

# **Australian International Optimist Dinghy Association Constitution**

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# ASSOCIATIONS INCORPORATION ACT (WA) 2015

## CONSTITUTION

of

# AUSTRALIAN INTERNATIONAL OPTIMIST DINGHY ASSOCIATION INCORPORATED (AIODA)

## 1. NAME OF ASSOCIATION

The name of the Association is the **Australian International Optimist Dinghy Association Incorporated** ("Association"), which may conduct business or be otherwise referred to as **AIODA** and **OptiAUS**.

## 2. DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

In this Constitution unless the contrary intention appears:

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

**"AS"** means Australian Sailing, the national sporting organisation (NSO) that governs sailing in Australia.

**"Association"** means the Australian International Optimist Dinghy Association Incorporated (AIODA).

**"Board"** means the body consisting of the Directors.

**"Constitution"** means this Constitution of the Association.

**"Council"** means the body consisting of the Directors and the State Delegates.

**"Delegate"** means the person(s) appointed from time to time to act for and on behalf of a State and to represent that State at General Meetings and Council.

**"Director"** means a member of the Board and includes any person acting in that capacity from time to time appointed in accordance with this Constitution but does not include the Executive Director if any is appointed.

**"Executive Director"** means the Executive Director of the Association for the time being appointed under this Constitution.

**"Financial year"** means the year ending on the next 30 September following incorporation and thereafter a period of 12 months commencing on 1 October and ending on 30 September each year.

**"General Meeting"** means the annual or any special general meeting of the Association.

**"Intellectual Property"** means all rights subsisting in copyright, business names, names, trade marks (or signs), logos, designs, equipment including computer software, images (including photographs, videos or films) or service marks relating to the Association or any activity of or conducted, promoted or administered by the Association in Australia.

**"International Optimist Dinghy Association"** refers to the international governing body of the Optimist Dinghy class, known as **IODA**.

**"Life Member"** means an individual appointed as a Life Member of the Association under **clause 6.2**.

**“Member”** means a member for the time being of the Association under **clause 6**.

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

**“Public Officer”** means the person appointed to be the public officer of the Association in accordance with the Act.

**“Register”** means a register of Members kept and maintained in accordance with **clause 8**.

**“Regulations”** mean any Regulations (By-Laws) made by the Board under **clause 35**.

**“Seal”** means the common seal of the Association (if any).

**“State”** means a State association, which is or is eligible to be a Member of the Association.

**“State Member”** means a State association and all of its constituent members, which is a Member of the Association.

**“Special Resolution”** means a special resolution defined in the Act.

**“World Sailing”** means the world governing body for the sport of sailing, known as **WS**.

## **2.2 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 corporate;
- (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.

## **2.3 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.

## **2.4 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 to the extent permitted by this Constitution.

## **3. STATUS AND COMPLIANCE OF ASSOCIATION**

### **3.1 Recognition of Association**

The Association is the controlling authority for the Optimist Dinghy class in Australia and subject to compliance with this Constitution shall continue to be so recognised and shall administer the Optimist Dinghy class in Australia in accordance with the Objects.

The Association comprises members from each State of Australia represented by the recognised nominated Delegate of each of the relevant State Associations.

The Association will seek to work with Australian Sailing as the national authority for sport of sailing in Australia and the International Optimist Dinghy Association as world governing authority for the Optimist Dinghy and subject to compliance with this Constitution and the constitutions of Australian Sailing and the International Optimist Dinghy Association shall continue to be so recognised and shall administer Optimist Dinghy class in Australia in accordance with the Objects.

### **3.2 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;
- (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 the Optimist Dinghy class, its standards, quality and reputation for the benefit of the Members; and
- (e) at all times act in the interests of the Members.

### **3.3 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 are to be conducted, promoted, encouraged, advanced and administered throughout Australia and;
- (b) to ensure the maintenance and enhancement of the Optimist Dinghy class, its standards, quality and reputation for the 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 the Optimist Dinghy class 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 the Optimist Dinghy class 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.

