



CONSTITUTION

Melbourne Vicentre Swimming Club Incorporated

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CONSTITUTION OF MELBOURNE VICENTRE SWIMMING CLUB INCORPORATED
ASSOCIATIONS INCORPORATION REFORM ACT 2012 (VIC)

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1 NAME OF ASSOCIATION

The name of the association is Melbourne Vicentre Swimming Club Incorporated (**Association**).

2 OBJECTS OF ASSOCIATION

The objects for which the Association is established are to:

- (a) conduct, encourage, promote, teach, advance, control and administer natatorial activities in the Association for the benefit of the Members and the development of swimming;
- (b) act in good faith and loyalty to ensure the maintenance and enhancement of the Association and swimming, its standards, quality and reputation for the collective and mutual benefit of the Members and the development of swimming;
- (c) affiliate and liaise with Swimming Victoria Inc (**SV**) and such other bodies as may be desirable to achieve these Objects;
- (d) at all times promote mutual trust and confidence between the Association, SV and the Members in pursuit of these Objects;
- (e) at all times act on behalf of, in the interest of, and in conjunction with the Members;
- (f) promote the economic and sporting success, strength and stability of the Association, and each Member and to act interdependently with each Member in pursuit of these Objects;
- (g) ensure compliance with the rules and by-laws of SV as amended from time to time;
- (h) use and protect the Intellectual Property
- (i) apply the property and capacity of the Association towards the fulfilment and achievement of these Objects;
- (j) strive for Governmental, commercial and public recognition of the Association and swimming;
- (k) pursue through itself or other such commercial arrangements, including sponsorship and marketing opportunities as are appropriate to further these Objects;
- (l) promote the health and safety of Members;
- (m) formulate or adopt and implement appropriate policies, including in relation to member protection, sexual harassment, equal opportunity, equity, drugs in sport, health, safety, junior and senior programs, infectious diseases and such other matters as arise from time to time as issues to be addressed in swimming;
- (n) encourage and promote performance-enhancing drug free competition;
- (o) represent the interests of its Members and of swimming generally in any appropriate forum;
- (p) have regard to the public interest in its operations;
- (q) do all that is reasonably necessary to enable these Objects to be achieved and to enable the Members to receive the benefits which these Objects are intended to achieve; and
- (r) undertake and or do all such things or activities which are necessary, incidental or conducive to the advancement of these objects.

3 POWERS OF THE ASSOCIATION

Solely for furthering the Objects, the Association has in, addition to the powers and functions under the Act, the legal capacity and powers of a company limited by guarantee as set out under section 124 of the *Corporations Act*.

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4 APPLICATION OF INCOME

- (a) The income and property of the Association shall be applied solely towards the promotion of the Objects.
- (b) Except as prescribed in this Constitution:
 - i) no portion of the income or property of the association shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any member; and
 - ii) no remuneration or other benefit in money or money's worth shall be paid or given by the association to any member who holds any office of the association.
- (c) Nothing in Rules 4(b)i) or 4(b)ii) shall prevent payment in good faith of or to any Member for:
 - iii) any services actually rendered to the Association whether as an employee or otherwise;
 - iv) goods supplied to the Association in the ordinary and usual course of operation;
 - v) interest on money borrowed from any Member;
 - vi) rent for premises demised or let by any Member to the Association;
 - vii) any out-of-pocket expenses incurred by the Member on behalf of the Association;provided that any such payment shall not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction.

5 LIABILITY OF MEMBERS

The liability of the Members of the Association is limited.

6 MEMBER'S CONTRIBUTIONS

Every Member of the Association undertakes to contribute to the assets of the Association in the event of it being wound up while the Member, or within one year after ceasing to be a Member for payment of the debts and liabilities of the Association contracted before the time at which it ceases to be a Member and the costs, charges and expenses of winding up the Association, such an amount not exceeding one dollar (\$1.00).

