

CONSTITUTION
OF
WILLOUGHBY SWIM CLUB
INC.

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Part 1 PRELIMINARY

1 Name of Club

The name of the club is Willoughby Swim Club Inc.

2 Definitions and Interpretation

2.1 Definitions

In this constitution, unless the contrary intention appears:

the Act means the *Associations Incorporation Act 2009*.

area association means the regional sporting association under Swimming NSW Ltd of which the club is a member.

the Regulation means the *Associations Incorporation Regulation 2016*.

casual vacancy means a vacancy occurring on the committee through insufficient nominations under **clause 20** or for any of the reasons set out in **clause 21.2**.

committee means the group of club members appointed under the terms of this constitution to control and manage the affairs of the club.

club year means the annual twelve month period from the commencement of which membership must be renewed under **clause 8.2**.

constitution means this constitution of the club.

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

financial year means the period of twelve (12) months commencing on 1 April and ending on 31 March following.

general meeting means the annual meeting or any special general meeting of the club.

general member means a registered, financial member of the club under **subclause 5.2(a)**.

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.

junior member means a registered financial member of the club under **subclause 5.2(b)**.

life member means a person appointed as a life member of the club under **clause 5.4**.

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**.

NSW means New South Wales.

office bearer means a club member appointed under **clause 18.1**.

objects means the objects of the club in **clause 3**.

ordinary committee member means a member of the committee who is not an office-bearer of the club.

pecuniary gain means pecuniary gain as defined in the Act.

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

register means a register of members kept and maintained in accordance with **clause 13**.

seal means the Common Seal of Willoughby Swim Club Inc. (if any).

secretary means:

- (a) the person holding office under this constitution as secretary of the club,
or
- (b) if no person holds that office - the Public Officer of the club.

special general meeting means a general meeting of the club other than an annual general meeting.

special resolution means a Special Resolution defined in the Act.

SA means Swimming Australia Limited, the national sporting organisation for swimming in Australia.

SNSW means Swimming NSW Limited, the state sporting organisation for swimming in New South Wales.

2.2 Interpretation

(a) In this constitution:

- (i) a reference to "**writing**" shall, unless the contrary intention appears, be construed as including reference to a mode of representing or reproducing words in a visible form, including messages sent by electronic mail,
- (ii) a reference to a **function** includes a reference to a power, authority and duty, and
- (iii) a reference to the **exercise of a function** includes, if the function is a duty, a reference to the performance of the duty.

(b) The provisions of the *Interpretation Act 1987* apply to and in respect of this constitution in the same manner as those provisions would so apply if this constitution were an instrument made under the Act.

Part 2 OBJECTS and POWERS OF THE CLUB

3. Objects

The club is established solely for the objects. The objects of the club are established to:

- (a) conduct, promote, encourage, advance and administer swimming in the local area;
- (b) advance the operations and activities of the club in the local area;
- (d) stimulate public opinion in favour of providing proper accommodation and facilities for swimming in the local area;
- (d) act, at all times, on behalf of and in the interest of the members and swimming in the local area;
- (e) have regard to the public interest in its operations;
- (f) 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;
- (g) affiliate and otherwise liaise with the relevant area association affiliated with SNSW known as Sydney Metro North East Inc (or such other relevant area association by whatever name called from time to time);
- (g) 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 NSW; and
- (h) undertake and or do all such things or activities which are necessary, incidental or conducive to the advancement of these objects.

4. Powers

Solely for furthering the objects, the club has, in addition to the rights, powers and privileges conferred on it under section 25 of the Act, the legal capacity and powers of a company as set out under section 124 of the Corporations Act 2001 (Cth).

Part 3 MEMBERSHIP

5. Members

5.1 Membership

- (a) The membership of the club shall comprise all the members described in **clause 5.2** and all persons who are members of the club at the time of approval of this constitution under the Act; and
- (b) Membership is open to all natural persons who accept the objects and rules of the club.

5.2 Members

The members of the club shall comprise natural persons in the following categories:

- (a) general members, being persons aged eighteen (18) years and over;
- (b) junior members, being persons aged less than eighteen (18) years; and
- (c) life member appointed under this constitution. (*Refer clause 5.4*)

5.3 Rights of members at general meetings

- (a) The members of the club except junior members, shall, subject to this constitution, have the right to receive notice of general meetings. A junior member who has attained the age of sixteen (16) years shall be deemed to have received notices of general meeting where such notice has been received by a parent of that junior member.
- (b) The members of the club who shall have the right to be present, to debate and to vote at general meetings, subject to this constitution, are:
 - (i) general members;
 - (ii) life members; and
 - (iii) junior members who have attained the age of sixteen (16) years.