#### **4. OBJECTS OF THE ASSOCIATION**

The Association is established solely for the Objects. The Objects of the Association are:

- (a) To serve as the national body for the promotion, advancement and administration of Optimist Dinghy class throughout Australia;
- (b) To adopt and implement policies for the benefit of the Optimist Dinghy class in Australia, to ensure the maintenance and enhancement of the Association, its standards, quality and reputation for the benefit of the Members and junior sailing in Australia;
- (c) To form such commercial arrangements as are beneficial to the advancement of Optimist Dinghy sailing, and promote the economic and community service success, strength and stability of the Association, the Members and Optimist Dinghy sailing in Australia;
- (d) To plan for and conduct annually, or otherwise, the Australian Optimist Championships and the Australian Optimist Team Racing Championships;
- (e) To plan for and conduct or co-ordinate Australia's involvement in International competitions, as agreed by the Board;
- (f) To plan for and conduct other nationally focussed Optimist events, as agreed by the Board;
- (g) To abide by, promulgate, enforce and secure uniformity in the application of, the rules of the Optimist Dinghy class and the rules of sailing as may be determined from time to time by IODA or WS and as may be necessary for the management and control of Optimist Dinghy related activities in Australia;
- (h) To invest monies of the Association on interest bearing deposit and to utilise those monies in the promotion and advancement of Optimist Dinghy sailing and these objectives;
- (i) To use and protect the Intellectual Property of the Association;
- (j) To take such steps to become recognised by other Associations or bodies that promote the advancement and administration of the Optimist Dinghy class and junior sailing as may be required, and represent the interests of its Members in any appropriate forum in Australia and Internationally;
- (k) To at all times promote mutual trust and confidence between the Association, and the Members in pursuit of these Objects, and at all times act on behalf of, and in the interest of, the Members and Optimist Dinghy sailing in Australia; and
- (l) To review and/or determine any matters relating to Optimist Dinghy sailing which may arise, or be referred to it, by any Member.

#### **5. 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 as set out under section 124 of the *Corporations Act 2001 (Cth)*.

## **6. MEMBERS**

### **6.1 Categories of Members**

The Members of the Association shall consist of:

- (a) State Members, which subject to this Constitution, shall be represented by a Delegate, and who shall have the right to receive notice of General Meetings and to be present, debate and vote on behalf of the State Member at General Meetings;
- (b) Directors who shall have the right to be present and debate at General Meetings but shall have no rights to vote at General Meetings;
- (c) Life Members, who subject to this Constitution, shall have the right to receive notice of General Meetings and to be present and to debate at General Meetings, but shall have no voting rights; and
- (d) Such new or other categories of Members that may be established by the Board. Any new category of Member established by the Board cannot be granted voting rights without the approval of the Association in General Meeting.

### **6.2 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 Optimist Dinghy sailing, where such service is deemed to have assisted the advancement of Optimist Dinghy sailing in Australia, be appointed as a Life Member.
- (b) A resolution of the Annual General Meeting to confer life membership (subject to **clause 6.2(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.

## **7. AFFILIATION**

### **7.1 State Members**

- (a) To be, or remain, eligible for membership, a State must be incorporated or in the process of incorporation, or be a designated representation of a state incorporated body.
- (b) Failure to incorporate within a 3 month period from the time of application shall result in the expulsion of the Delegate (acting on behalf of the unincorporated entity) from membership. The expelled unincorporated entity shall not be entitled to re-apply for membership until it becomes incorporated.

### **7.2 Application for Affiliation**

An application for affiliation must be:

- (a) 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;
- (b) 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;
- (c) Accompanied by the appropriate fee (if any); and



- (d) Compliant with such other conditions and requirements as AIODA may determine from time to time.

### **7.3 Discretion to Accept or Reject Application**

- (a) The Association may accept or reject an application whether or not the applicant has complied with the requirements in **clauses 7.1 and 7.2**. 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 Executive Director 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.

### **7.4 Re-Affiliation**

- (a) State Members must 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 a State Member must lodge with the Association a copy any and all amendments to its constitution and must provide details of any change in its Delegate and any other information reasonably required by the Association.

