

Western Australia

Ocean Gardens (Inc.) Act 2004

As at 06 Apr 2004

No. 3 of 2004

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Ocean Gardens (Inc.) Act 2004

CONTENTS

1.	Short title	1
2.	Commencement	2
3.	Terms used in this Act	2
4.	Rules of Ocean Gardens	2
5.	Temporary limit on winding up Ocean Gardens	2
6.	Temporary limit on alteration of existing Rules and new Rules of Ocean Gardens	3
7.	Temporary limit on the powers of the Board of Management	3
8.	Termination of office of and replacement of members of the Board of Management	4

Schedule 1 — Rules of Ocean Gardens (Inc.)

Western Australia

Ocean Gardens (Inc.) Act 2004

No. 3 of 2004

An Act to amend the rules of Ocean Gardens (Inc.), and for related purposes.

[Assented to 6 April 2004]

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Ocean Gardens (Inc.) Act 2004*.

2. Commencement

This Act comes into operation on a day fixed by proclamation.

3. Terms used in this Act

In this Act, unless the contrary intention appears —

“**1987 Act**” means the *Associations Incorporation Act 1987*;

“**commencement day**” means the day on which this Act comes into operation;

“**existing Rules**” means the rules of Ocean Gardens in effect immediately before the commencement day;

“**new Rules**” means the rules set out in Schedule 1;

“**Ocean Gardens**” means Ocean Gardens (Inc.).

4. Rules of Ocean Gardens

(1) On the commencement day —

(a) the existing Rules cease to be the rules of Ocean Gardens; and

(b) the new Rules are the rules of Ocean Gardens.

(2) On the commencement day the new Rules are to be taken to be the rules of Ocean Gardens for the purposes of the 1987 Act.

(3) As soon as practicable after the commencement day the Minister is to cause a copy of the new Rules to be lodged with the Commissioner as defined in section 3(1) of the 1987 Act.

5. Temporary limit on winding up Ocean Gardens

(1) In the period beginning on 20 August 2003 and ending when the Board of Management of Ocean Gardens is constituted under section 8, Ocean Gardens must not by special resolution resolve that it be wound up voluntarily or by the Supreme Court.

- (2) Any special resolution passed in contravention of subsection (1) is of no effect.

6. Temporary limit on alteration of existing Rules and new Rules of Ocean Gardens

- (1) In the period beginning on 20 August 2003 and ending when the Board of Management of Ocean Gardens is constituted under section 8, Ocean Gardens must not apply under the 1987 Act to alter the existing Rules or the new Rules unless the Minister has in writing first approved the proposed alteration.
- (2) Any alteration to the existing Rules made in contravention of subsection (1) is of no effect.

7. Temporary limit on the powers of the Board of Management

- (1) In the period beginning on 20 August 2003 and ending when the Board of Management of Ocean Gardens is constituted under section 8, the Board of Management of Ocean Gardens must not —
 - (a) sell all or any of the real or personal property of Ocean Gardens or let, mortgage, exchange or otherwise dispose of and execute conveyances, transfers, mortgages and assurances of that property;
 - (b) enter into —
 - (i) a contract for the supply of goods to Ocean Gardens;
 - (ii) a contract for services; or
 - (iii) a contract of service, with a term of more than 12 months;
 - (c) set aside any amounts from accumulated funds in accordance with rule 45 of the existing Rules or rule 44 of the new Rules; or
 - (d) distribute funds of Ocean Gardens referred to in rule 45 of the existing Rules or rule 44 of the new Rules.