5.4 Life Members

- (a) The committee may recommend to the annual general meeting the appointment as a life member of any natural person who has rendered special service to the club over a period of not less than ten (10) years.
- (b) Where the committee has resolved to recommend a person to the annual general meeting for appointment as a life member that person must first agree, in writing, to the recommendation being put to the annual general meeting.
- (c) A resolution of the annual general meeting to confer life membership on the recommendation of the committee must be a special resolution.
- (d) Upon a resolution being passed under **subclause 5.4(c)** the person's details shall be entered upon the register as a life member and from the time of such entry on the register the person shall be a life member of the club.
- (e) A life member is entitled to election to office or to the committee with full voting power.

6. Effect of Membership

Members acknowledge and agree that:

- (a) This constitution forms a contract between each of them and the club and that they are bound by this constitution and the club's regulations (if any);
- (b) they shall comply with and observe this constitution and the regulations (if any) and any determination, resolution or policy which may be made or passed by the committee or other entity with delegated authority;

- (c) by submitting to this constitution and the club's regulations (if any) they are subject to the jurisdiction of the club, the area association, SNSW and SA;
- (d) the constitution and the club's regulations (if any) are necessary and reasonable for promoting the objects and particularly the advancement and protection of swimming; and
- (e) they are entitled to all benefits, advantages, privileges and services of club membership.

7. Membership Application

7.1 Written application

Individuals wishing to become members of the club shall apply to the committee for membership. An application for membership of the club must be:

- (i) in writing from the applicant in the form (if any) decided by the committee from time to time; and
- (ii) accompanied by the appropriate fee.

The form of application decided by the committee may include a written electronic process provided overseen or maintained by or through SNSW and requiring payment of membership fees or subscriptions by electronic means.

7.2 Discretion to accept or reject application

- (a) The committee may accept or reject an application (whether the applicant has complied with the requirements in **clause 7.1** or not) and is not required or compellable to provide any reason for such acceptance or rejection.
- (b) Where application for membership is in the form of a written electronic process provided overseen or maintained by or through SNSW and requiring payment of membership fees or subscriptions by electronic means and as a result of an application being made in such form the applicant's details are automatically entered on an electronic register created provided overseen or maintained by SNSW then:
 - (i) the committee shall at its next practicable meeting accept or reject that application in accordance with **subclause 7.2(a)**;
 - (ii) where the application is accepted under **subclause 7.2(a)**, the date of commencement of the applicant's membership shall be deemed to be the date that was automatically entered on such electronic register as the date of membership EXCEPT where the applicant has transferred from another swimming club affiliated with SNSW or SA; and
 - (iii) where the application is accepted under **subclause 7.2(a)**, and the applicant for membership has transferred from another swimming club affiliated with SNSW or SA the date of commencement of the applicant's membership shall be deemed to be the date of payment of membership fees or subscriptions.

- (c) Where the committee rejects an application, it shall refund any fees forwarded with the application and the application shall be deemed rejected by the committee.

7.3 Renewal

Members (other than life members) must renew their membership annually in the manner determined by the committee from time to time and pay the annual membership fees or subscriptions determined by the committee.

7.4 Deemed membership

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.

8. Membership Fees

8.1 Committee to determine fees

The committee shall determine any annual membership fees or subscriptions or other levies (if any) payable by members to the club, and, subject to this constitution, the time for and manner of payment.

8.2 Club year

The club year shall run from 1st October to 30th September next following and membership fees shall fall due on the first day of September of each year.

9. Cessation of Membership

9.1 Membership ceasing

Membership shall cease upon resignation, failure to pay outstanding membership fees within three (3) months of the due date, discontinuance, or death.

9.2 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.

9.3 No membership fee refund

A member who ceases to be a member, for whatever reason, is not entitled to a refund of membership fees or levies paid whether on a pro-rata basis or otherwise. This clause does not affect the obligation of the committee under **subclause 7.2(c)** to refund any fees where an application for membership is rejected.

10. Resignation

10.1 Notice of resignation

A member may resign from membership of the club by giving one month's notice in writing (or any other period that the committee may determine) to the

club, and on the expiration of the period of notice, the member ceases to be a member.

10.2 Membership ceasing

When the club receives a notice of resignation of membership given under **clause 10.1**, it must make an entry in the register that records the date on which the member ceased to be a member.

11. Discontinuance for Breach

- (a) Membership of the club may be discontinued by the committee upon breach of any clause of this constitution or the regulations, including, but not limited to, the failure to pay any monies owed to the club, failure to comply with the regulations or any resolutions or determinations made or passed by the committee.
- (b) Membership shall not be discontinued by the committee under **clause 11(a)** without the committee first giving the relevant member the opportunity to explain the breach and/or remedy the breach.
- (c) Where a member fails, in the committee's view to adequately explain the breach, that member's membership shall be discontinued under **subclause 11(a)** by the club giving to the member written notice of the discontinuance. The register shall be amended to reflect any discontinuance of membership under this **subclause 11(c)** as soon as practicable.

12. Member May Re-apply

- (a) A member whose membership has ceased or been discontinued under any of **clauses 9, 10 or 11** may seek renewal of, or may re-apply for, membership in accordance with this constitution and may be re-admitted at the discretion of the committee.
- (b) Membership previously discontinued under **clause 11** may be reinstated at the discretion of the committee with such conditions imposed as it deems appropriate.

