

**CONSTITUTION OF**

**SWIMMING METRO SOUTH EAST**

**INCORPORATED**



## **1. NAME**

The name of the Association is Swimming Metro South East Incorporated.

## **2. OBJECTS**

The objects of the Association are to:

- (a) operate as an Area Swimming Association established under Swimming New South Wales Limited and affiliate in accordance with the constitutions of Swimming Australia Limited and Swimming New South Wales Limited or their successors or assigns;
- (b) conduct, encourage, promote, advance and administer relevant swimming activities within the Area;
- (c) apply the property and capacity of the Association towards the fulfilment and achievement of these Objects;
- (d) collect, distribute and publish information in connection with swimming to its Members;
- (e) promote Area competitions and championships and to the extent relevant, promote and assist in conducting state competitions and championships;
- (f) promote Swimming New South Wales meetings and represent the Area at Swimming New South Wales meetings and forums;
- (g) promulgate and secure uniformity in such rules as may be necessary or appropriate for the management and control of swimming and related activities in the Area; and
- (g) comply with the objects of Swimming New South Wales Limited as listed in its constitution in relation to swimming activities.

## **3. POWERS OF THE ASSOCIATION**

Solely for furthering the Objects, the Association, in addition to any powers it has under the Act, may with the approval of SNSW adopt its own rules which may provide for:

- (a) the election of officers to control the Area;
- (b) the election of a committee to provide training and conduct examinations for the qualification of members as technical officials;
- (c) the annual subscription to be paid by each Club within the Area;
- (d) the conduct of championships restricted to the Area;
- (e) the appointment of officials to control Area competitions;
- (f) the control of its own finances; and
- (g) the making of By-Laws which are not contrary to SNSW constitution or by-laws.

## 4. DEFINITIONS AND INTERPRETATIONS

### 4.1 Definitions

In this Constitution unless the context otherwise requires:

“**Act**” means the Associations Incorporation Act 1984.

“**Area**” means the association recognized by Swimming NSW Limited to administer the sport of swimming in a particular geographic region of New South Wales as determined by Swimming NSW Limited.

“**Association**” means Swimming Metro South East Incorporated.

“**By-Laws**” means any by-laws made by the Association under Clause 29.

“**Club**” means and includes those organisations admitted to this category of membership in accordance with Clause 6.

“**Committee**” means the management committee of the Association elected or appointed as detailed in this Constitution.

“**Constitution**” means the Constitution for the time being of the Association.

“**Delegate**” means the person elected or appointed from time to time by a Club to represent and act for and on behalf of the Club at General Meetings.

“**FINA**” means Federation Internationale de Natation or its successors or assigns.

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

“**Individual Member**” means a registered financial member of a Club.

“**Intellectual Property**” means all rights or goodwill subsisting in copyright, business names, names, trade marks (or signs), logos, designs, patents or service marks (whether registered or registrable) relating to the Association, Swimming New South Wales Limited or Swimming Australia Limited or any event, competition, championship, meeting or swimming activity of or conducted, promoted or administered by or under the control of the Association, Swimming New South Wales Limited and Swimming Australia Limited.

“**Life Member**” means an Individual Member upon whom life membership of the Association has been conferred under Clause 5.2.

“**Member**” means a member for the time being of the Association under Clause 5.

“**Objects**” means the objects of the Association in Clause 2.

“**Policy**” means the policies made by the Association under Clause 29.

**“President”** means the president for the time being of the Association.

**“SAL”** means Swimming Australia Limited or its successors or assigns.

**“SNSW”** means Swimming New South Wales Limited or its successors or assigns being the governing body for swimming in New South Wales.

**“Secretary”** means the person holding office under this constitution as secretary of the Association, or if no such person holds that office, the public officer of the Association.

**“Special Resolution”** means a resolution passed;

- (a) by a General Meeting of the Association of which twenty one (21) days notice of intention to move the motion has been given in accordance with this Constitution, and
- (b) by at least 75% of the persons present and voting at that meeting.

#### **4.2 Interpretation**

- (a) Expressions referring to “writing” shall unless the contrary intention appears, be construed as including references to printing, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail.
- (b) In this Constitution unless the context otherwise requires:
  - (i) a reference to a function includes a reference to a power, authority and duty;
  - (ii) 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;
  - (iii) words importing the singular include the plural and vice versa;
  - (iv) words importing the masculine gender include the feminine gender;
  - (v) references to persons include corporations and bodies politic;
  - (vi) references to a person include the legal personal representatives, successors and permitted assigns of that person;
  - (vii) 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);
  - (viii) an expression used in the Act that is given a special meaning for the purposes of the Act, has in any Clause of this Constitution that deals with the same matter, the same meaning as in the Act; and

- (ix) all headings contained in this Constitution are for guidance and do not form part of the substance of the Constitution.
- (c) If any provision of this Constitution or any phrase contained in it is invalid or unenforceable in any jurisdiction, the phrase or provision is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable. If it cannot be read down it shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of the Constitution or affecting the validity or enforceability of that provision in any other jurisdiction.

