**BAPTIST CHURCHES WESTERN AUSTRALIA**

**LEADERSHIP ACCOUNTABILITY BASED MODEL CHURCH CONSTITUTION**

**GUIDELINES**

These guidelines are provided to assist members of Baptist Churches Western Australia, and should be read in conjunction with the BCWA Leadership Accountability Based Model Church Constitution

The BCWA Leadership Accountability Based Model Constitution is recommended for growing and larger churches.

1. This constitution generally relates to principles of operation. Details will need to suit each individual church.
2. Suggestions that may need to be decided are *(italicised in brackets and in red)*. The church can decide which approach it prefers.
3. This constitution is entitled the “Leadership Accountability” model for churches. An alternative wording is “Leadership-led” or “Ministry-led”.
4. This constitution refers to the “Council”. Some churches use other titles to refer to these leadership groups e.g. “Board”, “Elders”, “Deacons” and “Leadership Team”. These alternative titles can be used, if preferred. Please change where needed.
5. The constitution refers to “members”. Some churches use other terms such as “partners” and will need to adapt these.
6. Consultants are available to assist churches in the preparation or modification of their constitutions.
7. It should be noted that churches are subject to Acts of Parliament such as the *Race Relations Act, Employment Relations Act, Privacy Act, Human Rights Act and the Associations Incorporation Act 2015.*
8. It is recommended that a church should have Policy Documents such as a Members’ Agreement.

How does the Associations Incorporation Act 2015 impact the church?

*In the following notes, the term ‘model’ is used. Please be careful to distinguish between the BCWA Model (Leadership Accountability Based Model Church Constitution) and the Associations Model as provided by the Department.*

The Associations Incorporation Act 2015 commenced 1 July 2016. The Act provides a framework of regulation for not-for-profit organisations including Churches in Western Australia leaving the internal management of associations largely to the members. Associations are still able to incorporate as a separate legal body and thereby limit the liability of its members for lawful activities.

If you are already an Incorporated Association, you do need to review and update your rules. Existing incorporated associations will have until 30 June 2019 to ensure that rules comply with the new law, or adopt the new model rules. A number of changes have been made, including:

* Financial reporting. A three-tiered system of financial reporting and accountability requirements have been introduced.
  + Tier 1 associations (revenue of less than $250,000) can elect to prepare basic financial statements with no independent review or audit.
  + Tier 2 associations (revenue of $250,000 or more, but less than $1,000,000) must prepare financial reports that give a true and fair view of the financial position of the association in accordance with Australian Accounting Standards. Such reports must be reviewed by a member of a professional accounting body.
  + Tier 3 associations (revenue of $1,000,000 or more) must prepare financial reports that give a true and fair view of the financial position of the association in accordance with Australian Accounting Standards. Such reports must be audited by a member of a professional accounting body holding a public practicing certificate.

Associations are still required to provide their financial reports to members; however the reports will now be required to also be provided to the Commissioner.

* Management. The obligations of committee members (Council / Elders / Boards / Diaconates) has been formalised, which already existed under other laws. These include:
  + Duty of care and diligence
  + Duty to act in the best interests of the association and for a proper purpose; and
  + Duty not to misuse their position of information.

Eligibility requirements have been set out which prohibit persons from sitting on the management committee. These would include elected persons (Elders / Deacons / Board /Council). A person is prohibited where they:

* Are an undischarged bankrupt or whose affairs are under insolvency law,
* Been convicted with an offence involving fraud or dishonesty punishable on conviction by 3 months or more imprisonment; and
* Have been convicted of an offence in connection with the promotion, formation of management of a body corporate, including duties under the new law.

Where a person is prohibited because they have bene convicted of an offence they cannot be a committee member for a period of five years from their conviction, except where the conviction resulted in imprisonment, in which case they cannot be a committee member for five years from their release from custody.

A disqualified person can request the Commissioner’s approval to be appointed to the committee.

The implications for the local church include completing due diligence in the appointment of office bearers / holders– whether Pastors, Elders, Deacons, Board Members, Council Members.

Under the Act, the management committee is the group of persons that has the authority to exercise the powers and functions of the association and to manage its affairs. This is an important provision because people who are identified as committee members have special responsibilities under the Act both as individuals and as part of the group.