13. Register of Members

13.1 Club to keep register

- (a) The club must keep and maintain a register of members (whether in written or electronic form) recording such information as is required under the Act from time to time, and as a minimum including the following information for each member:
 - (i) the name, date of birth and residential address;
 - (ii) the email address if applicable;
 - (iii) the date on which the person became a member; and
 - (iv) the date on which the person ceased to become a member (if applicable).
- (b) If in hard copy form, the register of members must be kept in New South Wales the club's official address.

13.2 Form of register

If the register of members is kept in electronic form it must be convertible into hard copy and the requirements of **sub-clause 13.1(b)** and **clause 13.3** apply as if a reference to the register of members is a reference to a current hard copy of the register of members.

13.3 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.

13.4 Use of information from register

Subject to the Act, confidentiality considerations and privacy laws, the register may be used to further the objects, in such manner as the committee considers appropriate. This includes a member using information from the register to contact or send material to the person for the purposes of sending the person:

- (i) a newsletter or information regarding club activities or events;
- (ii) a notice in respect of a meeting or other matter relating to the club; or
- (iii) other material relating to the club or its objects.

14. Members' Liabilities

The liability of a member of the club to contribute towards the payment of the debts and liabilities of the club or the costs, charges and expenses of the winding up of the club is limited to the amount, if any, unpaid by the member in respect of membership of the club as required by **clause 8**.

15. Grievance Procedure

15.1 Parties to dispute

The grievance procedure set out under this clause applies to complaints or disputes under this constitution or the club's regulations (if any) between a member or members (in their capacity as a member of the club) and:

- (i) another member or members (in their capacity as a member of the club); or
- (ii) the club

PROVIDED THAT where a complaint or dispute falls within the provisions of the SA Safe Sport Framework then the grievance procedure under this **clause 15** does not apply and the complainant or parties involved must lodge a complaint under the SA Safe Sport Framework complaint procedures.

15.2 Meeting to resolve

The parties to a 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.

15.3 Referral

- (a) 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 fourteen (14) days of the date on which the meeting was held, or was to have been held, refer the dispute to a Community Justice Centre for mediation under the *Community Justice Centres Act 1983*.
- (b) If a dispute is not resolved by mediation within three (3) months of the referral to a Community Justice Centre, the dispute is to be referred to arbitration. (The *Commercial Arbitration Act 2010* applies to a dispute referred to arbitration).

15.4 Additional grievance procedures

The committee may prescribe additional grievance procedures in regulations consistent with this **clause 15**.

16. Disciplining of Members

16.1 Safe Sport Framework

Members are bound to comply with the Safe Sport Framework as a result of the club's affiliation to SA and NSW pursuant to its objects and also as a result of **clause 51** 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.

16.2 Complaint

A complaint may be made to the committee by any person that a member of the club:

- (i) has refused or neglected to comply with a provision or provisions of this constitution; or
- (ii) has wilfully acted in a manner prejudicial to the interests of the club.

The committee may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.

16.3 Complaint process

If the committee decides to deal with the complaint, the committee:

- (i) must cause notice of the complaint to be served on the member concerned, and
- (ii) must give the member at least fourteen (14) days from the time the notice is served within which to make submissions to the committee in connection with the complaint, and
- (iii) must take into consideration any submissions made by the member in connection with the complaint.

16.4 Committee determination

- (a) The committee may, by resolution, expel the member from the club or suspend the member from membership of the club if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved and the expulsion or suspension is warranted in the circumstances.
- (b) If the committee expels or suspends a member, the secretary must, within 7 days after the action is taken, cause written notice to be given to the member of the action taken, of the reasons given by the committee for having taken that action and of the member's right of appeal under **clause 16.4**.
- (c) The expulsion or suspension does not take effect:
 - (i) until the expiration of the period within which the member is entitled to appeal against the resolution concerned; or
 - (ii) if within that period the member exercises the right of appeal, unless and until the club confirms the resolution under **clause 16.4**,whichever is the later.

16.5 Right of appeal of disciplined member

- (a) A member may appeal to the club in general meeting against a resolution of the committee under **clause 16.4**, within 7 days after notice of the resolution is served on the member, by lodging with the secretary a notice to that effect.
- (b) The notice may, but need not, be accompanied by a statement of the grounds on which the member intends to rely for the purposes of the appeal.
- (c) On receipt of a notice from a member under **subclause 16.5(a)**, the secretary must notify the committee, which is to convene a general meeting of the club to be held within 28 days after the date on which the secretary received the notice.
- (d) At a general meeting of the club convened under **subclause 16.5(c)**:
 - (i) no business other than the question of the appeal is to be transacted, and
 - (ii) the committee and the member must be given the opportunity to state their respective cases orally or in writing, or both, and
 - (iii) the members present are to vote by written ballot on the question of whether the resolution should be confirmed or revoked.
- (e) The appeal is to be determined by a simple majority of votes cast by members of the club.