### **7.5 Deemed Membership**

- (a) All 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.
- (b) State Members shall provide the Association with such details, if any, as are reasonably requested by the Association under this Constitution within one (1) month of the approval of this Constitution under the Act.
- (c) Any members of the Association prior to approval of this Constitution under the Act, who are not deemed Members under **clause 7.5(a)** shall be entitled to carry on such functions analogous to their previous functions as are provided for under this Constitution.

## **8. REGISTER OF MEMBERS**

### **8.1 Association to keep Register**

The Association shall keep and maintain a Register in which shall be entered (as a minimum):

- (a) the full name, address, and date of entry to membership of each State Member, and the full name and address of their nominated delegate; and
- (b) the full name, address and date of entry to membership of each Director and Life Member; and
- (c) where applicable, the date of termination of membership of any State Member.

State Members, Directors and Life Members shall provide notice of any change to these details to the Association within one month of such change.

## 8.2 Inspection of Register

Having regard to the Act, confidentiality considerations and privacy laws, an extract of the Register, shall be available for inspection by Members, upon reasonable request in accordance with rule 30.1(b).

## 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

Members acknowledge and agree that:

- (a) this Constitution constitutes a contract between each of them and the Association and that they are bound by this Constitution and the Regulations;
- (b) 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;
- (c) by submitting to this Constitution and Regulations they are subject to the jurisdiction of the Association;
- (d) the Constitution and Regulations are necessary and reasonable for promoting the Objects and particularly the promotion and growth of Optimist Dinghy sailing in Australia; and
- (e) they are entitled to all benefits, advantages, privileges and services of Association membership.

# 10. DISCONTINUANCE OF MEMBERSHIP

## 10.1 Notice of Resignation

- (a) A Member having paid all arrears of fees payable to the Association may resign or withdraw from membership of the Association by giving one month's notice in writing to the Association of such resignation or withdrawal.
- (b) A State Member may not resign, disaffiliate or otherwise seek to withdraw from the Association without approval by Special Resolution of the State Association. A copy of the relevant minutes of the State Association meeting showing that the Special Resolution has been passed by the State Association must be provided to the Association.
- (c) 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 Discontinuance for breach

- (a) Membership of the Association may be discontinued by the Board upon any material breach of a 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 10.2(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 10.2(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 10.3** as soon as practicable.

### **10.3 Discontinuance for failure to re-affiliate**

Membership of the Association may be discontinued by the Board if a State Member has not re-affiliated with the Association within three months of re-affiliation falling due. The Register shall be amended to reflect any discontinuance of membership under this **clause 10.3** as soon as practicable.

### **10.4 Member to Re-Apply**

A Member whose membership has been discontinued under **clauses 10.2** or **10.3**:

- (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.

### **10.5 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 State ceases to be a Member it shall also forfeit all representation rights on the Board and at General Meetings.

### **10.6 Delegate Position Lapses**

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

### **10.7 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.

### **10.8 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. SUBSCRIPTIONS AND FEES**

The annual membership subscription (if any) and any fees or other levies payable by Members to the Association, the time for and manner of payment, shall be as determined by the Board.

## **12. EXISTING DIRECTORS**

- (a) The members of the Committee of the Association in office immediately prior to approval of this Constitution under the Act shall continue in those positions for a period of up to 3 months following such adoption of this Constitution, during which time the Committee shall convene a general meeting for the positions of Directors to be filled, vacated or otherwise dealt with under this Constitution.
- (b) The person known and appointed to the position of Public Officer (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.

### **13. POWERS OF THE BOARD**

Subject to the Act and this Constitution, business of the Association and the powers of the Association shall be managed and exercised by the Board except for business required to be conducted or exercised by the Council.

In particular, the Board as the governing body for the Optimist Dinghy class in Australia shall be responsible for acting on national Optimist Dinghy class issues in accordance with the Objects and shall operate for the benefit of the Members and the sailing community throughout Australia and shall manage the Optimist Dinghy class in Australia in accordance with this Constitution and in particular the Objects of Association.

### **14. COMPOSITION OF THE BOARD AND COUNCIL**

#### **14.1 Composition of the Board**

The Board shall comprise:

- (a) Four (4) elected Directors;
- (b) Up to two (2) appointed Directors endorsed by the Council and approved by the Board; and
- (c) an Executive Director (*ex-officio*) or Secretary appointed by the Board.

who may be elected or appointed under **clause 14.3**.

