



# CONSTITUTION

SOUTHERN CAPES MOTORCYCLE CLUB INC

30 OCTOBER 2018



## 1. NAME OF THE CLUB

The name of the incorporated association is Southern Capes Motorcycle Club Inc (Club).

## 2. DEFINITIONS AND INTERPRETATIONS

### 2.1 Definitions

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

**AGM or Annual General Meeting** means the annual General Meeting of the Club required to be held by the Club in accordance with clause 10.1.

**Annual Subscription** means the annual fees payable by each class of membership as determined by the Management Committee under clause 8.

**By-Laws** mean a by-law made under clause 17.

**Chair** means the person described under clause 10.4.

**Committee** means a committee established under clause 12.

**Constitution** means this constitution as amended from time to time, and a reference to a particular clause is a reference to a clause of this Constitution.

**Extraordinary General Meeting** is a General Meeting as described under clause 10.3.

**Financial Year** means a year commencing 1 July and ending on 30 June.

**General Meeting** means a general meeting of Members and includes the AGM and any Extraordinary General Meetings.

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

**Local Area** means the area of the Busselton and Augusta/Margaret River Shires and surrounds.

**MA** means Motorcycling Australia Limited, the national sporting organisation for motorcycling in Australia.

**Management Committee** is the committee as described under clause 12.

**Member** means a member of the Club under clause 6.2.

**Membership Year** means a year commencing 1 January and ending on 31 December of each calendar year or such other date as the Management Committee decides.

**MWA** means Motorcycling Western Australia Incorporated, the State Controlling Body for motorcycling in Western Australia.

**Objects** mean the objects of the Club in clause 3.

**Register** means the register of Members kept in accordance with clause 9.

**Voting Member** means those Members of the Club entitled to vote in a General Meeting as set out under clause 6.2.

## 2.2 Interpretation

In this Constitution unless the context requires otherwise:

- (a) a reference to a function includes a reference to a power, authority and duty;
- (b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing any gender include the other genders;
- (e) references to persons include corporations and bodies politic;
- (f) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- (g) a reference to a statute, ordinance, code or other law includes Regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any legislative authority having jurisdiction); and
- (h) a reference to "writing" shall unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail.

## 2.3 Severance

If any provision of this Constitution or any phrase contained in it is invalid or unenforceable, the phrase or provision is to be read down if possible, so as to be valid and enforceable, and otherwise shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Constitution.

## **2.4 The Act**

- (a) In this Constitution, unless the context requires otherwise, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (b) The model rules created under the Act are displaced by this Constitution and accordingly do not apply to the Club.

## **3. OBJECTS**

The Club is established solely for the Objects. The objects are to:

- (a) provide for the encouragement, conduct, promotion and administration of the motocross discipline of motorcycling in Western Australia, in particular in the Local Area;
- (b) co-operate with similar clubs in fostering and maintaining motocross;
- (c) organise and conduct social functions, competitions, sports and entertainments and to encourage good fellowship among Members;
- (d) participate as a member of MWA so motocross can be conducted, encouraged, promoted, advanced and administered throughout the Local Area;
- (e) affiliate and otherwise liaise with MWA and MA;
- (f) use and protect the Intellectual Property;
- (g) pursue through itself or others such commercial arrangement, including sponsorship and marketing opportunities, as may be appropriate to the purposes of the Club in the Local Area;
- (h) having regard to these purposes, foster, regulate, organise and manage competitions, displays and other activities and to issue badges, medallions, trophies, certificates and other awards to successful Members;
- (i) promote the health and safety of Members;
- (j) represent the interests of its Members and of motocross generally in any appropriate forum;
- (k) have regard to the public interest in its operations;
- (l) give, and where appropriate seek, recognition for Members to obtain awards or public recognition;

- (m) seek and obtain improved facilities for the enjoyment of the Members; and
- (n) undertake and do all such things or activities which are necessary, incidental or conducive to the advancement of these Objects.