Part 4 THE COMMITTEE

17. Powers of the Committee

Subject to the Act, this constitution and any resolution passed by the club in general meeting, the committee:

- (a) is to control and manage the affairs of the club, and
- (b) may exercise all the functions that may be exercised by the club, other than those functions that are required by this constitution to be exercised by a general meeting of members of the club, and
- (c) has power to perform all the acts and do all things that appear to the committee to be necessary or desirable for the proper management of the affairs of the club.

18. Membership of Committee

18.1 Composition

- (a) The committee is to consist of:
 - (i) five (5) office bearers, and
 - (ii) up to seven (7) ordinary committee members,each of whom must be a club member and is to be elected at the annual general meeting of the club under **clause 20**.
- (b) The office bearers are as follows:
 - (i) the president;
 - (ii) the treasurer;
 - (iii) the secretary;
 - (iv) the registrar; and
 - (v) the race secretary.
- (c) The maximum number of committee members is twelve (12).
- (d) The committee may determine and allocate portfolios to committee members as it decides necessary.
- (e) A committee member may hold more than one portfolio or office bearer position.

18.2 Term of office

- (a) Each member of the committee is to hold office immediately following the conclusion of the annual general meeting at which they are elected until the conclusion of the next annual general meeting.
- (b) Each member of the committee is eligible for re-election.

- (c) There is no maximum number of consecutive terms for which a committee member may hold office.

18.3 Composition at committee at approval of constitution

The membership of the committee at the time this constitution takes effect shall comprise all the committee members in office (duly elected or appointed under the provisions of a previous constitution), at the time of approval of this constitution under the Act.

19. Nomination of Committee Members

Nomination of committee members as office bearers or ordinary committee members must, except as provided in **subclause 20(b)**, be:

- (i) made to the committee, whether in writing or orally;
- (ii) consented to in writing by the candidate expressing their willingness to accept the nominated position, such consent to be given by the time at which notice of the annual general meeting must be given to members.

20. Election of Committee Members

- (a) If the number of nominations received is equal to or fewer than the number of vacancies to be filled on the committee, the persons nominated are taken to be elected.
- (b) If insufficient nominations are received to fill all vacancies on the committee, further nominations may be received at the annual general meeting. Such further nominations may be made orally if the nominee is present at the annual general meeting and orally confirms his or her willingness to accept the position.
- (c) if insufficient further nominations are received, any vacant positions remaining on the committee are taken to be casual vacancies and may be filled under **clause 21.1**.
- (d) If the number of nominations received exceeds the number of vacancies to be filled, a ballot is to be held, with voting papers to be prepared containing the names of the candidates in alphabetical order.
- (e) Voting shall be conducted in such manner and by such a method as determined by the committee from time to time.
- (f) The ballot for the election to fill any vacancy is to be conducted at the annual general meeting in any usual and proper manner that the committee directs.

21. Casual Vacancies

21.1 Filling casual vacancies

If a casual vacancy occurs in the membership of the committee, the committee may appoint a member of the club to fill the vacancy and the member so appointed is to hold office, subject to this constitution, until the annual general meeting next following the date of the appointment.

21.2 Casual vacancies

A casual vacancy in the position of a member of the committee occurs if the member:

- (i) resigns office by notice in writing given to the club; or
- (ii) ceases to be a member of the club; or
- (iii) is removed from the position under **clause 22**; or
- (iv) is absent from three (3) consecutive meetings of the committee without providing reasonable justification for those absences or having obtained the consent of the committee; or
- (v) holds any office of employment with the club without the approval of the committee; or
- (vi) is directly or indirectly interested in any contract or proposed contract with the club and fails to declare the nature of that interest; or
- (vii) is the subject of disciplinary proceedings under **clause 16** in which a resolution has been made to suspend or expel the member; or
- (viii) becomes of unsound mind or becomes a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
- (ix) dies.

22. Removal of Committee Members

- (a) The club in general meeting may by resolution remove any member of the committee from the office of committee member before the expiration of the member's term of office and may by resolution appoint another person to hold office until the expiration of the term of office of the member so removed.
- (b) If a member of the committee to whom a proposed resolution referred to in **subclause 22(a)** relates makes representations in writing to the secretary or president (not exceeding a reasonable length) and requests that the representations be notified to the members of the club, the secretary or the president may send a copy of the representations to each member of the club or, if the representations are not so sent, the member is entitled to require that the representations be read out at the meeting at which the resolution is considered.

23. Committee to Meet

The committee must meet as often as necessary in every calendar year to conduct the business of the club at the place and time that the committee may determine, and subject to this constitution may adjourn and otherwise regulate its meetings as it thinks fit.

