

BACKGROUND

In response to evolving governance expectations from Sport Australia (SportAus) and the WA Department of Local Government, Sport and Cultural Industries (DLGSC) the Triathlon WA Board has commissioned a working group to review the Association’s constitution to confirm it remains in step with governance best practice and the current business environment.

WORKING GROUP

A Constitution Working Group has been established to oversee the Constitution review. The members of the Committee are:

- John McCann, Chair, TWA Board Member
- Henrietta Farrell, TWA Board Member
- James Nelson, TWA Member Representative
- Fran Jones, Administration Manager, SportWest (Independent)
- Ashleigh Apps, Executive Director TWA

REVIEW PROCESS

A special resolution proposing constitutional changes will be presented for member vote at the Annual General Meeting (“AGM”) on 22 October 2022. A critical step in the process is member consultation and incorporation of member views and feedback on the changes.

Members are invited to submit comments or questions to the Triathlon WA Executive Director, Ashleigh Apps, at ashleigh.apps@wa.triathlon.org.au, or by telephone on (08)9443 9778. All feedback must be received before 12 noon AWST on Friday 19 August 2022.

Members are also invited to participate in a *Microsoft Teams online* discussion with the Triathlon WA Board, at 6:00pm – 7:00pm AWST, Wednesday 17 August. To register to attend this feedback opportunity can be [found here](#)

KEY DATES

Phase	Date
Proposed changes distributed to members	29 July 2022
Online member feedback session	6:00pm 17 August 2022
Verbal and email feedback submissions close	12 noon 19 August 2022
TWA Board review of Member feedback and proposed updated Constitution endorsed by Board	31 August 2022
Notice of AGM, Special Resolution and Proxy Forms dispatched to members	30 September 2022 (21 days prior to AGM)
Triathlon WA Annual General Meeting	22 October 2022 at 3:15pm

PROPOSED CHANGES

Key elements of the proposed changes to the Constitution are outlined below:

In addition: the Association will post a copy of the Constitution with proposed changes to the clauses highlighted in “marked-up” format, on the Association’s website.

Please review TABLE 1: Material Changes.

Other matters

The Board is taking the opportunity to tidy up and, clarify other clauses throughout the Constitution that may be affected if Members approve the rule changes discussed above.

Please review TABLE 2: Updates with no material changes.

Material Changes

CLAUSE	PROPOSED CHANGE (BLUE FONT)	DRIVER FOR CHANGE
New 20.2 USE OF TECHNOLOGY	New Clause 20.2 Use of technology to be present at general meetings (1) The presence of a Member at a general meeting need not be by attendance in person but may be by that Member and each other Member at the meeting being simultaneously in contact by telephone or other means of instantaneous communication. (2) A Member who participates in a General Meeting as allowed under Rule 21.1 is taken to be present at the meeting and, if the Member votes at the meeting, the Member is taken to have voted in person. (3) No Member may, without the express permission of the chair, take any recordings (audio, video or both) of the General Meeting; and (4) No Member may, except with the express permission of the chair, allow any non-Member to see, hear or otherwise participate in the General Meeting.	<p>The use of digital technology has gained widespread acceptance as a method for remote collaboration. The benefits of using technology include more efficient and less expensive meetings with greater opportunity to participate. Laws have recently changed in Australia to permit companies and associations to conduct both virtual and hybrid meetings.</p> <p>The current constitution is silent on the use of technology. This new clause is intended to reinforce that the use of technology is allowed and to define the basic rules around virtual and hybrid meetings.</p> <p>Subclauses (1) and (2) are taken from the Associations Incorporation Act (WA) Model Rules.</p> <p>For further information, refer to the AICD virtual meetings guidance for NFPs</p>
24. COMPOSITION OF THE BOARD	24.1 Board Composition Subject to rule 24.3, the Board shall comprise: (i) Seven Five Elected Board Members in accordance with Rule 25 (ii) Two Four Appointed Board Members shall be appointed in accordance with Rule 26.	<p>SportAus and AICD recommend that a board should have a diverse mix of skills, expertise and experience and be able to demonstrate commitment towards achieving its diversity targets. The SportAus Sports Governance Standard (SGS) recommends boards have >40% appointed board members (but a majority still elected) and no more than 60% of one gender on the board.</p> <p>Increasing the number of appointed Board Members will give the Board an increased ability to manage diversity and skills that may not be achieved through elected members alone. Failure to maintain adequate board diversity can result in withdrawal of State Government funding.</p>