#### **4. POWERS OF THE CLUB**

Subject to this Constitution the Club shall have the powers to do all such acts and things whether solely or in conjunction with any person or persons as may be considered incidental or conducive to the above objects or any one of them, and, in particular, the Club shall have the powers to:

- (a) purchase, take on lease, exchange, hire or otherwise acquire any real and personal property which may be deemed necessary or convenient for any of the objects of the Club;
- (b) invest monies of the Club not immediately required in such manner as may be determined;
- (c) manage, develop, lease, sell, convey, assure or otherwise dispose of either absolutely or by way of mortgage and real or personal property for the time being vested in the Club and in any case the Club shall take or hold any property which may be subjected to any trust, to deal with the same in such manner as allowed by law having regard to such trusts;
- (d) borrow or raise upon loan any sum or sums of money and for the purpose of securing payment thereof to execute or give any mortgage, charges, bonds, debentures, bills of exchange, promissory notes or other securities over all or any of the property of the Club as may be deemed necessary and to liquidate, redeem or pay off such obligations, such securities and any of them; and
- (e) employ, pay and dismiss servants for the purpose of furthering the objects of the Club.

#### **5. NON PROFIT**

The income and the property of the Club shall be applied solely towards the promotion of the objects of the Club. No portion of the income or property shall be paid, transferred or distributed directly or indirectly to the members of the Club, provided that nothing shall prevent the payment in good faith of remuneration to any officer or employee of the Club or to any person other than a member, in return for services rendered to the Club.

#### **6. MEMBERSHIP**

### **6.1 Minimum number of Members**

The Club must have at least 6 Voting Members.

### **6.2 Categories of Members**

The Members of the Club shall consist of:

- (a) Life Members who subject to this Constitution, shall have the right to receive notice of General Meetings and to be present, debate and vote at General Meetings;
- (b) Senior Members, who subject to this Constitution, shall have the right to receive notice of General Meetings and to be present, debate and vote at General Meetings;
- (c) Junior Members, who subject to this Constitution, shall have the right to receive notice of General Meetings and to be present and debate but not vote at General Meetings; and
- (d) such new or other categories of Members as may be established by the Management Committee. Any new category of Member established by the Management Committee cannot be granted voting rights without the approval of the Club in General Meeting.

### **6.3 Life Members**

- (a) The Club at the Annual General Meeting may elect Life Members.
- (b) The Management Committee may recommend in writing to the Annual General Meeting, not less than 30 days prior to the Annual General Meeting, that any natural person who has rendered distinguished service to the Club be appointed as a Life Member.
- (c) A resolution of the Annual General Meeting to confer Life Membership on the recommendation of the Management Committee must be a special resolution.
- (d) Upon a person accepting the Club's resolution to confer Life Membership, the person's details shall be entered upon the Register, and from the time of entry on the Register the person shall be a Life Member.
- (e) At the time of adoption of this Constitution, the Life Members of the Club shall be those persons currently recognised by the Club as Life Members.

### **6.4 Application for Membership**

- (a) Subject to this Constitution, to be eligible for membership as a Member, except as a Life Member which is governed by clause 6.3, the applicant must be a natural person and meet any other criteria set by the Management Committee from time to time.
- (b) Subject to this Constitution or any procedures set by the Management Committee from time to time, an application for membership as a Member, except a Life Member, must be:
  - (i) in writing on the form or manner prescribed from time to time by the Management Committee, from the applicant or their nominated representative and lodged with the Club; and
  - (ii) accompanied by the appropriate fee.

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

- (a) The Management Committee may accept or reject an Application, irrespective of whether:
  - (i) the applicant is a new applicant making an application under clause 6.4 or an expiring Member reapplying under clause 6; or
  - (ii) the applicant has complied with the requirements in clause 6.4 or not.

The Management Committee is not required or compelled to provide any reason for such acceptance or rejection.

- (b) Where the Management Committee accepts an application, the applicant shall become a Member. Membership shall be deemed to commence upon acceptance of the application by the Management Committee. The Register shall be amended accordingly as soon as practicable.
- (c) Where the Management Committee rejects an application, it shall refund any fees forwarded with the application and the application shall be deemed rejected by the Club.
- (d) There is no right of appeal where the Management Committee rejects an application for membership, whether a new application or a renewal application.

### **6.6 Renewal of Membership**

- (a) Membership of the Club (other than Life Membership) expires annually at the conclusion of each Membership Year or other date determined by the Management Committee.

- (b) Members (other than Life Members) must reapply for membership of the Club each Membership Year and in accordance with the procedures set down by the Management Committee from time to time.
- (c) The Management Committee may accept or reject a reapplication for membership in accordance with clause 6.5.
- (d) Upon reapplication a Member must provide details of any change in their personal details, and any other information reasonably required by the Management Committee.

