

*Associations Incorporation Act 2009 (NSW) (Act).*

# **Constitution: Windsor Swim Club**

**August 2017**

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# ASSOCIATIONS INCORPORATION ACT 2009 (NSW)

## CONSTITUTION

of

### WINDSOR SWIM CLUB INCORPORATED

#### 1. NAME OF CLUB

The name of the Club is Windsor Swim Club Incorporated (**Club**).

#### 2. DEFINITIONS AND INTERPRETATION

##### 2.1 Definitions

In this Constitution unless the contrary intention appears:

“**Act**” means the *Associations Incorporation Act 2009 (NSW)*.

‘**Area Association**’ means **Swimming Metro North West**, the Regional Sporting Organisation.

‘**Board**’ means the body managing the Club and consisting of the directors. Also known as the Managing Committee

“**Constitution**” means this Constitution of the Club.

“**Director**” means a Member of the Board and includes any person acting in that capacity from time to time appointed in accordance with this Constitution but does not include the Executive Director.

“**Financial year**” means the year ending on the next 31 August following incorporation and thereafter a period of 12 months commencing on 1 September and ending on 31 August each year.

“**General Meeting**” means the annual or any special general meeting of the Club.

‘**Individual Member**’ means a registered, financial Member of the Club who is at least 18 years of age.

“**Intellectual Property**” means all rights subsisting in copyright, business names, names, trade marks (or signs), logos, designs, equipment including computer software, images (including photographs, videos or films) or service marks relating to the Club or any activity of or conducted, promoted or administered by the Club in New South Wales.

‘**FINA**’ means Federation Internationale de Natation, the International Federation for Swimming.

‘**Junior Member**’ means a registered Member of the Club who is younger than 18 years of age.

‘**Life Member**’ means an Individual appointed as a Life Member of the Club under **clause 5.3**.

‘**Local Area**’ means the geographical area for which the Club is responsible as recognised by the Area Association of which the Club is a Member and/or Swimming NSW Limited.

‘**Member**’ means a Member of the Club for the time being under **clause 5**.

**'Objects'** means the Objects of the Club in **clause 3**.

**'Public Officer'** means the person appointed to be the public officer of the Club in accordance with the Act.

**'Register'** means a register of Members kept and maintained in accordance with **clause 7**.

**'Seal'** means the common Seal of Windsor Swim Club (if any).

**'Special Resolution'** means a Special Resolution defined in the Act.

**'SA'** means Swimming Australia Limited, the National Sporting Organisation for Swimming in Australia.

**'NSW'** means Swimming NSW Limited, the State Sporting Organisation for Swimming in New South Wales.

## 2.2 Interpretation

In this Constitution:

- (a) a reference to a function includes a reference to a power, authority and duty;
- (b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing any gender include the other genders;
- (e) references to persons include corporations and bodies politic;
- (f) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- (g) a reference to a statute, ordinance, code or other law includes By-Laws and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any legislative authority having jurisdiction); and
- (h) a reference to "writing" shall unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail.

## 2.3 Severance

If any provision of this Constitution or any phrase contained in it is invalid or unenforceable, the phrase or provision is to be read down if possible, so as to be valid and enforceable, and otherwise shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Constitution.

## 2.4 The Act

Except where the contrary intention appears, in this Constitution, an expression that deals with a matter under the Act has the same meaning as that provision of the Act. Model rules under the Act are expressly displaced by this Constitution.

### 3. OBJECTS OF THE CLUB

The Club is established solely for the Objects. The Objects of the Club shall be to:

- (a) conduct, encourage, promote, advance and administer Swimming throughout the Local Area;
- (b) act, at all times, on behalf of and in the interest of the Members and Swimming in the Local Area
- (c) affiliate and otherwise liaise with SNSW and/or SA of which the Club is a Member and adopt their rule and policy frameworks to further these Objects
- (d) abide by, promulgate, enforce and secure uniformity in the application of the rules of Swimming as may be determined from time to time by SA or FINA and as may be necessary for the management and control of Swimming and related activities in New South Wales;
- (e) advance the operations and activities of the Club throughout the Local Area;
- (f) have regard to the public interest in its operations; and
- (g) undertake and or do all such things or activities which are necessary, incidental or conducive to the advancement of these Objects.

### 4. POWERS OF THE CLUB

Solely for furthering the Objects, the Club has, in addition to the rights, powers and privileges conferred on it under the Act, the legal capacity and powers of a company as set out under section 124 of the *Corporations Act 2001 (Cth)*.

### 5. MEMBERS ®

#### 5.1 Minimum number of Members

The Club must have at least 5 Members.

#### 5.2 Categories of Members ®

The Members of the Club shall consist of:

- (a) Life Members, who subject to this Constitution, shall have the right to receive notice of General Meetings and to be present, to debate and to vote at General Meetings;
- (b) Individual Members, who subject to this Constitution, shall have the right to receive notice of General Meetings and to be present, to debate and to vote at General Meetings; and
- (c) Junior Members, who subject to this Constitution, shall have no right to receive notice of General Meetings and no right to be present or debate or vote at General Meetings.

#### 5.3 Life Members

- (a) The Board may recommend to the annual general meeting that any natural person who has rendered distinguished service to the Club over ten consecutive years be appointed as a Life Member.

- (b) A resolution of the annual general meeting to confer life membership (subject to **clause 5.3(c)**) on the recommendation of the Board must be a Special Resolution.
- (c) A person must accept or reject the Club's resolution to confer life membership in writing. Upon written acceptance, the person's details shall be entered upon the Register, and from the time of entry on the Register the person shall be a Life Member.