CLAUSE	PROPOSED CHANGE (BLUE FONT)	DRIVER FOR CHANGE
		By having a greater number of appointed members on the Board, this allows for the organisation to be adaptable to the external landscape and bring on skills based on the organisation's current needs. The majority of the Board still remains elected by the membership.
New 24.3 TRANSITIONAL ARRANGEMENTS	<p>24.3 Transitional Arrangements Upon adoption of these rules for the first time, the following transitional arrangements will be followed to allow a new Board to be established:</p> <p>(1) The existing Board at the time of adoption of these rules will become an interim Board until the first AGM after adoption. (2) At the first AGM after adoption of these rules, but subject to rule 24.2, a new Board will be established using the processes outlined in rules 25 and 26. (3) At the first AGM after the adoption of these rules, two (2) Elected Board Members will be elected, with one additional Board Member appointed by the Board post AGM. (4) At the second AGM after the adoption of these rules, three (3) Elected Board Members will be elected, with one additional Board Member appointed by the Board post AGM.</p>	<p>Transitional arrangements are required to ensure compliance with the constitution during the period in which the board composition does not meet the requirements of clause 24.1.</p> <p>The transitional clause enables the composition to move from 7 elected and 2 appointed at the time the new constitution is voted on to 6 elected and 3 appointed at the AGM subsequent to the vote (2023) and 5 elected and 4 appointed at the second AGM after the vote (2024).</p>
25.1(iv) Qualifications for Elected Board Members	25.1(iv) No person who has served as a Board Member (whether Elected or Appointed or a combination of both) for a period of ten six consecutive years shall be eligible for election or appointment as a Board Member until after the expiration of twelve months three years following the date of conclusion of their most recent term as a Board Member.	<p>SportAus and AICD recommends limiting tenure to encourage renewal and provide an opportunity to review the board member's performance.</p> <p>SportAus recommends a maximum 10 year tenure with a three year ineligibility period.</p>
25.1 Qualifications for Elected Board Members	<p>New clause</p> <p>25.1 (v) The Elected Board Members must be, at the date of being nominated and at all times throughout their appointment, Members of the Association</p>	<p>Currently there is no requirement for Elected Board Members to be members of the Association. To encourage board member engagement and participation it is proposed to require elected board members to be Association members. This is consistent with the existing requirement for Appointed Board Members</p>
25.4 (b) Term of Appointment	(b) For each two-year interval, three Elected Board Members shall be elected in the first year and four two in the second year.	<p>Consistent with recommendation to reduce elected board members from 7 to 5</p>

CLAUSE	PROPOSED CHANGE (BLUE FONT)	DRIVER FOR CHANGE
26.1 Appointment of Members	Subject to rule 24.3, The Elected current Board Members shall appoint two four Board Members.	<p>Consistent with current practice, Appointed and Elected Board Members should both be responsible for the appointment of incoming Appointed Board Members</p> <p>In line with the proposed change to Board Composition the number of appointed Board Members also needs to be reflected in this clause</p>
26.2(ii) Qualifications for Appointed Directors Board Members	26.2(ii) No person who has served as a Board Member (whether Elected or Appointed or a combination of both) for a period of ten six consecutive years shall be eligible for election or appointment as a Director Board Member until after the expiration of twelve months three years following the date of conclusion of their most recent term as a Director Board Member.	As above in 25.1(iv) plus correct undefined term “Director” to “Board Member”
New clause 26.3(b)	<p>New Clause</p> <p>26.3 (2) For each two-year interval, two Appointed Board Members shall be elected in the first year and two in the second year.</p>	<p>Both SportAus and AICD recommend a staggered approach to appointments to ensure ongoing diversity of the board.</p> <p>Legal advice confirmed there should be a specific clause for staggered appointments.</p>

