



**MOTIONS FOR THE 2010 ANNUAL GENERAL MEETING
of the ROTTNEST CHANNEL SWIM ASSOCIATION
18 May 2010**

(1) Proposed motion – amendment to section 10(1) of the RCSA Constitution

Mary-Anne Paton proposes the motion: that section 10(1) of the Constitution regarding Committee of Management of the Association which presently states that “*The affairs of the Association shall be managed exclusively by a Committee of Management*” should be amended by deletion of the words “*shall be managed exclusively by*” to be replaced with “*shall be managed in accordance with the Constitution and By-Laws of the Association*”, through a Committee of Management consisting of - ...”

Accordingly section 10(1) would then read “*The affairs of the Association shall be managed in accordance with the Constitution and by-laws of the Association, through a Committee of Management consisting of - ...*”

Background for the motion

Section 10(1) of the Constitution currently provides as follows -

Committee of Management of the Association

10. (1) The affairs of the Association shall be managed exclusively by a Committee of Management consisting of –

(a) a President

(b) a Vice President

(c) a Financial Controller

(d) a Past President; and

(e) not less than 3 other persons, and not more than 5 other persons;

all of whom if not already members shall be deemed Committee members by virtue of their election to the Committee at the annual general meeting or appointment under

However as the Constitution currently provides that it is members who in fact manage the affairs of the Association by (1) having the final say as to whether or not a member is expelled from the association (section 9); (2) by the appointment of committee members (section 10); (3) by the power to call a special general meeting (section 16) and further act as the committee under certain circumstances through section 16; (4) by the power to make rules of the Association (section 21); (5) by having the final say as any possible amendment to by-laws (section 22); and (6) by having the power under section 25 to wind up the Association – it is contradictory to provide that the committee has exclusive management of the RCSA.

(2) Proposed motion – removal from or clarification of material from RCSA website

Mary-Anne Paton proposes the motion: that the RCSA website ought be amended by either removing the following material as contrary to the full purpose of the Association as that purpose is stated in section 3 (Objects of the Association) of the Constitution or that material should be stated as referring only to section 3(1)(f) of the Constitution -

Mission [of the RCSA]

To promote and conduct the annual Rottnest Channel Swim in a responsible and professional manner while maintaining maximum possible participation in a safe, friendly and carnival atmosphere.

Vision [of the RCSA]

To provide a sustainable and professionally managed open water swim to Rottnest that maximizes participation.

Background for the motion

Section 3 of the RCSA Constitution states the objects of the Association as follows:

Objects of the Association

3. (1) *The objects of the Association are –*

- (a) to promote interest in swimming across the Rottnest Channel;*
- (b) to observe and authenticate persons who attempt a solo Rottnest Channel crossing;*
- (c) to promote the safety and welfare of swimmers attempting a Rottnest Channel crossing;*
- (d) to furnish information to and advise those intending to make a Rottnest Channel crossing attempt;*
- (e) to gather and preserve historical Rottnest Channel swimming data;*
- (f) to conduct an annual swim between the mainland and Rottnest Island.*

(2) The property and income of the Association shall be applied solely towards the promotion of the objects of the Association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to members, except in good faith in the promotion of those objects.

In view of the objects of the Association as set out in section 3(1) it is not representative of the true and full purpose of the RCSA to promote the mission of the RCSA as “*To promote and conduct the annual Rottnest Channel Swim in a responsible and professional manner while maintaining maximum possible participation in a safe, friendly and carnival atmosphere.*”

Clearly the purpose of the Association is much wider than the annual event and the narrowing of the RCSA’s vision could lead to the perception that the Association does not support crossings outside of the annual February swim.

(3) Proposed motion – further consideration of by-law 8

Mary-Anne Paton proposes the motion: that members give further consideration to by-law 8 which presently states (as resolved on 12 May 2009, RCSA AGM) that “*A non refundable fee will be charged by the Association prior to the swim attempt and an explanation of the calculation would be made available on written request.*” The basis for reviewing by-law 8 is that legal advice relevant to the discussion of the by-law at the 2009 RCSA AGM was not provided to the 2009 AGM and accordingly members were not fully informed as to the unconstitutional nature of the then by-law 8.

Background for the motion

Prior to the 2009 AGM (held on 12 May 2009) by-law 8 stated:

‘8. A fee of \$250 + GST for current members and \$300 + GST for non members may be paid to the RCSA Secretary prior to the swim attempt.’

The raising of the fees to \$250 and \$300 caused considerable upset over the years 2008/2009. The upset was firstly based on members not understanding how such an amount could be justified by the RCSA Committee. Throughout 2008/2009 the RCSA Committee would not provide a detailed explanation as to how such a high fee was calculated. It was also unclear on what basis the Committee had determined that there should be differentiation between members and non-members when the constitution does not make this distinction. This is of particular concern as the main way people may become a member of the RCSA is through a successful solo crossing and a higher fee for non-members would seem to be discriminatory.

There was also concern that such a high fee acted as a possible financial barrier to attempting solo crossings outside of the February event. Finally there was concern that in view of the RCSA constitutional objects it could be held that by imposing such high fees (and hence possible barrier) the RCSA is actually hindering the Association’s constitutional objects.

In April 2009 I wrote to the RCSA in relation to several constitutional matters including by-law 8. I did so as it came to my attention that by increasing the fees to \$250 and \$300 and thereby amending by-law 8, and doing so without consulting members, it could be held that the then Committee had acted contrary to the Constitution.

