



Associations Incorporation Act 2009 (NSW) (Act)

Constitution

Swimming Metro North East Incorporated

Adopted or Amended	By Whom	Date
Model Regional Sporting Organisation Constitution	NSW Office of Sport	November 2018
Version 1.0	SMNE Board	June 2020

TABLE OF CONTENTS

1. NAME OF ASSOCIATION.....4

2. DEFINITIONS AND INTERPRETATION4

3. OBJECTS OF THE ASSOCIATION6

4. POWERS OF THE ASSOCIATION7

5. MEMBERS7

6. AFFILIATION8

7. REGISTER OF MEMBERS.....10

8. EFFECT OF MEMBERSHIP10

9. DISCONTINUANCE OF MEMBERSHIP11

10. DISCIPLINE12

11. SUBSCRIPTIONS AND FEES.....13

12. POWERS OF THE BOARD.....13

13. COMPOSITION OF THE BOARD14

14. ELECTION OF THE BOARD.....14

15. VACANCIES ON THE BOARD15

16. MEETINGS OF THE BOARD16

17. PUBLIC OFFICER18

18. DELEGATIONS.....18

19. SEAL19

20. ANNUAL GENERAL MEETING19

21. SPECIAL GENERAL MEETINGS20

22. NOTICE OF GENERAL MEETING.....20

23. BUSINESS21

24. NOTICES OF MOTION21

25. PROCEEDINGS AT GENERAL MEETINGS21

26. VOTING AT GENERAL MEETINGS22

27. PROXY VOTING23

28. STRATEGIC FORUM OF ASSOCIATION23

29. RESOLUTION OF INTERNAL DISPUTES	23
30. RECORDS AND ACCOUNTS	24
31. AUDITOR	25
32. INCOME	25
33. WINDING UP.....	26
34. DISTRIBUTION OF PROPERTY ON WINDING UP	26
35. ALTERATION OF CONSTITUTION.....	26
36. BY-LAWS AND POLICIES	26
37. STATUS AND COMPLIANCE OF ASSOCIATION.....	27
38. NOTICE	28
39. INDEMNITY	28
40. REGISTERED ADDRESS	28

ASSOCIATIONS INCORPORATION ACT 2009 (NSW)

CONSTITUTION

of

SWIMMING METRO NORTH EAST INCORPORATED

1. NAME OF ASSOCIATION

The name of the Association is Swimming Metro North East Incorporated ("**Association**").

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Constitution unless the contrary intention appears:

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

Affiliate Member means an individual who is an umpire, referee, coach or other official who is associated with, or recognised by, the Association but who is not an Individual Member.

Annual General Meeting (AGM) means the annual general meeting of the Association held in accordance with **clause 20**.

Area means the geographical region for which the Association is responsible as recognised by SNSW.

Association means swimming Metro North East Incorporated.

Board means the body managing the Association consisting of the Directors.

By-Laws means any by-laws made by the Board under **clause 36**.

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

Constitution means this Constitution of the Association.

Delegate means the person(s) appointed from time to time to act for and on behalf of a Club and to represent the Club at General Meetings.

Director means a member of the Board and includes any person acting in that capacity from time to time elected in accordance with this Constitution and including the Executive Director.

Executive Director means the Executive Director of the Association (if any or by some other title) for the time being appointed under this Constitution. Where the Association does not have an Executive Director, the Association secretary or Public Officer will, subject to confirmation by the Board, assume the functions of the Executive Director under this Constitution.

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

Financial year means (unless determined otherwise by the Board) the year ending on the next 31 March following incorporation and thereafter a period of 12 months commencing on 1 April and ending on 31 March each year.

General Meeting means the AGM or any SGM of the Association.

Individual Member means a registered, financial member of a Club who is at least 18 years of age.

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

Junior Member means a registered, financial member of the Club who is younger than 18 years of age.

Life Member means an individual appointed as a Life Member of the Association 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 3**.

Policy means the policies made by the Board under **clause 36**,

President means the president for the time being of the Association, who shall be an Elected Director.

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

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

SAL means swimming Australia Limited, the National Sporting Organisation for swimming in Australia.

Seal means the common seal of the Association (if any).

SNSW means swimming NSW Limited, the State Sporting Organisation for swimming in New South Wales.

Special General Meeting (SGM) means a special general meeting of the Association held under **clause 21**.