### **6.7 Deemed Membership**

- (a) All persons who are, prior to the approval of this Constitution under the Act, Members of the Club shall be deemed Members from the time of approval of this Constitution under the Act.
- (b) Any Members of the Club, prior to approval of this Constitution under the Act, who are not deemed Members under clause 6.7(a) shall be entitled to carry on such functions analogous to their previous functions as are provided for under this Constitution.

### **6.8 Suspension and Expulsion**

- (a) Any member of the Club who fails to observe the rules of the Club or whose conduct in the opinion of the Management Committee is prejudicial to the interests of the Club may be suspended or removed from membership of the Club by a majority of at least two thirds of the Management Committee as shall be present and vote at a meeting of the Management Committee called for that purpose and for which seven days notice has been given to all members of the Management Committee and to the member whom it is proposed to suspend or expel.
- (b) The member whom it is proposed to suspend or expel may attend such meeting for purpose of being heard and offering an explanation for his/her alleged conduct if he/she so desires.
- (c) Any appeal shall lie to an Extraordinary General Meeting, which shall be called by the Management Committee, at the request in writing of the member who has been suspended or expelled, within 7 days of the Management Committee's decision.
- (d) Any Member who is suspended or expelled shall not be entitled to any refund of any entrance fees or Annual Subscription.



- (e) On appeal from a decision of the Management Committee the Extraordinary General Meeting may make such resolution as it may see fit to allow or disallow the appeal in whole or in part and may vary the decision of the Management Committee.
- (f) Where a Member has been suspended or expelled, his/her suspension or expulsion shall not affect the membership of any other Member who may compromise a family membership.
- (g) Where a Member is suspended such Member shall be deemed to not be a Member during the period of his/her suspension until such time as his/her suspension is lifted.

## **6.9 General**

- (a) No Member whose membership ceases has any claim against the Club or the Management Committee for damages or otherwise arising from cessation or termination of membership.
- (b) Membership is personal to each Member. No Member shall, or purport to, assign the rights comprising or associated with membership to any other person and any attempt to do so shall be void.
- (c) Members must treat all other members, staff, committee representatives, contractors, event officials and other stakeholders with respect and courtesy at all times.
- (d) Members must not act in a manner unbecoming of a Member or prejudicial to the Objects and/or interests of the Club.
- (e) Any Member may retire from membership of the Club at any time by giving the Club notice thereof in writing however in the event of such notice being received by the Club, the Club is under no obligation to return any Annual Subscription to the Member who gives notice under this Clause.
- (f) A Member who ceases to be a Member, for whatever reason shall forfeit all right in and claim upon the Club and its property.

## **7. EFFECT OF MEMBERSHIP**

- (a) Members acknowledge and agree that:
  - (i) this Constitution constitutes a contract between each of them and the Club and that they are bound by this Constitution and any By-Laws;

- (ii) they shall comply with and observe this Constitution, the By-Laws and any determination, resolution or policy which may be made or passed by the Management Committee or any other duly authorised committee;
- (iii) by submitting to this Constitution and the By-Laws they are subject to the jurisdiction of the Club;
- (iv) this Constitution is made in pursuit of a common purpose, namely for the mutual and collective benefit of the Club, its Members and motocross;
- (v) this Constitution and By-Laws are necessary and reasonable for promoting the Objects and particularly the advancement and protection of the Club and motocross;
- (vi) neither membership of the Club nor this Constitution gives rise to:
  - a. any proprietary right of Members in, to or over the Club or its property or assets;
  - b. any automatic right of a Member to renewal of their membership of the Club;
  - c. subject to the Act and the Club acting in good faith, the right of Members to natural justice unless expressly provided for in this Constitution; and
- (vii) they are entitled to all benefits, advantages, privileges and services of Club membership.

## **8. SUBSCRIPTIONS**

- (a) Members shall pay an Annual Subscription to be fixed from time to time by the Management Committee.
- (b) All Annual Subscriptions are payable in advance by the due date each year as notified to Members by the Management Committee.
- (c) The Management Committee is empowered to prevent any Member whose Annual Subscription is in arrears from exercising the whole or any of the rights or privileges of membership of the Club, including but not limited to the right to vote at General Meetings.

## **9. REGISTERS**

### **9.1 Club to Keep Register**

The Club shall keep and maintain a Register in accordance with the Act in which shall be entered (as a minimum) the full name, one or more of the residential or postal or email address, category of membership, the date of entry of each Member including Life Members. Members shall provide notice of any change and required details to the Club within 28 days of such change.

