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**Constitution of Kalgoorlie-Boulder Racing Club Incorporated**  
**Incorporated in Western Australia**  
**ABN: 74 157 979 873**

**21 June 2024**

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## PART 1 — PRELIMINARY

### 1. Terms used

In these rules, unless the contrary intention appears —

**Kalgoorlie-Boulder Racing Club Incorporated** and the **KBRC** have the same meaning

**Act** means the *Associations Incorporation Act 2015*.

**Board** means the persons appointed as Directors for the time being of the KBRC.

**Chair** means a person appointed or elected to the office of Chair of the KBRC in accordance with this Constitution.

**Chief Executive Officer** means a person appointed as the Chief Executive Officer in accordance with this Constitution.

**Club Rules** means the club rules of the KBRC made in accordance with this constitution, as amended from time to time.

**Code of Conduct** means a code of conduct adopted in accordance with this Constitution, as amended from time to time.

**Director** means a person appointed or elected to the office of director of the KBRC in accordance with this Constitution.

**Elected Director** means a Director elected to office by the Members in accordance with this Constitution or appointed by the Directors

**Joining Fee** means the sum (if any) payable by a successful applicant for membership, as determined by the Board from time to time.

**Life Member** has the meaning set out in the Club Rules.

**Member** means any person who is admitted to the membership of the KBRC and whose name is entered in the Register.

**Member Present** means, in connection with a meeting, the Voting Member present (by whatever means) at the venue or venues for the meeting in person, or by proxy, or by attorney.

**Non Voting Member** means a Member who is not a Voting Member.

**Office** means the registered office of the KBRC.

**Ordinary Member** has the meaning set out in the Club Rules.

**Register** means the register of members maintained by the KBRC in accordance with the Act.

**Resolution** means a resolution other than a special resolution.

**Rules of Racing** means the Rules of Racing (WA) and the Australian Rules of Racing.

**Seal** means any common seal or duplicate common seal of the KBRC.

**Secretary** means any person appointed to perform the duties of secretary of the KBRC and includes an assistant secretary or any person appointed to act as secretary temporarily.

**Special Resolution** means a resolution that has been passed by at least 75% of Members present and entitled to vote on the resolution.

**Subscription** means the sum (if any) payable annually by instalments or otherwise, by a Member, as determined by the Board from time to time.

**Vice-Chair** means a person appointed or elected to the office of Vice-Chair of the KBRC in accordance with this Constitution.

**Voting Member** has the meaning set out in the Club Rules.

**Associate member** means a member with the rights referred to in rule 8(6).

**Association** means the incorporated association to which these rules apply.

**Books**, of the Association, includes the following —

- (a) a register;
- (b) financial records, financial statements or financial reports, however compiled, recorded or stored;
- (c) a document;
- (d) any other record of information.

**By laws** means by-laws made by the Association under rule 64.

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

**Board** means the management Board of the Association.

**Board meeting** means a meeting of the Board.

**Financial records** includes —

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and
- (b) documents of prime entry; and
- (c) working papers and other documents needed to explain —
  - (i) the methods by which financial statements are prepared; and
  - (ii) adjustments to be made in preparing financial statements.

**Financial report**, of a tier 2 association or a tier 3 association, has the meaning given in section 63 of the Act.

**Financial statements** means the financial statements in relation to the Association required under Part 5 Division 3 of the Act.

**Financial year**, of the Association, has the meaning given in rule 2.

**General meeting**, of the Association, means a meeting of the Association that all members are entitled to receive notice of and to attend.

**Member** means a person (including a body corporate) who is an ordinary member or an associate member of the Association.

**Ordinary Director** means a Director who is not an office holder of the Association under rule 27(3).

**Ordinary member** means a member with the rights referred to in rule 8(5).

**Register of members** means the register of members referred to in section 53 of the Act.

**Rules** means these rules of the Association, as in force for the time being.

**Secretary** means any person appointed to perform the duties of secretary of the KBRC, and includes an assistant secretary or any person appointed to act as secretary temporarily.

**Special general meeting** means a general meeting of the Association other than the annual general meeting.

**Special resolution** means a resolution passed by the members at a general meeting in accordance with section 51 of the Act.

**SubBoard** means a subBoard appointed by the Board under rule 48(1)(a).

**Tier 1 association** means an incorporated association to which section 64(1) of the Act applies.

**Tier 2 association** means an incorporated association to which section 64(2) of the Act applies.

**Tier 3 association** means an incorporated association to which section 64(3) of the Act applies.

**Treasurer** means the Director holding office as the treasurer of the Association.

## 2. Financial year

1. The first financial year of the Association is to be the period notified to the Commissioner under section 7(4)(e) or, if relevant, section 29(5)(e) of the Act being period of 12 months commencing on 1 January and ending on 31 December of each year.
2. Each subsequent financial year of the Association is the period of 12 months commencing at the termination of the first financial year or the anniversary of that termination.

### 3. Headings are for convenience only and do not affect interpretation

The following rules of interpretation apply unless the context requires otherwise.

- a) A gender includes all genders.
- b) The singular includes the plural and conversely.
- c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- d) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- e) A reference to a clause, sub-clause, paragraph, or sub-paragraph is a reference to a clause, sub-clause, paragraph or sub-paragraph of this Constitution.
- f) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.
- g) A reference to '\$' or 'dollars' is to currency of the Commonwealth of Australia.
- h) An expression has, in a provision of this Constitution which relates to a particular provision of the Act, the same meaning as in that provision of the Act.
- i) The words 'includes' and 'including' are not words of limitation, and do not and must not be taken as detracting from the generality of any provisions of this Constitution.