## **6. MEMBERSHIP APPLICATION ®**

### **6.1 Application for Membership**

An application for membership must be:

- (a) in writing on the form prescribed from time to time by the Board (if any), from the applicant or its nominated representative and lodged with the Club; and
- (b) accompanied by the appropriate fee (if any).

### **6.2 Discretion to Accept or Reject Application**

- (a) The Board may accept or reject an application whether the applicant has complied with the requirements in **clause 6.1** or not. The Board shall not be required or compelled to provide any reason for such acceptance or rejection.
- (b) Where the Board accepts an application, the applicant shall become a Member. Membership shall be deemed to commence upon acceptance of the application by the Board. The Register shall be amended accordingly as soon as practicable.
- (c) Where the Board rejects an application, it shall refund any fees forwarded with the application and the application shall be deemed rejected by the Board.

### **6.3 Renewal**

Members (other than Life Members) must renew their membership annually in accordance with the procedures set down by the Club in By-Laws from time to time.

### **6.4 Deemed Membership**

- (a) All persons who are, prior to the approval of this Constitution under the Act, Members of the Club shall be deemed Members from the time of approval of this Constitution under the Act.
- (b) Any Members of the Club, prior to approval of this Constitution under the Act, who are not deemed Members under **clause 6.4(a)** shall be entitled to carry on such functions analogous to their previous functions as are provided for under this Constitution.

## **7. REGISTER OF MEMBERS ®**

### **7.1 Club to Keep Register**

The Club shall keep and maintain a Register in which shall be entered such information as is required under the Act from time to time including but not limited to (as a minimum):

- (a) the full name, address and date of entry of each Member; and
- (b) where applicable, the date of termination of membership of any Member.

Members shall provide notice of any change and required details to the Club within one month of such change.

#### 7.2 **Inspection of Register**

Having regard to the Act, confidentiality considerations and privacy laws, an extract of the Register, excluding the address or other direct contact details of any Member, shall be available for inspection (but not copying) by Members, upon reasonable request.

#### 7.3 **Use of Register**

Subject to the Act, confidentiality considerations and privacy laws, the Register may be used to further the Objects, in such manner as the Board considers appropriate.

### **8. EFFECT OF MEMBERSHIP**

Members acknowledge and agree that:

- (a) this Constitution constitutes a contract between each of them and the Club and that they are bound by this Constitution and the By-Laws.
- (b) they shall comply with and observe this Constitution and the By-Laws and any determination, resolution or policy which may be made or passed by the Board or other entity with delegated authority;
- (c) by submitting to this Constitution and By-Laws they are subject to the jurisdiction of the Club, the Area Association, SNSW and SA.
- (d) this Constitution is made in pursuit of a common purpose, namely the mutual and collective benefit of the Club, the Members and the sport of Swimming;
- (e) the Constitution and By-Laws are necessary and reasonable for promoting the Objects and particularly the advancement and protection of Swimming;
- (f) they are entitled to all benefits, advantages, privileges and services of Club membership;
- (g) if their membership ceases they will have no claim against the Club or the Directors for damages or otherwise arising from cessation or termination of membership; and
- (h) a right, privilege or obligation of a Member by reason of their membership of the Club is not capable of being transferred or transmitted to another Member. No Member shall, or purport to, assign the rights comprising or associated with membership to any other person and any attempt to do so shall be void.

### **9. DISCONTINUANCE OF MEMBERSHIP**

#### 9.1 **Notice of Resignation**

- (a) A Member who has paid all arrears of fees payable to the Club may resign or withdraw from membership of the Club by giving one month's notice in writing to the Club.
- (b) Once the Club receives a notice of resignation of membership given under **clause 9.1(a)**, it must make an entry in the Register that records the date on which the Member ceased to be a Member.



## 9.2 Discontinuance for Breach

- (a) Membership of the Club may be discontinued by the Board upon breach of any clause of this Constitution or the By-Laws, including, but not limited to, the failure to pay any monies owed to the Club, failure to comply with the By-Laws or any resolutions or determinations made or passed by the Board or any duly authorised committee.
- (b) Membership shall not be discontinued by the Board under **clause 9.2(a)** without the Board first giving the accused Member the opportunity to explain the breach and/or remedy the breach.
- (c) Where a Member fails, in the Board's view to adequately explain the breach, that Member's membership shall be discontinued under **clause 9.2(a)** by the Club giving written notice of the discontinuance to the Member. The Register shall be amended to reflect any discontinuance of membership under this **clause 9.2** as soon as practicable.

## 9.3 Member to Re-Apply

A Member whose membership has been discontinued under **clauses 9.1 or 9.2**:

- (a) must seek renewal or re-apply for membership in accordance with this Constitution; and
- (b) may be re-admitted at the discretion of the Board.

## 9.4 Forfeiture of Rights

A Member who ceases to be a Member, for whatever reason, shall forfeit all rights in and claims upon the Club and its property and shall not use any property of the Club including Intellectual Property. Any Club documents, records or other property in the possession, custody or control of that Member shall be returned to the Club immediately.

## 9.5 Membership may be Reinstated

Membership which has been discontinued under this **clause 9** may be reinstated at the discretion of the Board, with such conditions as it deems appropriate.

## 9.6 Refund of Membership Fees

Membership fees or subscriptions paid by the discontinued Member may be refunded on a pro-rata basis to the Member upon discontinuance.

# 10. DISCIPLINE ®

## 10.1 Safe Sport Framework

Members are bound to comply with the Safe Sport Framework as a result of clause 35.5 of this Constitution. Accordingly, all complaints or disputes under the Safe Sport Framework will be dealt with in accordance with the processes set out under the Safe Sport Framework. Members agree to submit unreservedly to the jurisdiction, disciplinary procedures, penalties and the appeal mechanisms set out in the Safe Sport Framework.