24. Committee Meetings

24.1 Notice

- (a) A committee meeting may be convened by the president or by any member of the committee within reasonable time.
- (b) Oral or written notice of a meeting of the committee must be given by the secretary to each member of the committee at least seven (7) days before the time appointed for the holding of the meeting unless all committee members agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their apology or presence).
- (c) The agenda, specifying the general nature of the business to be transacted at the meeting, shall be forwarded to each committee member.

24.2 Quorum

- (a) The quorum for the transaction of the business of a meeting of the committee shall be five (5) committee members.
- (b) No business is to be transacted by the committee unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to stand adjourned to such time and place as shall be determined by the Chair.
- (c) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.

24.3 Chair

At a meeting of the committee the Chair shall be:

- (i) the president, or
- (ii) if the president is absent or unwilling to act, one of the remaining members of the committee chosen by the members present at the meeting shall act as Chair.

25. Voting and Decisions

- (a) Questions arising at a meeting of the committee are to be determined by a majority of the votes of members of the committee present at the meeting.
- (b) Each member present at a meeting of the committee (including the person presiding at the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the person appointed to chair the meeting may exercise a second or casting vote.
- (c) Any act or thing done or suffered, or purporting to have been done or suffered, by the committee, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the committee.
- (d) Subject to the requirement for a quorum in **sub-clause 24.2(a)**, the committee may act despite any vacancy on the committee.

26. Use of Technology at Committee Meetings

26.1 Meeting at multiple venues

A meeting of the committee may be held where one or more of the committee members 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, electronic means or some other form of communication; and
- (ii) notice of the meeting is given to all the committee members entitled to notice in accordance with the usual procedures under this constitution and the notice specifies that committee members are not required to be present in person.

26.2 Deemed presence at meeting

- (a) A committee member who participates in a committee meeting using technology under **clause 26.1** is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.
- (b) Any meeting held where one or more of the committee members is not physically present shall be deemed to be held at the place specified in the notice of the meeting, provided a committee member is there present. If no committee member is there present, the meeting shall be deemed to be held at the place where the Chair of the meeting is located.

26.3 Quorum affected by failure in technology

If a failure in technology or communications prevents one or more committee members from being able to communicate with each other effectively, simultaneously and instantaneously under **clause 26.1** thereby preventing the requirement of the minimum number of committee members which constitutes a quorum from being satisfied (committee members, if any, physically present at the place where the meeting is deemed to be held by virtue of **clause 26.2** not being sufficient in number to constitute a quorum), then the meeting shall be suspended until **clause 26.1** 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.

27. Resolutions Not in Meetings

A resolution in writing that has been assented to by any form of visible or other electronic communication by a simple majority of committee members:

- (i) shall be as valid and effectual as if it had been passed at a meeting of committee members duly convened and held; and
- (ii) shall have date deemed to be the date upon which the resolution was assented to by a simple majority of committee members; and
- (iii) may consist of several documents in like form each assented to by one or more of the committee members

PROVIDED THAT notice of the meeting is given to all the committee

members entitled to notice in accordance with the usual procedures under this constitution and the notice specifies that committee members are not required to be present in person.

28. Delegations

- (a) The committee may, by instrument in writing, delegate to one or more sub-committees (consisting of the member or members of the club that the committee thinks fit) or individual officers the exercise of any of the functions of the committee that are specified in the instrument, other than:
 - (i) this power of delegation, and
 - (ii) a function which is a duty imposed on the committee by the Act or by any other law.
- (b) The procedures for any entity exercising delegated power shall be the same as that applicable to meetings of the committee under **clauses 24, 25, 26 and 27**, and the entity shall make decisions in accordance with the objects and shall promptly provide the committee with details of all material decisions and any other reports, minutes and information required by the committee.
- (c) A function the exercise of which has been delegated to a sub-committee under this clause may, while the delegation remains unrevoked, be exercised from time to time by the sub-committee in accordance with the terms of the delegation.
- (d) A delegation under this clause may be made subject to any conditions or limitations as to the exercise of any function, or as to time or circumstances, that may be specified in the instrument of delegation.
- (e) Despite any delegation under this clause, the committee may continue to exercise any function delegated.
- (f) Any act or thing done or suffered by a sub-committee acting in the exercise of a delegation under this clause has the same force and effect as it would have if it had been done or suffered by the committee.
- (g) The committee may, by instrument in writing, revoke wholly or in part any delegation under this clause.
- (h) A sub-committee may meet and adjourn as it thinks proper.

29. Appointment of Club Members as Committee Members to Constitute Quorum

If at any time the number of committee members is less than the number required to constitute a quorum for a committee meeting, then:

- (i) existing committee members may act only to appoint a sufficient number of members of the club as committee members to enable the quorum to be constituted, and
- (ii) a member of the committee so appointed is to hold office, subject to this constitution, until the annual general meeting next following the date of the appointment, and

- (iii) this clause does not apply to the filling of a casual vacancy to which **clause 18** applies.