- (2) Despite subsection (1), the Minister may —
 - (a) approve the sale of all or any of the real or personal property of Ocean Gardens or the letting, mortgaging, exchange of or other disposal of and execution of conveyances, transfers, mortgages and assurances of that property;
 - (b) approve the Board of Management of Ocean Gardens entering into a contract of a type mentioned in subsection (1)(b) with a term of more than 12 months;
 - (c) approve the setting aside from accumulated funds of amounts in accordance with rule 44 of the new Rules; or
 - (d) approve the distribution of funds of Ocean Gardens referred to in rule 44 of the new Rules.
- (3) Subsection (1)(a) does not apply to —
 - (a) the lease of a part of the real property of Ocean Gardens to a member or a person who has applied to become a member of Ocean Gardens; or
 - (b) the sale of personal property to a member of Ocean Gardens or a person who is using the facilities of Ocean Gardens.
- (4) Anything done in contravention of subsection (1) is of no effect.

8. Termination of office of and replacement of members of the Board of Management

- (1) All members of the Board of Management of Ocean Gardens holding office immediately before the 42nd day after the commencement day (“**appointment day**”) cease to hold office at the beginning of the appointment day.
- (2) An election to elect the 3 members of the Board of Management of Ocean Gardens referred to in rule 11 of the new Rules must be held within 42 days of the commencement day.

- (3) For the purpose of holding the election referred to in subsection (2) and despite rules 11 and 28 of the new Rules, the Secretary of Ocean Gardens must call a Special General Meeting of Ocean Gardens to be held within 42 days of the commencement day.
- (4) Despite rule 11 of the new Rules, the candidates who receive the highest and second highest number of votes hold office for a term commencing at the beginning of the appointment day and ending at the expiration of the second Annual General Meeting of Ocean Gardens held after the commencement day.
- (5) Despite rule 11 of the new Rules, the candidate who receives the third highest number of votes holds office for a term commencing at the beginning of the appointment day and ending at the expiration of the first Annual General Meeting of Ocean Gardens held after the commencement day.
- (6) The Town of Cambridge must appoint 3 of its council members to be members of the Board.
- (7) An appointment under subsection (6) commences at the beginning of the appointment day.

Schedule 1 — Rules of Ocean Gardens (Inc.)

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OCEAN GARDENS (INC.)

CONSTITUTION

NAME

1. The name of the Association is “OCEAN GARDENS (INC.)”.

INTERPRETATION

2. Throughout this Constitution, if not inconsistent with the context:
 - “council member” has the meaning given to “member” in the *Local Government Act 1995*;
 - “the Association” means OCEAN GARDENS (INC.);
 - “the Board” means the Board of Management of the Association;
 - “Town” means the Town of Cambridge.

OBJECTS

3. The objects of the Association shall be:
 - (1) To promote and undertake or assist in promoting and undertaking assistance for elderly people of both sexes irrespective of creed, class or colour, and without in any way limiting the generality of the foregoing provision the Association shall have power to do or assist in doing any or all of the following things, namely:
 - (a) To provide benevolent relief to elderly people by establishing and maintaining a club or clubs.
 - (b) To establish and maintain a “meals on wheels” service.
 - (c) To organise and maintain a visiting service.
 - (d) To establish and maintain hostels, nursing homes and day care centres for the accommodation and care of aged and disabled persons entitled to relief under the *Aged or*

Disabled Persons Homes Act 1954 as amended or any statute enacted in substitution therefor.

- (2) To provide homes or housing for those aged married couples or single persons who are, in the opinion of the Board, by reason of age, ill health, accident or infirmity, wholly or in part unable to maintain themselves by their own exertions.
- (3) To promote and assist the general good of all elderly people by assisting the work of statutory authorities and voluntary organisations engaged in respect of elderly people in providing facilities for physical and mental recreation, developing physical improvement, furthering health, relieving poverty, distress or sickness, or in pursuing any objects which are benevolent.
- (4) To promote and organise cooperation in the achievement of the above purposes and to that end bring together in Committee representatives of the authorities and organisations engaged in the furtherance of the above purposes or any of them.
- (5) To assist any other benevolent body or bodies financially or otherwise in the furtherance of the above purposes or any of them.
- (6) To promote and carry out or assist in promoting and carrying out surveys relating to the needs of elderly people and arrange for forwarding to the proper authorities and organisations the relevant facts regarding such cases and causes of distress as it appears to be within the power of those authorities and organisations to alleviate.
- (7) To arrange and provide for or join in arranging and providing for the holding of exhibitions, meetings, lectures and classes in furtherance of the objects of the Association or any of them.

