

Summary of Proposed New Constitution The Federation of Western Australia Police & Community Youth Centres (Inc)

Date Prepared: 14 October 2020

Introduction

1. This summary is a brief introduction to the proposed new constitution for The Federation of Western Australia Police & Community Youth Centres (Inc) (**Association**). This document summarises the key features of the new constitution.
2. The Council (**Board**) of the Association, with expert advice and assistance from our Lawyers Jackson McDonald, have recently undertaken a governance review and developed a new constitution which meets the contemporary needs of the Association. The Board recommends that the members adopt the new constitution at a Special General Meeting immediately prior to the 2020 Annual General Meeting (**AGM**) of the Association.

Historical Context

3. The Federation of Western Australian Police & Citizens Youth Clubs was formed in 1941. From its establishment, and until 2012, the Association was run by the Western Australian Police, supported by an 'army' of volunteers. It provided recreational and sporting facilities and opportunities for Western Australian youth. It was largely member based and provided activities on a fee for service basis.
4. Over the years, the organisation went through many changes. These include:
 - (a) Name changed to The Federation of Western Australian Police & Community Youth Centres.
 - (b) In 2012 the WA Police relinquished the running of the Association and the centres. The Association now requires a paid workforce to run the Association and its centres, with support from a reduced number of volunteers.
 - (c) The role of the Association has changed significantly and now focuses on providing services and support to the at-risk youth in Western Australia.
 - (d) The Association is no longer member based, and many programs are provided at no charge to participants. Participation fees will continue to be charged for recreational programs which engage mainstream children and young people. Funding is now primarily from government, fundraising, grants, donations & sponsors. Membership subscriptions are minimal and provide little revenue. The gymnastic program does provide reasonable revenue.

Approach to Constitutional Review

5. The significant changes in the role and operation of the Association has rendered the current constitution to not be appropriate for the Association's current needs. It clearly does not reflect how the Association operates and does not comply with contemporary governance standards and principles.
6. Accordingly, a detailed review has been conducted over the past twelve months.

7. The required and recommended changes are extensive, and it was decided that the best approach was to rewrite the constitution. Attempting to amend the 'outdated' document would not be appropriate or constructive. A new constitution has been drafted, that accurately reflects the current day operations and activities of the Association. It gives the Association an opportunity to adopt a modern, robust and consistent document.
8. A key feature of the new constitution is the restructure of the Association's voting membership. This has been changed to reflect that the Association is now essentially a service-based organisation rather than needing to be representational of a broad-based membership.

Summary of Key Features

- A. The new constitution does not change the legal structure, charity registration or tax status of the Association. The Association must still follow the rules and requirements in the *Associations Incorporation Act 2015 (WA) (Act)*.
- B. The name of the Association has been updated to 'Western Australian Police and Community Youth Centres (Inc)'.
- C. The objects of the Association have been refined. The Association is to assist disadvantaged and at-risk children and young people, rather than young people in general. This change has been made to appropriately reflect the Association's status as a Public Benevolent Institution (**PBI**) (a type of charity), registered with the Australian Charities and Not-for-profits Commission (**ACNC**).
- D. The classes of membership have changed. Membership of the Association is not open to the public. The classes of membership include Ordinary Members, Life Members and Honorary Life Members.
- E. Those persons eligible to be Ordinary Members are the directors, for the duration of their appointment to office. The only members with voting rights are Ordinary Members (not Life Members or Honorary Life Members).
- F. The Board will decide the eligibility criteria and appoint Life Members or Honorary Life Members. Life Members and Honorary Life Members are recognised for their distinguished service and/or support to the Association or the Association's centres.
- G. There are no subscription or amenities fees payable by members. Funding is sourced from Government grants, recreational activities, fundraising, sponsorships and donations.
- H. The new constitution uses contemporary language. The terms Council and President have been replaced by the Board and Chairperson.
- I. The Board is comprised of a minimum of 7 and a maximum of 10 directors that must meet the requirements contained in the new constitution and the eligibility criteria developed by the Board. The Board may prescribe that persons demonstrate certain skills, qualifications and experience in order to be appointed to the Board. This ensures that the Association has a skills-based Board that meets the current strategic needs of the Association.
- J. The directors' terms of appointment have been reduced. Directors hold office until the second AGM after their appointment rather than for a period of 3 years. Directors may be re-elected and are not subject to a maximum period to serve on the Board.
- K. The Ordinary Members at an AGM elect directors, who must meet the requirements in the new constitution and the eligibility criteria for appointment as a director. The Ordinary Members may remove a director by special resolution at a general meeting. The Ordinary Members determine the remuneration of the directors.

