1 month after the relevant meeting is held implies that on most occasions only a draft set of minutes will be placed on record within that time, and that a confirmed set of minutes will be substituted following signing of that confirmed set. It may be appropriate for the Board to determine a procedure that provides for signing of electronic records.

Rule 48(2) deals in a similar manner with signing of records of resolutions taken without a meeting as permitted under Rule 30(10).

49. Minutes as Evidence

Rule 49 provides that a minute recorded and signed as specified is evidence of the particular proceedings or resolution, unless the contrary is proved.

50. Inspection of Records

Rule 50(1) ensures that Members may inspect the minute books of General Meetings.

Rule 50(2) ensures access for Members to a wider range of records of the Branch, including any specific records of personal information of that Member.

Execution of Documents

51. Manner of Execution

Rule 51 provides 3 alternative means for the Branch to validly execute (render effective) a document, for example a lease or contract of sale that commits the Branch in some legally binding way. Only 1 of these means would require the use of the common seal of the Branch. It may be appropriate for the Board to determine a policy concerning when one or other of these alternatives should be adopted.

52. Common Seal

Rule 52 sets out requirement to be met when using the common seal of the Branch.

53. Notices

Rule 53 sets out requirements for validly giving a notice to a Member or Members.

General

54. Submission to Jurisdiction

Rule 54 provides that on becoming a Member or Board Member of the Branch the person accepts that matters of interpretation and application of the Rules of Association may be dealt with under WA law.

55. Prohibition and Enforceability

Rule 55 respects specific prohibitions, validity and enforceability constraints under law.

56. Dissolution of the Branch

Rule 56 provides for a winding up process for the incorporated entity that is consistent with its not-for-profit status and its incorporation as an association under the Act.

57. Review of Rules

Rule 57 provides for timely reviews of the efficacy of the Rules of Association.

58. Transitional Arrangements

Rule 58 sets out certain arrangements concerning tenure of office holders that are designed to facilitate transition from the current Constitution. These arrangements

anticipate the coming into effect of the Rules of Association only after the AGM in July 2010. This is expected to be the timing even should a Special Resolution to adopt these Rules be passed in a Special Meeting of the Branch held shortly before the AGM 2010 or in the AGM itself. The Rules of Association do not come into effect until approved under the Act. Accordingly, the AGM is expected to have ratified the election of persons to vacant positions on the Board as constituted under the current Constitution, and to have made appointments to all offices of the Branch Council also under the current Constitution.

There are substantial differences between the composition of the Board under Rule 27 and that under the current Constitution. Rule 58(1) offers then Board Members and Branch Council office holders (President, Vice-President and Honorary Treasurer) the opportunity to serve out under the Rules of Association their term of office, thus avoiding an immediate round of nomination and election/appointment processes.

Rule 58(2) is designed to transition all the then elected Board Members into the positions available to them under Rule 27(1)(g) and Rule 27(2). The person, if any, then elected as a person under 30 years of age may be transitioned directly by appointment into the vacant position under Rule 27(1)(e).

The Honorary Treasurer is transitioned to the Board under Rule 58(1) since that position is ex-officio on the Board under Rule 27(f). The Chief Commissioner at that time is transitioned to the Board since that position is ex-officio on the Board under Rule 27(a).

Rule 58(3) is designed to promptly establish initial appointments into the three new positions under Rule 27(b), (c) and (d) reserved for the respective categories of Uniformed Member.

Rule 58(4) is designed to accommodate at the AGM of 2011, the continuing tenures of Board Members elected to positions under Rule 27(g), while seeking to establish as soon as practical the appointment and renewal cycles as provided for in Rule 27(3) and Rule 28.

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