## **5. MEMBERS**

### **5.1 Members of Association**

The Members of the Association shall consist of:

- (a) the Clubs, which subject to this Constitution, shall be represented by their Delegates who have the right to attend, debate and vote at General Meetings for and on behalf of the Club;
- (b) Individual Members who may attend General Meetings but otherwise have no right to debate or vote at General Meetings (unless also a Delegate);
- (c) Life Members of the Association, who may attend and debate but not vote at General Meetings of the Association (unless also a Delegate).

### **5.2 Life Members**

- (a) The Association may, from among persons who have provided long and meritorious service of at least ten (10) years with the Association or its predecessor Area Associations, appoint Life Members in recognition of their efforts in furthering the interests of the Association.
- (b) A Life Member may only be elected by Special Resolution at an Annual General Meeting.
- (c) A nomination for Life Membership may only be made by the Committee or a Club.
- (d) Nominations for life membership must be submitted to the Association and must be received by the Secretary sixty (60) days prior to the relevant Annual General Meeting.
- (e) Nominations for life membership shall be examined by the Committee. After reviewing the nomination and completing any relevant enquiries, the Committee shall make a recommendation to the Annual General Meeting in relation to the nomination.
- (f) Upon life membership being conferred, the person's details shall be entered upon the register. A person shall become a Life Member from the time their life membership is formally announced.

- (g) Existing life members of the predecessor Areas shall automatically become life members of Swimming Metro South East Incorporated.

## **6. CLUBS**

### **6.1 Clubs**

The Association shall consist of such Clubs which are recognised as clubs by SNSW and are admitted to membership.

### **6.2 Admission of Clubs**

- (a) After receiving advice from SNSW the Association shall accept membership of a Club which has been assigned to the Association in accordance with the SNSW constitution.
- (b) The Secretary of the Association must, as soon as practicable after the advice from SNSW provide the Club with the appropriate membership information.

### **6.3 Compliance of Clubs**

Each Club shall:

- (a) provide the Association not later than thirty (30) days after its annual general meeting a list of the names of the office bearers elected at the meeting; and
- (b) maintain, in a form and with such details as are acceptable to the Association, a register of all its members. Each Club shall provide a copy of the register at a time and in a form acceptable to or required by the Association and shall provide prompt and regular updates of that register to the Association when requested by the Committee.

### **6.4 Operation of Constitution**

The Association and the Members agree:

- (a) that they are bound by this Constitution and that this Constitution operates to create uniformity in the way in which the Objects and the sport of swimming are to be conducted, encouraged, promoted and administered in the Area;
- (b) to act in good faith and loyalty to each other to ensure the maintenance and enhancement of swimming, its standards, quality and reputation for the collective and mutual benefit of the Members;
- (c) not to do or permit to be done any act or thing which might adversely affect or derogate from the standards, quality and reputation of swimming and its maintenance and enhancement;
- (d) to make full and proper disclosure to each other of all matters of importance to the Association and swimming;
- (e) to ensure that no Member acquires any improper material or financial advantage at the expense of the Association or swimming;

- (f) to operate with mutual trust and confidence in pursuit of the Objects;
- (g) to promote the economic and sporting success, strength and stability of each other and to act interdependently with each other in pursuit of the Objects; and
- (h) to act for and on behalf of the interests of swimming, the Association and the Members.

## **7. SUBSCRIPTIONS AND FEES**

- (a) The funds of the Association are to be derived from annual membership fees and such additional fees as decided at a General Meeting of the Association.
- (b) Fees including annual membership fees payable by Members (or any category of Member) to the Association, the basis of, the time for and the manner of payment shall be as decided at a General Meeting of the Association.
- (c) Monies payable to the Association by the Clubs under Clause 7(b) shall be forwarded to the Association for the Association's use by such dates as are prescribed by the Committee.
- (d) Any Club which has not paid all monies due and payable by that Club to the Association, shall (subject to the Committee's discretion), have all rights under this Constitution immediately suspended from the expiry of the time prescribed for payment of those monies. Such rights will be suspended until the monies are fully paid or otherwise in the Committee's discretion. The Club shall be dealt with in the Committee's discretion, which includes the right to recommend to SNSW suspension as detailed in Clause 11.1.