7 DISTRIBUTION OF PROPERTY ON WINDING UP

If upon winding up or dissolution of the Association there remains after satisfaction of all its debts and liabilities any assets or property, the same shall not be paid to or distributed amongst the Members but shall be given or transferred to an organisation or organisations, having objects similar to the Objects and which prohibits the distribution of its or their income and property among its or their Members to an extent at least as great as is imposed on the Association by this Constitution. Such organisation(s) will be determined by the Members at or before the time of dissolution, and in default thereof by such judge of the Supreme Court of Victoria or other Court as may have or acquire jurisdiction in the matter.

8 DEFINITIONS AND INTERPRETATION

8.1 DEFINITIONS

In this Constitution unless the contrary intention appears:

Act means the *Associations Incorporated Reform Act 2012* (Vic).

Association means Melbourne Vicentre Swimming Club Incorporated.

Board means the body governing the Association and consisting of the Directors under **Rule 25**.

By Laws means any By-Laws made by the Board under **Rule 31**.

Constitution means this Constitution of the Association.

Director means a member of the Board appointed in accordance with this Constitution.

Financial year means the year ending 30 April in each year or such other period as may be determined by the Board.

General Meeting means the annual or any special general meeting of the Association.

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Intellectual Property means all rights subsisting in copyright, business names, names, trade marks (or signs), logos, designs, equipment, images (including photographs, television, videos or films) or service marks (whether registered or registrable) relating to the Association or any championship, competition, series, event or activity of or conducted, promoted or administered by the Association.

Junior Member means a registered member of the Association under the age of 16 years of age.

Life Member means an individual appointed as a Life Member of the Association under **Rule 9.2**.

Member means a member for the time being of the Association.

Objects means the objects of the Association under **Rule 2**.

Seal means the common seal of the Association and includes any official seal of the Association.

Senior Member means a registered member of the Association over the age of 16 years of age who is entitled to vote at General Meetings.

Special Resolution means a resolution passed in accordance with the Act.

SV means the body recognised by Swimming Australia as the peak body administering natatorial activities in Victoria.

8.2 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 or 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 regulations 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.

8.3 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.

8.4 EXPRESSIONS IN 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.

8.5 SOLE PURPOSE

The Association is established solely for the Objects.

8.6 MODEL RULES

The model rules under the Act are expressly displaced by this Constitution.

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9 MEMBERS

9.1 CATEGORIES OF MEMBERS

The Members of the Association shall consist of:

- (a) Life Members, who subject to this Constitution, shall have the right to receive notice of, be present and to debate at General Meetings, but shall have no voting rights; unless they also meet the qualifications of a Senior Member under **Rule 9.1(b)**;
- (b) Senior Members over 16 years of age with such other qualifications as are set out in the By-Laws, who shall have the right to receive notice of, be present, to debate and to vote at General Meetings; and
- (c) Junior Members under 16 years of age, with such other qualifications as are set out in the By-Laws who will be granted membership in their own right, but shall not have the right to receive notice, be present, to debate nor to vote at General Meetings.

9.2 LIFE MEMBERS

- (a) The Board may recommend to the Annual General Meeting that any natural person who has rendered distinguished service to the Association and swimming, where such service is deemed to have assisted the advancement of the Association and swimming be appointed as a Life Member.
- (b) A resolution of the Annual General Meeting to confer life membership on the recommendation of the Board must be a Special Resolution.
- (c) A person must accept or reject the Association'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.

9.3 SV

All Members shall be registered with SV each year.

10 SUBSCRIPTIONS AND FEES

The annual membership subscription (if any) and fees payable by Members to the Association, the time for and manner of payment shall be as determined by the Board from time to time.

11 APPLICATION

11.1 APPLICATION FOR MEMBERSHIP

An application for membership by an individual (applicant) must be:

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

11.2 DISCRETION TO ACCEPT OR REJECT APPLICATION

- (a) The Board may accept or reject an application whether the applicant has complied with the requirements in **Rule 11.1** or not, and shall not be required or compelled to provide any reason for such acceptance or rejection. In considering an application for membership the Board must act reasonably and in good faith.
- (b) Where the Association accepts an application the applicant shall become a Member.
- (c) Membership of the Association shall be deemed to commence upon acceptance of the application by the Association. The Register shall be updated accordingly as soon as practicable.

