

Attachment 11.3

Motion to amend the Articles of Association – Membership Review

Purpose:

It is proposed to amend the constitution to:

- Broaden the factors through which the National Board may intervene when Members fail to comply with the Movement's standards, guidelines or requirements imposed upon them and;
- Strengthen the authority of the National Board when it needs to address noncompliance and provide the National Board with the flexibility and the measures to address or deal with such non-compliance.

Resolution: 2014-9:

That, pursuant to Article 55 of the Articles of Association, the Articles of Association are amended by deleting Article 2(d) in its entirety and replacing it with a new Article 2(d) as follows:

- (d) *Membership Review*
- (i) *The National Board or any of its agents or representatives may conduct a Membership Review to determine whether the Member has satisfactorily carried out the objectives as set out in its Constitution, Statement of Purposes or Memorandum of Association including where the Member:*
- (A) *fails to comply with any article in these Articles, any clause in the Licensing Agreement, or any clause in the Member's governing document;*
 - (B) *fails to comply with the Priority One Standards as amended from time to time;*
 - (C) *fails to comply with, or contravenes any applicable laws, or acts in such a manner which is likely to bring the YMCA Movement or a Member into disrepute.*
- (ii) *If the National Board wishes to conduct a Membership Review, the National Board shall provide written notice to the Member setting out the date and purpose of, and the reason for, the Membership Review, and the documents and information required by the National Board for the purposes of the review.*
- (iii) *The Member subject to a Membership Review must provide all documents and information and take action as requested by the National Board within such time as specified by the National Board.*

- (iv) *After conducting a Membership Review, the National Board shall provide written notice to the Member of the outcome of the review, the things the Member must do, the things the National Board proposes to do and the steps it proposes to take.*
- (v) *If the Member fails to take any action required by the written notice, the National Board has the power to suspend or terminate the Member's Charter of Membership.*
- (vi) *If a Member's Charter of Membership is suspended or terminated under Article 2(d)(v), that Member irrevocably appoints the National Board and each Director jointly and severally to be its agent and attorney with full power in that Member's name and on that Member's behalf to do anything and sign any document.*
- (vii) *If the National Board does any act under Article 2(d)(vi) all costs incurred as a result of any act by the National Board under this Article shall be borne by the Member and the Member indemnifies the National Board for any loss, cost, charge, liability or expense that the National Board sustains or incurs as a direct or indirect consequence of the exercise of the power under Article 2(d)(vi).*

Links to strategic plan:

The development of this policy aligns with this strategic priority area:

Strengthen our Movement: This proposal provides the National Board with the constitutional authority to be more responsive to noncompliance and to dealing with ongoing non-compliance. This will provide assurance to the Movement that standards are being met.

Links to supporting documents:

Members are referred to the discussion papers which formed part of the Movement engagement leading up to this resolution:

[Link here](#) to the AGM Portal on the Extranet.

Members are also referred to this related work:

- Clarifying the stages in the Member Intervention Process. [Link here](#)

Background:

This paper has been sponsored by the YMCA of Australia Board (National Board) through the Governance and Licensing & Member Development Committees.

It is a principle accepted by all in the Movement that all YMCA Members must comply with the licensing standards. Members of the YMCA Movement also expect that the National Board will ensure that all of our Members are meeting these standards.

Being able to assure the Movement that all YMCAs meet standards and conditions set by the National Board and the Movement has become increasingly important. Providing greater capacity for the National Board to act responsively and proportionately will protect all YMCAs.

The Priority One Standards as currently set by the Board are provided for information.

Reasons for the change:

Under current arrangements, while having the power to terminate a licence, the National Board is constrained in being able to respond in a timely fashion and with proportionate authority. Furthermore, while the National Board has authority to suspend or terminate a licence, there is no interim measure between issuing conditions on a licence and suspension or termination.

This situation prejudices the ability of the National Board and the Movement to protect the Brand and reputation of all YMCAs. It also leads to an 'all or nothing' situation for the Member Association should a Member remain non-compliant and the Board decide to continue action to ensure compliance.