POWERS

4. The Association shall have power:
 - (a) to acquire any property real or personal by purchase, exchange, gift, devise, lease or by any other means whatsoever subject to or not subject to any special or other condition or conditions and subject to the objects of the Association and to sell all or any of the real or personal property of the Association and to let, mortgage,

- exchange or otherwise dispose of and execute conveyances, transfers, mortgages and assurances thereof;
- (b) to build, construct, establish, alter, rebuild, renovate, reconstruct and maintain houses, flats, homes, premises, rooms, hostels, nursing homes, day care centres and grounds and other things and places generally for the purposes of carrying out the objects of the Association;
 - (c) to borrow money and, for the purpose of securing repayment of such money and interest thereon, to mortgage or charge the whole of or any part of the real or personal property of the Association and for such purpose to execute mortgages, bills of sale, debentures or other securities containing such covenants and provisions as the Association may consider necessary;
 - (d) to invest all or any of the funds of the Association in any securities or investments and upon any terms and conditions provided that such securities or investments and such terms and conditions are authorised or permitted by the laws of Western Australia for the investment of trust funds;
 - (e) to establish, assist, support or aid in the establishment or support of any institution or association established or to be established in furtherance of the objects of the Association or any of them and for such purpose to transfer any of the property of the Association whether real or personal by sale or gift to any such institution or association;
 - (f) to make alter and rescind by-laws, rules or regulations and other proceedings for the due maintenance of the Association and for regulating the duties, control and conduct of persons in the employ or under the care and control of the Association and governing and regulating applications for admission to the homes or housing of the Association, the occupancy thereof and the conduct and welfare of the occupants;
 - (g) to do all such other lawful things as may be incidental to or deemed to be conducive to the attainment or execution of the objects and powers or any of them and generally to manage the homes and housing and hostels, nursing homes and day care centres of the Association;

- (h) contribute to any trust fund established for the benefit of lessees of residential units on land owned by the Association.

MEMBERSHIP

- 5. The Board may receive or invite applications from and admit as members of the Association:
 - (a) representatives of any statutory body, voluntary organisation or charitable or benevolent institution having objects similar to those of the Association or whose functions may assist the Association PROVIDED THAT not more than three representatives of each such body organisation or institution shall be members of the Association at any one time;
 - (b) any person whose knowledge or experience may be of assistance to the Association; and
 - (c) any person who has performed any valuable voluntary service to the Association.

The Board may in its absolute discretion and without assigning any reason therefor refuse to grant an application made for membership under this clause.

- 6. Any body, organisation or institution which has representatives as members may, at any time and from time to time, by notice in writing to the Association remove any representative and appoint another in his or her place and may fill any vacancy in its representation.
- 7. Membership of the Association shall be for a period terminating at the conclusion of the second Annual General Meeting of the Association following the date of admission to membership. The Board may renew a person's membership for an additional period or periods.

LIFE MEMBERSHIP

- 8. At any Annual General Meeting of the Association life membership may be awarded to a person or persons in recognition of outstanding service to the Association PROVIDED THAT not more than one (1) life membership shall be awarded in any one year. Any member may nominate another member for life membership by giving written notice of such nomination to the Secretary of the Association at least two (2) months prior to the Annual General Meeting.

EXPULSION OF MEMBERS

9. (1) The Board may, by resolution, expel a member of the Association if, in the opinion of the Board, the member has failed to observe the provisions of this Constitution or has conducted himself or herself in a manner prejudicial to the interests of the Association.
- (2) The Board shall cause notice stating that the Board has expelled the member and specifying the grounds for the expulsion to be served upon the member without delay.
- (3) A member upon whom a notice under sub-clause (2) of this clause is served may appeal against the expulsion to the next General Meeting of the Association by delivering to the Secretary of the Association within fourteen (14) days after service of that notice, a requisition in writing requiring a hearing of his or her appeal.
- (4) A member expelled by the Board shall not be re-admitted except by a resolution of a General Meeting of the Association.