#### **14.2 Composition of the Council**

The Council shall comprise:

- (a) The members of the Board as defined under **clause 14.1**; and
- (b) The Delegates as appointed by each State member from time to time.

#### **14.3 Appointment and Election of Directors**

The Association will determine the process for electing and appointing Directors as set out in the Rules and Regulations of the Association, and include:

- (a) The right of all Members to nominate their delegate as a director,
- (b) The process to elect Directors from outside the State delegates
- (c) The appointed Directors that may be appointed by the Board from time to time.

#### **14.4 Term of Directors**

- a) Each elected Director shall be elected for a term of 2 years. For this purpose, 2 years shall be defined as commencing at the conclusion of the Annual General Meeting at which they are elected and ending at the conclusion of the second Annual General Meeting following election but the shall be eligible for re-election.
- b) Following the election of the initial Directors, after adoption of this Constitution, the Directors shall amongst themselves determine at least two Directors who shall retire at the first Annual General Meeting following their election, but who shall be eligible for re-election.
- c) Each appointed Director shall hold office from the time of their appointment by Council until the next Annual General Meeting.

#### **14.5 Remuneration of Directors**

A Director may not be paid for services as a Director but, with the approval of the Board and subject to the Act, may be reimbursed by the Association for their reasonable travelling, accommodation and other expenses when:

- a) travelling to or from meetings of the Board, Council or a Committee of the Association; or
- b) when otherwise engaged in the conducting the affairs of the Association.

#### **14.6 Portfolios**

The Board may allocate portfolios, roles, tasks and/or titles to Directors in accordance with the regulations which may be established and/or varied by the Board.

### **15. VACANCIES ON THE BOARD**

#### **15.1 Casual Vacancies**

Any casual vacancy occurring in the position of Director may be filled by:

- (a) the Council, where the casual vacancy is an elected Director, or
- (b) the Board where the casual vacancy is an appointed Director.

Any casual vacancy may only be filled until the date of the next Annual General Meeting.

#### **15.2 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 her 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 their office in writing to the Association;
- (e) is absent without the consent of the Board from meetings of the Board held during a period of four (4) months;
- (f) holds an 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 2001 (Cth)*.

### **15.3 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 Directors to a number sufficient to constitute such a quorum.

## **16. MEETINGS OF THE BOARD AND COUNCIL**

### **16.1 Council to Meet**

The Council shall meet at least three times per annum between each Annual General Meeting the schedule of which shall be determined by the Board.

### **16.2 Matters to be considered by Council**

Subject to this Constitution, the Board shall have regard to the recommendation of the Council in regard to the following:-

- a) Selection policies for the Australian Optimist Sailing Team and any other AIODA representative Teams or Squads;
- b) Selection of the venue for the Australian Optimist Championship;
- c) Any increase in annual affiliation fee above 10% of the previous fee; and
- d) Any other matter the Board shall so refer to Council.

### **16.3 Board to Meet**

The Board shall meet as often as it deems 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.

### **16.4 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.

### **16.5 Resolutions not in Meeting**

- (a) A resolution in writing, signed or assented to by e-mail or 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) 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 16.5(b)(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 16.5(b)(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.

#### **16.6 Quorum at Meetings**

At meetings of the Board the number of Directors whose presence is required to constitute a quorum is four (4) and at meetings of Council the number of members whose presence is required to constitute a quorum is seven (7) including at least three (3) Delegates.

#### **16.7 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 and Delegate. The agenda shall be forwarded to each Director and Delegate not less than three (3) days prior to such meeting.

#### **16.8 Chairperson**

The Board shall appoint a chairperson from amongst its number. The chairperson shall be the nominal head of the Association and will act as chair of any Board meeting, Council meeting or General Meeting at which they are present. If the chairperson is not present, or is unwilling or unable to preside at a board meeting the remaining Directors shall appoint another Director to preside as chair for that meeting only.

#### **16.9 Directors' and Delegate Interests**

A Director or Delegate 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.