Associations usually refer to this group as ‘the committee’, but sometimes may use other names such as ‘the council’, ‘the board’ and/or in the case of churches ‘the Eldership’, ‘Executive’ or the ‘Diaconate’.

Some large incorporated associations have both a board of governors and a management committee. In this case, a distinction may be made between the role of the board and the role of the management committee:

The management committee:

* derives authority to function from the board of governors;
* is concerned with the implementation of policy and all the organisational and administrative activities that are carried out in order to achieve the objects of the association; and
* attends to the day-to-day administration and activities.

The board of governors:

* is concerned with policy-making and rule making;
* focuses on the overall strategic direction of the association, compliance with the legislation and policy; and
* oversees financial management, providing resources and promoting the objects of the association.

In associations where a board of governors and a management committee co-exist, it is essential for these two groups to work together. Both need to understand and support the different roles and have a clear understanding of the various areas of responsibility and authority.

It is also important to be very clear about which group is the management committee for the purposes of the Act. The Act expects there to be only one management committee responsible at law and the rules must clearly identify which group it is. In most associations one committee is responsible for both governance and management.

This has implications upon churches who have an Eldership and a Diaconate.

The BUWA Model includes one group: the Council. The Council does have overall governance and management responsibilities – with tasks delegated to the Senior Pastor as a member of the Council. The implementation of policy, the organisational and administrative activities may be delegated, however the overall responsibility still sits with the Council.

As a group – the committee of management must fulfil a number of legal responsibilities, including compliance with the Act; legal responsibilities to employees, members, volunteers, customers, insurance; record keeping, meetings, and special financial responsibilities including the audit of accounts, risk management (ie 2 signatories on accounts), and solvency.

Individual members of the committee also have a number of responsibilities including: complying with rules, declaring material personal interests, and compliance with the Act.

* **Office Holders / Bearers**

The act does not assign specific responsibilities to individual committee members. It is up to the association to decide what the role and responsibilities of each committee member will be and to ensure that these are correctly set out in the association’s rules.

By definition of the Act, an **Officer** of an incorporated association, means any of the following —

(a) a member of the management committee of the association;

(b) a person, including an employee of the association, who makes, or participates in making, decisions that affect the whole, or a substantial part, of the operations of the association;

(c) a person who has the capacity to significantly affect the association’s financial standing;

(d) a person in accordance with whose instructions or wishes the management committee of the association is accustomed to act (but excluding a person who gives advice to the association in the proper performance of functions attaching to the person’s professional capacity or to the person’s business relationship with members of the management committee or with the association.)

* **Privacy**

Access to the membership register continues to be restricted to association members but the law now also limits how the information may be used. Further, a member may provide a post office box or email address for contact instead of a residential address.

It is an offence (penalty of $10,000) for a member to use or disclose information in the registers, except for a purpose that is directly connected with the affairs of the association; or that is related to the administration of the Associations Incorporation Act.

This has implications for record keeping, and the use of a members list by other members.

* **Dispute Resolution**

Each association is required to include an internal dispute resolution process in its rules. It is important to note that in the Act, this is defined as ‘a procedure for dealing with any dispute under or relating to the rules: between members; or between members and the incorporated association.’

The procedure should also include a referral section for when matters cannot be resolved, otherwise the dispute will be heard by the State Administrative Tribunal. The BUWA Model includes referral to BUWA for the appointment of a mediator, or to hear the dispute.

* **Minimum Membership**

To be incorporated, an association must have at least six (6) voting members at all times.

* **Winding Up**

The Act includes options for winding up an association, as well as amalgamation and disposal of assets.

Requirements of the Act:

Choosing your model:

* An association can adopt the Associations Model rules as its own rules. Any changes to the Associations Model will automatically apply to a church who adopts the Associations Model – without charge, and without a members’ resolution to change the constitution. The potential risk is that you may not be aware of changes to the model, and fail to update your own constitution.
* You can download the Association Model from commerce.wa.gov.au/publications/model-rules-associations-2016.
* Note that the Associations Model is for a committee of management, and is not a governance, or leadership accountability model. The Associations Model also includes different classes of membership: ordinary members and associate members.
* If an association adopts its own rules (eg a modified version of the BUWA model) – if there are any items not covered by the adopted model, the Associations Model will apply.