Entity Type, Charity and Tax Status

9. The Association is an Incorporated Association registered in Western Australia and is subject to the rules and requirements in the Act. The Association is also a registered charity with the ACNC under the subtypes of a PBI and advancing social and public welfare.
10. The Association is endorsed by the Australian Taxation Office as a tax concession charity for income tax exemption and is GST exempt. It is also a deductible gift recipient covered by item 1 of the table in section 30-15 of the Income Tax Assessment Act 1997.

Objects and Activities

11. The objects of a not-for-profit organisation are the purposes for which an organisation must do its work. The new constitution provides that the objects of the Association are as follows:

“to empower and assist disadvantaged and at-risk children and young people across Western Australia by:

- (i) getting young people active in life;*
- (ii) working with young people to develop their skills, character and leadership;*
- (iii) reducing and preventing anti-social behaviour and crime by and against young people;*
- (iv) providing a safe environment for young people;*
- (v) engaging with young people on their terms; and*
- (vi) working effectively and constructively with the Western Australian Police Force, communities and other organisations.”¹*

12. The Association must maintain its not-for-profit nature by not providing any profit, distribution or benefits to members or Board members other than in carrying out the objects².
13. The Association must operate and undertake activities that promote and advance the objects³.

¹ Rule 3.1

² Rule 5.1 and 5.2

³ Rule 4.1

Membership

Classes of Membership

14. The new constitution provides for:
- (a) *Ordinary Members*: each director of the Association is eligible and will be deemed to be an Ordinary Member upon their appointment as a director⁴.
 - (b) *Life Members*: this class of membership is awarded to an individual in recognition of a significant contribution to the Association⁵.
 - (c) *Honorary Life Members*: this class of membership is awarded to an individual who has provided distinguished service and/or support to the Association⁶.
15. An individual is awarded Life Membership or Honorary Life Membership by the Board in accordance with the rules and criteria set by the Board⁷. Members are not required to pay annual subscription fees⁸.
16. Anyone who is currently a member (other than a director or Life Member), will cease to be a member when the new constitution takes effect.

Cessation and Suspension of Membership

17. A member ceases to be a member if they resign by giving notice to the Association or are unable to continue acting as a member⁹. A director will cease to be an Ordinary Member where they are no longer a director of the Association¹⁰.
18. The Board may suspend or expel a Life Member or Honorary Life Member if they fail to comply with the Association's constitution or the member's conduct is considered prejudicial or detrimental to the interests of the Association¹¹. The Board must follow the process outlined in the new constitution to suspend or expel a member.

Rights of Members

19. All members are entitled to:
- (a) receive notices of, attend and be heard at any general meeting; and
 - (b) receive a copy of the annual financial report of the Association¹².
20. Ordinary Members are entitled to vote at any general meeting (one vote only on any given resolution). Life Members and Honorary Life Members are not entitled to vote at a general meeting¹³.

⁴ Rule 6.2

⁵ Rule 6.3

⁶ Rule 6.4

⁷ Rule 6.3 and 6.4

⁸ Rule 6.6

⁹ Rule 7.1

¹⁰ Rule 7.1(a)(iii)

¹¹ Rule 8.1

¹² Rule 6.7

¹³ Rule 6.7(b) and (c)