Special Resolution means a special resolution defined in the Act.

2.2 Interpretation

In this Constitution:

- (a) a reference to a function includes a reference to a power, authority and duty;
- (b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing any gender include the other genders;
- (e) references to persons include corporations and bodies politic;

- (f) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- (g) a reference to a statute, ordinance, code or other law includes 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.

2.3 Severance

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

2.4 The Act

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

3. OBJECTS OF THE ASSOCIATION

The Association is established solely for the Objects. The Objects of the Association are to:

- (a) affiliate and otherwise liaise with NSW or its successor or assign and such other bodies as may be desirable to achieve these Objects;
- (b) conduct, encourage, promote, advance and administer swimming throughout the Area;
- (c) 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 swimming;
- (d) at all times operate and promote mutual trust and confidence between the Association and the Members in pursuit of these Objects;
- (e) at all times act on behalf of, and in the interest of, the Members and swimming in the Area;
- (f) promote the economic and sporting success, strength and stability of the Association, the Members and to act independently with each Member in pursuit of these Objects;
- (g) ensure compliance with the by-laws, policies and rules as amended from time to time of NSW and the Association;
- (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) collect, distribute and publish information in connection with swimming;

- (k) promote and control Area meetings, competitions and championships and to the extent relevant, promote and assist in conducting state and national meetings, competitions and championships;
- (l) strive for government, commercial and public recognition of the Association as the controlling body for swimming in the Area;
- (m) 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;
- (n) advance the operations and activities of the Association throughout the Area;
- (o) review and/or determine any matters relating to swimming which may arise, or be referred to it, by any Member;
- (p) recognise any penalty imposed by any Member;
- (q) act as arbiter (as required) on all matters pertaining to the conduct of swimming in the Area, including disciplinary matters;
- (r) pursue such commercial arrangements, including sponsorship and marketing opportunities as are appropriate to further these Objects;
- (s) formulate or adopt and implement such policies as may be developed by SNSW or SAL, including in relation to member protection, equal opportunity, drugs in sport, health and safety, junior and senior programs and such other matters as may arise from time to time as issues to be addressed in swimming;
- (t) represent the interests of its Members and of swimming generally in any appropriate forum in the Area;
- (u) have regard to the public interest in its operation;
- (v) do all that is reasonably necessary to enable these Objects to be achieved and enable Members to receive the benefits which these Objects are intended to achieve;
- (w) through or in association with SNSW or other entities or of itself, promote the health and safety of all Members;
- (x) seek and obtain improved facilities for the enjoyment of swimming in the Area; and
- (y) undertake and or do all such things or activities which are necessary, incidental or conducive to the advancement of these Objects.

4. POWERS OF THE ASSOCIATION

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

5. MEMBERS

5.1 Categories of Members

The Members of the Association shall consist of:

- (a) Clubs, which subject to this Constitution, shall be represented by a Delegate, and who shall have the right to receive notice of General Meetings and to be present, debate and vote on behalf of the Club at General Meetings;
- (b) Life Members, who subject to this Constitution, shall have the right to receive notice of General Meetings and to be present and to debate at General Meetings, but shall have no voting rights (unless also a Delegate);
- (c) Individual Members and Affiliate Members who shall have the right to be present at General meetings but shall have no rights, to debate or to vote at General Meetings (unless also a Delegate);
- (d) Junior Members, who subject to this Constitution, shall have no right to receive notice of General Meetings and no right to be present or debate or vote at General Meetings;
- (e) Directors, who shall have the right to be present and to debate and vote at General Meetings; and
- (f) such new or other categories of Members as may be established by the Board. Any new category of Member established by the Board can not be granted voting rights without the approval of the Association in General Meeting.

5.2 Life Members

- (a) The Board may recommend to the AGM that any natural person who has rendered distinguished service to the Association or swimming in the Area, where such service is deemed to have assisted the advancement of swimming in the Area, be appointed as a Life Member.
- (b) A resolution of the AGM to confer life membership (subject to clause 5.2(c)) 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.

6. AFFILIATION

6.1 Clubs

To be, or remain, eligible for membership, a Club must be recognised and admitted to membership as a Club by SNSW.

6.2 Application for Affiliation

- (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 Executive Director must, as soon as practicable after the advice from SNSW provide the Club with the appropriate membership information; and
- (c) An application for affiliation must be accompanied by a copy of the applicant's constitution (which must be acceptable to the Association and must substantially conform to this Constitution), the applicant's register of members and accompanied by the appropriate fee (if any).