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- (d) If a membership application is rejected, the Association shall refund any fees forwarded with the application, and the application shall be deemed rejected by the Association. No reasons for rejection need be given.

11.3 RE-APPLICATION

- (a) Members must re-apply for membership of the Association in accordance with the procedures set down by the Association from time to time. Membership renewal is not automatic and a re-application may be accepted or rejected by the Association in its discretion but acting reasonably and in good faith at all times. If the Association rejects a re-application, it shall refund any fees forwarded with the application, and the re-application shall be deemed rejected by the Association. No reasons for rejection need be given.
- (b) Upon re-application a Member must provide details of any change in their personal details, and any other information reasonably required by the Association.

11.4 DEEMED MEMBERSHIP

- (a) All individuals who are, prior to the approval of this Constitution, members of the Association shall be deemed Members of the Association (in the relevant category with the relevant rights) from the time of approval of this Constitution under the Act.
- (b) The Members shall provide the Association with such details as may be required by the Association under this Constitution within one month of the approval of this Constitution under the Act.
- (c) Any members of the Association prior to approval of this Constitution under the Act, who are not deemed Members under **Rule 11.4** shall be entitled to carry on such functions analogous to their previous functions as are provided for under this Constitution.

12 REGISTER OF MEMBERS

12.1 REGISTER

The Association shall keep and maintain a Register in which shall be entered (as a minimum):

- (a) the full name, address, category of membership, date on which the Member became a member and for each former Member, the date of ceasing to be a member; and
- (b) the full name, address and date of entry of the name of each Director.
- i) Members shall provide notice of any change and required details to the Association within one month of such change.
- ii) where a Member ceases to be a member, this must be recorded in the Register within 14 days of the date of ceasing to be a member.

12.2 INSPECTION OF REGISTER

Inspection of the Register will only be available as required by the Act and in accordance with **Rule 34(d)**Annexure A1(d) Use of Register

Subject to confidentiality considerations and privacy laws, the Register may be used by the Association to further the Objects, as the Board considers appropriate.

13 EFFECT OF MEMBERSHIP

Members acknowledge and agree that:

- (a) this Constitution constitutes a contract between each of them and the Association and that they are bound by this Constitution and 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 any other entity with delegated authority;

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- (c) by submitting to this Constitution and the By-Laws they are subject to the jurisdiction of, and become a member of the Association;
- (d) the Constitution and By-Laws are necessary and reasonable for promoting the Objects and particularly the development of swimming; and
- (e) they are entitled to all benefits, advantages, privileges and services of Association membership.

14 DISCONTINUANCE OF MEMBERSHIP

14.1 NOTICE OF RESIGNATION

A Member having paid all arrears of fees payable to the Association may resign or withdraw from membership of the Association by giving notice in writing to the Association of resignation or withdrawal.

14.2 DISCONTINUANCE FOR BREACH

- (a) Membership of the Association may be discontinued by the Board upon breach of any clause of this Constitution, including but not limited to the failure to pay any monies owed to the Association, failure to comply with the By-Laws or any resolution or determination made or passed by the Board or any duly authorised committee.
- (b) Membership shall not be discontinued by the Board under **Rule 14.2 (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 to remedy the breach, that Member's membership shall be discontinued under **Rule 14.2 (a)** by the Association giving written notice of the discontinuance.
- (d) This Rule 14.2 operates in addition to and notwithstanding the Association's disciplinary rules in **Rule 15**.

14.3 FAILURE TO RE-APPLY

If a Member has not re-applied for Membership with the Association within one month of re-application falling due, that Member's membership will be deemed to have lapsed from that time. The Register shall be amended to reflect any lapse of membership under this **Rule 14.3** within 14 days of the membership lapsing.

14.4 MEMBER TO RE-APPLY

A Member whose membership has been discontinued or has lapsed under **Rule 14.3**:

- (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.

14.5 FORFEITURE OF RIGHTS

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

14.6 MEMBERSHIP MAY BE REINSTATED

Membership which has been discontinued under this **Rule 14** may be reinstated at the discretion of the Board, upon such conditions as it deems appropriate.