## **8. ASSOCIATION REGISTER OF MEMBERS**

### **8.1 Association to Keep Register**

The Association shall keep and maintain a register of Members in which shall be entered such information as is required under the Act from time to time.

### **8.2 Inspection of Register**

- (a) Having regard to privacy and confidentiality considerations and subject to Clause 8.2(b), an extract of the register, excluding the address of any Member, shall be available for inspection (but not copying), upon reasonable request.
- (b) The extract of the register can only be inspected by Clubs and only in relation to Individual Members in their Club.

## **9. EFFECT OF MEMBERSHIP**

Members acknowledge and agree that:

- (a) this Constitution constitutes a contract between each of them and the Association and they are bound by this Constitution, the By-Laws, the Policies and the rules;
- (b) they shall comply with and observe this Constitution, the By-Laws, the Policies and the rules and any determination, resolution or policy which may be made or passed by the Committee or any duly authorised committee;
- (c) by submitting to this Constitution, the By-Laws, the Policies and the rules they are subject to the jurisdiction of the Association;
- (d) this Constitution, the By-Laws, the Policies and the rules are made in pursuit of a common object, namely the mutual and collective benefit of the Association, the Members and swimming;
- (e) this Constitution, the By-Laws, the Policies and the rules are necessary and reasonable for promoting the Objects and particularly the advancement and protection of swimming; and
- (f) they are entitled to all benefits, advantages, privileges and services of the Association membership.

## **10. DISCONTINUANCE OF MEMBERSHIP**

### **10.1 Notice of Cessation**

Where a Club ceases to be a member of the Association an entry, recording the date on which the Club ceased to be a Member shall be recorded in the register.

### **10.2 Forfeiture of Property Rights**

A Club who ceases to be a Member, for whatever reason, shall forfeit all right in and claim upon the Association and its property including Intellectual Property. Any of the Association documents, records or other property in the possession, custody or control of that Club shall be returned to the Association immediately.

### **10.3 Forfeiture of Representation Rights**

Where a Club ceases to be a Member it shall also forfeit all representation rights at General Meetings.

### **10.4 Membership May be Reinstated**

Club Membership which has been withdrawn under this Constitution may be reinstated on application in accordance with this Constitution.

## 10.5 Individual Members and Clubs

Where a Club ceases to be a Member in accordance with this Constitution or the Act, the Individual Members of that Club may continue to be recognised by the Association to the extent (if any) and for such time (if any) as is determined in the sole discretion of the Committee.

## 11. DISCIPLINE OF MEMBERS

### 11.1 Discipline of Clubs

- (a) The Committee may recommend that SNSW take disciplinary action against a Club if the Club:
  - (i) does not comply with any of the provisions of this constitution, or
  - (ii) acts in a way considered to be injurious or prejudicial to the objectives or interest of the Association, or
  - (iii) has membership fees in arrears for at least three months.
- (b) Before the Committee makes such a recommendation, the Committee must give a full and fair opportunity to the Club to show why the recommendation should not be made.
- (c) If, after considering all representations made, the Committee decides to recommend the taking of disciplinary action against a Club, the Committee must give a written notice of the decision to the Club.

### 11.2 Discipline of Members

- (a) Where the Committee is advised or considers that a member has allegedly:
  - (i) breached, failed, refused or neglected to comply with a provision of this Constitution, the By-Laws, the Policies and the rules or any resolution or determination of the Committee; or
  - (ii) acted in a manner unbecoming of a member or prejudicial to the Objects and interests of the Association and/or swimming; or
  - (iii) brought the Association or swimming into disrepute;

the Committee may commence or cause to be commenced disciplinary proceedings against that member, and that member will be subject to, and submits unreservedly to the jurisdiction, procedures, penalties and appeal mechanisms of the Association as set out in its Constitution and/or By-Laws.

- (b) For the purposes of this Clause the term “member” includes any person participating in any capacity in any swimming meet or other activity held under the auspices of the Association but does not include a Club.

**Comment [CEH1]:** Not required as By-laws covers

### **11.3 Jurisdiction to Hear Matters**

The Association may choose to not accept any matter under this Clause where it considers it has been properly addressed by a Club.

### **11.4 Non Application of Clause 11**

This Clause 11 shall not apply to any incident or matter to which the By-Laws, the Policies or the rules apply and which include a disciplinary procedure. Any disciplinary matter which may be dealt with in accordance with the By-Laws, the Policies or the rules shall be dealt with in accordance with the disciplinary procedure set out in such By-Laws, Policies or rules.