Part 5 GENERAL MEETINGS

30. Holding of Annual General Meetings

The club must hold its annual general meetings in each club year within the period up to 30 June after the close of each financial year of the club, or within any later time that may be allowed or prescribed under the Act.

31. Calling and Business at Annual General Meetings

31.1 Convening

- (a) The annual general meeting of the club is to be convened on the date and at the place and time that the committee thinks fit. Calling of the annual general meeting is subject to **clause 30** and to the Act.
- (b) An annual general meeting must be specified as being an annual general meeting in the notice convening it.

31.2 Business to be transacted

In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting is to include the following, whether specified or not:

- (i) to confirm the minutes of the last preceding annual general meeting and of any special general meeting held since that meeting;
- (ii) to receive from the committee reports on the activities of the club during the last preceding financial year;
- (iii) to elect committee members; and
- (iv) to receive and consider any financial statement or report required to be submitted to members under the Act.

31.3 Patron

In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting may include the receipt of a recommendation from the committee as to the name of a person who has agreed to grant their patronage to the club for the ensuing club year in the position of Patron.

31.4 Life Members

In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting may include the receipt of a recommendation from the committee as to the name of any member or members who has or have agreed to be recommended as a life member under the provisions of **clause 5.4**. Any resolution of the annual general meeting to confer life membership on such person or persons must be a special resolution.

32. Special General Meetings

32.1 Convening

- (a) The committee may, whenever it thinks fit, convene a special general meeting of the club.
- (b) The committee must, on the requisition of ten (10) members of the club, convene a special general meeting of the club.

32.2 Requisition by members

A requisition of members for a special general meeting:

- (i) must be in writing, and
- (ii) must state the purpose or purposes of the meeting, and
- (iii) must be signed by the members making the requisition, and
- (iv) must be lodged with the secretary, and
- (v) may consist of several documents in a similar form, each signed by one (1) or more of the members making the requisition.

32.3 Committee failure to cConvene

- (a) If the committee fails to convene a special general meeting to be held within one month after the date on which a requisition of members for the meeting is lodged with the secretary, any one or more of the members who made the requisition may convene a special general meeting to be held not later than three (3) months after that date.
- (b) A special general meeting convened by a member or members as referred to in **clause 32.3** must be convened as nearly as is practicable in the same manner as general meetings are convened by the committee.

32.4 Form of requisition

For the purposes of **clause 32.2**:

- (i) a requisition may be in electronic form, and
- (ii) a signature may be transmitted, and a requisition may be lodged, by electronic means.

33. Notice of General Meetings

33.1 Period of notice.

At least fourteen (14) days before the date fixed for the holding of the general meeting, the secretary must give a notice to each member who is entitled to receive such a notice under **Clause 5.3** specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting, except if the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the club.

33.2 Special resolutions - period of notice.

If the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the club, at least 21 days before the date fixed for the holding of the general meeting the secretary must give a notice to each member **who is entitled to receive such a notice under clause 5.3** specifying the intention to propose the resolution as a special resolution, in addition to specifying the matters required under **clause 33.1**.

33.3 Business transacted

No business other than that specified in the notice convening a general meeting is to be transacted at the meeting except, in the case of an annual general meeting, business required to be transacted under **clause 31.2**.

33.4 Members' notice of business:

Members entitled to vote under **clause 5.3** and desiring to bring any business before a general meeting may give notice of that business in writing to the club no less than thirty days prior to the general meeting for inclusion in the next notice calling a general meeting.

34. Proceedings at General Meetings

34.1 Quorum

- (a) Twenty (20) members present and eligible to vote under **clause 5.3** at a general meeting constitute a quorum.
- (b) No item of business shall be transacted at any general meeting unless a quorum is present at the time that the meeting proceeds to business.
- (c) No item of business shall be transacted at any general meeting unless a quorum is present during the time the meeting is considering that item.

34.2 Adjournment for lack of quorum

- (a) If within half an hour after the appointed time for the commencement of a general meeting a quorum is not present, the meeting
 - (i) if convened on the requisition of members—is to be dissolved, and
 - (ii) in any other case—is to stand adjourned to a date, time and place specified by the Chair at the time of the adjournment or communicated by written notice to members given before the day to which the meeting is adjourned.
- (b) 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) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the meeting will lapse.

34.3 Chair

At each general meeting of the club the Chair shall be:

- (i) the president; or

- (ii) if the president is absent or unwilling to act, the members present must elect one of their number to preside as Chair at the meeting.

34.4 Adjournment of meeting

- (a) The Chair of a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (b) If a general meeting is adjourned for fourteen (14) days or more, the secretary must give written or oral notice of the adjourned meeting to each member who is entitled to receive such a notice under **clause 5.3** stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- (c) Except as provided in **subclause 34.4(a)** and **subclause 34.4(b)**, notice of an adjournment of a general meeting or of the business to be transacted at an adjourned meeting is not required to be given.

