

## **Bibbulmun Track Foundation Inc.**

Draft amendments to the *Bibbulmun Track Foundation Rules 2009*.

Explanation of why the amendments are proposed.

This explanation is to be read with the version of the rules dated 24 August 2017 that shows draft amendments to the rules in the form of draft insertions and deletions. The draft amendments will be considered at the Foundation's 2017 annual general meeting.

### **Background—**

- On 1 July 2016, the law in WA governing incorporated associations changed because the *Associations Incorporation Act 1987* (the 'old Act') was repealed and the *Associations Incorporation Act 2015* (the 'new Act') came into operation.
- The BTF (Bibbulmun Track Foundation Inc.) is an incorporated association.
- The new Act requires all incorporated associations to have rules (sometimes people call them constitutions) that comply with the new Act by 1 July 2019. What the new Act requires is different from what the old Act required.
- Under the new Act, regulations have been made (the *Associations Incorporation Regulations 2016*) which, in Schedule 2, include model rules for incorporated associations. The model rules do not have to be followed.
- The draft amendments to the *Bibbulmun Track Foundation Rules 2009* are proposed—
  - to make them comply with the new Act; and
  - to make some minor changes and improvements.

### **Explanation—**

1. Rule 2. The amendment proposed to the definition of “**associations law**” in r 2(1) would mean the definition refers to the new Act.
2. Rule 5. Incorporated associations, being “not-for-profit” organisations, cannot financially reward their members. But there are situations when it is permissible for an incorporated association to pay a member money. The amendments proposed to r 5 are based on the model rules r 3(3) and would allow the BTF to make payments to its members in limited situations.
3. Rule 7. The amendment to r 7 is proposed because—
  - It does not seem wise to allow groups of individuals which do not have some formal structure (such as a company or incorporated association) or some kind of recognized linkage between them (such as being a family) to be members.
  - The proposed r 7 would reflect the classes of member set out in r 8.Note: The term “**organisation**” is defined in r 2(1).
4. Rule 9. The amendment to r 9 is proposed so that it complies with the new Act (specifically: the new Act Sch 1 Div 1 item 8 and Div 2 cl 2).
5. Rule 10. The amendment proposed to r 10(4) would correct a mistake in it.
6. Rules 11-12A—
  - The replacement of r 11 & 12 and the new r 12A are proposed so the BTF's rules comply with the new Act and so they read more logically.
  - The proposed r 11 is the same as the existing r 12(1) & (2).
  - The new r 12(1)-(3) are proposed so the BTF's rules comply with the new Act (specifically: the new Act Sch 1 Div 1 item 3).
  - The proposed r 12(4) & (5) are the same as the existing r 12(3) & (4).

- The proposed r 12A is the same as the existing r 11.
7. Rule 17. The proposed change to the heading to r 17 is to correct a mistake in it.
  8. Rule 25A. The new r 25A is proposed so the BTF's rules comply with the new Act (specifically: the new Act Sch 1 Div 1 item 6).
  9. Rule 26. The new r 26(1A) & (1B) are proposed to clarify how the actual number of elected Board members is set.
  10. Rule 29—
    - The first amendment proposed to r 29(3) would delete words that do not make sense because the Executive Director is not presently a member of the Board and, if the ED were ever a member of the Board, r 29(3) should apply to them.
    - The new r 29(3)(c) is proposed so the BTF's rules comply with the new Act (specifically: the new Act s 40).
  11. Rule 31. The amendment proposed to r 31(4) would correct an omission in it.
  12. Rule 32. The new r 32(4) is proposed because it seems better to always have secret ballot to elect members to the Board.
  13. Rule 43. The amendment proposed to r 43(4) would correct an error in it.
  14. Rule 44—
    - The amendment proposed to the definition of “**responsible person**” in r 44(1) would correct an error in it.
    - The proposed new r 44(1A) would draw attention to what the new Act says about registers of members and records of office holders.
    - The proposed new r 44(2A) would clarify that non-members cannot have access to the BTF's records without the consent of the Board.
    - The proposed amendments to r 44(3)-(8) and the proposed new r 44(9) are a consequence of the proposed new r 44(2A) and would be consistent with sections 54, 56, 57 and 58 of the new Act.
  15. Rule 49. The proposed new r 49 would mean the model rules would apply if the BTF's rules do not cover a matter or do not cover it sufficiently.

24 August 2017