## PART 2 — ASSOCIATION TO BE NOT FOR PROFIT BODY

### 4. Not-for-profit body

1. The property and income of the KBRC must be applied solely towards the promotion of the objects or purposes of the KBRC and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to any member, except in good faith in the promotion of those objects or purposes.
2. A payment may be made to a member out of the funds of the KBRC only if it is authorised under subrule (3).
3. A payment to a member out of the funds of the KBRC is authorised if it is —
  - a) the payment in good faith to the member as reasonable remuneration for any services provided to the Association, or for goods supplied to the KBRC, in the ordinary course of business; or
  - b) the payment of interest, on money borrowed by the Association from the member, at a rate not greater than the cash rate published from time to time by the Reserve Bank of Australia; or
  - c) the payment of reasonable rent to the member for premises leased by the member to the Association; or
  - d) the reimbursement of reasonable expenses properly incurred by the member on behalf of the Association.

## PART 3 — OBJECTS AND POWERS

### 5. Objects

The name of the Association is: **Kalgoorlie-Boulder Racing Club Incorporated**

The objects of the Association are:

- a) The KBRC has been established for the encouragement of horse racing. Whilst this is our primary aim, we also encourage tourism activities, maintain a racing museum which is open to the public, manage heritage buildings and provide a venue for public events and other incidental related purposes.

- b) The KBRC may undertake such other activities not inconsistent with the objectives set out in paragraph 5 a) to enhance, promote or protect the interests of the KBRC.
  - (i) The property and income of the Club shall be applied solely towards the promotion of the objects or purposes of the Club and no part of that property or income may be paid or otherwise distributed, directly or indirectly to members of the Club, except in good faith in the promotion of those objects or purposes.
  - (ii) Subject to the *Associations Incorporation Act 2015*, the Kalgoorlie-Boulder Racing Club Incorporated may do all things necessary to lawfully pursue its objects and purposes.
- c) Any ten (10) members with full voting rights (this does not include honorary memberships), personally present (being members entitled to vote under these rules at a general meeting) will constitute a quorum for the conduct of business at a general meeting.
- d) A minimum of five (5) Directors constitutes a quorum for the conduct of the business of a Board meeting.

## 6. Actions Under the Law

- a) Where the Act authorises or permits a KBRC to do any matter or thing if so authorised or permitted by its constitution, the KBRC is taken by this clause to be authorised or permitted to do that matter or thing, despite any other provisions of this Constitution.
- b) Unless the KBRC is no longer subject to the RWWA Act 2003:
  - (i) the KBRC is only authorised or permitted to do a matter or thing pursuant to clause 3 a) to the extent that doing so does not contravene the requirements of the RWWA Act; and
- c) the KBRC must comply with the provisions of the RWWA Act to the extent it is required by law to do so. Other acts and regulations that govern racing activities in WA are the:
  - i. Racing Restriction Act 2003
  - ii. Racing and Wagering Western Australia Tax Act 2003
  - iii. Racing and Wagering Western Australia Regulations 2003
  - iv. Gaming and Wagering Commission Act 1987

## PART 4 — MEMBERS

### 7. Membership

#### 7.1 Eligibility for membership

- a) Any person who supports the objects or purposes of the Association is eligible to apply to become a member.
- b) An individual who has not reached the age of 18 years is not eligible to apply for a class of membership that confers full voting rights.

#### 7.2 Register of Members

- a) The Chief Executive Officer (CEO) must keep the Members Register on behalf of the KBRC, which must contain the full names and addresses of the Members, and other such particulars as the Board may prescribe or as are required by any relevant law from time to time.
- b) Every Member is required to communicate any change in his or her address to the KBRC in writing and any such change of address must be entered in the Register.
- c) The latest address in the Register is deemed to be the Member's registered address.
- d) Upon request from a member of the KBRC, the CEO shall make the register available for the inspection of the member and the member may make a copy of or take an extract from the register but shall have no right to remove the register for that purpose.
- e) The register must be so kept and maintained at the CEO's place of residence, or at such other place as the members at a General Meeting decide.
- f) The CEO must cause the name of a person who dies or ceases to be a member under Clause 9 of this constitution to be deleted from the register of members.

#### 7.3 Application for Membership

- a) An application for membership must:
  - i. be made in a form determined by the Board from time to time;

- ii. be signed by the applicant; and
- iii. be signed by at least two (2) Full Members nominating the applicant for membership, unless this requirement is waived by the Board in relation to any particular applicant.

#### **7.4 Employees and persons holding licences under the Rules of Racing**

- a) Unless the KBRC is no longer subject to the RWWA Act, employees of the KBRC may only be admitted as Non Voting Members.

#### **7.5 Admission of Members**

- a) The Board will hold a meeting to determine applications for membership at such time as the Directors see fit.
- b) All Directors must be provided with notice of a person's application for membership, prior to the Board determining that person's application for membership.
- c) An applicant for membership of the KBRC is to be admitted as a Member on the approval of the Board and upon payment by the applicant of the applicable Joining Fee (if any) and the first Subscription.
- d) The Board is not required to give any reason for rejecting or accepting an application for membership.
- e) When an applicant has been accepted for membership, the Chief Executive Officer (or other person whom the Board may appoint) must notify the applicant of the acceptance and request payment of the Joining Fee (if any).
- f) If the applicant does not pay the applicable Joining Fee within the time prescribed by the Board, the acceptance of the applicant's application for membership is cancelled, unless the Board decides otherwise.
- g) Visitors and others at the Boards discretion may be admitted by the Board as honorary members at any KBRC function without payment of any subscription.

#### **7.6 Classes of Members**

- a) The Board may determine and admit different classes of Members, and subject to this constitution, the qualification, rights, privileges and obligations of the respective classes of Members are as determined by the Board from time to time.

### **8. Membership Fees**

#### **8.1 Joining Fee**

- a) The Board may determine that a Joining Fee is payable by an applicant for membership of the KBRC.
- b) The Board may determine the amount of the Joining Fee from time to time.
- c) The Board may prescribe different amounts, suspend or waive the payment of the Joining Fee in respect of any person or category of person applying to become a Member.

#### **8.2 Annual Subscription**

- a) The Board may determine that a Subscription is payable annually, by instalments or otherwise.
- b) The Board may determine the amount of the Subscription from time to time.
- c) The Board may prescribe different amounts, suspend or waive the payment of the Subscription in respect of any Member or applicant for membership of the KBRC.