BOARD OF MANAGEMENT

10. (1) The Board shall comprise six (6) members, three (3) of whom shall be council members of the Town appointed by the Town from time to time. The Town may by notice in writing to the Association remove any council member so appointed and appoint another council member in his or her place and may fill any vacancy which may arise in the Town's appointment.
- (2) For each member that the Town appoints to the Board of Management the Town may appoint one council member to be a Deputy Member to act on behalf of each council member appointed as a Member of the Board of Management whenever that member is unable to be present at a meeting thereof.
- (3) Where a Member of the Board of Management does not attend a meeting thereof the Deputy Member is entitled to attend that meeting in place of the member and act for the member thereat and while so acting has all the powers of that member.
- (4) For each Member of the Board of Management other than a Member appointed by the Town, the Board of Management may appoint one (1) person who is a member of the Association to be

the Deputy to act on behalf of each member whenever that member is unable to be present at a meeting thereof.

- (5) Where a Member of the Board of Management does not attend a meeting thereof the Deputy Member is entitled to attend that meeting in place of the member and act for the member thereat and while so acting has all the powers of that member.
11. The members of the Board (other than the members appointed by the Town pursuant to clause 10 hereof) shall be elected at the Annual General Meeting from the members of the Association for a term of two (2) years and hold office until the expiration of the Annual General Meeting at the end of the term.
12. If any member of the Board (other than a member appointed by the Town pursuant to clause 10 hereof) resigns, is unwilling to act, becomes incapable of acting, dies or permanently resides out of the Perth Metropolitan Area or is absent without leave previously granted by a resolution of the Board for three (3) consecutive meetings of the Board or for any reason whatsoever ceases to act as a member of the Board then, such members as remain upon the Board, shall appoint from the members of the Association a new member to the Board to hold the place until the next Annual General Meeting. At the next Annual General Meeting a successor shall, if the term has not then expired, be chosen to hold the place from the date of his or her election until the expiration of term. The Board shall appoint such fit and proper persons who will in its opinion assist in attaining the objects of the Association.
13. The election to fill vacant places shall be held in the year at the expiration of which the places become vacant.
14. The Board shall have and exercise the sole control direction and management of the Association and of the occupancy of the houses, flats, homes, premises, rooms, hostels, nursing homes and other places erected, owned and controlled by the Association and shall receive and determine applications for admission thereto. The Board shall make and present an annual report to the Annual General Meeting.
15. The Board shall at its first meeting following every Annual General Meeting elect:

Schedule 1 Rules of Ocean Gardens (Inc.)

- (a) a Chairman from among the three (3) members appointed by the Town (pursuant to clause 10 hereof); and
- (b) a Vice Chairman from among the three (3) members appointed by the Town (pursuant to clause 10 hereof),

both of whom shall hold office until the conclusion of the first meeting of the Board held after the Annual General Meeting next following their election. Both of such office bearers shall be eligible for re-election.

- 16. The Board shall meet at such times as the Board may from time to time decide. The Chairman or any two (2) members of the Board may call a meeting of the Board at any time.
- 17. At least three (3) clear days' notice of any meeting of the Board and the business to be brought forward at the meeting shall be given to each member of the Board by facsimile or email or by letter delivered to the address of the member or by prepaid post. A notice sent by facsimile or email shall be deemed to have been delivered on the day after the day the same has been electronically dispatched. A notice sent by prepaid post shall be deemed to have been delivered on the second day after the same has been put into the post.
- 18. The Chairman or in his or her absence the Vice Chairman shall preside at all meetings of the Board but in the absence of both the Chairman and the Vice Chairman the members present shall choose from among their number a chairman for that meeting. All questions at the meeting of the Board shall be determined by a majority of the votes of the members present each of whom shall be entitled to one (1) vote provided that in the case of an equality of votes the Chairman at the meeting shall have a second or casting vote.
- 19. Three (3) members of the Board shall form a quorum, one of whom shall be the Chairman.