14.7 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.

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15 DISCIPLINE AND GRIEVANCES

15.1 DISCIPLINE

- (a) The Board may commence or cause to be commenced disciplinary proceedings against a Member who 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; or
 - ii) acted in a manner unbecoming of a member, or prejudicial to the purposes and interests of the association and/or swimming; or
 - iii) brought the association, themselves, any other member or swimming into disrepute.
- That Member will be subject to and will submit unreservedly to the jurisdiction, procedures, penalties and the appeal mechanisms of the Association set out in the By-Laws.
- (b) The Board may appoint a Judiciary Committee to deal with any disciplinary matter referred to it. Such a Judiciary Committee shall operate in accordance with the procedures expressed in the By-Laws or as otherwise determined by the Board but is subject always to the Act.

15.2 NO APPEAL

There shall be no appeal from a decision of the Board under 15.1.

15.3 GRIEVANCES

- (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 Association.
- (b) The parties to the dispute must meet and discuss the matter in dispute in good faith, 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 then the matter should be managed in accordance with the procedures determined by the Association in the By Laws. The Board may prescribe additional grievance procedures in the By-Laws consistent with this **Rule 15.3**

16 ANNUAL GENERAL MEETING

- (a) An Annual General Meeting of the Association shall be held in accordance with the Act and on a date and at a venue to be 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.

17 NOTICE OF GENERAL MEETING

- (a) Notice of every General Meeting shall be given to every Member entitled to receive notice in accordance with **Rule 36**. The auditor and the Directors shall also be entitled to notice of every General Meeting, which shall also be sent in accordance with **Rule 36**. No other person shall be entitled as of right to receive notices of General Meetings.
- (b) A notice of a General Meeting shall specify the place and day and hour of meeting and shall state the business to be transacted at the meeting.
- (c) At least 21 days notice of a General Meeting shall be given to those Members entitled to receive notice, together with:
- i) the agenda for the meeting; and
 - ii) any notice of motion received from Members.

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18 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 and the election of Directors under this Constitution.
- (b) All business that is transacted at a General Meeting, and also all that is transacted at an Annual General Meeting, with the exception of those matters set down in **Rule 18(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.

19 NOTICES OF MOTION

Members shall be entitled to submit notices of motion for inclusion as special business at a General Meeting. For the Annual General Meeting the Board shall call for notices of motion for inclusion as special business 42 days before that General Meeting. All notices of motion must be submitted in writing to the Association not less than 30 days (excluding receiving date and meeting date) prior to the General Meeting.

20 SPECIAL GENERAL MEETINGS

20.1 SPECIAL GENERAL MEETINGS MAY BE HELD

The Board may, whenever it thinks fit, convene a Special General Meeting of the Association and, where, but for this clause more than 15 months would elapse between Annual General Meetings, shall convene a Special General Meeting before the expiration of that period.

20.2 REQUISITION OF SPECIAL GENERAL MEETINGS

- (a) The Board shall on the requisition in writing of 50% of Members entitled to vote convene a Special General Meeting.
- (b) The requisition for a Special General Meeting shall state the object(s) of the meeting, shall be signed by the Members making the requisition and be sent to the Association. The requisition may consist of several documents in a like form, each signed by one or more of the Members making the requisitions.
- (c) If the Board does not cause a Special General Meeting to be held within one month after the date on which the requisition is sent to the Association, the Members making the requisition, or any of them, may convene a Special General Meeting to be held not 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 nearly as possible as that, in which meetings are convened by the Board.

21 PROCEEDINGS AT GENERAL MEETINGS

21.1 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 shall be 10 Senior Members entitled to vote. A quorum must be present throughout the meeting.

21.2 CHAIRMAN TO PRESIDE

The chairman shall, subject to this Constitution, preside at every General Meeting except:

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

If the chairman is not present, or is unwilling or unable to preside the Members shall appoint one of the Directors to preside as chairman for that meeting only.