## 10.2 Establishing a Disciplinary Committee

- (a) Where the Board is advised of an allegation (not being vexatious, trifling or frivolous) or considers that a Member has allegedly:

- (i) breached, failed, refused or neglected to comply with a provision of this Constitution, the By-Laws or any resolution or determination of the Board or any duly authorised committee
- (ii) acted in a manner unbecoming of a Member, or prejudicial to the purposes and interests of the Club and/or Swimming; or
- (iii) brought the Club, any other Member or Swimming into disrepute,

and that matter is not being dealt with under the Safe Sport Framework, the Board may by resolution establish a Disciplinary Committee to convene to hear a matter against any Member and to determine what action, if any, to take against that Member (**Disciplinary Hearing**), and that Member, will be subject to, and submits unreservedly to the jurisdiction, disciplinary procedures, penalties and the appeal mechanisms of the Club in this Constitution.

### 10.3 **Provisional Suspension**

- (a) Upon establishing a disciplinary committee in accordance with clause 10.1 the Board may by resolution provisionally suspend the Member subject to the Disciplinary Hearing until such time as the disciplinary committee makes a finding.
- (b) The disciplinary committee may lift a provisional suspension prior to making a finding at the Disciplinary Hearing.

### 10.4 **Disciplinary Committee Members**

The members of the disciplinary committee:

- (a) may be Members or anyone else; but
- (b) must not be biased against, or in favour of, the Member concerned.

### 10.5 **Notice of Alleged Breach**

- (a) Where a disciplinary committee is established the Club shall serve on the Member not earlier than 28 days and not later than 14 days before the Disciplinary Hearing is to be held, a notice in writing:
  - (i) setting out the alleged breach of the Member and the grounds on which it is based;
  - (ii) stating that the Member may address the disciplinary committee at the Disciplinary Hearing;
  - (iii) stating the date, place and time of that Disciplinary Hearing;
  - (iv) informing the Member that he, she or it may do one or more of the following:
    - (A) attend that Disciplinary Hearing; and
    - (B) give the disciplinary committee prior to or at that meeting a written statement regarding the alleged breach.

### 10.6 **Determination of Disciplinary Committee**

- (a) The disciplinary committee shall ensure that the Disciplinary Hearing accords with the principles of natural justice by ensuring that:

- (i) the Member has the opportunity to be heard and to call witnesses; and
- (ii) due consideration is given to any written statement submitted by the Member or a witness,

before determining whether the alleged breach occurred.

- (b) If the disciplinary committee determines there was a breach under clause 10.6(a), it will determine what penalty (if any) shall be given to the Member, and give notice of this to the Board.
- (c) The penalties able to be given to the Member by the disciplinary committee include:
  - (i) expel a Member from the Club; or
  - (ii) suspend a Member from membership of the Club or accessing certain privileges of membership for a specified period; or
  - (iii) fine a Member; or
  - (iv) impose such other penalty, action or educative process as the disciplinary committee sees fit which shall include but is not limited to removing that Member from the office of being a Director (if the relevant Member is a Director).

#### 10.7 **Appeal**

- (a) Subject to clause 10.6(b), an appeal tribunal may be appointed by the Board to hear and adjudicate on any appeal lodged by a Member against the decision of the disciplinary committee.
- (b) An appeal may only be lodged:
  - (i) by a party directly affected by a decision; and
  - (ii) on the grounds that new information or evidence can be presented that was not available at the time of the original decision being appealed against.

#### 10.8 **Appeal Tribunal**

- (a) The Board will appoint an appeal tribunal to determine an appeal lodged in accordance with the provisions of clause 10.7. The composition of an appeal tribunal shall be:
  - (i) an individual with legal training or experience in dispute resolution; or
  - (ii) a panel of 2 or 3 persons deemed suitable by the Board including a chairperson with legal training or experience in dispute resolution.
- (b) No member of the appeal tribunal pursuant to clauses 10.8(a)(i) and 10.8(a)(ii) may have been a party to or directly interested in the decision under appeal or the original matter brought for determination.

#### 10.9 **Appeals Process**

- (a) A request for an appeal against a decision of the disciplinary committee must be forwarded to the Board in writing within 5 days of the relevant party being given notice of the disciplinary committee decision.

- (b) The lodgement of appeal must be accompanied by payment of an appeal fee as determined by the Board from time to time. The fee shall be fully refundable if the appeal is successful.
- (c) The Board shall determine whether the appeal falls within the grounds for appeal pursuant to clause 10.7(b). If satisfied, an appeal tribunal will be appointed as soon as practicable after formal lodgement of the appeal.
- (d) The appeal tribunal will schedule a date and venue for a hearing as soon as possible and circumstances permitting, no later than 30 days after formal lodgement of the appeal.
- (e) If, as the circumstances may be, all parties are unable to be present at an appeal hearing, they may participate by teleconference or other medium as determined appropriate at the discretion of the appeal tribunal.
- (f) The parties will be advised of the grounds for appeal and invited to lodge written submissions which must be received by the appeal tribunal no later than 2 business days prior to the scheduled appeal hearing.
- (g) The appeal tribunal will consider the appeal in accordance with the principles of natural justice as broadly outlined in clause 10.5.
- (h) The appeal tribunal may adjourn a hearing to obtain further information or evidence.
- (i) At the conclusion of the hearing the appeal tribunal shall:
  - (i) uphold the appeal and rescind the original decision; or
  - (ii) dismiss the appeal; or
  - (iii) dismiss the appeal and review the penalty within the provisions of clause 10.6(c).
- (j) The decision of the appeal tribunal shall be final and binding on the parties.
- (k) The appeal tribunal must forward to the Board a written report outlining their determination of the matter.