I held that the Committee had acted unconstitutionally on the basis that section 22 of the constitution provides that members have the final say in determining the RCSA’s by-laws, as follows -

By-Laws of the Association

22. The by-laws of the Association can be amended at a Committee meeting or a general meeting following the procedures as set out in rule 15. Notification of a proposal to make an amendment to the by-laws must be submitted in writing to the members no less than fourteen (14) days prior to the Committee meeting or a general meeting.

Following my emails of April 2009, on 5 May 2009 the then President received legal advice from Mr Iain Freeman of Lavan Legal as follows (excerpt from Mr Freeman's email):

"In my opinion, the Rule 22 does require changes proposed to be made by the Committee to be given to the members. The purpose behind giving that notice would seem to be to enable members to lobby a meeting as contemplated by Rule 16(1)(i). I note that 14 days notice is required, which seems to mean that the notice could be given and the Committee then vote on the by-law change before any notice is received (or if a notice is given, any general meeting is convened) as a result of the notice given to members.

This gives rise to 2 interesting problems:

1. the decision of Rush v WA Amateur Football League would suggest that the by laws may need to be amended in the same manner as the Constitution. If that is right, then any change to the by-laws by committee vote, even on notice to the members, is invalid.

2. If the first conclusion is right, then the amendments are invalid.

I think that there is a good case to say that the Association should bite the bullet and have a complete revamp of the Constitution to overcome the problems that it is facing."

On the basis of Lavan Legal's advice, therefore, the Committee's decision to raise fees to \$250 and \$300 and insert the distinction between members and non-members, without informing members, was contrary to the constitution. Accordingly at the time of the 2009 AGM, by-law 8 was in effect unconstitutional.

In view of the fact that at the 2009 AGM the following occurred -

1. further amendment to by-law 8 was on the agenda;
2. during discussion of the further amendment members expressed considerable concern as to the raising of such high fees and asked the then RCSA Committee on what basis were such fees justified; and
3. that (unknown to members) the President had received legal advice material or relevant to the discussion of by-law 8,

full disclosure of the following essential information should have been made to members prior to any discussion of by-law 8 at the 2009 AGM –

- (1) content of Lavan Legal's advice in relation to by-law 8 and section 22 of RCSA constitution;
- (2) that the increase of the fees levied under by-law 8 was unconstitutional;

- (3) that the differentiation between members and non-members was unconstitutional; and
- (4) that accordingly members could have voted to either rescind by-law 8 or to keep the fee at a lower amount.

(4) Proposed motion – amendment to by-law 1: swim suits

Mary-Anne Paton proposes the motion: that by-law 1 should be amended as follows:

- To allow swimmers to wear swim skins or swim suits of any brand and any length, with or without zippers, so long as the swim skins or swim suits are not made out of or contain any material such as is used in wetsuits or neoprene based swim or active wear. In addition, that swimmers be permitted to wear rash vests so long as they do not contain any material used in wetsuits or neoprene based swim or active wear. And that swimmers are only permitted to wear one swim suit or swim skin or one rash vest at any one time.
- If solo swimmers wear wetsuits then any solo crossing/s undertaken at any time while wearing a wetsuit will not be recognised by the RCSA and will not be acknowledged in any history or official record of the Association or any event results or event material.
- If any team (either duo or 4 person) have one or more persons wearing a wetsuit, then that team will not be acknowledged in any history or official record of the Association or in any event results or event material.
- No swimmer (solo or team) shall use or be assisted by artificial aids of any manner.
- No swimmer will hold onto any escorting craft (boat, ski, kayak, board etc) during any crossing unless the swimmer is withdrawing from the event or is making a team changeover or is receiving medical assistance (and thereby ceasing to undertake or be any part of a solo crossing).
- No swimmer shall have any supporting contact with any other swimmer unless the swimmer is receiving medical assistance and thereby withdrawing from an event or ceasing any crossing attempt.
- No swimmer shall intentionally draft off another swimmer.
- No swimmer shall intentionally draft off any escorting craft.
- Swimmers are permitted to grease the body before a swim, use goggles, wear a maximum of two caps, nose clip and earplugs.

- By-law 1 should be reviewed at each Annual General Meeting of the Association to allow members to consider any new developments in either swim wear technology and/or FINA rules in relation to open water swim wear.

Background for motion

By-law 1 presently states that:

1. In any Rottneest Channel swim attempts, no swimmer shall use or be assisted by artificial aids of any manner. Swimmers are permitted to grease the body before a swim, use goggles, wear a maximum of two caps, nose clip and earplugs and one bathing suit in accordance with FINA's Rules for Open Water Swimming. The suit may not be made of neoprene or rubber or any other non porous material and may not be designed either to retain body heat or for aid in buoyancy, speed or endurance.

By-law 2 presently states that:

During an attempt, no supporting contact whatsoever shall be permitted by any person or object with the swimmer.

For clarity it is proposed that by-laws 1 and 2 be amalgamated and expanded as above.

The proposed range of swim wear to be permitted is that used in 2008 to 2010. The swim wear used in these years has not resulted in any significantly faster times. However the swim wear has given swimmers greater protection from sunburn and stingers and by improving circulation has thereby greatly assisted in swimmer safety and health and swimmer protection.

In view of the changes to open water swim wear technology it is proposed that members annually review by-law 1.