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21.3 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 such other day and at such other time and place as the chairman may determine and 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 chairman 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 but 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 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (d) Except as provided in **Rule 21.3(c)** it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

21.4 USE OF TECHNOLOGY

- (a) A Member not physically present at a General Meeting may participate in the meeting by the use of technology that allows that Member and the Members present at the meeting to clearly and simultaneously communicate with each other.
- (b) A Member participating in a General Meeting as permitted under Rule 21.4(a) is taken to be present at the meeting and, if the Member votes at the meeting, is taken to have voted in person.

21.5 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 chairman; or
- (b) a simple majority of Members entitled to vote.

21.6 RECORDING OF DETERMINATIONS

Unless a poll is demanded under **Rule 23**, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the minutes of the proceedings of the Association shall be conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution.

21.7 WHERE POLL DEMANDED

If a poll is duly demanded under **Rule 21.5** it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

22 VOTING AT GENERAL MEETINGS

22.1 MEMBERS ENTITLED TO VOTE

Each Member entitled to vote as set out in **Rule 9.1** shall have one vote at General Meetings which, subject to this Constitution, shall be exercised by that Member. The Directors shall have the right to attend and debate, but not vote, at General Meetings unless they are also an Individual Member entitled to vote under **Rule 9.1**.

22.2 CASTING VOTE

Where voting at General Meetings is equal the chairman may exercise a casting vote.

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23 PROXY VOTING

Proxy voting shall not be permitted at any General Meeting.

24 POWERS OF THE BOARD

Subject to the Act and this Constitution, the business of the Association shall be managed, and the powers of the Association shall be exercised, by the Board.

25 COMPOSITION OF THE BOARD

25.1 COMPOSITION OF THE BOARD

THE BOARD SHALL COMPRISE:

- (a) up to 5 Directors who must all be Individual Members and who shall be elected under **Rule 26 (Elected Directors)**; and
- (b) up to 2 Directors who may, but need not, be Individual Members and who shall be appointed under **Rule 27 (Appointed Directors)**.

25.2 PORTFOLIOS

If the Board considers it appropriate, in order to further the Objects, it may allocate Directors to specific portfolios, with specific responsibilities, as determined in the discretion of the Board.

25.3 RIGHT TO CO-OPT

It is expressly acknowledged that the Board may co-opt any person with appropriate experience or expertise to assist the Board in respect of such matters and on such terms as the Board thinks fit. Any person co-opted under this clause shall not be a Director, and shall not exercise the rights of a Director, but shall act in an advisory role only.

25.4 CHAIRMAN

The Board shall appoint a chairman from among its number. The chairman shall be the nominal head of the Association and will act as chair of any Board meeting or General Meeting at which he is present. If the chairman is not present, or is unwilling or unable to preside at a Board meeting the remaining Directors shall appoint another Director to preside as chair for that meeting only.

26 ELECTED DIRECTORS

26.1 NOMINATIONS OF CANDIDATES

- (a) Nominations for candidates to be elected to the Board as Elected Directors shall be called for by the Association forty-two days prior to the Annual General Meeting. When calling for nominations the Association shall also provide details of the necessary qualifications and job description for the positions (if any). Qualifications and job descriptions shall be as determined by the Board from time to time.
- (b) Nominations of candidates for election as Elected Directors shall be:
 - i) made in writing, signed by two Senior Members and accompanied by the written consent of the nominee (which may be endorsed on the form of nomination); and
 - ii) delivered to the Association not less than 30 days before the date fixed for the holding of the Annual General Meeting, and the Association shall send the nominations to the Members entitled to receive notice under this Constitution together with the agenda for that General Meeting.
- (c) If insufficient nominations are received to fill all available vacancies on the Board the candidates nominated shall, subject to declaration by the chairman, be deemed to be elected.
- (d) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated shall, subject to declaration by the chairman, be deemed to be elected.

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- (e) 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.

26.2 VOTING PROCEDURES

Elections shall be conducted by such means as is prescribed by the Board in the By-Laws. Elections must be conducted formally and the Association must appoint a returning officer or officers to conduct elections. All candidates at an election have the right to appoint a scrutineer and for that scrutineer to be present at the return of ballots and vote count.