## **11. SUBSCRIPTIONS AND FEES ®**

### **11.1 Fees payable by Members**

- (a) The Directors must determine from time to time:
  - (i) the amount (if any) payable by an applicant for membership;
  - (ii) the amount of the annual membership fee payable by each Member, or any category of Members;
  - (iii) any other amount to be paid by each Member, or any category of Members, whether of a recurrent or any other nature; and
  - (iv) the payment method and due date for payment.
- (b) Each Member must pay to the Club the amounts determined under this clause 11 in accordance with clause 11(a)(iv).

## 11.2 **Non-Payment of Fees**

- (a) Subject to clause 11.2(b) but notwithstanding any other clause of this Constitution, the right of a Member to attend and vote at a General Meeting may, at the discretion of the Directors, be suspended while the payment of any subscription or other amount determined under clause 11.1(a)(i), clause 11.1(a)(ii) or clause 11.1(a)(iii) is in arrears.
- (b) Where a Member is in arrears for any amount:
  - (i) the Board may enter an arrangement with the Member for the payment of the amount; and
  - (ii) any arrangement must be disclosed to other Voting Members, but does not require their approval.

## 12. **EXISTING DIRECTORS**

The Members of the administrative or governing body (by whatever name called) of the Club in office immediately prior to approval of this Constitution under the Act shall continue in those positions until the next annual general meeting following such adoption of this Constitution. After this General Meeting the positions of Directors shall be filled, vacated and otherwise dealt with in accordance with this Constitution.

## 13. **POWERS OF THE BOARD**

Subject to the Act and this Constitution, the business of the Club shall be managed and the powers of the Club shall be exercised by the Board. In particular, the Board shall act in accordance with the Objects and shall operate for the benefit of the Members and the community throughout the local area.

## 14. **COMPOSITION OF THE BOARD**

### 14.1 **Composition of the Board**

The Board shall comprise **seven** elected directors who must all be Members and who shall be elected under **clause 15**; and

### 14.2 **Election and Appointment of Directors** ®

The elected Directors shall be elected under **clause 15**.

### 14.3 **Portfolios** ®

- (a) The Board may allocate portfolios to Directors.
- (b) The Board must appoint a President, Vice-President and Secretary from amongst its number. The term of the appointment shall be one (1) year and each person is eligible for re-appointment.

## 15. ELECTED DIRECTORS

### 15.1 Nomination for Board ®

- (a) When calling for nominations, details of the necessary qualifications and job descriptions for the positions shall also be provided. Qualifications and job descriptions shall be determined by the Board from time to time.
- (b) Nominees for elected Director positions must declare any position they hold in an Area Association, SNSW or SA.

### 15.2 Form of Nomination

Nominations must be:

- (a) in writing or by vocal election at an Annual General Meeting;
- (b) on the prescribed form (if any) provided for that purpose;
- (c) signed or moved by two Individual Members; and
- (d) certified by the nominee (who must be a Member) expressing his willingness to accept the position for which he is nominated.

### 15.3 Elections ®

- (a) If the number of nominations received is equal to the number of vacancies to be filled or if there are insufficient nominations received to fill all vacancies on the Board, then those nominated shall be declared elected only if approved by the majority of Members entitled to vote.
- (b) If there are insufficient nominations received to fill all vacancies on the Board, or if a person is not approved by the majority of Members under **clause 15.3(a)**, the positions will be deemed casual vacancies under **clause 16.1**.
- (c) If the number of nominations exceeds the number of vacancies to be filled, voting papers shall be prepared containing the names of the candidates in alphabetical order for each vacancy on the Board.
- (d) Voting shall be conducted in such a manner and by such a method as determined by the Board from time to time.

### 15.4 Term of Appointment for Elected Directors

- (a) Directors elected under **clause 15** shall be elected for a term of one year but are eligible for re-election subject to 15.4(b). Subject to provisions in this Constitution relating to early retirement or removal of Directors, elected Directors shall remain in office from the conclusion of the annual general meeting at which the election occurred until the conclusion of the annual general meeting following.
- (b) A Director may not serve more than 15 consecutive terms as a Director. However, the effect of this clause shall commence on the date this Constitution is adopted and any term served prior to the adoption of this Constitution shall not be counted for the purposes of this clause 15.4.

## 16. VACANCIES ON THE BOARD

### 16.1 Casual Vacancies

Any casual vacancy occurring in the position of Director may be filled by the remaining Directors from among appropriately qualified Members of the Club. Any casual vacancy may only be filled for the remainder of the Director's term under this Constitution.

### 16.2 Grounds for Termination of Director

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act, the office of a Director becomes vacant if the Director:

- (a) is no longer a Member;
- (b) dies;
- (c) becomes bankrupt or makes any arrangement or composition with his creditors generally;
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in anyway under the law relating to mental health;
- (e) resigns his office in writing to the Club;
- (f) is absent without the consent of the Board from meetings of the Board held during a period of six months;
- (g) holds any office of employment with the Club without the approval of the Board;
- (h) is directly or indirectly interested in any contract or proposed contract with the Club and fails to declare the nature of that interest;
- (i) in the opinion of the Board (but subject always to this Constitution):
  - (i) has acted in a manner unbecoming or prejudicial to the Objects and interests of the Club
  - (i) has brought the Club into disrepute
- (j) is removed by Special Resolution;
- (k) is removed in accordance with clause 10.6(c)(iv); or
- (l) would otherwise be prohibited from being a director of a corporation under the *Corporations Act 2001 (Cth.)*.

### 16.3 Board May Act

In the event of a casual vacancy or vacancies in the office of a Director or Directors, the remaining Directors may act. However, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of the Board, they may act only for the purpose of increasing the number of Director to a number sufficient to constitute a quorum.