6.3 Re-Affiliation

- (a) Clubs must re-affiliate annually with the Association in accordance with the procedures set down by the Association in By-Laws from time to time.
- (b) Upon re-affiliation a Club must lodge with the Association an updated copy of its constitution (including all amendments) and must provide details of any change in its Delegate and any other information reasonably required by the Association. Each Club must ensure that its constitution is amended to conform to any amendments made to this Constitution.

6.4 Compliance of Clubs

Each Club shall:

- (a) be incorporated;
- (b) 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;
- (c) 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 Board;
- (d) adopt the Objects and adopt rules which reflect and which are in conformity in all material respects with this Constitution;
- (e) apply its property and capacity solely in pursuit of the Objects and swimming;
- (f) at all times act for the joint advantage of the Association, the Members and swimming;
- (g) do all that is reasonably necessary to enable the Objects to be achieved;
- (h) act in good faith and loyalty to maintain and enhance the Association and swimming, its standards, quality and reputation for the collective and mutual benefit of the Members and swimming;
- (i) at all times operate with and promote mutual trust and confidence between the Association and the Members in pursuit of the Objects; and
- (j) at all times act on behalf of and in the interests of the Members and swimming.

6.5 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 a 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) act for and on behalf of the interests of swimming, the Association and the Members.

7. REGISTER OF MEMBERS

7.1 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.

Clubs, Directors and Life Members shall provide notice of any change and required details to the Association within one (1) month of such change.

7.2 Inspection of Register

- (a) Having regard to privacy and confidentiality considerations, inspection of the Register will only be available as required by the Act and under clause 7.2(b). If permitted, only an extract of the Register, excluding the address or other direct contact details of any Life Member or Director, shall be available for inspection (but not copying) by Members.
- (b) The extract of the register can only be inspected by Clubs and only in relation to Individual Members and Junior Members in their Club.

7.3 Use of Register

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

8. EFFECT OF MEMBERSHIP

Members acknowledge and agree that:

- (a) this Constitution constitutes a contract between each of them and the Association and that they are bound by this Constitution, the By-Laws and 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 Board 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) the 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 Association membership.

9. DISCONTINUANCE OF MEMBERSHIP

9.1 Notice of Resignation

Subject to this Constitution any Club which has paid all monies due and payable to the Association and has no other liability (contingent or otherwise) to the Association may resign from the Association by giving one(1) months' notice in writing to the Association of such intention to withdraw or resign and upon the expiration of that period of notice, the Club shall cease to be a Member.

9.2 Expiration of Notice Period

Upon the expiration of any notice period applicable under Clause 9.1, an entry, recording the date on which the Club who or which gave notice ceased to be a Member shall be recorded in the register.

9.3 Discontinuance for breach

- (a) Notwithstanding Clause 10, where a Club fails to comply with its financial and reporting obligations under this Constitution, the Board may determine that Club to be not of good standing. On determination that a Club is not of good standing, the Board may give notice to the Club of:
 - (i) the Board's determination; and
 - (ii) the grounds for the Board's determination;
 - (iii) and request that the Club show cause within twenty one (21) days from the date of that notice as to why some action should not be taken against the Club The Club's failure to respond or act to the Board's satisfaction (including assurances or compliance with its obligations) may result in the Board suspending or terminating the Club's membership of the Association, or otherwise imposing such conditions on its membership, as the Board sees fit.
- (b) Such penalty (other than termination) will take effect upon notification by Board.

9.4 Discontinuance for failure to re-affiliate

Membership of the Association may be discontinued by the Board if a Club has not re-affiliated with the Association within one (1) month of re-affiliation falling due. The Register shall be amended to reflect any discontinuance of membership under this **clause 9.4** as soon as practicable.

9.5 Forfeiture of Rights

A Member who or which 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 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. Where a Club ceases to be a Member it shall also forfeit all representation rights on the Board and at General Meetings.

9.6 Delegate Position Lapses

The position of Delegate shall lapse immediately on cessation of membership of a Club.

9.7 Membership may be Reinstated

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

9.8 Individual Members

Where a Club ceases to be a Member in accordance with this Constitution or the Act, the Individual Members and Junior 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 Board.