#### **8.3 Non-payment of Annual Subscription**

- a) If a Member's Subscription remains unpaid after it becomes due, the Board may direct the Chief Executive Officer to give notice to the Member of that fact.
- b) If the Subscription remains unpaid on the expiration of a period determined by the Board after the date of the notice, the Board may suspend or expel the Member from membership of the KBRC and, if applicable, remove the Member's name from the Register.
- c) A Member is not entitled to exercise any rights of membership until that Member has paid his or her Subscription in full or as otherwise determined by the Board, and a Member whose membership of the KBRC has been suspended is not entitled to exercise any rights of membership until that suspension has ended.



## 9. Cessation of Membership

### 9.1 Resignation of a Member

- a) A Member may at any time, by giving notice in writing to the Chief Executive Officer, resign as a Member.
- b) The resignation is effective from the date of receipt of the notice by the Chief Executive Officer. That Member's name must be removed from the Register.

### 9.2 Misconduct of a Member

- a) Without limiting clause 9.3 if any Member:
  - i. is in breach of the provisions of this Constitution or a Club Rule or Code of Conduct; or is guilty of any act or omission which, in the opinion of the Board, is unbecoming of a Member or prejudicial to the interests of the KBRC,
  - ii. the Board may suspend or expel the Member from membership of the KBRC and, if applicable, remove the Member's name from the Register.

### 9.3 Suspension or Expulsion

- a) The Board must not suspend or expel a Member under clause 9.2, unless
  - i. reasonable notice has been given to the Member, stating the date, time and place at which the question of suspension or expulsion of that Member is to be considered by the Board, and the nature of the alleged breach or act or omission; and
  - ii. the Member has been provided with an opportunity to address the Board in respect of the alleged breach or act or omission.

### 9.4 Other Grounds for Cessation of Membership

- a) A Member automatically ceases to be a Member if that Member:
  - i. dies;
  - ii. becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the laws relating to mental health; or
  - iii. becomes bankrupt.

### 9.5 Re-admission

- a) A person who ceases to be a Member under clause 9.4 (iii) is entitled to reapply for membership of the KBRC once that person has discharged his or her bankruptcy, and may be readmitted as a Member at the discretion of the Board.

## PART 5 — GENERAL MEETINGS OF ASSOCIATION

## 10. Meetings

### 10.1 Power to Convene General Meetings

- a) The Board may at any time convene a general meeting of the KBRC.

### 10.2 Convening of General Meetings by Members

- a) The Board must call and arrange to hold a general meeting within 30 days if after receiving a written request signed by not less than 10 members with the purpose of the request clearly specified;
  - i. The secretary must give to all members not less than 14 days' notice of the general meeting and that notice must specify:
  - ii. When and where the general meeting is to be held;
  - iii. The purpose specified in the submitted request
- b) If the general meeting is not convened within the relevant period of 30 days referred to in 10.2 a)
  - i. the members who made the request concerned may themselves convene a special general meeting as if they were the board.

### 10.3 Annual General Meetings

- a) the KBRC must hold an annual general meeting before 30 June in each year, for the following purposes:
  - i. to consider the financial statements and related reports for the preceding year;
  - ii. the preceding year relates to the financial year of the KBRC which starts on 1 January and concludes on 31 December;
  - iii. to elect Directors in accordance with this Constitution;
  - iv. to discuss the general business of the KBRC; and
  - v. to transact any other business which under this Constitution or the Act ought to be transacted at an annual general meeting.
- b) The secretary must give to all members not less than 21 days' notice of an annual general meeting and that notice must specify:
  - i. When and where the annual general meeting is to be held;
  - ii. The particulars and order in which the business is to be transacted, as follows,
    1. first, the consideration of the accounts and reports of the Board;
    2. second, the election of the Directors to replace outgoing Directors;
    3. third, any other business requiring consideration by the KBRC at the general meeting.

### 10.4 Notices of Meetings

- a) The secretary must give to all members not less than 14 days' notice of a special general meeting and that notice must specify:
  - i. the place, the day and the hour of meeting
  - ii. the particulars of the business to be transacted at the meeting; and
  - iii. contain any other information required by the Act.
- b) The non-receipt of a notice convening a general meeting by, or the accidental omission to give notice to, any person entitled to receive notice does not invalidate the proceedings at, or any resolution passed at, that meeting.

### 10.5 Quorum

- a) No business may be transacted at any general meeting unless a quorum of Voting Members is present at the time when the meeting proceeds to business.
- b) Except as otherwise provided for in this Constitution:
  - i. Ten (10) members constitute a quorum
- c) If a quorum is not present within 30 minutes after the time appointed for the general meeting:
  - i. where the meeting was convened on the requisition of Voting Members, the proposed meeting is dissolved;
- d) in any other case:
  - i. the meeting stands adjourned to a day and at a time and place as the Board decides or, if no decision is made by the Board, to the same day in the next week at the same time and place;
  - ii. and if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is dissolved.

### 10.6 Chair

- a) The Chair of the Board or, in the Chair's absence, the Vice-Chair must preside as chair at every general meeting.
- b) Where a general meeting is held and:
  - i. there is no Chair or Vice-Chair; or
  - ii. the Chair or Vice-Chair is not present within 15 minutes after the appointed time for the meeting;
  - iii. the Board present must choose one of the Directors present to chair the meeting.
- c) In the absence of all Directors, a Member elected by the meeting must chair the meeting.

### 10.7 Adjournments

- a) The Chair of the meeting may, with the consent of the meeting at which a quorum is present, and must if directed by the meeting, adjourn the meeting from time to time and from place to place.

- b) The Chair of the meeting may adjourn the meeting for a period not exceeding one hour without the consent of the meeting.
- c) No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- d) It is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

#### **10.8 Conduct at a General Meeting**

- a) Subject to the Act and any laws and Club Rules, the Chair of the meeting may give necessary directions for the conduct of any meeting and the ruling of the Chair of the meeting is final (including, but not limited to, rulings in respect of a right to vote or the appointment of a proxy and any declaration as to whether or not a resolution has been carried).
- b) Any question requiring a decision must be in the form of a motion which must be submitted in writing and be proposed and seconded before being discussed.