**Powers of Incorporated Associations.**

* Under section 14 of the Act the Association may do all things necessary or convenient for carrying out its objects and purposes, and in particular may:

1. acquire, hold, deal with, and dispose of any real or personal property; and
2. open and operate bank accounts; and
3. invest its money — (i) as trust funds may be invested under the Trustees Act 1962 Part III; or (ii) in any other manner authorised by the rules of the association; and
4. borrow money upon such terms and conditions as the association thinks fit; and
5. give such security for the discharge of liabilities incurred by the association as the association thinks fit; and
6. appoint agents to transact any business of the association on its behalf; and
7. enter into any other contract it considers necessary or desirable

**Not for Profit:**

* Note Section 5(1) of the Act provides that an association is not eligible to be incorporated under the Act if it is formed or carried on for the purpose of securing pecuniary profit for its members from its transactions, and section 5(3) of the Act provides details about when an association is not ineligible under section 5(1) of the Act.

Members:

* Membership:

Under sections 4 and 17 of the Act an association must always have at least 6 members with full voting rights.

* Liabilities of the Association:

Under section 19 of the Act a member of the management committee, trustee or a member of the association is not liable in respect of the liabilities of the association. This does not apply to liabilities incurred by or on behalf of the association prior to incorporation.

* Member to receive rules:

Section 36(1)(b) of the Act provides that the association must give each person who becomes a member of the association a copy of the rules in force at the time their membership commences. It is acceptable for the association to provide a copy of the rules to new members by electronic transmission or providing the details for the website where the rules may be downloaded. A hard copy must be provided if the member requests that the rules be provided in that manner.

* Register of Members:

Section 53 of the Act requires an incorporated association to maintain a register of its members and record in the register any change in the membership of the association. Any change to the register must be recorded within 28 days after the change occurs.

Under section 53(2) of the Act the register of members must include each member’s name and a residential, postal or email address.

Under section 54 of the Act a member is entitled to inspect the register free of charge. The member may make a copy of, or take an extract from, the register but has no right to remove the register for that purpose.

Under section 56 of the Act the management committee is authorised by to determine a reasonable charge for providing a copy of the register.

**Council**

* Persons who are not to be members of Council (committee).
* Under section 39 of the Act the following persons must not, without leave of the Commissioner, accept an appointment or act as a member of a management committee of an association:
  + A person who is, according to the Interpretation Act 1984 section 13D, a bankrupt or person whose affairs are under insolvency laws;
  + A person who has been convicted, within or outside the State, of:
    - An indictable offence in relation to the promotion, formation or management of a body corporate; or
    - An offence involving fraud or dishonesty punishable by imprisonment for a period of not less than three months; or
    - An offence under Part 4 Division 3 or section 127 of the Act.
* Section 39 only applies to a person who has been convicted of the above offences only for a period of 5 years from the time of the person’s conviction, or if the conviction results in a term of imprisonment, from the time of the person’s release from custody.

**Duties of Committee Members and Officers.**

* Section 3 of the Act provides a definition of “officer”. The duties provisions will apply to committee members and to those persons who have the ability to influence the management committee but who do not hold a formal committee position
* Under section 44 of the Act an officer of an association must exercise his or her powers and discharge his or her duties with a degree of care and diligence that a reasonable person would exercise if that person-
  + - were an officer of the association in the association’s circumstances; and
    - occupied the office held by, and had the same responsibilities within the association as, the officer.
* Under section 45 of the Act an officer of an association must exercise his or her powers and discharge his or her duties-
  + in good faith in the best interests of the Association; and
  + for a proper purpose.
* Under section 46 an officer of an association must not improperly use his or her position to-
  + gain an advantage for the officer or another person; or
  + cause detriment to the Association.
* Under section 47 a person who obtains information because the person is, or has been, an officer of an association must not improperly use the information to-
  + - gain an advantage for the person or another person; or
    - cause detriment to the Association.

**Record of Office Holders.**

* Under section 58 of the Act an association must maintain a record of —
  + the names and addresses of the persons who are members of its management committee; or hold other offices of the association provided for by its rules;
  + the name and address of any person who is authorised to use the common seal of the association (if it has a common seal); and
  + the name and address of any person who is appointed or acts as trustee on behalf of the association.
* Under section 58 of the Act the association must, upon the request of a member of the association, make available the record for the inspection of the member. The member may make a copy of or take an extract from the record but does not have a right to remove the record for that purpose.**.**

Access to Register of Members and/or Register of Office Holders.