10. DISCIPLINE

10.1 Safe Sport Framework

Members are bound to comply with the Safe Sport Framework as a result of clause 36.5 of this Constitution. Accordingly, all complaints or disputes under the Safe Sport Framework will be dealt with in accordance with the processes set out under the Safe Sport Framework. Members agree to submit unreservedly to the jurisdiction, disciplinary procedures, penalties and the appeal mechanisms set out in the Safe Sport Framework.

10.2 Discipline of Clubs

- (a) The Board may recommend SNSW take disciplinary action against a Club if the Club:
 - (i) does not comply with any of the provisions of this Constitution; or
 - (ii) acted in a manner 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 Board makes such a recommendation, the Board 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 Board decides to recommend the taking of disciplinary action against a Club, the Board must give a written notice of the decision to the Club.

10.3 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 Board; 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;
- (b) the Board 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 (if any) of the Association set out in its Constitution and/or By-Laws.
- (c) 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.

10.4 Jurisdiction to Hear Matters

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

10.5 Non Application of Clause 10

This Clause 10 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.

11. SUBSCRIPTIONS AND FEES

- (a) Fees including annual membership fees, registration fees and levies 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 by the Board.
- (b) Monies payable to the Association by the Clubs under Clause 11(a) shall be forwarded to the Association for the Association’s use by such dates as are prescribed by the Board.
- (c) Any Club which has not paid all monies due and payable by that Club to the Association, shall (subject to the Board’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 Board’s discretion. The Club shall be dealt with in the Board’s discretion, which includes the right to recommend to SNSW suspension as detailed in Clause 10.1.
- (d) Where the Board exercises its discretion under Clause 11(c) and imposes a penalty on a Club which or who has not paid all monies due and payable by that Club to the Association, the rules of natural justice are hereby expressly excluded and do not apply to the imposition of that penalty.

12. 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. In particular, the Board shall act in accordance with the Objects and shall operate for the collective and mutual benefit of the Association and swimming throughout the Area.

13. COMPOSITION OF THE BOARD

13.1 Composition of the Board

The Board shall comprise of a minimum of six (6) Directors and up to ten (10) Directors who must all be Individual Members and who shall be elected under clause 14.

13.2 Qualifications of Directors

- (a) All Directors must be Individual Members at the time of nomination and during their term in office.
- (b) All Directors must hold a NSW Working with Children Clearance at the time of nomination and during their term in office.
- (c) An employee of the Association cannot retain that position if elected to the Board.
- (d) Subject always to the law, the Board will determine necessary requirements and qualifications for eligibility as Directors from time to time and the Board shall advise the Clubs of any requirements, qualifications and modifications when determined.

13.3 Portfolios

The Board may allocate portfolios and/or titles to Directors. Subject to this Constitution and any properly passed resolution of the Board, the allocation of portfolios or titles does not effect the powers and duties of Directors.

14. ELECTION OF THE BOARD

14.1 Nominations

Nominations for Director positions shall be called for forty-five (45) days prior to the Annual General Meeting. Qualifications and job descriptions may be determined by the Board from time to time.

14.2 Form of Nomination

Nominations for election to the Board pursuant to Clause 14.1 must be in writing on the prescribed form provided for that purpose.

14.3 Elections

- (a) If the number of nominations received for the Board is equal to the number of vacancies to be filled or if there are insufficient nominations received to fill all vacancies on the Board, then those nominated may be declared elected only if approved by the majority of Members present and entitled to vote.
- (b) If there are insufficient nominations received to fill all vacancies on the Board, or if a person is not approved by the majority of Members under clause 14.3(a), the positions will be deemed casual vacancies under clause 15.1.
- (c) If the number of nominations exceeds the number of vacancies to be filled, voting papers shall be prepared containing the names of the candidates in alphabetical order, for each vacancy on the Board.
- (d) Voting shall be conducted in such manner and by such method as may be determined by the Board from time to time.

14.4 Term of Appointment for Directors

- (a) Directors elected under this clause 14 shall be elected for a term of one (1) year but are eligible for re-election subject to 14.4(b). Subject to provisions in this Constitution relating to earlier retirement or removal of Directors, Directors shall remain in office from the conclusion of the AGM at which the election occurred until the conclusion of the AGM following.
- (b) A Director may not serve more than 15 consecutive terms as a Director. However, the effect of this clause shall commence on the date this Constitution is adopted and any term served prior to the adoption of this Constitution shall not be counted for the purposes of this clause 14.4.