Updates with no material change

CLAUSE	PROPOSED CHANGE (BLUE FONT)	DRIVER FOR CHANGE
Definitions "Act"	"Act" means the Associations Incorporation Act 1987 2015 (WA)	The 1987 Act has been repealed. The Constitution is now under the 2015 Act and should have been updated in 2016.
Definitions "Board"	"Board" means the board of the Association elected by the Senior Members of the Association as described in Rule 25 and appointed as described in Rule 26;	Correct terminology – senior member is not defined, nor a type of membership. Acknowledge that the Board is both elected and appointed
Definitions "Club Member"	"Club Member"	Missing inverted comma before Club
Definitions "Financial Year"	"Financial year" means the year ending 30 June in each year;	Financial year is defined in Clause 3. Eliminate duplication
Definitions "Triathlon"	"Triathlon" means the sport comprising a combination of the disciplines of swimming, cycling and running and includes the sports of Duathlon, Aquathlon, Aquabike and its related other multi-sports	Consistency with TA Constitution. Will enable deletion of the terms Duathlon and Aquathlon from clauses 4.1, 5.1 (24)(27)(30), 6.1 (1)(2), 6.2 (3)(5)(6), 6.3 (1), 6.4 (4)(5), 7.1 (1) and from the definitions of Triathlon Australia and Triathlon Club. For brevity, these deletions have not all been included in this table however remain part of this proposal.
Definitions "Triathlon Australia and TA"	"TA" means Triathlon Australia Ltd; "Triathlon Australia" and "TA" means the Australian governing body for the sport of Triathlon, Duathlon and Aquathlon and presently known as Triathlon Australia Ltd or such other or substitute body as succeeds this body as the peak body in respect of Triathlon, Duathlon and Aquathlon in Australia;	Eliminate duplication and consistent with new definition for Triathlon
Definitions "Triathlon Club"	"Triathlon Club" means an incorporated entity in Western Australia whose objects are principally the participation or advancement of the sports of Triathlon, Duathlon and Aquathlon;	Consistent with new definition for Triathlon

CLAUSE	PROPOSED CHANGE (BLUE FONT)	DRIVER FOR CHANGE
1.2 Interpretation	Change formatting of clause to number each point (full text excluded here for brevity)	For ease of reference and consistency with approach throughout document
5.1 Powers of the Association	Solely for furthering the purposes set out above, and (except to the extent of any inconsistency) in addition to the rights, powers and privileges provided under the Western Australia Act, the Association has power to	Correctly refers to the Act
5.1 (30)	the setting up of a headquarters and management and administration arrangements in accordance with the Rules, the powers specified in Rule 4 Clause 5 and such powers as it may from time to time determine provided that this administration will not derogate, diminish or lessen the authority of TWA in respect of the sport of Triathlon, Duathlon and Aquathlon in Western Australia, which absolute authority shall be subject only to TA	Correct and clarify reference
6.2 (2) Compliance of Association	where deemed appropriate by the Board: (a) use its best endeavours to comply with and be bound by the standards and technical requirements of Triathlon Australia; (b) to the best of its ability uphold and enforce the policies and procedures as published from time to time by Triathlon Australia; and	Add sub-paragraph letters for consistency with rest of document
6.2 (4) Compliance of Association	Use its best endeavours to have at least one Senior Individual Member to be a -elected to the Board of Triathlon Australia	Correct terminology – senior member is not defined, nor a type of membership.
8.1 Eligibility of membership	(1) Any person who supports the objects or purposes of the Association is eligible to apply to become a member Member.	Update grammar
8.3 (2) Membership Categories	(i) The Board committee accepts the application; and	Correct use of definition
8.3 (3) Membership Categories	Each person who becomes a member Member of the Association will be able to access the Rules of the Association from the Association's website where they will be available for download. A hardcopy can be provided to the member Member should they request.	Insert apostrophe in "Associations" to make it clear that it is TWA's website Capitalise "Member" as a defined term

CLAUSE	PROPOSED CHANGE (BLUE FONT)	DRIVER FOR CHANGE
11.1 Executive Director to keep Register	<p>(1) The Executive Director shall ensure that a register of Members is kept and maintained, in which shall be entered such information as is required under the Act from time to time.</p> <p>(12) Members will provide notice of any change in required details to the Association within 1 month of the change.</p>	Correct sub paragraph numbering
14.1 Disciplinary Action	<p>(1) Where the Board is advised or considers that a Member has allegedly:</p> <p>(i)(1) breached, failed, refused or neglected to comply with a provision of these Rules, the Regulations, or any resolution or determination of the Board or any duly authorised Committee;</p> <p>(ii)(2) acted in a manner unbecoming of a Member or contrary to or prejudicial to the objects and purposes and interests of the Association or Triathlon, Duathlon or Aquathlon; or</p> <p>(iii)(3) brought the Association, Triathlon, Duathlon or Aquathlon into disrepute,</p> <p>(iv)(4) the Board may commence or cause to be commenced, disciplinary proceedings against that Member, and that Member will be subject to, and submits unreservedly to the jurisdiction, disciplinary procedures and penalties and the appeal mechanisms of the Association set out in the Regulations.</p>	Sub paragraphs updated to numbers
14.2 Suspension or Expulsion	<p>(1) The Board may decide to suspend a Member's membership or to expel a Member from the Association if:</p> <p>(a)(1) the Member contravenes any of these rules; or</p> <p>(b)(2) the Member acts detrimentally to the interests of the Association.</p>	Sub paragraphs updated to numbers
23. Powers of the Board	<p>(1) — Subject to the Act and these Rules, the business of the Association will be managed, and the powers of the Association will be conducted by the Board in accordance with the objects of the Association and shall operate for the collective and mutual benefit of the Association and the sport of Triathlon throughout Western Australia and shall:</p> <p>(i)(1) Govern the sport of Triathlon in WA in accordance with the objects of the Association;</p> <p>(ii)(2) Determine major strategic directions of the Association; and</p>	Sub paragraphs updated to numbers