#### **16.10 Conflict of Interest**

A Director shall declare his interest in any:

- (a) contractual matter;
- (b) selection matter;
- (c) disciplinary matter; or
- (d) financial matter;

in which a conflict of interest arises or may arise, and shall, unless otherwise determined by the Board, absent himself 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.

#### **16.11 Disclosure of Interests**

- (a) The nature of the interest of such Director must be declared by the Director at the meeting of the Board at which the 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.
- (b) All disclosed interests must also be disclosed to each Annual General Meeting in accordance with the Act.

#### **16.12 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 16.11** 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.

#### **16.13 Recording Disclosures**

Any declaration made, any disclosure or any general notice given by a Director in accordance with **clauses 16.8, 16.11** and/or **16.12** must be recorded in the minutes of the relevant meeting.

### **17. EXECUTIVE DIRECTOR**

#### **17.1 Appointment of Executive Director**

An Executive Director may be appointed by the Board for such term and on such conditions as the Board thinks fit.

Should an Executive Director not be appointed, then the Board shall appoint a Secretary and the Secretary will assume the duties of the Executive Director.

#### **17.2 Executive Director to act as Secretary and Public Officer**

The Executive Director 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.

#### **17.3 Specific Duties**

The Executive Director shall:

- (a) as far as practicable attend all Board meetings and all General Meetings, but shall not vote;
- (b) prepare the agenda for all Board and 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 to each of the Directors and Delegates promptly, but not later than 14 days, from the date of the meeting;



- (d) maintain custody of the records of the Association other than those placed under the custody of another director by this Constitution or resolution of the Board; and
- (e) regularly report on the activities of, and issues relating to, the Association.

#### **17.4 Board Power to Manage**

Subject to the Act, this Constitution, the Regulations and any policy directive of the Board, the Executive Director 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 Council or Association in General Meeting shall invalidate any prior act of the Executive Director or the Board which would have been valid if that resolution had not been passed.

#### **17.5 Executive Director may employ**

The Executive Director may in consultation with the Board and within approved budgets, 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 Executive Director determines.

### **18. SPECIALIST APPOINTMENTS**

The Board may by instrument in writing make such specialist appointments on such terms as it may determine to assist the Association to further its Objectives. Such appointments may include, but not be limited to:

- a) Registrar;
- b) Chief Measurer; and
- c) National Head Coach.

### **19. DELEGATIONS**

#### **19.1 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. In exercising its power under this clause the Board must take into account broad stakeholder involvement

#### **19.2 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 Executive Director by the Act or any other law, or this Constitution or by resolution of the Association in General Meeting.

#### **19.3 Delegated Function Exercised in Accordance with Terms**

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

#### **19.4 Procedure of Delegated Entity**

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 16** above. The entity exercising delegated powers shall make decisions in accordance with the Objects, and shall promptly provide the Board with details of all material decisions and shall provide any other reports, minutes and information as the Board may require from time to time.

#### **19.5 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.

#### **19.6 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 any decision made by such body or person under this clause.

### **20. SEAL**

- (a) The Association may have a Seal upon which its corporate name shall appear in legible characters.
- (b) The Seal shall 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 and on the Seal register. The affixing of the Seal must be witnessed by two (2) Directors, unless the Board determines otherwise.

### **21. ANNUAL GENERAL MEETING**

- (a) 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 coincide with the Australian Optimist Championships in January each year.
- (b) All General Meetings other than the Annual General Meeting shall be Special General Meetings and shall be held in accordance with this Constitution.

### **22. SPECIAL GENERAL MEETINGS**

#### **22.1 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.

#### **22.2 Requisition of Special General Meetings**

- (a) The Executive Director shall on the requisition in writing of at least 20% of the 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 Executive Director 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.

## **23. NOTICE OF GENERAL MEETING**

- (a) Notice of every General Meeting shall be given to every State and Life Member or other Member entitled to receive notice at the address appearing in the Register kept by the Association. The Executive Director and Directors shall also be entitled to notice of every General Meeting, which shall be sent to their last notified address. No other person shall be entitled as of right to receive notices of General Meetings.
- (b) A notice of a General Meeting shall specify the place and day and hour of meeting and shall state the business to be transacted at the meeting.
- (c) At least twenty-one (21) days' notice of a General Meeting shall be given to those Members entitled to receive notice, together with:
  - (i) the agenda for the meeting;
  - (ii) any notice of motion received from Members entitled to vote; and
  - (iii) forms of authority in blank for proxy votes pursuant to Clause 27 of this constitution.
- (d) Notice of every General Meeting shall be given in the manner authorised in **clause 38**.