15. VACANCIES ON THE BOARD

15.1 Casual Vacancies

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

15.2 Grounds for Termination of Director

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

- (a) Is no longer an Individual Member;
- (b) dies;
- (c) becomes bankrupt or makes any arrangement or composition with their 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 their office in writing to the Association;
- (f) is absent without the consent of the Board from meetings of the Board held during a period of six (6) months;
- (g) holds any office of employment with the Association;
- (h) is directly or indirectly interested in any contract or proposed contract with the Association and fails to declare the nature of their interest;
- (i) in the reasonable opinion of the Board (but subject always to this Constitution) has:
 - (i) acted in a manner unbecoming or prejudicial to the Objects and interests of the Association; or
 - (ii) brought themselves or the Association into disrepute;
- (j) is removed by Special Resolution; or
- (k) would otherwise be prohibited from being a Director of a corporation under the Corporations Act 2001 (Cth).

15.3 Board May Act

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

16. MEETINGS OF THE BOARD

16.1 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.

16.2 Chairperson

The President shall chair any Board meeting or General Meeting at which they are present. If the President 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.

16.3 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 for all purposes be deemed a determination of the Board. All Directors shall have one (1) vote on any question. Where voting is equal, the chair may not exercise a casting vote and the motion will be lost.

16.4 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 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 (1) or more of the Directors.
- (b) Without limiting the power of the Board to regulate its meetings as it thinks fit, a meeting of the Board may be held where one (1) or more of the Directors is not physically present at the meeting, provided that:
 - (i) all persons participating in the meeting are able to communicate with each other effectively simultaneously and instantaneously whether by means of telephone or other form of communication;
 - (ii) notice of the meeting is given to all the Directors entitled to notice in accordance with the usual procedures agreed upon or laid down from time to time by the Board or this Constitution;
 - (iii) if a failure in communications prevents clause 16.4(b)(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 clause 16.4(b)(i) is satisfied again. If such condition is not satisfied within fifteen (15) minutes from the interruption the meeting shall be deemed to have terminated or adjourned; and

- (iv) no meeting shall be invalidated merely because no Director is physically present at the place for the meeting specified in the notice of meeting.

16.5 Quorum

At meetings of the Board the number of Directors whose presence is required to constitute a quorum is at least 50% of the Directors. A quorum must remain present throughout the meeting.

16.6 Notice of Board Meetings

Unless all Directors agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their apology or presence) not less than seven (7) days written notice of the meeting of the Board shall be given to each Director. The agenda shall be forwarded to each Director not less than four (4) days prior to such meeting.

16.7 Validity of Board Decisions

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

16.8 Conflict of Interest

A Director shall declare to the Board their 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 Board, absent themselves from discussions of such matter and shall not be entitled to vote in respect of such matter. If the Director votes the vote shall not be counted. If there is any uncertainty as to whether it is necessary for a Director to absent themselves from discussions and 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. The Executive Director shall maintain a register of declared interests.

16.9 Disclosure of Interests

- (a) The nature of the interest of such Director must be declared by the Director at the meeting of the Board at which the relevant matter is first taken into consideration if the interest then exists or in any other case at the first meeting of the Board after the acquisition of the interest. If a Director becomes interested in a matter after it is made or entered into the declaration of the interest must be made at the first meeting of the Board held after the Director becomes so interested.
- (b) All disclosed interests must also be disclosed to each AGM.

16.10 General Disclosure

A general notice that a Director is a member of any specified firm or company and that they are "interested" in all transactions with that firm or company is sufficient declaration under **clause 16.9** as regards such Director and the said transactions. After such general notice it is not necessary for the Director to give a special notice relating to any particular transaction with that firm or company.

16.11 Recording Disclosures

Any declaration made, any disclosure or any general notice given by a Director in accordance with **clauses 16.8, 16.9** and/or **16.10** must be recorded in the minutes of the relevant meeting and otherwise in accordance with the Act.

17. PUBLIC OFFICER

- (a) The Board shall ensure that a person is appointed as Public Officer in accordance with the Act. The Public Officer must be a Director.
- (b) The Public Officer will be familiar with the provisions of the Act and will use their best endeavours to ensure that all documents, financial statements, reports and statutory declarations are lodged by the prescribed date and advise the President if any item to be lodged is not available.
- (c) The Board may at any time remove the Public Officer and appoint a new Public Officer provided the person complies with the requirement of section 34 of the Corporations Act 2001 (Cth) and this Constitution.
- (d) The Public Officer shall be deemed to have vacated his position in the following circumstances;
 - (i) death;
 - (ii) resignation;
 - (iii) removal by the Board 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.