## 17. MEETINGS OF THE BOARD

### 17.1 Board to Meet

The Board shall meet as often as is deemed necessary in every calendar year for the dispatch of business (and shall be at least as often as is required under the Act). Subject to this Constitution, it may adjourn and otherwise regulate its meetings as it thinks fit. A director may at any time convene a meeting of the Board within reasonable time.

### 17.2 Decisions of Board

- (a) Subject to this Constitution, questions arising at any meeting of the Board shall be decided by a majority of votes and a determination of a majority of directors shall for all purposes be deemed a determination of the Board. All directors shall have one vote on any question. Where voting is equal, the chairperson may not exercise a casting vote and the motion will be lost.
- (b) The Secretary shall notify all Members by means of notices approved by the Board and prepared and issued by the Club of all administrative decisions made at the Board meeting within 14 days of the conclusion of that meeting.

### 17.3 Resolutions Not in Meeting

- (a) A resolution in writing that has been signed or assented to by telegram, cablegram, radiogram, facsimile, telex or other form of visible or other electronic communication by all the directors for the time being present in Australia shall be as valid and effectual as if it had been passed at a meeting of directors duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more of the directors.
- (b) Without limiting the power of the Board to regulate its meetings as it thinks fit, a meeting of the Board may be held where one or more of the directors is not physically present at the meeting, provided that:
  - (i) All persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously whether by means of telephone or other form of communication.
  - (ii) Notice of the meeting is given to all the directors entitled to notice in accordance with the usual procedures agreed upon or laid down from time to time by the Board or this Constitution. The notice will specify that directors are not required to be present in person.
  - (iii) If a failure in communications prevents **clause 17.3(b)(i)** from being satisfied by the number of directors which constitutes a quorum, and none of such directors are present at the place where the meeting is deemed by virtue of the further provisions of this rule to be held, then the meeting shall be suspended until **clause 17.3(b)(i)** is satisfied again. If such condition is not satisfied within fifteen minutes from the interruption, the meeting shall be deemed to have been terminated or adjourned.
  - (iv) Any meeting held where one or more of the directors is not physically present shall be deemed to be held at the place specified in the notice of the meeting, provided a director is there present. If no director is there present, the meeting shall be deemed to be held at the place where the chairperson of the meeting is located.



#### 17.4 Quorum

At meetings of the Board the number of Directors whose presence is required to constitute a quorum is at least **5 of the Directors**

#### 17.5 Notice of Board Meetings

Unless all Directors agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their apology or presence) not less than fourteen (14) days written notice of the meeting of the Board shall be given to each Director. The agenda shall be forwarded to each Director not less than four (4) days prior to such meeting.

#### 17.6 Chairperson

- (a) The President shall chair any Board meeting at which he is present. If the President is not present, or is unwilling or unable to preside, the Vice-President, is to preside as chairperson.
- (b) If the President and Vice-President are not present, or are unwilling or unable to preside at a Board meeting the remaining Directors shall appoint another Director to preside as chair for that meeting only.

#### 17.7 Conflict of Interest ®

A Director shall declare his interest in any contractual, selection, disciplinary, or financial matter in which a conflict of interest arises or may arise. He shall, unless otherwise determined by the Board, absent himself from discussions of such matters and shall not be entitled to vote in respect of such matters. If the director casts a vote, the vote shall not be counted. In the event of any uncertainty as to whether it is necessary for a Director to absent himself from discussions and refrain from voting, the issue should be immediately determined by vote of the Board. If this is not possible, the matter shall be adjourned or deferred.

#### 17.8 Disclosure of Interests

- (a) The nature of the interest of a director must be declared at the meeting of the Board at which the relevant matter is first taken into consideration, if the interest then exists. In any other case, the interest should be revealed to the Board at the next meeting of the Board. If a director becomes interested in a matter after it is made or entered into, the declaration of the interest must be made at the first meeting of the Board held after the director becomes interested.
- (b) All disclosed interests must also be disclosed to each annual general meeting in accordance with the Act.

#### 17.9 General Disclosure

A general notice stating that a director is a Member of any specified firm or company and that he is 'interested' in all transactions with that firm or company is sufficient declaration under **clause 17.8**. After the distribution of the general notice, it is not necessary for the director to give a special notice regarding any particular transaction with that firm or company.

#### 17.10 Recording Disclosures ®

Any declaration made, any disclosure or any general notice given by a director in accordance with **clauses 17.7, 17.8** and/or **17.9** must be recorded in the minutes of the relevant meeting.

## **18. PUBLIC OFFICER**

### **18.1 Appointment of Public Officer**

The Board shall ensure that a person is appointed as Public Officer in accordance with the Act. The Public Officer may also be a Director.

### **18.2 Role of Public Officer**

The Public Officer will be familiar with the provisions of the Act and will use their best endeavours to ensure that all documents, financial statements, reports and statutory declarations are lodged by the prescribed date and advise the president if any item to be lodged is not available. The Public Officer may attend all Board meetings and General Meetings and must receive notice of such meetings but is not entitled to vote.

### **18.3 Removal of Public Officer**

The Board may at any time remove the Public Officer and appoint a new Public Officer provided the person complies with the requirement in section 34 of the Act.

### **18.4 Vacation of Office**

The Public Officer shall be deemed to have vacated his position in the following circumstances;

- (a) death;
- (b) resignation;
- (c) removal by the Board or at a General Meeting;
- (d) bankruptcy or financial insolvency;
- (e) mental illness; or
- (f) residency outside the geographical boundaries as required by the Act.