26.3 TERM OF OFFICE OF ELECTED DIRECTORS

- (a) Directors elected under **Rule 26** shall be elected for a term of two years. Subject to provisions in this Constitution relating to early retirement or removal of Elected 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 second annual general meeting following.
- (b) Three Elected Directors shall retire in each odd year and two Elected Directors shall retire in each even year until, after two years the five original Elected Directors have retired after which those Elected Directors (or their replacements) who first retired, shall retire and so on.
- (c) The sequence of retirements under **Rule 26.3(b)** to ensure rotational terms shall be determined by the Board. If the Board can not agree it will be determined by lot.

27 APPOINTED DIRECTORS

27.1 APPOINTMENT OF APPOINTED DIRECTORS

The Elected Directors may appoint up to 2 Appointed Directors.

27.2 QUALIFICATIONS FOR APPOINTED DIRECTORS

Appointed Directors may have specific skills in commerce, finance, marketing, law or business generally or such other skills which complement the Board composition, but need not have experience in or exposure to swimming. They do not need to be Members.

27.3 TERM OF OFFICE OF APPOINTED DIRECTORS

Appointed Directors may be appointed by the Elected Directors in accordance with this Constitution for a term of up to two years. If the Elected Directors appoint two Appointed Directors the Elected Directors should determine the sequence of retirement to ensure the terms of the Appointed Directors rotate with the terms of the Elected Directors. For example, one Appointed Director retires in even years and one in odd years.

28 VACANCIES OF DIRECTORS

28.1 GROUNDS FOR TERMINATION OF OFFICE 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) dies;
- (b) becomes bankrupt or makes any arrangement or composition with his creditors generally;
- (c) 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;
- (d) resigns his office in writing to the Association;
- (e) is absent without the consent of the Board from meetings of the Board held during a period of 6 months;

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- (f) without the prior consent or later ratification of the Members in General Meeting holds any office of profit under the Association;
- (g) is directly or indirectly interested in any contract or proposed contract with the Association and fails to declare the nature of his interest;
- (h) is removed by Special Resolution;
- (i) in the reasonable opinion of the Board:
- (j) has acted in a manner unbecoming or prejudicial to the Objects and/or interests of the Association and/or swimming ; or
- (k) has brought themselves, the Association or swimming into disrepute;
- (l) breaches any rule, by-law or code of conduct of the Association;
- (m) has been expelled or suspended from membership; or
- (n) would otherwise be prohibited from being a Director of a corporation under the *Corporations Act*.

28.2 REMAINING DIRECTORS MAY ACT

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

28.3 CASUAL VACANCY

In the event of a casual vacancy in the office of any Director, the Board may appoint an appropriately qualified Member to the vacant office and the person so appointed may continue in office up to the conclusion of the Annual General Meeting at which the term of the previous appointee would have expired.

29 MEETINGS OF THE BOARD

29.1 BOARD TO MEET

The Board shall meet as often as is deemed necessary in every calendar year for the dispatch of business and subject to this Constitution may adjourn and otherwise regulate its meetings as it thinks fit. A Director may at any time convene a meeting of the Board within a reasonable time.

29.2 DECISIONS OF BOARD

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 be deemed a determination of the Board. All Directors (Elected and Appointed) shall have one vote on any question. The chairman may exercise a casting vote where voting is equal.

29.3 RESOLUTIONS NOT IN MEETING

- (a) A resolution in writing, signed or assented to by any 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 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;

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- 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 these Rules and such notice specifies that Directors are not required to be present in person;
- iii) in the event that a failure in communications prevents Rule i) from being satisfied by that 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 Rule i) is satisfied again. If such condition is not satisfied within 15 minutes from the interruption the meeting shall be deemed to have terminated or adjourned; and
- 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 meeting provided a Director is there present and if no Director is there present the meeting shall be deemed to be held at the place where the Chairman of the meeting is located.

29.4 QUORUM

At meetings of the Board the number of Directors whose presence is required to constitute a quorum is a majority of the Directors.

29.5 NOTICE OF BOARD MEETINGS

Unless all Directors agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their presence) not less than seven days oral or written notice of the meeting of the Board must be given to each Director.