Meetings of Members

21. The Association must hold an AGM once every calendar year within six months after the end of its financial year¹⁴. A notice of the AGM must be sent to all members, irrespective of voting rights, in accordance with the new constitution¹⁵. In addition to the members, the notice must also be provided to each manager of the Association's centres, the chairperson of each Community Advisory Committee and one delegate for each Blue Light Unit.
22. The business of the AGM includes:
 - (a) confirmation of the minutes of the previous AGM;
 - (b) the consideration of the Association's annual financial report and auditor's report (as required by the *Australian Charities and Not-for-profits Commission Act 2012 (Cth)(ACNC Act)*) and any other reports (if prepared);
 - (c) the appointment and remuneration of directors; and
 - (d) asking questions about the management of the Association and asking questions of the auditor (if any)¹⁶.
23. The Board must convene a general meeting if it so determines or if a certain number of members make a written request to the Association for a general meeting to be held (the relevant number is members with at least 20% of the votes that may be cast at a general meeting)¹⁷.
24. Each Ordinary Member present at a general meeting has a vote¹⁸. An Ordinary Members may appoint a proxy to vote and speak on his or her behalf at a general meeting¹⁹.
25. A quorum of a general meeting is a majority of the Ordinary Members²⁰.

Roles and Responsibilities

The Board

26. The role of the Board is to govern the Association in a manner that enables it to pursue its objects and carry out its activities in compliance with the Association's constitution and the relevant law. This principle is reflected in the new constitution.
27. The Board is responsible for and has the authority to determine all matters relating to the policies, practices, administration and operations of the Association²¹. This includes ensuring good corporate governance, determining and approving strategies and providing guidance and oversight to the chief executive officer and management²².

¹⁴Rule 18.1(a)

¹⁵Rule 18.3

¹⁶Rule 18.12

¹⁷ Rule 18.1

¹⁸ Rule 18.7

¹⁹ Rule 18.8

²⁰ Rule 18.4

²¹ Rule 11.1

²² Rule 14

Chairperson

28. The Board must, in consultation with the Minister and Commissioner of Police, appoint a person as a director to hold the position of chairperson of the Board²³. The chairperson is responsible for:
- (a) facilitating Board meetings, providing leadership and promoting cohesive, effective teamwork by the Board;
 - (b) ensuring the Board is meeting its functions, duties and responsibilities;
 - (c) ensuring proper Board delegations, reporting and monitoring systems; and
 - (d) reviewing the composition and effective working of the Board²⁴.

Board Committees

29. From time to time, the Board may establish Board committees to advise the Association on any matter relating to the Association²⁵. The opinion or decisions of a Board committee are recommendations only and do not bind the Board in any way²⁶. The Board may make and amend rules for any Board committee²⁷.

Centres

30. The centres established prior to the new constitution will continue to exist. The Board may otherwise establish new centres to further the Association's purposes, and determine the rules governing their establishment and management.²⁸

Community Advisory Committees

31. The Board may establish committees (**Community Advisory Committees**) to assist in governing the Association's centres²⁹. The Board will determine the rules which govern the establishment and management of Community Advisory Committees³⁰.

Chief Executive Officer

32. The Board appoints a chief executive officer who is responsible for the day to day management of the business and affairs of the Association and has the powers and undertakes the responsibilities that the Board determines³¹. The remuneration of the chief executive officer is determined by the Board³².

Patrons

33. The Board may appoint Patrons to the Association to publicly promote and support the Association in the community³³. A Patron must not be a director of the Association and will not have any executive powers or functions. The Commissioner of Police shall be the first Patron of the Association.

²³ Rule 11.5

²⁴ Rule 15.4

²⁵ Rule 16.1

²⁶ Rule 16.3

²⁷ Rule 16.4

²⁸ Rule 10.2

²⁹ Rule 10.3(a)

³⁰ Rule 10.3(b)

³¹ Rule 17.1

³² Rule 17.2

³³ Rule 4.2

Directors

Board Composition

34. The Board should comprise a minimum of 7 and maximum of 10 directors with a broad range of skills, expertise and experience that will assist the Association³⁴. A person is only eligible for appointment as a director if that person:
- (a) is at least 18 years of age;
 - (b) is eligible to serve as a director under the requirements of the Act and is not disqualified from being a “responsible entity” under the ACNC Act; and
 - (c) meets any additional eligibility criteria, qualification or experience requirements determined by the Board³⁵.
35. The Board may establish a Board Committee to:
- (a) facilitate an expressions of interest process for vacant director positions; and
 - (b) assess the eligibility of nominees to be appointed as directors and provide a list of eligible nominees to the Board³⁶.