## **19. DELEGATIONS ®**

### **19.1 Board May Delegate Functions**

The Board may, by instrument in writing, create, establish or appoint special committees, Individual officers and consultants to carry out specific duties and functions.

It will determine what powers these committees are given. In exercising its power under this clause, the Board must take into account broad stakeholder involvement.

### **19.2 Delegation by Instrument**

In the establishing instrument, the Board may delegate such functions as are specified in the instrument, other than:

- (a) this power of delegation; and
- (b) a function imposed on the Board or the executive officer by the Act, any other law, this Constitution, or by resolution of the Club in a General Meeting.

### 19.3 **Delegated Function Exercised in Accordance with Terms**

A function, the exercise of which has been delegated under this clause, may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.

### 19.4 **Procedure of Delegated Entity**

The procedures for any entity exercising delegated power shall, subject to this Constitution and with any necessary or incidental amendment, be the same as that applicable to meetings of the Board under **clause 177**. The entity exercising delegated powers shall make decisions in accordance with the Objects, and it shall promptly provide the Board with details of all material decisions. The entity shall also provide any other reports, minutes and information required by the Board.

### 19.5 **Delegation May Be Conditional**

A delegation under this clause may be made subject to certain conditions or limitations regarding the exercise of any function. These may be specified in the delegation.

### 19.6 **Revocation of Delegation**

At any time the Board may, by instrument in writing, revoke wholly or in part any delegation made under this clause. It may amend or repeal any decision made by a body or person under this clause.

## 20. **SEAL**

- (a) If the Club has a common seal it shall:
  - (i) be kept in the custody of the Board; and
  - (ii) not be affixed to any instrument except by the authority of the Board and the affixing of the common seal shall be attested by the signatures of 2 Directors.
- (b) A Director may not sign a document to which the seal of the Club is fixed where the Director is interested in the contract or arrangement to which the document relates.

## 21. **ANNUAL GENERAL MEETING**

- (a) The Club's annual general meeting shall be held in accordance with the Act and this Constitution. It should be held on a date and at a venue determined by the Board.
- (b) All General Meetings other than the annual general meeting shall be special General Meetings and shall be held in accordance with this Constitution.

## 22. **SPECIAL GENERAL MEETINGS**

### 22.1 **Special General Meetings May be Held**

The Board may, whenever it thinks fit, convene a special general meeting. When, but for this clause, more than fifteen months elapse between annual general meetings, the Board shall convene a special general meeting before the expiration of that period.

## 22.2 Requisition of Special General Meetings

- (a) The secretary will convene a special general meeting when **six (6)** Members entitled to vote (no less) submit a requisition in writing.
- (b) The requisition for a special general meeting shall state the object(s) of the meeting, be signed by the Members making the requisition and be sent to the Club. The requisition may consist of several documents in a like form, each signed by one or more of the Members making the requisition.
- (c) If the Board does not cause a special general meeting to be held one month after the date in which the requisition is sent to the Club, the Members making the requisition, or any of them, may convene a special general meeting to be held no later than three months after that date.
- (d) A special general meeting convened by Members under this Constitution shall be convened in the same manner, or as close as possible, as those convened by the Board.

## 23. NOTICE OF GENERAL MEETING

- (a) Notice of every General Meeting shall be given to every Life Member and Individual Member entitled to receive notice. Notices shall be sent to the addresses appearing in the Club's Register. The auditor and Directors shall also be entitled to receive notice of every General Meeting. This will be sent to the auditor's last known address. No other person shall be entitled, as of right, to receive notices of General Meetings.
- (b) At least fourteen (14) days notice of the place, day and hour of the General Meeting shall be given to those Members entitled to receive notice.
- (c) At least five (5) days' notice of the business to be transacted at a General Meeting shall be given to those Members entitled to receive notice, together with:
  - (i) the agenda for the meeting;
  - (ii) any notice of motion received from Members entitled to vote; and
  - (iii) forms of authority in blank for proxy votes.
- (d) Notice of every general meeting shall be given in the manner authorised in **clause 37**.

## 24. BUSINESS

- (a) The business to be transacted at the annual general meeting includes the consideration of accounts and the reports of the Board and auditors, the election of directors under this Constitution and the appointment of the auditors.
- (b) All business that is transacted at a general meeting and at an annual general meeting, with the exception of those matters set down in **clause 24(a)**, shall be special business.
- (c) No business other than that stated on the notice for a general meeting shall be transacted at that meeting.

## 25. NOTICES OF MOTION

Members entitled to vote may submit notices of motion for inclusion as special business at a general meeting. All notices of motion must be submitted in writing to the Club no less than thirty days (excluding receiving date and meeting date) prior to the general meeting.

## 26. PROCEEDINGS AT GENERAL MEETINGS

### 26.1 Quorum

No business shall be transacted at any general meeting unless a quorum is present at the time when the meeting proceeds to business. A quorum for General Meetings of the Club shall be **the lesser of at least 19 members and half** of Members.

### 26.2 President to Preside

The president, or in the president's absence, the vice-president, shall, subject to this Constitution, preside as chair at every General Meeting except:

- (a) in relation to any election for which the chairperson is a nominee; or
- (b) where a conflict of interest exists.

If the president and the vice-president are not present, or are unwilling or unable to preside the Delegates present shall appoint another Director to preside as chairperson for that meeting only.

### 26.3 Adjournment of Meeting

- (a) If within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall be adjourned until the same day in the next week at the same time and place or to a date, time or place determined by the chairperson. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the meeting will lapse.
- (b) The chairperson may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place. No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (d) Except as provided in **clause 26.3(c)** it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

### 26.4 Voting Procedure

At any meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by:

- (a) the chairperson; or
- (b) a simple majority of the Members.