## **9.2 Inspection of Register**

- (a) Having regard to the Act and subject to this Clause 9.2, the Register shall be available for inspection and copying by Members, upon reasonable request to the Management Committee. A Member may also in writing request the Management Committee provide the Member with a copy of the Register.
- (b) Where a Member wishes to copy, or wishes to receive a copy of, the Register, the Member must first provide to the Management Committee a statutory declaration setting out the purpose for which the copy is required and declaring the purpose is connected with the affairs of the Club.
- (c) Subject to the Act, the Management Committee may determine a reasonable charge for the cost of complying with a request under Clause 9.2(a).

## **9.3 Use of Register**

Subject to the Act, confidentiality considerations and privacy laws:

- (a) the Management Committee may use the Register to further the Objects, in such manner as the Management Committee considers appropriate; and
- (b) a Member must only use or disclose information in the Register for a purpose that is in good faith, is directly connected with the affairs of the Club or that is related to the Administration of the Act.

# **10. GENERAL MEETINGS**

## **10.1 Annual General Meeting**

- (a) AGMs of the Club shall be held on such date and at such place as may be decided by the Management Committee, provided that at least 6 months and not more than 13 months has passed from the previous AGM.
- (b) The business of the AGM shall be the secretary's annual report, the treasurer's annual report and balance sheet for the ensuing year and the

election of the Officers and Management Committee and any other general business.

- (c) The secretary shall, at least 7 days prior to the AGM, send to every member in the Register a notice of such meeting, stating the place where and the time when the said meeting will be held and the business that will be brought before it.

### **10.2 General Meeting**

A General Meeting of the Club shall be held on such date and at such place as may be decided by the Management Committee.

### **10.3 Extraordinary General Meeting**

- (a) The Management Committee may, at any time and shall on the requisition of any 8 Members stating the business for which it is required, convene an Extraordinary General Meeting.
- (c) 7 days notice of such meeting and the business to be discussed shall be given in writing by the secretary to each Member.

### **10.4 Procedure at General Meeting**

- (a) At all General Meetings the chair shall be the President or Vice President or in their absence any member of the Management Committee.
- (b) Every question (unless otherwise provided by this Constitution) shall be decided by a majority of votes via a show of hands. Every Member who is entitled to vote as per clause 6.2 shall have 1 vote. In the case of a tied vote the chair shall have the casting vote. Votes shall be given personally and not by proxy.
- (c) The chair will decide whether an appropriate quorum is present to conduct a General Meeting.
- (d) Minutes will be kept for each General Meeting.

## **11. OFFICE BEARERS**

- (a) The Officers of the Club shall be President, Vice President, Secretary, Treasurer, MWA delegate(s) and any other Officer as the Management Committee may decide to successfully operate and administer the Club. For the purposes of convenience it shall be permissible for a Member to be elected to more than one office. Only financial members and Life Members are eligible for election as Officers of the Club.

- (b) All Officers of the Club shall hold office for the term of 1 year and shall be eligible for re-election.
- (c) Should any Officer or other member of the Management Committee die, resign or be removed from office, his/her place shall be filled by a member elected at the next General Meeting and such person shall hold office for the remainder of the term of which his/her predecessor was elected.

## **12. MANAGEMENT COMMITTEE AND SUB COMMITTEES**

- (a) The Club shall be governed, subject to the control of the Members in General Meeting, by a Management Committee consisting of President, Vice President, Secretary, Treasurer and any other Office Bearer as determined under clause 11(a).
- (b) The Management Committee members will be elected at the Annual General Meeting and shall be eligible for re-election.
- (c) The Management Committee shall have power to vote ordinary working expenses and to transact the general business of the Club. Any 4 members of the Management Committee constitute a quorum.
- (d) Matters decided by the Management Committee to be of an important nature shall be referred back to the Members in a General Meeting.
- (e) Meetings of the Management Committee may be convened by the Secretary when necessary or by any 3 other Management Committee members.
- (f) Other sub committees may be formed by the Management Committee as required.

## **13. DUTIES OF PRESIDENT AND VICE-PRESIDENT**

The President or in his/her absence the Vice President shall preside at all meetings of the Club.

## **14. DUTIES OF SECRETARY**

- (a) The Secretary shall keep the Register, minutes of meetings, records of Club races and competitions and other records of the Club as the Management Committee may from time to time direct.
- (b) The Secretary shall be responsible for the correspondence of the Club as directed by a General Meeting or Management Committee meeting, and shall prepare an Annual Report of the Club's activities to be presented at

the AGM. The Secretary shall keep a list of all Club property and its location and shall be responsible for the safekeeping of such property.