The existing Article 2(d) provides that the National Board may conduct a Membership Review and grants the power to make certain decisions regarding a Member's rights.

One of the key issues with the existing Article 2(d) is that currently the Membership Review process is limited to a review as to whether the Member has satisfactorily carried out the objectives under its Constitution, Statement of Purposes or Memorandum of Association.

Based on its own experience and feedback from the Movement through a number of forums and conversations, the National Board proposes that the current process of a Membership Review is too narrowly focused and may not enable the National Board to conduct Membership Reviews, or to deal with any non-compliance, in a manner that would be in the best interests of the Movement.

Finally, the proposed amendments provide broader scope for action if the Board intend to suspend or terminate a licence. It is proposed that the Board has the power to explore and consider other options prior to taking these definitive steps, including a Power of Attorney.

Standard	Measure	Other relevant compliance requirements	Notes
<p>The Member's activities contribute to the YMCA mission and are aligned to YMCA values.</p>	<p>Member Associations can demonstrate that all of its activities contribute to meeting the YMCA mission and are aligned to YMCA vision & values. Evidence exists that the Member has considered the activities (including services and investments) undertaken by their Association and its subsidiaries with a view to ensuring all are aligned with the YMCAs mission, vision and values.</p>	<p>Constitution of the National Council of Young Men's Christian Associations of Australia. Constitution of the Member Association. Movement Strategic Directions paper</p>	<p>This standard ensures that Members activities are not only assessed in relation to commercial and risk requirements but are also assessed for alignment to the YMCA mission, vision and values. This standard applies to YMCA branded activities and non-branded activities. Example: Sponsorship from a tobacco company would be non-compliant. Operating a health club in a casino venue would, on the face of it, be non-compliant.</p>
<p>The Member maintains its charitable tax status.</p>	<p>The Member complies with the Australia Charities and Not For Profit Commission (ACNC) & Australian Taxation Office (ATO) legislation. The Member is registered for charity tax concessions and/or as a Public Benevolent Institution (when relevant).</p>	<p>Legislation, Public rulings and determinations, requirements of ATO and ACNC requirements.</p>	<p>This is an essential component of the YMCA Brand and Members must ensure that charitable status is maintained. With YMCAs diversifying their services, it is important that Members routinely assess their activities to ensure they remain within taxation legislation and rulings.</p>
<p>The Member meets all requirements of the YMCA Safeguarding Children and Young People Policy (Movement Child Protection Policy).</p>	<p>The Member can demonstrate compliance to all requirements of the YMCA Child Protection Policy.</p>	<p>Relevant statutory reporting requirement of the State/Territory Australian Children's Education and Care Quality Authority regulations and legislation.</p>	<p>The Australian Childhood Foundation (ACF) provides guidance to Members and to YMCA Australia to ensure that Members can assure communities that they are child safe and meet the Movement Child Protection Policy.</p>
<p>The Member is trading in a position of solvency and its financial accounts accurately reflect its financial position.</p>	<p>The Member can demonstrate ability to meet all its debts as and when they fall due. The Member can provide accurate and detailed financial performance reports that clearly inform the Directors of the financial position of the Member Association regularly.</p>	<p>Associations Incorporation Act of the relevant State/Territory. Corporations Act requirements. Management Liability insurance policy requirements.</p>	<p>Where the working capital ratio is less than 1 then the Member would be expected to have a cashflow plan which demonstrates the ability to pay its debts as and when they fall due.</p>

Standard	Measure	Other relevant compliance requirements	Notes
	<p>The Member has evidence that asset values and liabilities are accurately reflected in the accounts.</p> <p>The Member has completed valuations of assets as required by regulatory and professional bodies.</p>		
<p>The Member meets relevant Health and Safety legislation and complies with the YMCA National risk and incident management framework.</p>	<p>The Member can demonstrate compliance with:</p> <ul style="list-style-type: none"> • State/Territory and Commonwealth workplace health and safety law • YMCA risk management systems • YMCA incident and accident management is in place. 	<p>Relevant federal, state/territory and local legislation, regulations and codes of practice.</p>	