* It is an offence for a person to use or disclose information in the registers, except for a purpose that is directly connected with the affairs of the association; or that is related to the administration of the Associations Incorporation Act. A penalty of $10,000 applies.

**Committee members upon incorporation –**

* the committee members appointed on incorporation of the association will hold office until the conclusion of the first general meeting of the association and will be eligible for re-election.

**Handing over Documents and Records.**

* Where a person ceases to be a member of the associations management committee, section 41 of the Act requires that person to, as soon as practicable after their membership ceases, deliver to a member of the committee all of the relevant documents and records they hold pertaining to the management of the association’s affairs.

**Material Personal Interests of Committee Members.**

* Under section 42 of the Act a member of the committee who has a material personal interest in a matter being considered at a committee meeting must:
  + as soon as he or she becomes aware of that interest, disclose the nature and extent of his or her interest to the Committee;
  + disclose the nature and extent of the interest at the next general meeting of the association
* Under section 42(3) of the Act this rule does not apply in respect of a material personal interest
  + that exists only because the member-
    - is an employee of the incorporated association; or
    - is a member of a class of persons for whose benefit the association is established; or
  + that the member has in common with all, or a substantial proportion of, the members of the Association.
* Under section 43 of the Act a member of the management committee who has a material personal interest in a matter being considered at a meeting of the management committee must not be present while the matter is being considered at the meeting or vote on the matter.
* Under section 42(6) of the Act the association must record every disclosure made by a committee member of a material personal interest in the minutes of the committee meeting at which the disclosure is made.

AGM:

* unless approved by the Commissioner, section 50(3) of the Act holds that the AGM must be held within 6 months after the end of the Association’s financial year. If it is the first AGM, it may be held at any time within 18 months after incorporation.

Notice to be given to reviewer or auditor –

* For Tier 2 and 3 associations – under section 86 of the Act a reviewer or auditor of an incorporated association is entitled to receive all notices of and other communications relating to any general meetings of the association that a member is entitled to receive.

**Special resolutions:**

* Under the Act, a special resolution is required if an incorporated association proposes to do any of the following—
  1. to adopt these model rules (section 29(1));
  2. to alter its rules, including changing the name of the association (section 30(1));
  3. to decide to apply for registration or incorporation as a prescribed body corporate (section 93(1));
  4. to approve the terms of an amalgamation with one or more other incorporated associations (section 102(4);
  5. to be wound up voluntarily (section 121(2)) or by the Supreme Court (section 124(a) and Schedule 4 item 9);
  6. to cancel its incorporation (section 129).

Financial Matters.

* Under section 66 of the Act, an incorporated association must keep financial records that: -
  + correctly record and explain its transactions and financial position and performance; and
  + enable true and fair financial statements to be prepared in accordance with Part 5 Division 3 of the Act.
  + Under section 67 of the Act, an incorporated association must retain its financial records for at least 7 years after the transactions covered by the records are completed

Distribution of surplus property

* Under section 24(1) of the Act surplus property can only be distributed to one or more of the following —
  + an incorporated association;
  + a company limited by guarantee that is registered as mentioned in the Corporations Act section 150;
  + a company holding a licence that continues in force under the Corporations Act section 151;
  + a body corporate that at the time of the distribution is the holder of a licence under the Charitable Collections Act 1946;
  + a body corporate that —
  + is a member or former member of the incorporated association; and
  + at the time of the distribution of surplus property, has rules that prevent the distribution of property to its members;
  + a trustee for a body corporate referred to in paragraph (e);
  + a co operative registered under the Co operatives Act 2009 that, at the time of the distribution of surplus property, is a non distributing co operative as defined in that Act.

Alteration of Rules.

* Section 31 of the Act requires an incorporated association to obtain the Commissioner’s approval if the alteration of its rules has effect to change the name of the association.
* Section 33 of the Act requires an incorporated association to obtain the Commissioner’s approval if the alteration of its rules has effect to alter the objects or purposes of the association or the manner in which surplus property of the association must be distributed or dealt with if the association is wound up or its incorporation is cancelled.
* Amendments to the rules do not take effect until required documents are lodge with the Commissioner, even if the amendments to not require the approval of the Commissioner under Section 31 or section 33. The required documents must be lodged within one month after the special resolution is passed.