18. DELEGATIONS

18.1 Board may Delegate Functions

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

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

18.2 Delegation by Instrument

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

- (a) this power of delegation; and

- (b) a function imposed on the Board or the Executive Director by the Act or any other law, or this Constitution.

18.3 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.

18.4 Procedure of Delegated Entity

The procedures for any entity exercising delegated power shall, subject to this Constitution and with any necessary or incidental amendment, be the same as that applicable to meetings of the Board under **clause 16** above. The entity exercising delegated powers shall make decisions in accordance with the Objects, and shall promptly provide the Board with details of all material decisions. The entity shall also provide any other reports, minutes and information as required by the Board from time to time.

18.5 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.

18.6 Revocation of Delegation

The Board may by resolution and/or instrument in writing, at any time revoke wholly or in part any delegation made under this clause. The Board may also amend or repeal any decision made by such body or person under this **clause 18**.

18.7 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 Board in accordance with this Clause 18.7. For the avoidance of doubt the standing committees and their members are responsible to the Board and are subject to the direction of, and delegation prepared by, the Board in accordance with this Clause 18.7.
- (c) The Board will call for applications as detailed in the By-Laws from Individual Members for consideration for appointment to the standing committees. Such appointments will be advised as soon as possible after the Annual General Meeting.

19. SEAL

- (a) The Seal must be kept in the custody of the Board
- (b) The Seal must not be used without the express authorisation of the Board. Every use of the Seal shall be recorded in the Association's minutes. Two (2) Directors must witness every use of the Seal.

20. ANNUAL GENERAL MEETING

- (a) An AGM of the Association shall be held in accordance with the Act and this Constitution and on a date and at a venue determined by the Board.

- (b) All General Meetings other than the AGM shall be SGMs and shall be held in accordance with this Constitution.

21. SPECIAL GENERAL MEETINGS

21.1 SGMs May be Held

The Board may, whenever it thinks fit, convene a SGM of the Association and, where, but for this clause more than fifteen (15) months would elapse between AGMs, shall convene a SGM before the expiration of that period.

21.2 Requisition of Special General Meetings

- (a) The Board shall on the requisition in writing made by not less than twenty percent (20%) of the Club or five (5) Clubs (which ever is the lower) convene a SGM.
- (b) The requisition for a SGM shall state the object(s) of the meeting, shall be signed by the Clubs making the requisition and be sent to the Association. 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 Board does not cause a SGM to be held within three (3) months after the date on which the requisition is sent to the Association, the Clubs making the requisition, or any of them, may convene a SGM to be held not later than three (3) months after that date.
- (d) A SGM 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 Board.

22. NOTICE OF GENERAL MEETING

- (a) Notice of every General Meeting shall be given to every Member entitled to receive notice in accordance with clause 5.1 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) At least forty five (45) days' notice of the place and day and hour of the General Meeting shall be given to those Members entitled to receive notice.
- (c) At least twenty one (21) days' notice of the business to be transacted at a General Meeting shall be given to those Members entitled to receive notice, together with:
 - (i) the agenda for the meeting;
 - (ii) any notice of motion received from any Members, Director or the Board in accordance with this Constitution; and
 - (iii) relevant accounts and reports in accordance with this Constitution and the Act.
- (d) Notice of intention to attend a General Meeting shall be given to the Executive Director by each Delegate at least seven days prior to the scheduled day of meeting. Should the Executive Director fail to receive notice that a quorum intend to be present at the meeting, the Executive Director shall notify all such Delegates, by whatever means are appropriate, that the meeting is cancelled and consult the Directors as to the next appropriate date to hold such meeting.

23. BUSINESS

- (a) The business to be transacted at the AGM includes the consideration of accounts and the reports of the Board and auditors (subject to the requirements of the Act), the election of Directors under this Constitution and the appointment of the auditors.
- (b) All business that is transacted at a General Meeting and all business that is transacted at an AGM, with the exception of those matters set down in clause 23(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.