## **24. BUSINESS**

- (a) The business to be transacted at the Annual General Meeting includes the consideration of accounts and the reports of the Board and the election of Directors under this Constitution.
- (b) All business that is transacted at a General Meeting and all business that is transacted at an Annual General Meeting, with the exception of those matters set down in **clause 24(a)** shall be special business.
- (c) No business other than that stated on the notice for a General Meeting shall be transacted at that meeting.

## **25. 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 Secretary or the Executive Director not less than twenty-five (25) days (excluding receiving date and meeting date) prior to the General Meeting.

## **26. PROCEEDINGS AT GENERAL MEETINGS**

### **26.1 Quorum**

No business shall be transacted at any General Meeting unless a quorum is present at the time when the meeting proceeds to business. A quorum for General Meetings shall be five (5) State Members represented by their Delegates.

A General Meeting may be held where one (1) or more of the Members 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) if a failure in communications prevents **clause 16.5, 16.5(b), 16.5(b)(i)** from being satisfied by that number of Members which constitutes a quorum, and none of such Members 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 16.5, 16.5(b), 16.5(b)(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
- (iii) any meeting held where one (1) or more of the Members is not physically present shall be deemed to be held at the place specified in the notice of meeting provided a Member is there present and if no Member is there present the meeting shall be deemed to be held at the place where the chairperson of the meeting is located.

## **26.2 Chairperson to preside**

The chairperson of the Board 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 chairperson is not present, or is unwilling or unable to preside the Delegates present shall appoint another Director to preside as chairperson for that meeting only.

## **26.3 Adjournment of Meeting**

- (a) If within half an hour from the time appointed for the meeting, a quorum is not present the meeting shall be adjourned until the same day in the next week at the same time and place or to such other day and at such other time and place as the chairperson may determine and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the meeting will lapse.
- (b) 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.
- (c) 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.
- (d) Except as provided in **clause 26.3(c)** it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

## **26.4 Voting Procedure**

At any 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.

## **26.5 Recording of Determinations**

Unless a poll is demanded under **clause 26.4**, 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.

## **26.6 Where Poll Demanded**

If a poll is duly demanded under **clause 26.4** 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.

## **27. VOTING AT GENERAL MEETINGS**

### **27.1 Members Entitled to Vote**

Each State Member shall be entitled to one (1) vote at General Meetings which, subject to this clause shall be exercised by the State'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 5.1**. The Directors and Executive Director shall have no right to vote at General Meetings.

State Members shall only be entitled to vote at General Meetings when all fees and dues are paid, and appropriate affiliation in accordance with Clause [6](#) is in place.

### **27.2 Equality of Votes**

Where an equal number of votes are cast in favour and against a motion the motion will be lost. Where the motion is for the election of a director then neither candidate shall be elected and the chair may call for a re-vote. In the event the candidates again receive equal vote the position will remain vacant and may be filled by Council as a casual vacancy.

### **27.3 Postal Voting**

No motion shall be determined by a postal ballot unless determined by the Board. If the Board so determines, the postal ballot shall be conducted under the procedures set by the Board from time to time.

## **28. PROXY VOTING**

- (a) Proxy voting shall be permitted at all General Meetings provided a proxy form in the form approved by the Board from time to time, has been duly completed and executed and is lodged with the Executive Director at or before the commencement of the meeting.
- (b) Proxies shall only be exercised by Members with voting entitlements. No Member entitled to vote shall exercise more than one (1) proxy vote at any one (1) time.
- (c) 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 exercise the proxy vote as he thinks fit.