#### **10.9 Voting at General Meetings**

- a) Any resolution to be put to a vote at a general meeting is to be determined by a show of hands unless a poll is demanded.
- b) A declaration by the Chair of the meeting that a resolution has on a show of hands been carried or lost and an entry to that effect in the minutes of the meeting is conclusive evidence of the fact without the need to show the number or proportion of the votes recorded in favour of or against the resolution.
- c) A poll for a resolution may be demanded by:
  - i. the Chair of the meeting; or
  - ii. as otherwise provided for by the Act.
- d) A demand for a poll may be withdrawn.

#### **10.10 Procedure for Poll**

- a) Subject to the Act and any Club Rules, a poll must be taken in the manner and at the time the Chair of the meeting directs.
- b) The result of the poll is a resolution of the meeting at which the poll was demanded.
- c) The demand for a poll does not prevent a meeting from continuing for the transaction of any business other than that on which a poll has been demanded.

#### **10.11 Chair's Casting Vote**

- a) In the case of an equality of votes on a show of hands or on a poll, the Chair of the meeting has a casting vote in addition to any deliberative vote to which the Chair may be entitled as a Member.

#### **10.12 Representation and Voting of Members**

- a) Subject to this Constitution:
  - i. Members entitled to attend and vote at general meetings, may attend and vote in person or by proxy or attorney.
  - ii. A Member which is a corporation may appoint an individual as a representative;
  - iii. on a show of hands, every Member present having the right to vote at the meeting has one vote; and
  - iv. on a poll, every Member Present having the right to vote at the meeting has one vote.

#### **10.13 Restriction on Voting Rights - Unpaid Amounts**

- a) A Voting Member is not entitled to vote at a general meeting unless all sums due and payable by the Voting Member in respect of membership in the KBRC have been paid.
- b) Honorary members have no voting rights whatsoever.

#### **10.14 Objections to Qualification to Vote**

- a) An objection to a person's qualification to vote may be raised only at the meeting or adjourned meeting at which the vote objected to is tendered.
- b) Any objection must be referred to the Chair of the meeting, whose decision is final.
- c) A vote allowed after an objection is valid for all purposes.

### **10.15 Proxies**

- a) A Voting Member who is entitled to attend and cast a vote at a general meeting may appoint another person as the Member's proxy to attend and vote for the Voting Member at the meeting.
- b) An instrument appointing a proxy must:
  - i. be in writing;
  - ii. signed by the Member entitled to attend and vote at the meeting, or signed by such a Member under power of attorney;
  - iii. state the full name, registered address, and membership number of the Member entitled to attend and vote at the meeting; and
  - iv. state the meeting at which the appointment may be used.
- c) The Board has the power to prescribe the form of an instrument appointing a proxy from time to time. In the absence of a prescribed form of proxy, any instrument appointing a proxy which complies with the requirements contained within this Constitution is valid.
- d) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution, and where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
- e) In the absence of any direction contained in the instrument appointing a proxy specifying the manner in which the proxy is to vote in respect of a particular resolution, the proxy may vote as the proxy thinks fit on any motion or resolution.

### **10.16 Lodgement of Proxies**

- a) For an instrument appointing a proxy to be valid, the instrument appointing the proxy must be received by the KBRC (at the Office or at such other place as is specified for that purpose in the notice convening the meeting) no less than 48 hours before the time for holding the meeting, at which the person named in the instrument proposes to vote.
- b) For an instrument appointing an attorney to act on behalf of a Member at all general meetings or at all meetings for a specified period to be effective, the following documents must be received by the KBRC at any time before commencement of the meeting or adjourned meeting at which the attorney proposes to vote:
  - i. the power of attorney or a certified copy of that power of attorney; and
  - ii. any evidence that the Board requires to establish the validity and non-revocation of that power of attorney.
- c) For the avoidance of doubt, the KBRC receives these documents when they are received at any of the following:
  - i. the Office;
  - ii. a fax number at the Office; or
  - iii. a place, fax number or electronic address specified for the purpose in the notice of meeting.

### **10.17 Validity of Proxies**

- a) A vote exercised in accordance with the terms of an instrument of proxy or a power of attorney is valid despite:
  - i. the previous death or unsoundness of mind of the appointing Member; or
  - ii. the revocation of the instrument (or of the authority under which the instrument was executed) or the power, if no notice in writing of the death, unsoundness of mind, or revocation has been received by the KBRC at the Office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

### **10.18 Where Proxy is Incomplete**

- a) No instrument appointing a proxy will be treated as invalid merely because it does not contain:
  - i. the address of the appointor or of a proxy;
  - ii. the proxy's name or the name of the office held by the proxy; or
  - iii. in relation to any or all resolutions, an indication of the manner in which the proxy is to vote.
- b) Where the instrument does not specify the name of a proxy, the instrument is taken to be given in favour of the chair of the meeting.

## PART 6 — THE BOARD

### 11. Board

#### 11.1 The Board of Directors

- a) The Board is to consist of a minimum of 9 Directors.
- b) The Directors may act as the Board despite a vacancy in their number. However, if their number is reduced below the minimum fixed for a quorum for a meeting of the Board, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to the number required for a quorum.
- c) The Directors may appoint a person as a Director to replace:
  - i. a Club Appointed Director who has vacated office;
  - ii. an Elected Director who has vacated office.

#### 11.2 Board to manage KBRC

- a) The management and control of the business and affairs of the KBRC are vested in the Board.
- b) The Board may exercise all powers of the KBRC which are not, by the Act or this Constitution, required to be exercised by the KBRC in general meeting.

