

Perth Racing Member Consultation (2)

- Respecting our Heritage while embracing the Future -

- (a) This is the second of two Discussion Memoranda upon which the Board wishes to consult the Club's members.
- (b) This Discussion Memorandum (2) covers the rationale for proposed revisions to the Club's By-laws and constitutional terms as well as its internal governance framework and operational policies to align them with contemporary accepted good governance principles and practice in the best interests of the Club as a whole.

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1. Introduction and Background

Discussion Memorandum (1) summarises the rationale and benefits for the Club to become an incorporated body registered under the Corporations Act (“CA”) as a company limited by guarantee.

It is not intended to repeat those here and members are encouraged to read Discussion Memorandum (1) to assist them in this second round of consultation.

2. Concerns with current By-laws and constitutional terms

The Club’s current By-laws present as a professionally prepared set of governance rules reasonably designed to complement the Club’s current unincorporated status and the statutory enablement of The Western Australian Turf Club Act 1892 (“WATC Act”).

However, the report of the expert governance consultant engaged by the Club highlighted some issues that warrant attention should the Club resolve to incorporate and especially if the Club wishes its governance framework to meet contemporary accepted good governance principles and practice.

3. Proposed revisions to current By-laws and constitutional terms

The following comparative table seeks to explain the main proposed changes to achieve this outcome relative to the current By-laws.

	Current By-laws	Proposed revised By-laws/Constitution
1	Absence of regulatory compliance requirements as the Club is unincorporated and not bound by the relevant statutes	Inclusion of relevant statutory and regulatory compliance requirements initially under the Associations Incorporation Act and then the Corporations Act (CA) following ultimate transition
2	Name of Club need not include the words “Incorporated” or “Limited”	The Club’s name will need to initially include “Inc” and then later “Limited” upon registration under the CA.
3	Classes of Membership current contemplate <ul style="list-style-type: none">• ordinary members• corporate members• life members• other classes as determined by Board	As different membership classes can impose additional regulatory requirements on the Club, it is proposed for there to be only one class <ul style="list-style-type: none">• members (all with the same membership rights); but with differential membership “Status” benefits to recognise for example <ul style="list-style-type: none">• “corporate” status allowing the member to appoint a nominee;• “life member” status still recognising meritorious service to

		the Club and waiver of annual fees.
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	Current By-laws	Proposed revised By-laws/Constitution
4	Application of the WATC Act	Application of the WATC Act but only while it is current and has not been repealed
5	Objects of Club	No change
6	Not for profit principles upon which the Club operates	No change
7	Member liability – inherent risk of personal liability (albeit unlikely) due to unincorporated status	Member liability (upon ultimate registration under the CA) <ul style="list-style-type: none"> Each member’s liability is absolutely capped at \$1 (ONE DOLLAR) and then may only be called in case of insolvency of the Club
8	Resignation, suspension and expulsion of members	No material changes
9	<p>(A) Board composition to comprise as follows:</p> <ul style="list-style-type: none"> 5 x elected members Up to 4 x Board appointed Directors (whose appointments should align with an AGM) 1x CEO ex officio <p>(B) Maximum duration in office: Member elected Directors (9 years – 3 x 3 year terms) Board appointed Directors (7 years – 3 year term renewable)</p> <p>(C) Removal from office of a Director:</p>	<p>(A) Maximum 9 members (incl CEO) comprising as follows:</p> <ul style="list-style-type: none"> between 4 - 6 x Member elected Directors between 2 - 4 Board appointed Directors (flexibility as to timing of appointments) 1 x CEO ex officio (but non-voting) Member elected Directors must at all times be in the majority of voting Directors <p>(B) For both Member elected Directors and Board appointed Directors (9 successive years based on 3 x 3 year terms)</p> <p>(C) no material change</p>

	By Members in general meeting	
10	<p>Eligibility and nomination for Board election</p> <ul style="list-style-type: none"> • basic criteria only • if number of vacancies exceed number of nominations, the nominee is deemed elected • method of election at Board discretion 	<ul style="list-style-type: none"> • basic criteria (plus) • description of desired skills/experience/ attributes of Board members (criteria) • nominees to include a statement of their satisfaction of the criteria • Board Committee to review nominees' attributes and provide information to members • method of election at Board prudential discretion
11	<p>Officebearers</p> <ul style="list-style-type: none"> • Chair • Vice Chair 	No change