## **29. GRIEVANCES AND DISCIPLINE PROCEDURE**

### **29.1 Jurisdiction**

- (a) Upon becoming a Member of the Association, Members will be subject to, and submit unreservedly to, the jurisdiction, procedures, penalties and appeal mechanisms of the Association whether under the Rules, Policies or under this Constitution.
- (b) Such other individuals and entities (including without limitation Participants, Volunteers and Associates) may by agreement submit to, the jurisdiction, procedures, penalties and appeal mechanisms of the Association whether under the Rules, Policies or under this Constitution.

### **29.2 Policies**

- (a) The Directors may make a Policy or Policies:
  - (i) for the hearing and determination of:
    - (A) grievances by any Member who feels aggrieved by a decision or action of the Association (or another State Member); and
    - (B) disputes between Members and Participants within the jurisdiction of the Association or a State Member relating to the conduct and administration of optimist sailing;
  - (ii) for the discipline of Members or Participants;
  - (iii) for the formation and administration of an Appeals Tribunal which must be independent of any party before it on the matter which is the subject of the appeal in question; and
  - (iv) for the termination of Members (except in respect of a State Member).
- (b) The Directors in their sole discretion may refer an allegation (which in the opinion of the Directors is not vexatious, trifling or frivolous) by a complainant (including a Director or a Member) that a Member or Participant has:
  - (i) breached, failed, refused or neglected to comply with a provision of this Constitution, the Policies, the Rules or any other resolution or determination of the Directors or any duly authorised committee; or
  - (ii) acted in a manner unbecoming of a Member or prejudicial to the object and interests of Australian Sailing or the sport of sailing or both; or
  - (iii) prejudiced Australian Sailing or the sport of sailing or brought Australian Sailing or the sport or themselves into disrepute;

for investigation or determination either under the procedures set down in Policies or Rules or by such other procedure and/or persons as the Directors consider appropriate.
- (c) During investigatory or disciplinary proceedings under this **clause 21**, a respondent may not participate in any sanctioned optimist sailing Event, pending the determination of such proceedings (including any available appeal) unless the Directors decide continued participation is appropriate having regard to the matter at hand.
- (d) The Directors may include in any Policy or Rule a final right of appeal to an independent body outside the control of the sport of sailing.

## **30. RECORDS AND ACCOUNTS**

### **30.1 Records**

- (a) 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.
- (b) Upon a request in writing from a Member, the Executive Director shall within 14 days make available for inspection, the records of the Association. However access to the financial records shall be limited to the most recent financial report recorded in the minutes as accepted by the Board and the right to inspect the minutes of any meeting is subject to any decision the Board has made about minutes of meetings generally, or the minutes of a specific meeting being available for inspection by members. Members making a request under this rule, unless otherwise approved by the Board, are not entitled to copy or take an extract of any document other than the Register of Members or other document specifically authorised by the Act.

### **30.2 Records Kept in Accordance with Act**

Proper accounting and other records shall be kept and disclosed to relevant authorities in accordance with the Act. The books of account shall be kept in the care and control of the Treasurer where one is appointed or otherwise by the Executive Director.

### **30.3 Association to Retain Records**

The Association shall retain such records for five (5) years after the completion of the transactions or operations to which they relate.

### **30.4 Board to Submit Accounts of Financial Year**

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 for each financial year of the Association from 1 October to the following 30 September.

### **30.5 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.

### **30.6 Accounts to be Sent to Members**

The Board shall cause to be sent to all persons entitled to receive notice of Annual General Meetings in accordance with this Constitution, a copy of the Annual Financial Statements, the Board's report and every other document required under the Act (if any) with the notice of Annual General Meeting.

### **30.7 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 any two (2) duly authorised Directors or in such other manner as the Board determines.

## **31. INCOME**

31.1 The income and property of the Association shall be applied solely towards the promotion of the Objects or purposes of the association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to any member of the association, except in good faith in the promotion of those objects or purposes.

31.2 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.

31.3 Nothing in **clauses 31.1 or 31.2** shall prevent payment in good faith of or to any Member for:

- (a) any services actually rendered to the Association whether as an employee, 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;

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.

## **32. WINDING UP**

- (a) Subject to this Constitution the Association may be wound up in accordance with the Act.
- (b) The liability of the Members of the Association is limited.
- (c) 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).