## **12. DELEGATES**

### **12.1 Appointment of Delegates**

- (a) Each Club shall be entitled to appoint such number of persons as determined in the By-Laws to be its delegates at General Meetings of the Association. Clubs shall appoint their Delegates for such term as is deemed appropriate by the Club.
- (b) A Delegate must be:
  - (i) an Individual Member of the Club which appoints him; and
  - (ii) appropriately empowered by his Club to make decisions at General Meetings.

### **12.2 Delegates as Representative**

Delegates shall represent their Club at General Meetings and shall have full power to consider and vote on resolutions at General Meetings.

### **12.3 Clubs to Advise**

The Club must advise the Association of its appointed Delegates by a specified time determined by the Committee and in writing signed on behalf of the Club committee.

## **13. GENERAL MEETINGS**

### **13.1 Powers of the General Meeting**

The Members in General Meeting shall act in accordance with the Objects and for the mutual and collective benefit of the Members and swimming throughout its Area. The Members in General Meetings will act in the best interests of the Area and will in addition to its other powers and functions under the Act:

- (i) elect / dismiss, Committee members and standing committee members;
- (ii) alter the Constitution;

**Comment [CEH2]:** standing committees to be elected at AGM & not appointed by Committee

- (iii) consider the annual report;
- (iv) consider Special Resolutions; and
- (v) be the final arbiter on matters referred to it by the Committee.

**14. ANNUAL GENERAL MEETING TO BE HELD**

- (a) An Annual General Meeting of the Association shall be held at least once in each calendar year and within the period of three (3) months after 31 March in any year in accordance with this Constitution on a date and at a venue to be determined by the Committee.
- (b) All General Meetings other than the Annual General Meeting shall be Special General Meetings and shall be held in accordance with this Constitution.

**15. NOTICE OF GENERAL MEETINGS**

- (a) Notice of every General Meeting shall be given to every Club, Life Member and Committee Member at the address appearing in the register kept by the Association. No other person shall be entitled as of right to receive notices of General Meetings, except the Association's auditor(s).
- (b)
  - (i) At least forty two (42) days notice of the place, day and hour of the Annual General Meeting shall be given.
  - (ii) At least twenty eight (28) days notice of the place, day and hour of any Special General Meeting shall be given
- (c) At least twenty (21) day's notice of the business to be transacted at a General Meeting shall be given, together with:
  - (i) any notice of motion received from any Club or the Committee in accordance with this Constitution;
  - (ii) relevant accounts and reports in accordance with this Constitution and the Act; and
  - (iii) the agenda for the meeting.
- (d) Notice of intention to attend a General Meeting shall be given to the Association Secretary by each delegate at least seven days prior to the scheduled day of meeting. Should the Secretary fail to receive notice that a quorum intend to be present at the meeting, the Secretary shall notify all such delegates, by whatever means are appropriate, that the meeting is cancelled and consult the members of the Committee as to the next appropriate date to hold such meeting.

## **16. BUSINESS OF GENERAL MEETINGS**

### **16.1 Business to be Transacted**

- (a) The business to be transacted at the Annual General Meeting includes the following:
- (i) the confirmation of 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 Association during the preceding financial year;
  - (iii) to receive and consider the statement which is required by the Act to be submitted to Members;
  - (iv) to elect members of the Committee and standing committees;
  - (v) to appoint an auditor; and
  - (vi) the appointment of a Patron or Patrons, if agreed to by the meeting
- (b) All business that is transacted at a General Meeting, with the exception of those matters set out in Clause 16.1(a) shall be Special Business. "Special Business" is business of which a notice of motion has been submitted in accordance with Clause 17.

**Comment [CEH3]:** standing committees added as per previous comment

### **16.2 No Other Business**

No business other than that stated on the notice for a meeting shall be transacted at the General Meeting.

## **17. NOTICES OF MOTION**

All notices of motion from Clubs and/or the Committee for inclusion as Special Business at a General Meeting must be submitted in writing (in the required form) to the Association Secretary not less than thirty (30) days (excluding receiving date and meeting date) prior to the General Meeting.

## **18. SPECIAL GENERAL MEETINGS**

### **18.1 Special General Meetings may be Held**

The Committee may, whenever it thinks fit, convene a Special General Meeting of the Company and, where but for this Clause more than fifteen (15) months would elapse between Annual General Meetings, shall convene a Special General Meeting before the expiration of that period.