SECRETARY AND TREASURER

- 20. The Board may appoint a Secretary and a Treasurer at such remuneration and on such terms and conditions and with such powers and authorities as it thinks fit and may terminate the appointment of any Secretary or Treasurer so appointed by it. Nothing herein contained shall prevent the Board appointing an Honorary Secretary or Honorary Treasurer. A

Secretary, Honorary Secretary, Treasurer or Honorary Treasurer may hold another office of the Association.

21. The Secretary shall attend all meetings of the Board and of any subcommittee to which he or she is appointed and shall be entitled to be heard on any question but shall not be entitled to vote in his or her capacity as Secretary.
22. The Treasurer shall:
 - (a) be responsible for the receipt of all moneys on behalf of the Association and give receipts therefor;
 - (b) pay all moneys into such account or accounts in the name of the Association at such bank or banks as the Board may from time to time direct;
 - (c) submit at the Annual General Meeting, an Annual Report, Balance Sheet, Statement of Income and Expenditure the Auditor's report and other such information as the Association or Board may require;
 - (d) submit financial statements as and when required by the Board;
 - (e) generally carry out the instructions and decisions of the Board relating to the property and finances of the Association.

AUDIT

23. The Association's financial year shall be from the 1st July to the 30th June in the following year and once at least in every year the Board shall cause the Association's accounts to be audited by a duly qualified and experienced person or persons appointed by the Board of Management ("the Auditor").

SUBCOMMITTEES

24. The Board may from time to time appoint a subcommittee or subcommittees and may depute, delegate and refer to such subcommittees such of the powers and duties of the Board as the Board thinks fit. Any such subcommittee in the exercise of the powers and duties so deputed, delegated or referred to it shall conform to any regulations that may be imposed on it by the Board.

GENERAL MEETINGS

25. Annual General Meetings shall be held each year during the month of September. All other General Meetings shall be Special General Meetings.
26. Any member may on giving to the Secretary written notice together with a copy of the proposed resolution on or before the 15th day of August in any year submit any resolution to the next Annual General Meeting. Notice of such proposed resolution shall be given to the members with notice of the Annual General Meeting as hereinafter required.
27. The business of the Annual General Meeting shall be:
 - (a) the confirmation of the minutes of the last Annual General Meeting and of any Special General Meeting;
 - (b) the receipt and adoption of the Board's report;
 - (c) the receipt and adoption of the Auditor's report and the annual accounts;
 - (d) the election of members of the Board;
 - (e) special business (if any) brought forward after written notice as hereinbefore mentioned;
 - (f) general business.
28. A Special General Meeting shall be called by the Secretary upon the written demand of the Chairman or, in his or her absence, of the Vice Chairman, or upon the written demand of any two (2) members of the Board or of not less than thirty (30) members.
29. The Secretary shall give at least fourteen (14) days' notice of all General Meetings to the members by posting notice thereof to each member at the address appearing in the records of the Association for the time being. Such notice shall specify the nature of the business to be transacted at the meeting, and each notice shall be deemed to have been delivered on the second day after the notice has been put into the post.

QUORUM

30. At any General Meeting two thirds of the members of the Association present in person or by proxy shall form a quorum.

CHAIRMAN

31. The Chairman or in his or her absence the Vice Chairman shall preside at all General Meetings but in the absence of both the Chairman and the Vice Chairman the members present shall choose from among the members a Chairman for that meeting.

VOTING

32. At all General Meetings voting shall be by a show of hands save in the case of the election of officers where voting shall be by secret ballot. In the event of an equality of votes the vote shall be determined in the negative.
33. If a member is unable to attend a General Meeting he or she shall be entitled to cast his or her vote by proxy. A proxy shall be in writing and shall nominate the person in whose favour the proxy is given which person need not be a member. Proxies shall be delivered to the Secretary before the commencement of the meeting at which the proxy is to be exercised and shall be signed by the member.