## 26.5 Recording of Determinations

Unless a poll is demanded under **clause 26.4**, the chairperson's declaration shall be conclusive evidence of the result of a resolution decided by a show of hands. The declaration does not need to record the number of votes in favour of or against the resolution; the result of the resolution must be recorded in the Club's book of proceedings.

## 26.6 Where Poll Demanded

If a poll is duly demanded under **clause 26.4** it shall be taken in such a manner and either at once or after an interval or adjournment or otherwise as the chairperson directs. The result of the poll shall be the resolution of the meeting.

## 26.7 Minutes

The minutes of each General Meeting must be signed by the person presiding at the meeting, or the person presiding at the next General Meeting, verifying their accuracy.

## 27. VOTING AT GENERAL MEETINGS ®

### 27.1 Members Entitled to Vote

Each Individual Member and Life Member shall be entitled to one vote at General Meetings. No other Member shall be entitled to vote but shall, subject to this Constitution, have and be entitled to exercise those rights set out in **clause 5.1**.

### 27.2 Chairperson May Not Exercise Casting Vote

Where voting at General Meetings is equal, the chairperson may not exercise a casting vote and the motion will be lost.

### 27.3 Proxy Voting

- a) Proxy voting shall be permitted at all General Meetings provided a proxy form in the form approved by the Board from time to time, has been duly completed and executed and is lodged with the Secretary at least seventy-two (72) hours before the commencement of the meeting.
- b) The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. For the proxy to be valid a Club must instruct the proxy to vote either in favour of or against any proposed resolutions which must be set out in the proxy form.

### 27.4 Postal and electronic voting

- (a) Postal voting or voting by electronic communication may be permitted from time to time in such instances and on such resolutions as the Directors may determine.
- (b) When permitted by the Directors, postal or electronic voting shall be conducted in accordance with the Act, including that any particular resolution voted on by postal ballot or electronic communication must only be voted on using that method, and not in conjunction with voting in person at the General Meeting.

## 28. GRIEVANCE PROCEDURE ®

- (a) The grievance procedure set out in this rule applies to disputes under these rules between a Member and:
  - (i) another Member; or

- (ii) the Club.
- (b) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within fourteen days after the dispute comes to the attention of all parties.
- (c) If the parties are unable to resolve the dispute at the meeting or if a party fails to attend that meeting, then the parties must, within ten (10) days, refer the dispute to the Community Justice Centres New South Wales (or such other similar body in circumstances where Community Justice Centres New South Wales is no longer in existence) for resolution.
- (d) The Board may prescribe additional grievance procedures in the By-Laws consistent with this **clause 27.4**.

## **29. RECORDS AND ACCOUNTS**

### **29.1 Records**

- (a) The Club shall establish and maintain proper records and minutes concerning all of its transactions, business, meetings and dealings (including those of the Club and the Board). It shall produce these as appropriate at each Board or general meeting.
- (b) Records and minutes may be kept in written or electronic form. If kept in electronic form, the records and minutes must be able to be converted into hard copy.

### **29.2 Records Kept in Accordance with the Act**

Books, documents, securities and proper accounting and other records shall be kept in accordance with the Act, generally accepted accounting principles and/or any applicable code of conduct. All such records and the books of account shall be kept in the care and control of the Board.

### **29.3 Inspection of Records**

- (a) Members may on request inspect free of charge:
  - (i) the minutes of general meetings; and
  - (ii) subject to clause 29.3(b), the financial records, books, securities and any other relevant document of the Club.
- (b) The Board may refuse to permit a member to inspect records of the Club that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the Club.
- (c) The Board must on request make copies of these rules available to Members and applicants for membership free of charge.
- (d) Subject to clause 29.3(b), a Member may make a copy of any of the other records of the Club referred to in this clause and the Club may charge a reasonable fee for provision of a copy of such a record.
- (e) For the purposes of this clause, relevant documents means the records and other documents, however compiled, recorded or stored, that relate to the incorporation and management of the Club and includes the following:
  - (i) its financial statements;

- (ii) its financial records; and
- (iii) records and documents relating to transactions, dealings, business or property of the Club.

#### 29.4 **Board to Submit Accounts**

The Board shall submit the Club's statements of account to the Members at the annual general meeting in accordance with this Constitution and the Act.

#### 29.5 **Negotiable Instruments**

All cheques, promissory notes, bankers, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Club, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two duly authorised directors or in such other manner as the Board determines from time to time.

### 30. **AUDITOR**

- (a) A properly qualified auditor or auditors may be appointed by the Club in a general meeting. The auditor's duties shall be regulated in accordance with the Act. If no relevant provisions exist under the Act the duties shall be regulated in accordance with the *Corporations Act 2001 (Cth.)* and generally accepted principles and/or any applicable code of conduct. The auditor may be removed by the Club in a general meeting.
- (b) The accounts of the Club may be examined and the correctness of the profit and loss accounts and balance sheets ascertained by an auditor or auditors at the conclusion of each Financial Year.

### 31. **INCOME**

- 31.1 Income and property of the Club shall be derived from such sources as the Board determines from time to time.
- 31.2 The income and property of the Club shall be applied solely towards the promotion of the Objects.
- 31.3 Except as prescribed in this Constitution or the Act:
  - (a) no portion of the income or property of the Club shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise to any Member
  - (b) no remuneration or other benefit in money or money's worth shall be paid or given by the Club to any Member who holds any office of the Club.
- 31.4 Payment in good faith of or to any Member can be made for:
  - (a) any services actually rendered to the Club whether as an employee, director or otherwise
  - (b) goods supplied to the Club in the ordinary and usual course of operation
  - (c) interest on money borrowed from any Member
  - (d) rent for premises demised or let by any Member to the Club; or
  - (e) any out-of-pocket expenses incurred by a Member on behalf of the Club.