34.5 Voting procedure and decision

At any general meeting a resolution put to the vote of the meeting is to be decided on a show of hands unless:

- (a) a written ballot is (before, or on the declaration of the result of the show of hands) demanded by:
 - (i) the Chair; or
 - (ii) five or more members present on a show of hands; or
- (b) a written ballot is required to be held under the provisions of **clause 16.5** of this constitution.

34.6 Chair's declaration

- (a) Unless a written ballot is demanded or is required to be held under the provisions of this constitution, the Chair's declaration shall be conclusive evidence of the result of a resolution decided on a show of hands. An entry to that effect in the minute book of the club is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- (b) **Subclause 34.6(a)** applies to any method determined by the committee under **subclause 34.5(b)** in the same way as it applies to a show of hands.

34.7 Chair's directions for written ballot

If a resolution put to the vote of the meeting is to be determined by a written ballot, the ballot is to be conducted in accordance with the directions of the Chair.

35. Special Resolutions

- (a) A special resolution is required to be passed by a general meeting of the club to effect the following:
 - (i) to change the name of the club;

- (ii) to change the constitution of the club (*refer clause 49*);
 - (iii) to change the objects of the club;
 - (iv) to make or amend By-laws of the club;
 - (v) to amalgamate with another swimming club;
 - (vi) to confer life membership on a member (*refer clauses 5.4 and 31.4*);
 - (vii) to resign, disaffiliate or otherwise seek to withdraw from its area association and/or SNSW (*refer clause 50.3*); or
 - (viii) to voluntarily wind up the club and distribute the property of the club, subject to **clause 46**.
- (b) A special resolution requires notice to be given in accordance with **clause 33.2**.
 - (c) A special resolution may only be passed if at least three quarters of those present and eligible to vote vote in favour of the resolution.
 - (d) A special resolution may only be passed by the club otherwise in accordance with **section 39** of the Act.

36. Voting

- (a) On any question arising at a general meeting a member has one vote only.
- (b) In the case of an equality of votes on a question at a general meeting, the Chair of the meeting is entitled to exercise a second or casting vote.
- (c) A member is not entitled to vote at any general meeting of the club unless all money due and payable by the member to the club has been paid.
- (d) A member is not entitled to vote at any general meeting of the club if the member is under sixteen (16) years of age.

37. Proxy Votes Not Permitted

All votes must be given personally and proxy voting must not be undertaken at or in respect of a general meeting.

38. Postal or Electronic Ballots

- (a) Postal voting or voting by electronic communication may be permitted from time to time in such instances and on such resolutions as the committee may determine (other than an appeal by a disciplined member under **clause 16.3**).
- (b) When permitted by the committee, postal or electronic voting shall be conducted in accordance with the Regulation, 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.

39. Use of Technology at General Meetings

A member participates in a general meeting of the club only by being physically present at the meeting.

Part 6 FINANCE AND ADMINISTRATION

40. Insurance

The club may effect and maintain insurance.

41. Public Officer

41.1 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 committee member.

41.2 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 committee meetings and general meetings and must receive notice of such meetings but is not entitled to vote unless a duly elected member of the committee.

41.3 Removal of Public Officer

The committee 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**.

41.4 Vacation of office

The Public Officer shall be deemed to have vacated his or her position in the following circumstances:

- (i) resignation by notice in writing given to the secretary; or
- (ii) death; or
- (iii) removal by the committee or at a general meeting; or
- (iv) bankruptcy or financial insolvency; or
- (v) mental illness; or
- (vi) residency outside New South Wales.

42. Registered Address

The registered address of the club must be in New South Wales and an address where the Public Officer can generally be found and where documents can be served on the Public Officer.

43. Records and Accounts

43.1 Proper 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 committee). It shall produce these as appropriate at each committee 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.

43.2 Minutes

- (a) Without limiting the obligations in **subclause 43.1(a)** it is the duty of the secretary to keep minutes of:
 - (i) all appointments of office-bearers and members of the committee, in accordance with the Act, and
 - (ii) the names of members of the committee present at a committee meeting or a general meeting, and
 - (ii) all proceedings at committee meetings and general meetings.
- (b) Minutes of proceedings at a meeting must be signed by the Chair of the meeting or by the Chair of the next succeeding meeting.
- (c) The signature of the Chair may be transmitted by electronic means for the purpose of **subclause 43.2 (b)**.

43.3 Financial records

- (a) All books, documents, securities and proper accounting and other records showing the financial affairs of the club shall be kept in accordance with the Act, generally accepted accounting principles and/or any applicable code of conduct.
- (b) It is the duty of the Treasurer to ensure that the obligations under **subclause (a)** are met, including full details of all receipts and expenditure connected with the activities of the club.

43.4 Committee to submit accounts

The committee shall submit the club's statements of account to the members at the annual general meeting in accordance with this constitution and the Act.

43.5 Inspection of records

- (a) Members may on request inspect free of charge:
 - (i) the minutes of general meetings; and
 - (ii) subject to **subclause 43.5(b)**, the financial records, books, securities and any other relevant document of the club.
- (b) The committee 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 committee must on request make copies of this constitution available to members and applicants for membership free of charge.
- (d) Subject to **subclause 43.5(b)**, a member may obtain 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.