	Current By-laws	Proposed revised By-laws/Constitution
12	<p>(A) Powers of Board: [TBC]</p> <p>(B) Duties of directors and responsibilities (and exceptions/limitations):</p> <ul style="list-style-type: none"> • Fiduciary duties and responsibilities (and exceptions/limitations) materially as per Associations Incorporation and Corporations Acts but would need By-law amendment if the legislative provisions change • Primarily for members to enforce with no enforcement by ASIC 	<p>(A) Powers of Board: [TBC]</p> <p>(B) Fiduciary duties and responsibilities (and exceptions/limitations) under Corporations Act from time to time operate automatically</p> <ul style="list-style-type: none"> • ASIC may regulate and enforce in addition to members • Both statutory and civil liability penalties apply incl risk of jail and banning orders in egregious cases

13	Remuneration of Directors <ul style="list-style-type: none"> only with member approval in general meeting 	<ul style="list-style-type: none"> no material change
14	Review of Board performance <ul style="list-style-type: none"> basic/simple provision 	<ul style="list-style-type: none"> more enhanced requirements to apply especially via Governance Charter requirements
15	Board Committees <ul style="list-style-type: none"> basic provisions 	<ul style="list-style-type: none"> more enhanced requirements to apply especially via Governance Charter requirements
16	Quorum of member at Annual General Meetings lesser of: <ul style="list-style-type: none"> 5% of members 40 members 	Lesser of: <ul style="list-style-type: none"> 5% of members 40 members
17	Quorum of members at Special General Meeting lesser of: <ul style="list-style-type: none"> 5% of members 200 members 	Lesser of: <ul style="list-style-type: none"> 5% of members 40 members
18	Dispute resolution provision: <ul style="list-style-type: none"> yes 	<ul style="list-style-type: none"> no material change
19	<ul style="list-style-type: none"> Auditor 	<ul style="list-style-type: none"> no material change
20	Changes to By-laws/Constitution <ul style="list-style-type: none"> By Board only by majority resolution of all directors without need for Member approval 	<ul style="list-style-type: none"> only by Members by special resolution (inc. 75% majority of voting members present in person or by proxy at a General Meeting of which due notice has been given)

	Current By-laws	Proposed revised By-laws/Constitution
21	<p>Authority to pass governance related rules/by-laws not inconsistent with By-laws</p> <ul style="list-style-type: none"> No provision 	<ul style="list-style-type: none"> detailed provision including adoption of a detailed Governance Charter (once registered under CA) Importantly though such rules/ By-laws cannot be inconsistent with the Constitution itself
22	<p>Transitional Provision</p> <ul style="list-style-type: none"> not relevant 	<ul style="list-style-type: none"> yes, to ensure smooth transition from existing By-laws to new Constitution under the relevant legislation

4. Key elements of proposed Governance Charter

Contemporary accepted good governance principles and practices increasingly is seeing organisations adopting a formal Governance or Board Charter to better describe and assure disciplined accountable and transparent governance arrangements concerning the operations of the Board, its Committees, the interface with management, internal organisational accountabilities and arrangements, codes of conduct, policies, practices and protocols.

Although the Club currently has reasonably disciplined internal governance arrangements in place, they have not been embraced within the umbrella of a comprehensive and detailed Government Charter.

Attachment "A" to this Discussion Memorandum (2) contains a table of contents and an introductory statement as to the rationale for a Governance Charter, to give some idea to members as to what might be included in such a document. It is contemplated that a Governance Charter, materially guided by the descriptors in Attachment "A", will be adopted by the Board and will have the effect of sub-ordinate rules or by-laws in the terms of the revised constitution to be adopted.

5. Consultation

Specific issues upon which Member feedback and consultation are invited at the second consultation meeting relate to the proposed revised By-laws/Constitution and the proposed Governance Charter.

1. Are there any specific items of concern or items for clarification that Members would like to discuss concerning the proposed revised By-laws/Constitution or the proposed Governance Charter having read this second Discussion Memorandum.
2. Do the revised provisions that it is only the Members in general meeting by special resolution, rather than merely the Board at present, which can amend the By-laws/Constitution give added comfort and protective assurance to the Members?

3. Do members believe there to be value in the Club's governance framework being formalised in a Governance Charter, that meets contemporary accepted good governance standards, and that is transparently available to the members?
4. Are the members supportive of receiving more detailed information of the skills, experience and attributes of prospective board members so they may make more informed assessments of the candidates when voting for board members?
5. Do the members require any further clarification that under the proposed company limited by guarantee structure under the Corporations Act their personal liability is ABSOLUTELY limited to \$1 (ONE DOLLAR) and only in the case of an insolvent failure of the Club?

6. **Next Steps**

Following this second consultation with Members, the Club will then:

- summarise and share the key points arising from the two consultation meetings
- have due regard to the feedback provided by the members
- prepare the notices and other documents leading up to the general meetings of members at which formal resolutions will be proposed for resolution of members (as per the anticipated timetable for the implementation of the proposal appearing in Annexure "A" to the Discussion Memorandum (1)).