29.6 CONFLICT OF INTEREST

A Director shall declare his interest in any commercial, financial, contractual, selection, disciplinary or other matter in which a conflict of interest arises or may arise, and shall absent himself from discussions of such matter and shall not be entitled to vote in respect of such matter. In the event of uncertainty as to whether it is necessary for a Director to absent himself from discussion or refrain from voting, the issue should be immediately determined by vote of the Board, or if this is not possible, the matter shall be adjourned or deferred. All disclosed interests must be submitted to the Annual General Meeting in accordance with the Act.

30 DELEGATIONS

30.1 BOARD MAY DELEGATE FUNCTIONS

The Board may by instrument in writing create or establish or appoint from amongst its own members, or otherwise, special committees, sub-committees, individual officers and consultants to carry out such duties and functions, and with such powers, as the Board determines.

30.2 DELEGATION BY INSTRUMENT

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

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

30.3 DELEGATED FUNCTION EXERCISED IN ACCORDANCE WITH TERMS

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

30.4 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 **Rule 29**. The entity exercising delegated powers shall make decisions in accordance with the Objects, and shall promptly provide the Association with details of all material decisions and shall

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provide any other reports, minutes and information as the Association may require from time to time.

30.5 DELEGATION MAY BE CONDITIONAL

A delegation under this clause may be made subject to such conditions or limitations as to the exercise of any function or at the time or circumstances as may be specified in the delegation.

30.6 REVOCATION OF DELEGATION

The Board may by instrument in writing, revoke wholly or in part any delegation made under this clause, and may amend or repeal any decision made by such body or person under this clause.

31 DUTIES

31.1 GENERAL DUTIES

- (a) As soon as practicable after being elected or appointed to the Board, each Director must become familiar with this Constitution and the Act.
- (b) The Board is collectively responsible for ensuring that the Association complies with the Act and that individual Directors comply with this Constitution.
- (c) In addition to any duties imposed by this Constitution, a Director must perform any other duties imposed from time to time by resolution at a General Meeting.
- (d) The Board must ensure that the Association complies with all requirements in the Act regarding financial statements.

31.2 SECRETARY

- (a) The Association must have a secretary. The Board will determine from time to time who shall act as the Association's secretary under the Act.
- (b) The secretary must give the registrar notice of his or her appointment within 14 days after the appointment.
- (c) If the position of secretary becomes vacant, the Board must appoint a person to the position within 14 days after the vacancy arises.

32 BY-LAWS

32.1 BOARD TO FORMULATE BY-LAWS

The Board may formulate, issue, adopt, interpret and amend such By-Laws for the proper advancement, management and administration of the Association, the advancement of the Objects and swimming as it thinks necessary or desirable. Such By-Laws must be consistent with the Constitution.

32.2 BY-LAWS BINDING

All By-Laws made under this clause shall be binding on the Association and Members of the Association.

32.3 BY-LAWS DEEMED APPLICABLE

All clauses, rules, by-laws and regulations of the Association in force at the date of the approval of this Constitution insofar 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 under this clause.

32.4 NOTICES BINDING ON MEMBERS

Amendments, alterations, interpretations or other changes to By-Laws shall be advised to Members of the Association by means of notices approved and issued by the Board.

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33 FUNDS, RECORDS AND ACCOUNTS

33.1 SOURCE OF FUNDS

The Board will determine the sources from which the funds of the Association are to be or may be derived and the manner in which such funds are to be managed.

33.2 ASSOCIATION TO KEEP RECORDS

The Association shall establish and maintain proper records and minutes concerning all transactions, business, meetings and dealings of the Association and the Board and shall produce these as appropriate at each Board or General Meeting.

33.3 RECORDS KEPT IN ACCORDANCE WITH ACT

Proper accounting and other records shall be kept in accordance with the Act. The books of account shall be kept in the care and control of the Board.

33.4 ASSOCIATION TO RETAIN RECORDS

The Association shall retain such records for seven years after the completion of the transactions or operations to which they relate.

33.5 BOARD TO SUBMIT ACCOUNTS

The Board shall submit to the Members at the Annual General Meeting the statements of account of the Association in accordance with this Constitution and the Act.