#### 11.3 Election and appointment of Directors to the Boards

- a) The KBRC may at any time by resolution passed in general meeting elect a person to be a Director to replace:
  - i. a Club Appointed Director who has vacated office; or
  - ii. an Elected Director who has vacated office.
- b) An Elected Director holds office for a term of 2 years or until the Director sooner vacates office as a Director.
- c) Board elections will then be held every year with four (4) members being elected for a two (2) year term one year and the following year, four (4) members elected for a two (2) year term. Each year, one (1) Director is to be elected as a Trainer's Board Representative as per clause 11.4. The Trainer's Board representative must be a local registered thoroughbred trainer.
- d) The Board, or a committee of the Board constituted under clause 12.1, may determine a process for considering any nominations of candidates for election as a Director and whether or not it will make a recommendation in respect of a particular candidate.

#### 11.4 Trainer's Board Representative

One (1) Director position to be reserved out of the nine (9) positions for:

- a) one (1) local registered thoroughbred trainer elected by the local trainers to hold a board position for one (1) year,
- b) only one (1) trainer's representative may sit on the board at any one time,
- c) if the trainers fail to submit a representative by close of voting each year, the Board may appoint a trainer's representative.

#### 11.5 Director Qualification

- a) A person is eligible to be elected as a Director only if the person is:
  - i. a Member who has been a fully paid member of the KBRC, and
  - ii. not otherwise ineligible to be elected as a Director under clause 11.5 b)
- b) A person is not eligible to be elected as a Director if the person:
  - i. is an employee of a race club or racing association, or
  - ii. is a member of the governing body of another race club or eligible industry body
  - iii. is currently, or during the previous 10 years has been, warned off, disqualified or named on the Forfeit List under the Rules of Racing, or
  - iv. during the previous 10 years has been convicted in Australia of an offence that is punishable by imprisonment for 12 months or more, or convicted elsewhere than in Australia of an offence that, if committed in Australia, would be an offence so punishable, or
  - v. is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankruptcy, or
  - vi. is a Mentally Incapacitated Person.

### **11.6 Remuneration**

- a) Subject to clause 11.6 b), no Director is entitled to be paid a fee for his or her service as Director.
- b) A Director is entitled to be paid or reimbursed for all travel and other expenses properly incurred by him or her in connection with the performance of his or her duties or otherwise in connection with the business or affairs of the KBRC.
- c) Any amount paid under clause 11.6 b) must be approved by the Board.

### **11.7 Vacancies in the office of The Board and removal from office**

- a) In addition to the circumstances in which the office of a Director may become vacant under the Act and this Constitution, the office of a Director becomes vacant if the:
  - i. Director becomes a Mentally Incapacitated Person; or
  - ii. Director resigns the office by notice in writing to the KBRC; or
  - iii. Director's term of office expires and the Director is not re-elected or reappointed to the office; or
  - iv. Director, in the case of a Director other than an Independent Director, ceases to be a Member; or
  - v. Director is not present personally at meetings of the Board for a continuous period of 3 months without leave of absence from the Board; or
  - vi. Director becomes an employee of another race club or racing association; or
  - vii. Director dies; or
  - viii. Director is warned off, disqualified or named on the Forfeit List under the Rules of Racing; or
  - ix. Director is convicted in Western Australia of an offence that is punishable by imprisonment for 12 months or more, or convicted elsewhere than in Western Australia of an offence that, if committed in Western Australia, would be an offence so punishable, or
  - x. Director becomes bankrupt or insolvent or takes advantage of the laws in force for the time being relating to bankruptcy, or
  - xi. Director is removed from office under clause 11.7 b).
- b) The KBRC may at any time by resolution passed in general meeting remove any Director from office.

## **12. Powers and Duties of Directors**

### **12.1 Power to Make Club Rules**

- a) The Board has the power to make, amend and repeal Club Rules for the proper conduct and management of the KBRC, including but not limited to Club Rules which regulate and prescribe:
  - i. the qualifications, rights, privileges and obligations of Members;
  - ii. the admission of Members and visitors to the premises of the KBRC or any part thereof;
  - iii. the time the premises of the KBRC or any part thereof may be accessed;
  - iv. the conduct of Members;
  - v. the setting apart of any part or parts of the land owned or leased by the KBRC for any particular purpose;
  - vi. fines or penalties for the breach of any Club Rules or any provisions of the Constitution;
  - vii. the procedure at general meetings of the KBRC and meetings of the Board;
  - viii. the procedure in which polls may be taken;
  - ix. all matters required or proper to be prescribed for the conduct of, or associated with, the admission of persons as Members and election of Directors;
  - x. the process by which nominations of persons eligible for election as a Director must be made; and
  - xi. generally any matters whatsoever necessary or desirable for the purposes of giving effect to the objectives of the KBRC.

### **12.2 Code of Conduct**

The Board may adopt, amend and repeal a Code of Conduct in relation to the KBRC from time to time which must be adhered to by Directors, Members and employees of the KBRC.



### **12.3 Binding nature of Club Rules etc.**

- a) All Club Rules and Codes of Conduct are binding upon all Members and Directors.
- b) The Board may adopt such means as it deems sufficient to bring to the notice of Members all Club Rules and Codes of Conduct made, their amendment or repeal.
- c) Club Rules and Codes of Conduct must be consistent with and must not repeal anything contained in this Constitution or the Act. In the event of any inconsistency between this Constitution and any By-Law, Club Rule or Code of Conduct, this Constitution prevails to the extent of that inconsistency.
- d) Any Club Rule may also be set aside by members, in whole or in part, by Special Resolution (unless otherwise provided by law).
- e) The KBRC may alter or rescind these rules, or make rules additional to these rules, in accordance with the procedure set out in sections 17, 18 and 19 of the Act, which is as follows-
  - (i) Subject to sub-rule (1) (d) and (1) (e), the KBRC may alter its rules by special resolution but not otherwise;
  - (ii) Within one month of the passing of a special resolution altering its rules, or such further time as the Commissioner may in a particular case allow (on written application by the KBRC), the KBRC must lodge with the Commissioner notice of the special resolution setting out particulars of the alteration together with a certificate given by a member of the Committee certifying that the resolution was duly passed as a special resolution and that the rules of the KBRC as so altered conform to the requirements of this Act;
  - (iii) An alteration of the rules of the KBRC does not take effect until sub-rule (1) (b) is complied with;
  - (iv) An alteration of the rules of the KBRC having effect to change the name of the KBRC does not take effect until sub-rules (1) (a) to (1) (c) are complied with and the approval of the Commissioner is given to the change of name;
  - (v) An alteration of the rules of the KBRC having effect to alter the objects or purposes of the KBRC does not take effect until sub-rules (1) (a) to (1) (c) are complied with and the approval of the Commissioner is given to the alteration of the objects or purposes.
- f) These rules bind every member and the KBRC to the same extent as if every member and the KBRC had signed and sealed these rules and agreed to be bound by all their provisions.