24. NOTICES OF MOTION

Members entitled to vote may submit notices of motion for inclusion as special business at a General Meeting. All notices of motion must be submitted in writing to the Executive Director not less than thirty (30) days (excluding receiving date and meeting date) prior to the General Meeting.

25. PROCEEDINGS AT GENERAL MEETINGS

25.1 Quorum

No business shall be transacted at any General Meeting unless a quorum is present at the time when the meeting proceeds to business. A quorum for General Meetings of the Association shall be at least fifty (50) percent of the Members.

25.2 Chair to preside

The President shall, subject to this Constitution, preside at every General Meeting of the Association. If the President is not present, or is unwilling or unable to preside, the Directors shall elect one of the remaining Directors who shall, subject to this Constitution, preside as chair for that meeting only.

25.3 Adjournment of Meeting

- (a) If within half an hour from the time appointed for the General Meeting, a quorum is not present the meeting 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 chair 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 chair 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 General Meeting is adjourned for thirty (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 clause 25.3(c) it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

25.4 Voting Procedure

At any General 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):

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

25.5 Recording of Determinations

Unless a poll is demanded under **clause 25.4**, 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.

25.6 Where Poll Demanded

If a poll is duly conducted under **clause 25.4** 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 meeting at which the poll was conducted.

25.7 Procedural irregularities

- (a) No decision of the Association, the Board or any Board authorised entity shall be invalid merely because of a failure to give proper notice under this Constitution or the Regulations or other irregularity in procedure required by this Constitution or the Regulations unless a person suffers substantial prejudice as a result of that failure to give proper notice or irregularity in procedure.
- (b) The Association, the Board or other Board authorised entity may confirm an earlier decision which may have been otherwise invalid because of a failure to give proper notice or other irregularity in procedure and the decision shall be deemed to be valid from the time it was originally made.

26. VOTING AT GENERAL MEETINGS

26.1 Members Entitled to Vote

- (a) Each Club shall be entitled to one (1) vote at General Meetings which, subject to this clause shall be exercised by the Club's Delegate.
- (b) Each Director shall be entitled to one (1) vote at General Meetings.
- (c) Where voting at General Meetings is equal the chair may exercise a casting vote. If the chair does not exercise a casting vote the motion will be lost. No other person shall be entitled to vote but shall, subject to this Constitution, have and be entitled to exercise those rights set out in Clause 5.1.
- (d) 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.

26.2 Postal or Electronic Voting

No motion shall be determined by a postal or electronic ballot unless determined by the Board. If the Board so determines, the postal or electronic ballot shall be conducted under procedures determined by the Board from time to time.

27. PROXY VOTING

Proxy voting is not permitted at any General Meeting.

28. STRATEGIC FORUM OF ASSOCIATION

28.1 Strategic Forums

The Association shall hold a strategic forum as the Board determines from time to time and generally no more than once per year. The object of the strategic forum is to:

- (a) inform the Board of significant membership issues;
- (b) assist the Board to design or review the Association's strategic plan and direction;
- (c) discuss Area wide issues; and
- (d) provide feedback to the Board on the results of its governance decisions in practice at Member level.

28.2 Attendees at Strategic Forums

The following persons may attend strategic fora of the Association:

- (a) up to two (2) representatives from each Club; and
- (b) the Directors; and
- (c) such other persons the Board considers should be invited.

29. RESOLUTION OF INTERNAL DISPUTES

- (a) The grievance procedure set out in this clause rule applies to disputes arising under this Constitution 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, and, if possible, resolve the dispute within fourteen (14) days after the dispute comes to the attention of all parties.
- (c) If the parties are unable to resolve the dispute at the meeting or if a party fails to attend that meeting, then the parties may refer the dispute to a community justice centre for mediation under the Community Justice Centres Act 1983 (NSW).
- (d) The Board may prescribe additional grievance procedures in the By-Laws consistent with this clause 29.

- (e) If the dispute is not resolved the Board may take whatever steps it considers appropriate in regard to the dispute in the best interests of the Association and the Members concerned.

30. RECORDS AND ACCOUNTS

30.1 Records

- (a) 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.
- (b) Records and minutes may be kept in written or electronic form. If kept in electronic form, the records and minutes must be able to be converted into hard copy.