43.6 Custody of records

Except as otherwise provided by this constitution, all records, books and other documents relating to the club must be kept in New South Wales at the club's official address, in the custody of the Public Officer.

44. Funds and Property

44.1 Source of funds

The funds, income and property of the club are to be derived from entrance fees and annual subscriptions of members, grants, donations and such sources that the committee determines from time to time.

44.2 Depositing funds

It is the duty of the Treasurer to ensure that all money due to the club is collected and received and deposited as soon as practicable and without deduction to the credit of the club's bank or other authorised deposit-taking institution account.

44.3 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 committee members or in such other manner as the committee determines from time to time.

44.4 Application of funds

- (a) The club's funds, income and property are to be applied solely towards promotion of the objects of the club, in the manner that the committee determines and no pecuniary gain is to be provided for any of its members.
- (b) No portion of the funds, income or property of the club shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise to any member.

- (c) 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.

44.5 Payment to member in good faith

Payment in good faith of or to any member can be made for:

- (i) any out-of-pocket expenses incurred by a member on behalf of the club;
- (ii) any services actually rendered to the club whether as an employee, committee member or otherwise;
- (iii) goods supplied to the club in the ordinary and usual course of operation;
- (iv) interest on money borrowed from any member; or
- (v) rent for premises demised or let by any member to the club.

Nothing in **clause 44.4** precludes such payments provided they do not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction.

45. Service of Notices

45.1 Manner of service of notice

Notice may be given by the club to any person entitled to receive any notice under this constitution by:

- (a) sending by pre-paid post to a member's registered address by properly addressing, prepaying and posting the notice; or
- (b) sending by electronic mail to the member's electronic mail address; or
- (c) sending by facsimile transmission to the member's facsimile number; or
- (d) delivery in person.

45.2 Deemed service

Service of the notice shall be deemed to be effected, unless the contrary is proved, in the case of a notice sent by:

- (a) pre-paid post, three days after posting; and
- (b) electronic mail, on the date it was sent; and
- (c) facsimile transmission, on the date it was sent, or if the machine from which the transmission was sent produces a confirmation report of sending then upon the date of receipt of a confirmation report confirming the facsimile was sent to/or received at the facsimile number to which it was sent.

46. Winding Up of Club

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:

- (a) the assets or property shall be given or transferred to another organisation(s) that has objects similar to those of the club; and
- (b) the organisation(s) **to which the assets or property are to be given or transferred** 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; and
- (c) the organisation(s) **to which the assets or property are to be given or transferred** is to be determined by the members in a general meeting at or before the time of dissolution and such determination must be by special resolution. 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.

Part 7 MISCELLANEOUS

47. Common Seal

If the club has a common seal it shall be kept in the custody of the Public Officer and shall only be affixed to a document with the approval of the committee. The stamping of the common seal shall be witnessed by the signature of two (2) members of the committee.

48. Change of Name, Objects and Constitution

An application for registration of a change in the club's name, objects or constitution in accordance with section 10 of the Act is to be made by the Public Officer or a committee member.

49. Alteration of Constitution

This constitution shall not be altered except by Special Resolution.

50. Status and Compliance of Club

50.1 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.

50.2 Constitution of the club

This constitution will clearly reflect the objects of the regional and state bodies for swimming and will conform to the constitutions of those bodies, subject always to the Act.

50.3 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.

51. Safe Sport Framework

- (a) SA has adopted the Safe Sport Framework which commits to keeping children and young people safe in swimming and clarifies and raises standards of behaviour for dealing with children and young people through a code of conduct and provides processes and procedures when safe sport concerns or incidents arise.
- (b) Pursuant to its objects the committee has adopted the Safe Sport Framework, as amended from time to time, as a regulation which is binding on the club and all members.

52. 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.

53. By Laws

53.1 Committee to formulate by-laws

The committee 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 committee.

53.2 By-Laws binding

All By-Laws are binding on the club and all members.

53.3 Bulletins binding on members

Amendments, alterations, interpretations or other changes to by-laws shall be advised to members by means of bulletins and prepared and issued by the club to members. The matters in the bulletins are binding on all members.

54. Rules

54.1 Committee to formulate rules

The committee may from time to time formulate, issue, adopt, interpret and amend such club rules for the purposes of attaining the objects of the club, and such club rules must be consistent with this constitution or any rules or procedures adopted by SA or SNSW. The committee may from time to time vary amend or repeal any such club rules.

54.2 Rules binding

All club rules are binding on the club and all members.

54.3 Date of club rule

A club rule made under **clause 54.1** shall take effect from the date it is made, or such later date as the committee shall decide, and shall be laid before the annual general meeting of the club. If the club rule is disallowed at the annual general meeting then it shall cease to have effect as from the date of that meeting.