- (c) The Secretary shall be ex-officio on all Committees of the Club.

#### **15. DUTIES OF TREASURER**

- (a) The Treasurer shall collect from time to time all Annual Subscriptions and other monies due and payable to the Club and issue receipts for and on behalf of the Club and shall deposit such monies within 7 days of the receipt of same in the name of the Club in such bank account as the Management Committee shall decide. The Treasurer shall keep proper books of accounts and shall submit a financial statement showing the condition of the Club's finances to each General Meeting as required and the AGM. The Treasurer shall present an audited Balance Sheet for each Financial Year at the AGM.
- (b) The Treasurer shall pay all accounts authorised by resolution of a General Meeting of the Club or by the Management Committee out of the Club's Bank account signed by him/her and countersigned by the President or Secretary so authorised by the Club.
- (c) The Treasurer shall be ex-officio on all Committees of the Club.
- (d) In the event of the Secretary and Treasurer being one and the same person, he/she shall be known as Secretary-Treasurer.

#### **16. AUDITOR**

- (a) There shall be one or more Auditors who shall each be qualified to practise as any Auditor in the State and who shall audit the Annual Statement of Accounts and Balance Sheet as submitted by the Treasurer and certify to them. An Auditor shall have the power at any time to call for the production of all books of account, vouchers and other documents relative to the affairs of the Club.
- (b) An Auditor shall not be an Officer or Member of the Club. Such Auditor or Auditors shall be appointed annually at the Annual General Meeting.

#### **17. BY-LAWS**

The Management Committee may from time to time make, alter and/or repeal By-Laws regulating the holding of races and competitions and generally for the good conduct of the affairs of the Club. Such By-Laws shall, provided they are not inconsistent with the Constitution of the Club for the time being, be binding on all Members and be construed as part of the Constitution of the Club until they are varied or rescinded by the Club in a General Meeting.

## **18. INDEMNITY**

- (a) Every Officer, Management Committee member, auditor and employee of the Club shall be indemnified out of the property or assets of the Club against any liability incurred by him/her in his/her capacity as Officer, Management Committee member, auditor or employee in defending any proceedings, whether civil or criminal, in which judgement is given in his or her favour or in which he or she is acquitted or in connection with any application in relation to any proceedings in which relief is, under the Act, granted to him or her by the Court.
- (b) The Club shall indemnify its Officers, Management Committee members, auditors and employees against all damages and costs (including legal costs) for which any such Officers, Management Committee members, auditor or employee may be or become liable to any third party in consequence of any act or omission except wilful misconduct:
  - i. in the case of an Officer or Management Committee member, performed or made whilst acting on behalf of and with authority, express or implied of the Club; and
  - ii. in the case of an employee, performed or made in the course of, and within the scope of his or her employment by the Club.

## **19. PERMISSION TO INSPECT BOOKS OF CLUB**

Any Member may inspect the books of account and the records of the Club at such time or times to be arranged with the Secretary and Treasurer.

## **20. THE COMMON SEAL**

The Common Seal of the Club engraved with the name of the Club shall be kept in the care of the President. The seal shall not be used except pursuant to a resolution of the Club and in the presence of the President and two office bearers of the Club both of whom will subscribe their names as witnesses.

## **21. THE CONSTITUTION**

This Constitution and any interpretations of the Club shall be binding on all Members. No clause or part of a clause of this Constitution shall be repealed or amended and no new clause shall be added to this Constitution save and except by a three-quarter (3/4) majority of votes of those present and entitled to vote at an Annual General Meeting of the Club or a Special General Meeting of the Club called for that purpose.

## **22. APPEAL**

The Management Committee shall be the final arbiter of all matters arising under or by virtue of this Constitution.

### **23. DISSOLUTION**

- (a) The Club may be dissolved or wound up by a resolution of any General Meeting called for such purpose.
- (b) If upon the winding up of the Club there remains after satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid or distributed amongst its Members, but shall be given or transferred to another Club incorporated under the Act which has similar objects and which association shall be determined by resolution of the members.

### **24. SOURCE OF FUNDS**

The funds of the Club may be derived from Annual Subscriptions, fees and levies payable by Members, donations, grants sponsorships and such other sources as the Management Committee determines.

### **25. REGISTERED ADDRESS**

The registered address of the Club is:

- (a) the address determined from time to time by the Management Committee; or
- (b) if the Management Committee has not determined an address to be the registered address, the postal address of one of the Management Committee.