Nothing in **clauses 31.2 or 31.3** preclude such payments provided they do not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction.

### **32. WINDING UP**

- (a) Subject to this Constitution the Club may be wound up in accordance with the Act.
- (b) The liability of the Members of the Club is limited.
- (c) Every Member undertakes to contribute to the assets of the Club in the event of it being wound up while a Member, or within one year after ceasing to be a Member, for payment of the debts and liabilities of the Club contracted before the time at which they ceased to be a Member and towards the costs, charges and expenses of winding up the Club, such an amount not exceeding one dollar (\$1.00).

### **33. DISTRIBUTION OF PROPERTY ON WINDING UP**

If upon winding up or dissolution of the Club there remains, after satisfaction of all its debts and liabilities, any assets or property, they shall not be paid to or distributed among the Members. Instead, the assets or property shall be given or transferred to another organisation(s) that has Objects similar to those of the Club. The organisation(s) must prohibit the distribution of its income and property among its Members to an extent at least as great as that imposed on the Club by this Constitution. The organisation(s) is to be determined by the Members in a general meeting at or before the time of dissolution. If this does not occur, the decision is to be made by a judge of the Supreme Court of New South Wales or other court as may have or acquire jurisdiction in the matter.

### **34. ALTERATION OF CONSTITUTION**

This Constitution shall not be altered except by Special Resolution.

### **35. BY-LAWS**

#### **35.1 Board to Formulate By-Laws**

The Board may formulate, issue, adopt, interpret and amend By-Laws for the proper advancement, management and administration of the Club, the advancement of the purposes of the Club and Swimming in the local area. Such By-Laws must be consistent with the Constitution and any policy directives of the Board.

#### **35.2 By-Laws Binding**

All By-Laws are binding on the Club and all Members.

#### **35.3 Regulations Deemed Applicable**

All clauses, rules, by-laws and regulations of the Club in force at the date of the approval of this Constitution (as long as such clauses, rules, by-laws and regulations are not inconsistent with or have been replaced by, this Constitution) shall be deemed to be By-Laws and shall continue to apply.

#### **35.4 Bulletins Binding on Members**

Amendments, alterations, interpretations or other changes to By-Laws shall be advised to Members by means of bulletins approved by the Board and prepared and issued by the Club. The Club shall take reasonable steps to distribute information in the bulletins to Members. The matters in the bulletins are binding on all Members.

### 35.5 **Safe Sport Framework**

- (a) SA has adopted the Safe Sport Framework (**Safe Sport Framework**) which:
  - (i) specifically commits to keeping children and young people safe in swimming;
  - (ii) clarifies and raises the standards of behaviour for dealing with Children and Young People through a “Code of Conduct for dealing with Children and Young People”
  - (iii) includes a General Code of Conduct;
  - (iv) provides processes and procedures when safe sport concerns or incidents arise;
  - (v) requires rigorous recruitment and screening procedures, as well as reporting by all organisations in swimming; and
  - (vi) provides guidance, advice, tips and tools to assist us to keep each other and our sport safe.
- (b) The Board has adopted the Safe Sport Framework, as amended from time to time, as a Regulation which is binding on the Club and all Members.

## 36. **STATUS AND COMPLIANCE OF CLUB**

### 36.1 **Recognition of Club**

The Club is a Member of the regional and/or state bodies for Swimming and is recognised by those bodies as the entity responsible for the delivery of Swimming in the local area and is subject to compliance with this Constitution. The regional and/or state bodies’ Constitutions shall continue to be so recognised and shall administer Swimming in the local area in accordance with the Objects.

### 36.2 **Constitution of the Club**

This Constitution will clearly reflect the Objects of the region and state bodies for Swimming and will conform to the Constitutions of those bodies, subject always to the Act.

### 36.3 **Area and SNSW**

The Club may not resign, disaffiliate or otherwise seek to withdraw from its Area Association and/or SNSW without approval by Special Resolution.

## 37. **NOTICE**

- (a) Notices may be given by the Club to any person entitled under this Constitution to receive any notice. The notice can be sent by pre-paid post or facsimile transmission or, where available, by electronic mail to the Member’s registered address or facsimile number or electronic mail address. In the case of a delegate, the notice can be sent to the last recorded address, facsimile number or electronic mail address.
- (b) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting the notice. Service of the notice is deemed to have been effected three days after posting.

- (c) Where a notice is sent by facsimile transmission, service of the notice shall be deemed to be effected upon receipt of a confirmation report confirming the facsimile was sent to/or received at the facsimile number to which it was sent.
- (d) Where a notice is sent by electronic mail, service of the notice shall be deemed to be effected the next business day after it was sent.

### **38. INDEMNITY**

- (a) Every director and employee of the Club will be indemnified out of the property and assets of the Club against any liability incurred by them in their capacity as director or employee in defending any proceedings, civil or criminal, in which judgement is given in their favour or in which they are acquitted or connected with any application in relation to any such proceedings in which relief is granted by the Court.
- (b) The Club shall indemnify its directors and employees against all damages and losses (including legal costs) for which any such director or employee may be or become liable to any third party in consequence of any act or omission, except wilful misconduct:
  - (ii) in the case of a director, performed or made while acting on behalf of and with the authority, express or implied, of the Club; or
  - (iii) in the case of an employee, performed or made in the course of, and within the scope of, their employment by the Club.

### **39. REGISTERED ADDRESS**

- (a) The registered address of the Club must be:
  - (i) an address where the Public Officer can generally be found and where documents can be served on the Public Officer; and
  - (ii) in New South Wales.