## **18.2 Requisition of Special General Meetings**

- (a) The Committee shall on the requisition in writing made by not less than ten percent (10%) of the Clubs or three (3) Clubs (which ever is the less) convene a Special General Meeting.
- (b) The requisition for a Special General Meeting shall state the object(s) of the meeting and shall be signed by the Clubs making the requisition and be sent to the Committee Secretary. The requisition may consist of several documents in a like form, each signed by one (1) or more of the Clubs making the requisition.
- (c) If the Committee does not cause a Special General Meeting to be held within thirty five (35) days after the date on which the requisition is sent to the Committee, the Clubs making the requisition, or any of them, may convene a Special General Meeting to be held not later than three (3) months after that date.
- (d) A Special General Meeting convened by Clubs under this Constitution shall be convened in the same manner, or as nearly as possible as that, in which meetings are convened by the Committee and any Member who consequently incurs expenses is entitled to be reimbursed by the Association for any expenses so incurred.

## **19. PROCEEDINGS AT GENERAL MEETINGS**

### **19.1 Quorum Present**

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 at least fifty (50) percent of the Clubs being Members.

### **19.2 President to Preside**

The President or, in the President's absence, the vice-president, is to preside as chairperson at each General Meeting of the Association.

If the President and the vice-president are absent or unwilling to act, the Members present must elect one of their number to preside as chairperson at the meeting.

### **19.3 Adjournment of Meeting**

- (a) If within half an hour from the time appointed for the General Meeting a quorum is not present, the meeting:
  - (i) if convened on the requisition of the Clubs, is to be dissolved; and
  - (ii) in any other case shall be adjourned to such other day and at such other time and place as the chair may determine. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Delegates and members of the Committee then present shall form a quorum.

- (b) The chair may, 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 General Meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given.
- (d) Except as provided in Clause 19.3(c) it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

#### **19.4 Poll**

At any General Meeting of the Association 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):

- (a) directed by the chair; or
- (b) demanded by over half the Delegates present.

#### **19.5 Recording of Determinations**

Except when a poll is conducted in terms of Clause 19.4, a declaration by the chair 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 book containing 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.

#### **19.6 Where Poll Demanded**

If a poll is conducted under Clause 19.4 it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chair directs, and the result of the poll shall be the resolution of the motion in respect of which the poll was conducted.

#### **19.7 Minutes**

- (a) No later than 30 days after a General Meeting, minutes of the business transacted shall be issued to each member of the General Meeting and to the secretary of each Club.
- (b) The minutes of each General Meeting must be signed by the person presiding at the meeting, or the person presiding at the next General meeting, verifying their accuracy.

### **20. ENTITLEMENTS AT GENERAL MEETINGS**

- (a) Each Delegate present is entitled to one (1) vote only. The chair shall not have a casting vote. Where voting is equal the vote shall be lost.
- (b) Notwithstanding any other Clause of this Constitution, no Club shall be represented at, or take part in a General Meeting, unless all monies then due and payable by that Club to the Association are paid.

## **21. POWERS OF THE COMMITTEE**

Subject to the Act and this Constitution, the business of the Association shall be governed, and the powers of the Association shall be exercised, by the Committee. The Committee shall act in accordance with the Objects of the Association and shall operate for the collective and mutual benefit of the Association, the Members and swimming.

## **22. COMPOSITION OF THE COMMITTEE**

- (a) The Committee is to consist of;
  - (i) the office-bearers of the Association,  
each of whom is to be elected at the Annual General Meeting of the Association under Clause 23.
- (b) The office-bearers of the Association are to be:
  - (i) President,
  - (ii) Vice-President,
  - (iii) Secretary,
  - (iv) Treasurer,
  - (v) Development Coordinator,
  - (vi) Competitions Coordinator,
  - (vii) Public Relations Officer, and
  - (viii) Area Technical Swimming Committee Coordinator

## **23. ELECTION OF COMMITTEE MEMBERS**

### **23.1 Nominations for Committee Members**

- (a) Nominations must be received by the Secretary of the Association from Members to be considered for election as a Committee member thirty (30) days prior to the relevant General Meeting.
- (b) A Member may nominate for any number of Committee positions but shall only be eligible to be elected to one (1) only position.

### **23.2 Form of Nomination**

- (a) Nominations for election to the Committee pursuant to Clause 23.1 must be in writing on the prescribed form provided for that purpose.
- (b) Nominations for positions on the Committee may include a précis submitted by the nominee, of their background, experience and qualifications pertinent to the position.

### **23.3 Election Process**

- (a) A list of the candidates' names in alphabetical order for each position must be notified in writing to each Club at least twenty one (21) days immediately preceding the General Meeting of the Association.

- (b) The election of Committee members shall be by secret ballot at the Annual General Meeting and in accordance with the By Laws.
- (c) If insufficient nominations are received to fill all vacancies on the Committee, the candidates nominated as in Clause 23.1 are taken to be elected and further nominations may be taken from the floor of the meeting. If insufficient further nominations are received, any vacant positions remaining on the Committee are taken to be casual vacancies and dealt with as detailed in Clause 24.2.