30.2 Records Kept in Accordance with Act

- (a) Proper accounting and other records of the Association including books, minutes, documents and securities shall be kept in accordance with the Act and otherwise shall be kept in the care and control of the Executive Director.
- (b) Subject to the Act, the Board may determine whether and to what extent, and at what times and places and under what conditions, the financial records, accounts, books, securities or other relevant documents of the Association will be open for inspection by the Members.
- (c) The Association shall retain such records for seven (7) years after the completion of the transactions or operations to which they relate.

30.3 Board to Submit Accounts

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

30.4 Accounts Conclusive

The statements of account when approved or adopted by an AGM shall be conclusive except as regards any error discovered in them within three months (3) after such approval or adoption.

30.5 Accounts to be available to Members

- (a) The Executive Director shall ensure all persons entitled to receive notice of AGMs under this Constitution, on request inspect free of charge:
 - (i) The minutes of general meetings; and
 - (ii) Subject to clause 30.5(b), a copy of the statements of account, the Board's report, the auditor's report and every other document required under the Act (if any).
- (b) The Board may refuse to permit a Member to inspect records of the Association that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the Association.

- (c) For the purposes of this clause, relevant documents means the records and other documents, however compiled, recorded or stored, that relate to the incorporation and management of the Association and includes the following:
 - (i) its financial statements;
 - (ii) its financial records; and
 - (iii) records and documents relating to transactions, dealings, business or property of the Association.

30.6 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 (2) duly authorised Directors or in such other manner as the Board determines.

31. AUDITOR

- (a) A properly qualified auditor or auditors shall be appointed by the Association in General Meeting. 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 Board.
- (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.

32. INCOME

- (a) Income and property of the Association shall be:
 - (i) derived from such sources; and
 - (ii) managed in such manner;

as the Board determines from time to time subject to the Act and this Constitution.

- (b) The income and property of the Association shall be applied solely towards the promotion of the Objects and must not conduct its affairs so as to provide a pecuniary gain for any of its members.
- (c) 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 or Director.
- (d) 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.
- (e) Nothing in clauses 32(b) or clauses 32(c) shall prevent payment in good faith of or to any Member for:
 - (i) any services actually rendered to the Association whether as an employee, Director or otherwise;

- (ii) goods supplied to the Association in the ordinary and usual course of operation;
- (iii) interest on money borrowed from any Member;
- (iv) rent for premises demised or let by any Member to the Association; or
- (v) 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.

33. WINDING UP

- (a) Subject to this Constitution the Association may be wound up or cancelled in accordance with the Act.
- (b) The liability of the Members of the Association is limited.
- (c) Every Club undertakes to contribute to the assets of the Association if it is wound up or cancelled while they are 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 (\$1.00).

34. DISTRIBUTION OF PROPERTY ON WINDING UP

- (a) If upon winding up or dissolution of the Company 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 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 Company by Clause 32. Such organisation to be determined by the Members at or before the time of dissolution, and in default thereof by such judge of the Supreme Court of New South Wales as may have or acquire jurisdiction in the matter.

35. ALTERATION OF CONSTITUTION

No addition, alteration or amendment shall be made to this Constitution unless it has been approved by Special Resolution.

36. BY-LAWS AND POLICIES

36.1 Board to Formulate By-Laws and Policies

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

36.2 By-Laws and Policies Binding

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

36.3 By-Laws and Policies Deemed Applicable

All clauses, rules, by-laws and by-laws 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 and Policies under this Clause.

36.4 Notices Binding on Members

Amendments, alterations, interpretations or other changes to By-Laws and Policies shall be advised to Members by such means as are determined and approved by the Board from time to time and prepared and issued by the Executive Director. Clubs shall take reasonable steps to distribute such changes to Individual Members. All changes are binding on all Members.

36.5 Safe Sport Framework

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

37. STATUS AND COMPLIANCE OF ASSOCIATION

37.1 Recognition of Association

The Association is a member of SNSW and is recognised by SNSW as the controlling authority for swimming in the Area and subject to compliance with this Constitution and the SNSW and SAL’s constitutions shall continue to be so recognised and shall administer swimming in the Area in accordance with the Objects.

37.2 Constitution of the Association

This Constitution will clearly reflect the objects of SNSW and will conform to the SNSW’s constitution, subject always to the Act.

37.3 SNSW and SAL

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

38. 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 three (3) 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 or by posting the notice on the Association's website, service of the notice shall be deemed to be effected the next business day after it was sent or posted.

39. INDEMNITY

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

40. REGISTERED ADDRESS

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