CLAUSE	PROPOSED CHANGE (BLUE FONT)	DRIVER FOR CHANGE
	(iii) (3) Review the Association's performance in achieving its pre-determined aims, objectives and policies;	
25.4 Term of Appointment	(a) —(1) Elected Board Members shall be elected in accordance with this Constitution for a term of two (2) years, which shall commence from the conclusion of the Annual General Meeting at which the election occurred until the conclusion of the second Annual General Meeting following; (b) —(2) For each two-year interval, three Elected Board Members shall be elected in the first year and four in the second year; (c) —(3) Should any adjustment to the term of Elected Board Members elected under this Constitution be necessary to ensure rotational terms in accordance with this Constitution, this shall be determined by the Board. Elections to subsequent Boards shall then proceed in accordance with the procedures in this Constitution with approximately one half of the Elected Directors <u>Board Members</u> retiring each year.	Sub paragraphs updated to numbers "Directors" is not a defined term and should be replaced with Board Members
25.5 Appointment of President	The Board may elect a Vice President who will <u>hold office for the balance of their current term of appointment and</u> preside in meetings in place of the President should they not be available	No term listed on the VP role. Provides consistency with President appointment
26.2 Qualifications of Appointed <u>Directors</u> <u>Board Members</u>	(i) (1) The Appointed Directors <u>Board Members</u> may have specific skills in commerce, finance, marketing, law or business generally or such other skills which complement the Board composition, but need not have experience in or exposure to the sport of Triathlon. The Appointed Board Members must become Members of the Association. (i) (2) No person who has served as a Board Member (whether Elected or Appointed) for a period of ten consecutive years shall be eligible for election or appointment as a Director <u>Board Member</u> until after the expiration of twelve months following the date of conclusion of their most recent term as a <u>Director</u> <u>Board Member</u> .	"Directors" is not a defined term and should be replaced with Board Members Sub paragraphs updated to numbers
27.2 Remaining <u>Board Members</u> May Act	In the event of a casual vacancy or vacancies in the office of a Board Member, the remaining <u>Board</u> Members may act but, if the number of remaining <u>Board</u> Members is not sufficient to constitute a quorum at a meeting of the Board, they may act only for the purpose of increasing the number of <u>Board</u> Members to a number sufficient to constitute such a quorum.	Correct use of definition "Board Members"
28.3 (2) (iii)	in the event that a failure in communications prevents condition (a) (i) from being satisfied by the number of members which constitutes a quorum, and none of such members are present at the place where the meeting is deemed by virtue of the other provisions of this Rule to be held then	(a) Is not part of this clause. Needs to be replaced with (i)

CLAUSE	PROPOSED CHANGE (BLUE FONT)	DRIVER FOR CHANGE
	the meeting will be suspended until condition (a)(i) is satisfied again. If such condition is not satisfied within ½ an hour from the interruption the meeting shall be deemed to have terminated or adjourned; and	
28.7 Conflict of Interest	A Board Member must declare their interest in any contractual, selection, disciplinary or other matter in which a conflict of interest arises or may arise, and will absent himself-themselves from discussions of such matter and will not be entitled to vote in respect of such matter. In the event of any uncertainty as to whether it is necessary for a member to absent himself-themselves from discussion or refrain from voting, the issue should be immediately determined by vote of the relevant body, or if this is not possible, the matter shall be adjournment or deferred	Update himself to themselves
28.8 Payments to Board Members	a)(1) In attending a committee meeting; b)(2) attending a general meeting; c)(3) Otherwise in connection with the Association's business.	Sub paragraphs updated to numbers
29.4	The Executive Director may, in consultation with the Board, as appropriate, employ such personal personnel as are deemed necessary or appropriate from time to time and such appointments shall be for such period and on such conditions as the Board determines.	Spelling correction
34.2 Notice of Annual General Meeting	Delete entire clause Notice of every General Meeting will be given in the manner authorised in these Rules.	Eliminate redundant clause (already covered in clauses 15 and 16)
41. Effect of these Rules	41.1 —The Rules come into effect and will supersede and replace any previously existing constitutions, rules and orders of the Association and will remain in force until amended.	Remove sub paragraph numbering – not required
Various	Update clause numbers and references to clause numbers to reflect added and deleted clauses	