**Comment [CEH4]:** added to cover election procedure in by-laws

#### **23.4 Term of Committee Members**

Subject to the provisions in this Constitution relating to the earlier retirement or removal of Committee members, each Committee member shall hold office until the conclusion of the next Annual General Meeting but is eligible for re-election.

### **24. VACANCIES OF COMMITTEE MEMBERSHIP**

#### **24.1 Grounds for Termination of Committee Members**

In addition to the circumstances (if any) in which the office of a Committee member becomes vacant by virtue of the Act, the office of a Committee member becomes vacant if the Committee member:

- (a) is no longer an Individual Member;
- (b) dies;
- (c) becomes bankrupt or makes any arrangement or composition with his creditors generally;
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in anyway under the law relating to mental health;
- (e) resigns his office by providing notice in writing to the Association;
- (f) is absent without the consent of the Committee from three (3) consecutive Committee meetings held during a period of six (6) months;
- (g) without the prior consent or later ratification of the Members in General Meeting, holds any office of profit under the Association;
- (h) is directly or indirectly interested in any contract or proposed contract with the Association and fails to declare the nature of his interest; or
- (i) is removed from office by Special Resolution.

#### **24.2 Casual Vacancies**

Any casual vacancy occurring on the Committee, the continuing members of the Committee may appoint any Member of the Association to fill the vacancy until the conclusion of the Annual General Meeting next following the date of the appointment.

### **24.3 Remaining Committee Members May Act**

In the event of a casual vacancy or vacancies on the Committee, the remaining Committee members may act but, if the number of remaining Committee members is not sufficient to constitute a quorum at a Committee meeting, they may act to:

- (a) increase the number of Committee members to the number required for a quorum; or
- (b) call a General Meeting of the Association.

## **25. MEETINGS OF THE COMMITTEE**

### **25.1 Committee to Meet**

- (a) The Committee shall meet as often as is deemed necessary for the dispatch of business and may adjourn and, subject to this Constitution, otherwise regulate, its meetings as it thinks fit.
- (b) Notice of intention to attend a meeting of the Committee shall be given to the Secretary by each Committee member at least three (3) days prior to the scheduled day of meeting. Should the Secretary fail to receive notice that a quorum of members plan to be present at the meeting, the Secretary shall notify all members, by whatever means are appropriate, that the meeting is cancelled and consult the members of the Committee as to the next appropriate date to hold such meeting.

### **25.2 Chair**

The President shall chair any Committee meeting at which he is present. If the President is not present, or is unwilling or unable to preside the vice-president, is to preside as chairperson.

If the President and the vice-president are absent or unwilling to act, the remaining Committee members shall appoint one of their number to preside as chair for that meeting only.

### **25.3 Decisions of Committee**

- (a) Subject to this Constitution, questions arising at any meeting of the Committee shall be decided by a majority of votes and a determination of a majority of Committee members present and entitled to vote shall for all purposes be deemed a determination of the Committee. All Committee members shall have one (1) vote on any question. The chair shall also have a casting vote where voting is equal.
- (b) The Secretary shall notify all Clubs in writing of all administrative decisions made at a Committee meeting within 14 days of the conclusion of that meeting.

#### **25.4 Resolutions Not in Meeting**

- (a) A resolution in writing, signed or assented to by facsimile or other form of visible or other electronic communication by all the Committee members shall be as valid and effectual as if it had been passed at a meeting of the Committee duly convened and held. Any such resolution may consist of several documents in like form each signed by one (1) or more of the Committee members.
- (b) Without limiting the power of the Committee to regulate its meetings as it thinks fit, a meeting of the Committee may be held where one (1) 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 or other form of communication;
  - (ii) notice of the meeting is given to all the Committee members entitled to notice in accordance with the usual procedures agreed upon or laid down from time to time by the Committee;
  - (iii) in the event of a failure in communications prevents Clause 25.4 (b) (i) from being satisfied by a quorum of Committee members then the meeting shall be suspended until Clause 25.4 (b) (i) is satisfied again. If such is not satisfied within fifteen (15) minutes from the interruption the meeting shall be deemed to have terminated; and
  - (iv) no meeting shall be invalidated merely because no Committee member is physically present at the place for the meeting specified in the notice of meeting.

#### **25.5 Quorum**

- (a) At meetings of the Committee the number of Committee members whose presence or participation under Clause 25.4 is required to constitute a quorum is 50% or more of the number of current members of the Committee.
- (b) If a quorum is not present within 30 minutes after the time fixed for a Committee meeting, the meeting is to be adjourned to:
  - (i) the same day, time and place in the next week; or
  - (ii) a day, time and place decided by those then present.