MINUTES

34. The Secretary shall keep or cause to be kept detailed minutes of the proceedings of every General Meeting and of every meeting of the Board and of every meeting of a subcommittee in a book and such book when signed by the Chairman of the meeting in question shall be conclusive evidence that the proceedings minuted therein were regular and actually took place as minuted at a meeting duly convened and held and shall be binding on all the members. The book in which the minutes are so entered shall be kept by the Secretary and shall be available for inspection by members of the Association during usual business hours on application to the Secretary.

COMMON SEAL

35. The Association shall have a Common Seal which shall be held in the custody of the Secretary at all times. The Common Seal may be affixed to documents by resolution of the Board and in the presence of any two members of the Board or a member of the Board and the Secretary.

EMPLOYEES

36. The Board or a subcommittee to which such function has been delegated may employ such persons on such terms and conditions as it considers necessary and shall insure all persons so employed by it under the usual terms of a workers' compensation insurance policy.

BANKING

37. All moneys received by the Association shall be banked in one or more accounts to be opened with a bank selected by the Board. Cheques and other documents relating to every such account shall be signed by any two (2) of the Chairman, Vice Chairman or Secretary or such other person as is nominated by the Board for that purpose.

ACCOUNTS FOR PAYMENT

38. All accounts shall be presented to and passed for payment at meetings of the Board or of any subcommittee to which such powers shall be delegated and a proper record of such approval shall be included in the minutes.

INCOME AND PROPERTY

39. The income and property of the Association shall be applied solely towards the promotion of the objects of the Association and no portion thereof shall be paid or transferred directly or indirectly by way of dividend bonus or otherwise howsoever to its members providing that nothing herein shall prevent the payment in good faith of remuneration to any officer or servant of the Association for services actually rendered to the Association.

INDEMNITY

40. The members of the Board and every subcommittee and all officers of the Association shall be indemnified and saved harmless out of the funds of the Association from and against all charges, costs, losses, damages and expenses which they or any of them shall or may incur or sustain in or about the execution of their respective offices except as may be occasioned by or through their own wilful default and none of them shall be answerable for the acts of the others of them.

DISSOLUTION

- 41.1 If the Association is solvent the Association may be wound up by a Special Resolution passed at a Special General Meeting for that purpose.
- 41.2 “Special Resolution” shall have the meaning given to it by section 24(1) of the *Associations Incorporation Act 1987* (“the Act”).
- 41.3 If on the winding up of the Association any property of the Association remains after satisfaction of the debts and liabilities of the Association then the same shall not be paid or distributed amongst the members or the former members but shall be given or transferred to another association incorporated under the Act specified by the Town which has similar objects and which is approved by the Commissioner of Taxation as a public benevolent institution to which income tax deductible gifts can be made.

INTERPRETATION OF THE CONSTITUTION

42. Should any question arise as to the interpretation of this Constitution or of the by-laws rules or regulations which the Association is authorised and empowered to make, such questions shall be decided by the Board whose decision shall be final and binding.

ALTERATION TO THE CONSTITUTION

43. Subject to the prior written approval of the resolution by the Town, the Constitution of the Association may be altered added to or repealed at any General Meeting of the Association by a resolution passed by not less than three-quarters of the members of the Association present at that meeting.

DISTRIBUTION OF SURPLUS

44. At the end of a financial year the Board of Management shall set aside from accumulated funds the amounts considered necessary by the Board of Management to cover:
- (a) operating expenses of the Association;
 - (b) reserves for the purchase, replacement, periodic maintenance or refurbishment of any assets of the Association;

- (c) reserves for the repayment of contribution fees or deposits and reserves arising out of a capital revaluation,

and any distribution of funds of the Association which are surplus to these requirements may only be made to an association or institution specified by the Town which has objects similar to those of the Association or to a charitable or public benevolent institution specified by the Town and the rules of which association or institution prohibit the distribution of property among its members.

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