### **12.4 Appointment of Attorneys**

- a) The Board may appoint any person to be the attorney of the KBRC for the purposes, with the powers, authorities and discretions vested in or exercisable by the Board for any period and subject to any conditions, as the Board thinks fit.
- b) Any appointment under paragraph 11.7 may be made on terms for the protection and convenience of persons dealing with the attorney as the Board thinks fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

### **12.5 Negotiable Instruments**

All negotiable instruments of the KBRC may be executed by the persons and in the manner that the Board decides from time to time.

## **13. Proceedings of Directors**

### **13.1 Proceedings**

- a) Subject to the requirements of the Act to the extent applicable to the KBRC, the Directors may meet as often as they deem necessary.
- b) The quorum for a meeting of the Board is a minimum of five (5) Directors.
- c) The Chief Executive Officer may at any time and on the request of the Chairperson or any three (3) Directors, must convene a meeting of the Board.

- d) Reasonable notice must be given to every Director of the place, date and time of every meeting of the Board.
- e) Where any Director is for the time being outside of Australia, notice need only be given to that Director if contact details have been provided to the Secretary by the Director.
- f) Questions arising at a meeting of the Board are decided by a majority of votes of Directors present and voting and any such decision is for all purposes taken to be a decision of the Board.
- g) In the case of an equality of votes, the Chair of the meeting has a casting vote in addition to any deliberative vote.

### **13.2 Meetings by Technology**

- a) For the purposes of the Act, each Director, on becoming a Director (or on the adoption of this Constitution), consents to the use of the following technology for calling or holding a meeting of Board:
  - (i) video;
  - (ii) telephone;
  - (iii) electronic mail;
  - (iv) any other technology which permits each Director to communicate with every other Director; or
  - (v) any combination of the technologies described in the above paragraphs.
- b) A Director may withdraw the consent given under this clause in accordance with the Act.
- c) If the Directors are not all in attendance at one place and are holding a meeting using technology and each Director can communicate with the other Directors:
- d) the participating Directors are, for the purpose of every provision of this Constitution concerning meetings of Directors, be taken to be assembled together at a meeting and to be present at that meeting; and
- e) all proceedings of those Directors conducted in that manner are as valid and effective as if conducted at a meeting at which all of them were present.

### **13.3 Chair and Vice Chair of Directors**

- a) The Board may elect a Director to hold office as Chair and another Director to hold office as Vice-Chair.
- b) The Chair or in the Chair's absence, the Vice-Chair, is to chair any meeting of the Board.
- c) The Board may determine the period of time that a Director elected to the office of Chair or Vice-Chair may hold such office.
- d) No Director may hold the office of Chair or Vice-Chair for longer than a total aggregate of 4 years.
- e) If a meeting of the Board is held and:
  - i) neither a Chair nor a Vice-Chair has been elected as provided by clause or
  - ii) the Chair and Vice-Chair are not present at the time appointed for the holding of the meeting,the Board may elect another Director to be Chair of the meeting.
- f) The Chair is deemed to vacate the office of Chair at the annual general meeting following the date on which the Chair has held office for a total aggregate of four (4) years and will not be eligible for re-appointment as Chair.

### **13.4 Disclosure of Interests**

- a) A Director who has a material personal interest in a matter that relates to the affairs of the KBRC must give the Board notice of the interest in accordance with the Act.
- b) A contract or arrangement made by the KBRC with a Director or in which a Director is in any way directly or indirectly interested is not avoided merely because the Director is a party to or interested in it.
- c) A Director is not liable to account to the KBRC for any profit derived in respect of a matter in which the Director has a material interest, merely because of the Director's office or the fiduciary relationship it entails, if the Director has:
  - i) declared the Director's interest in the matter as soon as practicable after the relevant facts have come to the Director's knowledge; and
  - ii) not contravened this Constitution or the Act in relation to the matter.
- d) A general notice giving details of the nature and the extent of the interest and the relation of the interest to the affairs of the KBRC is a sufficient declaration of the Director's interest, provided



the extent of that interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.

- e) A Director may not be present during deliberations or vote on a contract or matter in which the Director has a personal interest unless the Board, when considering the particular contract or matter, resolves that the interested Director may be present and may vote on that particular matter because the Board is satisfied that the interest ought not disqualify the Director from being present and voting on it.
- f) A Director must not hold any office of employment in the KBRC in addition to holding office as a Director.

#### 14. Committees

- a) The Board may delegate any of their powers to a committee or committees consisting of such persons and of such numbers as the Board thinks fit.
- b) A committee to which the Board has delegated any powers, must exercise the powers delegated in accordance with any directions of the Board. Any such delegated power exercised by a committee is taken to have been exercised by the Board.
- c) The number of members of the committee present at a meeting of the committee that is necessary to constitute a quorum is the number determined by the Board and, in the absence of any such determination by the Board, is two Members. Unless the Board determine otherwise, the quorum need only be present at the time when the meeting proceeds to business.
- d) Minutes of all the proceedings and decisions of every committee must be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Act to be made, entered and signed.