#### **25.6 Notice of Committee Meetings**

Unless all Committee members agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their presence), not less than seven (7) days' written notice of the meeting of the Committee shall be given to

each Committee member. The agenda shall be forwarded to each Committee member not less than five (5) days prior to such meeting.

#### **25.7 Validity of Committee Decisions**

A procedural defect in decisions taken by the Committee shall not result in such decision being invalidated.

#### **25.8 Minutes**

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

### **26. CONFLICTS**

A Committee member shall declare to the Committee his interest in any:

- (a) contractual matter;
- (b) selection matter;
- (c) disciplinary matter;
- (d) financial matter; or
- (e) other matter;

in which a conflict of interest arises or may arise and shall, unless otherwise determined by the Committee, absent himself from discussion of such matter and shall not be entitled to vote in respect of such matter. In the event of any uncertainty as to whether it is necessary for a Committee member to absent himself from discussions and refrain from voting, the issue should be immediately determined by vote of the Committee, or if this is not possible, the matter shall be adjourned or deferred. The Secretary shall maintain a register of declared interests.

### **27. PUBLIC OFFICER**

- (a) The Committee shall ensure that a person is appointed as public officer in accordance with the Act.
- (b) The public officer will be familiar with the provisions of the Act and will use his 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.
- (c) The Committee may at any time remove the public officer and appoint a new public officer provided the person appointed is eighteen (18) years of age or older and a resident of the geographical boundaries as required by the Act.
- (d) The public officer shall be deemed to have vacated his position in the following circumstances;
  - (i) death;

**Comment [CEH5]:** added from company by-law 14

- (ii) resignation;
- (iii) removal by the Committee or at a General Meeting;
- (iv) bankruptcy or financial insolvency;
- (v) mental illness; or
- (vi) residency outside the geographical boundaries as required by the Act.

## **28. DELEGATIONS**

### **28.1 Committee may Delegate Functions**

The Committee may by instrument in writing create or establish or appoint from among the Committee Members or otherwise, standing committees, individual officers or consultants to carry out such duties and functions and with such powers, as the Committee determines.

### **28.2 Delegation by Instrument**

The Committee 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 Committee by the Act or any other law or this Constitution.

### **28.3 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.

### **28.4 Procedure of Delegated Entity**

The procedures for any delegated entity shall, with any necessary or incidental amendment, be the same as that applicable to meetings of the Committee under Clauses 25 and 26. The quorum shall be determined by the committee, but shall be no less than one half of the total number of committee members.

### **28.5 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.

### **28.6 Revocation of Delegation**

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

### **28.7 Standing Committees**

- (a) There will be standing committees elected at a General Meeting to deal with matters as described in the By-Laws.
- (b) A standing committee under this Clause will function as committees of the Committee in accordance with this Clause 28. For the avoidance of doubt the standing committees and their members are responsible to the Committee and are subject to the direction of, and delegation prepared by, the Committee in accordance with this Clause 28.
- (b) Nominations as detailed in the By-Laws from Members for consideration for election to the standing committees must be received by the Secretary from Members to be considered for election as a standing committee member thirty (30) days prior to the relevant General Meeting.

**Comment [CEH6]:** changed from applications & appointed to nominations and election deleted remaining as now included in by-laws

## **29. BY-LAWS AND POLICIES**

### **29.1 Committee to Formulate By-Laws and Policies**

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

### **29.2 By-Laws and Policies Binding**

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

### **29.3 By-Laws and Policies Deemed Applicable**

All powers, rules, regulations, policies and by-laws of the Association in force at the date of the approval of this Constitution under the Act insofar as such powers, rules, regulations, policies or by-laws are not inconsistent with, or have been replaced by this Constitution, shall be deemed to be By-Laws and Policies under this Clause.

#### **29.4 Notices Binding on Members**

Amendments, alterations, interpretations or other changes to By-Laws and Policies shall be advised to Clubs by means of notices approved by the Committee and prepared and issued by the Association. Clubs shall be obliged to draw such notices to the attention of its respective members. Notices are binding upon all Members.

### **30. RECORDS AND ACCOUNTS**

#### **30.1 Custody and Inspection of Books**

- (a) Except as otherwise provided by this Constitution, the Committee must keep in its custody or under its control all records, books and other documents relating to the Association.
- (b) The records, books and other documents of the Association must be open to inspect, free of charge, by a Club at any reasonable hour.

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

Proper accounting and other records shall be kept in accordance with the Act, generally accepted accounting principles and/or any applicable code of conduct.