Term of Appointment

36. A director holds office until the conclusion of the second AGM following their appointment and may be re-elected if they continue to satisfy the eligibility requirements³⁷.
37. Upon the adoption of the new constitution, those persons who hold a position on the Board prior to this constitution taking effect will hold a director position. At the first Board meeting of the Association, the Board must implement a system of rotation of directors. This is to ensure that not all the directors finish their board terms at the same time, as this helps preserve important corporate knowledge. Under this process:
- (a) half the directors hold office until the conclusion of the first AGM after the new constitution takes effect; and
 - (b) the remaining directors hold office until the conclusion of the second AGM after the new constitution takes effect³⁸.

Appointment and Removal of Directors

38. The Ordinary Members may elect at AGM a person who meets the eligibility criteria for appointment as a director³⁹. Following the election, the chairperson must declare those successful persons to be duly appointed as directors of the Association⁴⁰.

³⁴Rule 11.2

³⁵ Rule 11.3

³⁶ Rule 11.3(d)

³⁷ Rule 11.6

³⁸ Rule 11.6(b)

³⁹ Rule 11.4

⁴⁰ Rule 11.4(e)

39. If there are more eligible persons than the number of vacant director positions, the Ordinary Members must vote to decide the persons who are elected to the Board⁴¹. If the number of eligible persons is less than the number of vacant positions, the Board may appoint a “casual vacancy” by selecting a person who is eligible to fill the director position⁴².
40. The Ordinary Members may remove a director from office at a general meeting by special resolution (at least 75% of the Ordinary Members present and voting at the meeting must vote in favour of the resolution)⁴³. The process in the new constitution must be followed to remove a member.

Board Meetings

41. The Board will meet together to conduct the Association’s business as often as the chairperson determines, provided that the Board meets at least once every 3 months⁴⁴. The chairperson will preside the Board meeting⁴⁵.
42. A notice of the Board meeting will be sent to each director. The notice will set out the date and time of the Board meeting and where it will take place⁴⁶.
43. A quorum of a Board meeting is a majority of directors⁴⁷.
44. Every director present at the meeting has a vote⁴⁸. The Chairperson has a casting vote⁴⁹. A resolution is passed when a majority of directors at the meeting (and able to vote) vote for the resolution⁵⁰. The Board may also pass a resolution by circular resolution without a Board meeting being held⁵¹.
45. A director must not participate in discussions and cannot vote on any business if they have a material personal interest in the matter being considered by the Board⁵².

Other Rules

Dispute Resolution

46. The new constitution provides a dispute resolution process for disputes between members and/or a dispute between a member and the Association⁵³. If the parties to the dispute are unable to resolve the dispute in good faith, the matter is referred to a mediator who will resolve the dispute⁵⁴.

Records and Audit

47. The Association must maintain appropriate records (including financial records) about its operations and activities. The Association must have its financial report for each financial year audited by an auditor appointed by the Board⁵⁵.

⁴¹ Rule 11.4(c)

⁴² Rule 11.4(d)

⁴³ Rule 13.1

⁴⁴ Rule 15.1

⁴⁵ Rule 15.4

⁴⁶ Rule 15.2

⁴⁷ Rule 15.3

⁴⁸ Rule 15.5(a)

⁴⁹ Rule 15.5(c)

⁵⁰ Rule 15.5(b)

⁵¹ Rule 15.10

⁵² Rule 15.6

⁵³ Rule 19(a)

⁵⁴ Rule 19(d) and (f)

⁵⁵ Rule 21

Winding up or Cancellation of Incorporation

48. The Ordinary Members of the Association may, by special resolution, resolve that its incorporation be cancelled or that it be voluntarily wound up. The Ordinary Members must determine by special resolution which organisation any remaining property or assets of the Association will be distributed to. It must be an entity that:
- (a) has objects similar to the Association's objects;
 - (b) is a Registered Charity; and
 - (c) is a deductible gift recipient⁵⁶.

Amending the Constitution

49. The Ordinary Members of the Association may, by special resolution, amend or repeal the new constitution⁵⁷.

⁵⁶ Rule 26

⁵⁷ Rule 27