33.6 ACCOUNTS CONCLUSIVE

The statements of account when approved or adopted by an Annual General Meeting shall be conclusive except as regards any error discovered in them within three months after such approval or adoption.

33.7 ACCOUNTS TO BE SENT TO MEMBERS

The Board shall cause to be sent to all persons entitled to receive notice of Annual General Meetings in accordance with this Constitution, a copy of the statements of account, the Board's report, the auditor's report (if any) and every other document required under the Act (if any).

33.8 NEGOTIABLE INSTRUMENTS

All cheques, promissory notes, bankers, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Association, 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.

33.9 INSPECTION RIGHTS

Having regard to confidentiality considerations and privacy laws all accounts, books, securities and any other relevant documents of the Association will be available for inspection free of charge by any member upon reasonable request.

34 CUSTODY OF BOOKS AND OTHER DOCUMENTS

- (a) Except as otherwise provided in this Constitution, the Board shall keep in their custody or control all books, minutes, documents and securities of the Association.
- (b) If requested by a Member, the Board must permit such Member to inspect:
 - i) the rules of the Association;
 - ii) the minutes of each General Meeting.
- (c) Upon written request and payment of a fee determined by the Board from time to time, a Member may obtain a copy of the documents listed at rule 34(b).
- (d) If requested by a Member and subject to the Act, the Board must permit such Member to inspect the register of members.

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- (e) Subject to the Act and rules 34(b) and 34 (d) no Member is entitled to inspect the financial records, accounts, books, securities, minutes of Board meetings or other Relevant Documents of the Association, unless authorised in writing by the Board.

35 AUDITOR

- (a) A properly qualified auditor or auditors shall be appointed, and the remuneration of such auditor or auditors (if any) fixed by the Association. The auditor's duties shall be regulated in accordance with the Act, or if no relevant provisions exist under the Act, in accordance with the *Corporations Act* and generally accepted principles, and/or any applicable code of conduct. The auditor may be removed by the Association.
- (b) The accounts of the Association shall 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.

36 NOTICE

36.1 MANNER OF NOTICE

- (a) Notices may be given to any person entitled under this Constitution to receive any notice by sending the notice 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.
- (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 upon receipt of a confirmation report confirming the electronic mail message was received at the electronic mail address to which it was sent.

36.2 NOTICE OF GENERAL MEETING

Notice of every General Meeting shall be given in the manner authorised in this Constitution.

37 SEAL

37.1 SAFE CUSTODY OF SEAL

The Board shall provide for safe custody of the Seal.

37.2 AFFIXING SEAL

The Seal shall only be used by authority of the Board and every document to which the seal is affixed shall be signed by two Directors.

38 ALTERATION OF CONSTITUTION

- (a) The Constitution of the Association shall not be altered except by Special Resolution in accordance with the Act, and in compliance with all other procedures under the Act (if any).
- (b) In addition, there shall be no alteration or amendment to **Rule 41** without the consent of the relevant Minister or other authorised person under the Act.

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39 INDEMNITY

39.1 DIRECTORS TO BE INDEMNIFIED

Every Director, officer, auditor, manager, employee or agent of the Association shall be indemnified out of the property or assets of the Association against any liability incurred by him in his capacity as Director, officer, auditor or agent in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or in connection with any application in relation to any such proceedings in which relief is, under the Act, granted to him by the Court.

39.2 ASSOCIATION TO INDEMNIFY DIRECTORS

The Association shall indemnify its Directors, officers, managers and employees against all damages and costs (including legal costs) for which any such Director, officer, manager or employee may be or become liable to any third party in consequence of any act or omission except wilful misconduct:

- (a) in the case of a Director or officer, performed or made whilst acting on behalf of and with the authority, express or implied of the Association; and
- (b) in the case of an employee, performed or made in the course of, and within the scope of his employment by the Association.

40 DISSOLUTION

Subject to **Rules 6** and **7**, the Association may be wound up in accordance with the provisions of the Act.

41 AUTHORITY TO TRADE

The Association is authorised to trade in accordance with the Act.