## **33. DISTRIBUTION OF PROPERTY ON WINDING UP**

If upon winding up or dissolution of the Association there remains after satisfaction of all its debts and liabilities any assets or property, the same shall not be paid to or distributed amongst the Members but shall be given or transferred to another organisation or organisations having objects similar to the Objects and which prohibits the distribution of its or their income and property among its or their Members to an extent at least as great as is imposed on the Association by this Constitution. Such organisation(s) to be determined by the Members in General Meeting at or before the time of dissolution, and in default thereof by such judge of the Supreme Court of Western Australia or other Court as may have or acquire jurisdiction in the matter.



## **34. ALTERATION OF CONSTITUTION**

- (a) This Constitution shall not be amended or rescinded except pursuant to a Special Resolution of the Association carried by a majority of at least two thirds of the votes of the Delegates then present and voting at a General Meeting.
- (b) No motion providing for the amendment or rescission of this Constitution may be put to any Meeting of the Association unless at least twenty one days notice of the intention to propose that motion has been given to all Members.

## **35. REGULATIONS**

### **35.1 Board to Formulate Regulations**

The Board may formulate, issue, adopt, interpret and amend such Regulations for the proper advancement, management and administration of the Association, the advancement of the purposes of the Association as it thinks necessary or desirable. Such Regulations must be consistent with the Constitution, and any policy directives of the Board.

### **35.2 Regulations Binding**

All Regulations are binding on the Association and all Members.

### **35.3 Regulations Deemed Applicable**

All clauses, rules, by-laws and regulations of the Association in force at the date of the approval of this Constitution insofar as such clauses, rules, by-laws and regulations are not inconsistent with, or have been replaced by this Constitution, shall be deemed to be Regulations and shall continue to apply.

### **35.4 Bulletins Binding on Members**

Amendments, alterations, interpretations or other changes to Regulations shall be advised to Members by means of Bulletins approved by the Board and prepared and issued by the Executive Director. State Members shall take reasonable steps to distribute information in the Bulletins to Individual Members of their Association. The matters in the Bulletins are binding on all Members.

## **36. ASSOCIATION'S CONSTITUTION**

### **36.1 Constitution of the Association**

This Constitution will act to reflect the objects of IODA and subject always to the Act.

### **36.2 Register**

The Association shall maintain, in a form in accordance with the Act, a Register of all Members, and provide it to IODA as may be required from time to time.

## **37. STATUS AND COMPLIANCE OF STATE MEMBERS**

### **37.1 State Members**

State Members acknowledge and agree that with respect to their membership and recognition as the State governing bodies of the Optimist Dinghy class they shall

- (a) be or remain incorporated in the relevant State, or be a representative of an incorporated body;
- (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 as the national body for the Optimist Dinghy class in Australia;
- (d) adopt and implement such policies, procedures and protocols as determined by the Association; and
- (e) have regard to the Objects in any matter of the State pertaining to the Optimist Dinghy class.

### **37.2 State Constitutions**

- (a) State Members, or the relevant state incorporated body, will take all reasonable steps necessary to ensure their constituent documents reflect the Objects of, and will be aligned with, this Constitution.
- (b) State Members shall provide to the Association a copy of their constituent documents and all amendments to these documents
- (c) The constituent documents of each State Member, or relevant incorporated body shall, at the earliest available opportunity, but within one year of the commencement of this Constitution, recognise the Association as the national body for the Optimist Dinghy class in Australia, in accordance with clause [6](#).

### **37.3 Register**

State Members shall maintain, in a form acceptable to the Association, a register of their members and shall provide a copy of the register at a time and in a form acceptable to the Association, and shall provide regular updates of the register to the Association.

## **38. 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 by electronic mail, to the Member's registered address or electronic mail address, or in the case of a Delegate, to the last notified address 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 electronic mail, service of the notice shall be deemed to be effected the next business day after it was sent.

## **39. 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 agreement of that person or persons.

## **40. INDEMNITY**

- (a) Every Director and employee of the Association shall be indemnified out of the property and assets of the Association including any insurance policy held by 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.

- (b) 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:
  - (i) 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
  - (ii) in the case of an employee, performed or made in the course of, and within the scope of their employment by the Association.