#### 15. Written Resolutions

- a) If a document:
  - i) is sent to all those entitled to receive notice of a meeting at which a resolution could be put;
  - ii) contains a statement that the signatories to it are in favour of that resolution;
  - iii) the terms of the resolution are set out or identified in the document; and
- b) has been signed by a majority of the Directors entitled to vote on that resolution, a resolution in those terms is passed on the day on which and at the time at which the document was signed by a majority of Directors and the document has effect as a minute of the resolution.
- c) For the purposes of clause 15 a):
  - i) two or more separate documents containing statements in identical terms each of which is signed by one or more Directors will together be taken to constitute one document containing a statement in those terms signed by those Directors at the time at which the last of those documents to be signed was signed by a Director; and
  - ii) a fax which is received by the KBRC or an agent of the KBRC and is sent for or on behalf of a Director is taken to be a document signed by that Director not later than the time of receipt of the fax by the KBRC or its agent in legible form.

#### 16. Defects in Appointments

- a) All acts done by any meeting of the Board, committee, or person acting as a Director are as valid as if each person was duly appointed and qualified to be a Director or a member of the committee.
- b) Clause 16 a) applies even if it is afterwards discovered that there was some defect in the appointment of a person to be a Director or a member of a committee or to act as a Director or that a person so appointed was disqualified.

#### 17. Chief Executive Officer

##### 17.1 Chief Executive Officer

- a) The Board may appoint a Chief Executive Officer on such terms and conditions, as to remuneration and otherwise, as the Board decides.
- b) The Board may at any time terminate the appointment of the Chief Executive Officer.
- c) The Chief Executive Officer must not be appointed as a Director.

### **17.2 Delegation of Powers to Chief Executive Officer**

- d) The Board may, on the terms and conditions and with any restrictions as the Board thinks fit, confer on the Chief Executive Officer any of the powers exercisable by the Board.
- e) Any powers so conferred may be concurrent with the powers of the Board.
- f) The Board may at any time withdraw or vary any of powers conferred on the Chief Executive Officer.

### **17.3 Chief Executive Officer to act as Secretary**

- a) Unless the Board appoints a Secretary, the Chief Executive Officer will act as Secretary of the KBRC for the purpose of the Act.

### **17.4 Duties of the Secretary**

- a) co-ordinate the correspondence of the KBRC
- b) keep full and correct minutes of the proceedings of the Board and of the KBRC;
- c) comply on behalf of the KBRC with-
  - i) section 27 of the Act with respect to the register of members of the KBRC, as referred to clause 7.1;
  - ii) section 28 of the Act by keeping and maintaining in an up-to-date condition the rules of the KBRC and, upon the request of a member of the KBRC, must make available those rules for the inspection of the member and the member may make a copy of or take an extract from the rules but will have no right to remove the rules for that purpose; and
  - iii) section 29 of the Act by maintaining a record of –
    - (a) the names and residential or postal addresses of the persons who hold the offices of the KBRC provided for by these rules, including all offices held by the persons who constitute the Board and persons who are authorised to use the common seal of the KBRC under clause 19; and
    - (b) the names and residential or postal addresses of any persons who are appointed or act as trustees on behalf of the KBRC,
- d) and the Secretary must, upon the request of a member of the KBRC, make available the record for the inspection of the member and the member may make a copy of or take an extract from the record but will have no right to remove the record for that purpose;
- e) unless the members resolve otherwise at a general meeting, have custody of all books, documents, records and registers of the KBRC, including those referred to in paragraph (c) but other than those required by clause 17.5 to be kept and maintained by, or in the custody of, the Treasurer; and
- f) perform such other duties as are imposed by these rules on the Secretary.

### **17.5 Treasurer**

The Treasurer must-

- a) be responsible for the receipt of all moneys paid to or received by, or by him or her on behalf of, the KBRC and must issue receipts for those moneys in the name of the KBRC;
- b) pay all moneys referred to in paragraph (a) into such account or accounts of the KBRC as the Board may from time to time direct;
- c) make payments from the funds of the KBRC with the authority of a general meeting or of the Board and in so doing ensure that all cheques are signed by himself or herself and at least one other authorised Director, or by any two others as are authorised by the Board;
- d) comply on behalf of the KBRC with sections 25 and 26 of the Act with respect to the accounting records of the KBRC by-
  - i) keeping such accounting records as correctly record and explain the financial transactions and financial position of the KBRC;
  - ii) keeping its accounting records in such manner as will enable true and fair accounts of the KBRC to be prepared from time to time;

- iii) keeping its accounting records in such manner as will enable true and fair accounts of the KBRC to be conveniently and properly audited; and
- iv) submitting to members at each annual general meeting of the KBRC accounts of the KBRC showing the financial position of the KBRC at the end of the immediately preceding financial year.
- e) whenever directed to do so by the Chairperson, submit to the Board a report, balance sheet or financial statement in accordance with that direction;
- f) unless the members resolve otherwise at a general meeting, have custody of all securities, books and documents of a financial nature and accounting records of the KBRC, including those referred to in paragraphs (d) and (e); and
- g) perform such other duties as are imposed by these rules on the Treasurer.

## 18. Other Officers

- a) The Board may from time to time:
  - i) create any other position or positions in the KBRC with the powers and responsibilities as the Board may from time to time confer; and
  - ii) appoint any person to any position or positions so created. Without limiting clause 18 a), the Board may create any one or more of the following positions:
    - iii) a secretary (in addition to the position of Secretary of the KBRC) to carry out the functions of an approved secretary of a registered club under the Registered Clubs Act to the extent that Act applies to the KBRC,
    - iv) an Honorary Race Day Committee Director for the purpose of carrying out official or representative functions on behalf of the Board.
    - v) Any person appointed to a position under clause 18 a) must not also be a Director.
    - vi) The Board may at any time terminate the appointment of a person holding a position created under clause 18 a) and may abolish the position.

## 19. Seals and executing documents

- a) The KBRC will have a common seal. If the KBRC has a common seal, it may also have a duplicate common seal.
- b) A Seal shall be used only by the authority of the Board, or of a committee authorised by the Board to use the Seal. Every document to which the Seal is affixed shall be signed by:
  - i) 2 Directors; or
  - ii) a Director and the Chief Executive Officer (or another person appointed by the Directors to countersign that document or a class of documents in which that document is included).
  - iii) This clause does not limit the ways in which the KBRC may execute a document.