#### **30.3 The Association to Retain Records**

The Association shall retain such records for not less than seven (7) years after the completion of the transactions or operations to which they relate.

#### **30.4 Committee to Submit Accounts**

The Committee shall submit to the Annual General Meeting the accounts of the Association in accordance with this Constitution and the Act.

#### **30.5 Accounts Conclusive**

The accounts when approved or adopted by an Annual General Meeting shall be conclusive except as regards any error discovered in them within three (3) months after such approval or adoption.

#### **30.6 Accounts to be Provided to Members**

The Association shall cause to be provided to all persons entitled to receive notice of Annual General Meetings of the Association in accordance with this Constitution, a copy of the accounts, the Committee's report, the auditor's report and every other document required under the Act.

#### **30.7 Negotiable Instruments**

All cheques and other negotiable instruments shall be signed or otherwise executed, by any two (2) office bearers or in such other manner and by such persons the Committee determines.

### **30.8 Funds and Accounts**

- (a) The funds of the Association must be kept in an account in the name of the Association in a financial institution decided by the Committee.
- (b) Records and accounts must be kept in the English language showing full and accurate particulars of the financial affairs of the Association.
- (c) All amounts must be deposited in the financial institution account as soon as practicable after receipt.
- (d) All payments of \$100 or more are to be paid by cheque or electronic funds transfer.
- (e) All expenditure must be approved or ratified at a Committee meeting.

### **30.9 Financial Year**

The financial year of the Association closes on 31 March in each year.

## **31. APPLICATION OF INCOME AND PROPERTY**

- (a) The income and property of the Association shall be applied solely towards the promotion of the Objects.
- (b) 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.
- (c) 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.
- (d) Nothing contained in Clauses 31(b) or 31(c) shall prevent payment in good faith to any Member:
  - (i) for any services actually rendered to the Association whether as an employee or otherwise;
  - (ii) for goods supplied to the Association in the ordinary and usual course of business;
  - (iii) of interest on money borrowed from any Member;
  - (iv) of rent for premises demised or let by any Member to the Association; or
  - (v) for 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 arms length in a similar transaction.

### **32. COMMON SEAL**

- (a) The common seal of the Association must be kept in the custody of the Committee
- (b) The common seal must not be fixed to any instrument except by the authority of the committee and the affixing of the common seal must be attested by the signatures of two (2) office bearers.

### **33. AUDITOR**

- (a) A properly qualified auditor or auditors shall be appointed by a General Meeting and the remuneration of such auditor or auditors fixed by the Committee. The auditor's duties shall be regulated in accordance with the Act.
- (b) The accounts of the Association including the profit and loss accounts and balance sheet shall be examined by the auditor or auditors at least once in every year.

### **34. RESOLUTION OF INTERNAL DISPUTES**

- (a) Disputes between Members (in their capacity as Members) of the Association, and disputes between Members and the Association, are to be referred to a community justice centre for mediation in accordance with the Community Justice Centres Act 1983.
- (b) At least seven (7) days before a mediation session is to commence, the parties are to exchange statements of the issues that are in dispute between them and supply copies to the mediator.

### **35. NOTICES**

#### **35.1 Manner of Notice**

- (a) Notices may be given to any Member 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 two (2) 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. ADDITION ALTERATION OR AMENDMENT**

- (a) Subject to the Act, this Constitution may be amended, repealed or added to following the specific approval of SNSW by a Special Resolution carried at a General Meeting.
- (b) An amendment, repeal or addition is valid only if it is registered as required by the Act.

### **37. WINDING UP OF COMPANY AND LIABILITY OF MEMBERS**

#### **37.1 Club Contributions**

Each Club undertakes to contribute to the assets of the Association in the event of it being wound up while a Member, or within one (1) 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 and for an adjustment of the rights of contributors among themselves, such amount as may be required not exceeding one dollar (\$1).

#### **37.2 Distributions 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 paid to or distributed to an organisation or organisations having objects similar to the Objects and which prohibit(s) 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 Clause 31. Such organisation to be determined by the Members at or before the time of dissolution, and in default thereof by the Supreme Court of New South Wales.

#### **37.3 Liability of Members**

The liability of the Members of the Association is limited.

## **38. INDEMNITY**

### **38.1 Committee Members to be Indemnified**

Every Committee member, auditor, 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 a Committee member, auditor, employee or agent in defending any proceedings, whether civil or criminal, in which judgment 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.

### **38.2 The Association to Indemnify Committee Members**

The Association shall indemnify its Committee members and employees against all damages and costs (including legal costs) for which any such Committee member 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 Committee member, 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.