## 20. Inspection of Records

- a) The Board may authorise a Member to inspect books of the KBRC (to the extent, at the time and places and under the conditions the Board considers appropriate).
- b) A Member (other than a Director) does not have the right to inspect any document of the KBRC except as provided by the Act or authorised by the Board.

## 21. Application of Income and Property

- a) Subject to clause 21 b), the profits (if any) or other income and property of the KBRC must be applied solely towards the aims and purposes of the KBRC and no portion of it may be paid or transferred, directly or indirectly, to any Member whether by way of dividend, bonus or otherwise.
- b) Nothing in clause 21 a) prevents any payment in good faith by the KBRC of:
  - i) reasonable and proper remuneration to any Member or officer or employee of the KBRC (whether or not such a person is a Director) for any services actually rendered to the KBRC;
  - ii) reasonable and proper rent for premises let or demised by any Member of the KBRC to the KBRC;

## 22. Winding Up

- a) If upon the winding up or dissolution of the KBRC their remains after satisfaction of all its debts and liabilities any property whatsoever, the same must not be paid to or distributed among the members, or former members. The surplus property must be given or transferred to another association incorporated under the Act which has similar objects and which is not carried out for the purposes of profit or gain to its individual members and which association shall be determined by resolution of the members.

## 23. Notices

### 23.1 Notices Generally

- a) Any Member who has not left at or sent to the Office a place of address or an electronic mail address (for registration in the register) at or to which all notices and documents of the KBRC may be served or sent is not entitled to receive any notice.
- b) A notice may be given by the KBRC to any Member by:
  - i) serving it on the Member personally;
  - ii) sending it by post to the Member or leaving it at the Member's address as shown in the register or the address supplied by the Member to the KBRC for the giving of notices;
  - iii) serving it in any manner contemplated in this clause on a Member's attorney as specified by the Member in a notice given under clause;
  - iv) fax to the fax number supplied by the Member to the KBRC for the giving of notices; or
  - v) transmitting it electronically to the electronic mail address given by the Member to the KBRC for giving notices.
- c) A Member may by written notice to the Chief Executive Officer left at or sent to the Office require that all notices to be given by the KBRC or the Directors be served on the Member's attorney at an address specified in the notice.
- d) Notice to a Member whose address for notices is outside Australia may be sent by airmail, fax or electronic mail.
- e) Where a notice is sent by post, service of the notice is taken to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected:
  - (i) in the case of a notice of a meeting, on the day after the date of its posting; and
  - (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- f) Where a notice is sent by fax or electronic transmission, service of the notice is taken to be effected by properly addressing and sending or transmitting the notice and to have been effected on the day it is sent.

### 23.2 Notices of General Meeting

- a) Notice of every general meeting must be given:
  - (i) in the manner authorised by clause 10
  - (ii) to every Voting Member and to each Director; and
  - (iii) to the auditor of the KBRC (if any).
- b) No other person is entitled to receive notice of a general meeting.

## PART 7 — FINANCIAL MATTERS

### 24. Source of funds

The funds of the KBRC may be derived from entrance fees, annual subscriptions, donations, fund-raising activities, grants, interest and any other sources approved by the committee.

## 25. Control of funds

- (1) The KBRC must open an account in the name of the KBRC with a financial institution from which all expenditure of the KBRC is made and into which all funds received by the Association are deposited.
- (2) Subject to any restrictions imposed at a general meeting, the Board may approve expenditure on behalf of the KBRC.
- (3) The Board may authorise the treasurer to expend funds on behalf of the KBRC up to a specified limit without requiring approval from the Board for each item on which the funds are expended.
- (4) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments of the KBRC must be signed by —
  - (a) 2 Directors; or
  - (b) one Director and a person authorised by the Board.
- (5) All funds of the KBRC must be deposited into the KBRC's account within five (5) working days after their receipt.

## 26. Financial statements and financial reports

- (1) For each financial year, the Board must ensure that the requirements imposed on the KBRC under Part 5 of the Act relating to the financial statements or financial report of the KBRC are met.
- (2) Without limiting subrule (1), those requirements include —
  - (a) if the Association is a tier 1 association, the preparation of the financial statements; and
  - (b) if the Association is a tier 2 association or tier 3 association, the preparation of the financial report; and
  - (c) if required, the review or auditing of the financial statements or financial report, as applicable; and
  - (d) the presentation to the annual general meeting of the financial statements or financial report, as applicable; and
  - (e) if required, the presentation to the annual general meeting of the copy of the report of the review or auditor's report, as applicable, on the financial statements or financial report.

## 27. Indemnity

### 27.1 Indemnity and Insurance

- a) The KBRC is to indemnify each officer of the KBRC out of the assets of the KBRC to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the KBRC or in or arising out of the discharge of the duties of the officer.
- b) Where the Board considers it appropriate, the KBRC may execute a documentary indemnity in any form in favour of any officer of the KBRC.
- c) Where the Board considers it appropriate, the KBRC may:
  - (i) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the KBRC against any liability incurred by the officer in or arising out of the conduct of the business of the KBRC or in or arising out of the discharge of the duties of the officer; and
  - (ii) bind itself in any contract or deed with any officer of the KBRC to make the payments.
- d) Where the Board considers it appropriate, the KBRC may:
  - (i) give a former Director access to certain papers, including documents provided or available to the Board and other papers referred to in those documents; and
  - (ii) bind itself in any contract with a Director or former Director to give the access.
- e) In clause 27.1
  - (i) **officer** means:
    - i. a Director or Secretary, Chief Executive Officer or employee; or

- ii. a person appointed as a trustee by, or acting as a trustee at the request of, the KBRC, and includes a former officer.
- (ii) **duties of the officer** includes, in any particular case where the Board considers it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the KBRC or where applicable any other corporation.
- (iii) **to the relevant extent** means:
  - i. to the extent the KBRC is not precluded by law from doing so;
  - ii. to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, an insurer under any insurance policy); and
  - iii. where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.
- (iv) **liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.