



**CONSTITUTION  
OF  
SWIMMING A.C.T.  
INCORPORATED**

**AMENDMENTS TO THE CONSTITUTION**

**SUMMARY**

<b>Adopted or Amended</b>	<b>By Whom</b>	<b>Date</b>
Adopted	Special General Meeting	22 February 2017

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## **Constitution of Swimming A.C.T. Inc.**

### **1. NAME**

The name of the association is Swimming A.C.T. Inc. (“**SACT**”).

### **2. OBJECTS**

The objects of SACT are to:

- (a) operate as an Area Swimming Association established by 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) stimulate public opinion in favour of providing proper accommodation and facilities for swimming in the Area;
- (d) apply the property and capacity of SACT towards the fulfilment and achievement of these Objects;
- (e) collect, distribute and publish information in connection with swimming to its Members;
- (f) promote Area competitions and championships and to the extent relevant, promote and assist in conducting state competitions and championships;
- (g) promote Swimming New South Wales meetings and represent the Area at Swimming New South Wales meetings and forums;
- (h) 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
- (i) comply with the objects of Swimming New South Wales Limited as listed in its constitution in relation to swimming activities.

### **3. POWERS OF SACT**

Solely for furthering the Objects, SACT, 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 1991 (ACT)*.

**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 A.C.T. Inc.

**Board** means the board of SACT constituted under this Constitution.

**By-Laws** means any by-laws made by Board under Clause 31.

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

**Constitution** means the Constitution for the time being of SACT.

**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 and includes Alternate Delegates (where appointed).

**Director** means a member of the Board and includes any person acting in that capacity from time to time.

**Executive Officer** means the person appointed to that position, from time to time, by the Board.

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

**Financial year** means the year ending 31 December.

**General Meeting** includes the annual or any special general meeting of SACT.

**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 registerable) relating to SACT, 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 SACT, Swimming New South Wales Limited and Swimming Australia Limited.

**Life Member** means an Individual Member upon whom Life Membership of SACT has been conferred under Clause 5.2.

**Member** means a member for the time being of SACT under Clause 5.

**Objects** means the objects of SACT in Clause 2.

**Official** means any person elected or appointed to any position within SACT.

**Policy** means the policies made by SACT under Clause 31.

**President** means the president for the time being of SACT.

**Rules** means Swimming Rules or Policies put in place by SACT.

**SACT** means Swimming A.C.T. Inc.

**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.

**Special Resolution** means a resolution passed;

- (a) by a General Meeting of SACT 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.

**Swimmer** means an Individual Member.

## 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 any gender include the other 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 SACT shall consist of:

- (a) the Clubs, which subject to this Constitution, shall be represented by its 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); and
- (c) Life Members of SACT, who may attend debate and vote at General Meetings of SACT.

### **5.2 Life Members**

- (a) SACT may, from among persons who have provided long and meritorious service with SACT, appoint Life Members in recognition of their efforts in furthering the interests of SACT.
- (b) A Life Member may only be elected by Special Resolution at an Annual General Meeting.
- (c) Not more than two (2) Life Members shall be elected at any given Annual General Meeting.
- (d) A nomination for Life Membership may only be made by the Board or a Club.
- (e) Nominations for life membership must be submitted to SACT and must be received by the Executive Officer forty (40) days prior to the relevant Annual General Meeting.

- (f) Nominations for life membership shall be examined by the Board. After reviewing the nomination and completing any relevant enquiries, the Board shall make a recommendation to the Annual General Meeting in relation to the nomination.
- (g) 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.

## **6. CLUBS**

### **6.1 Clubs**

SACT shall consist of such Clubs as are recognised and admitted to membership as a Club by SNSW.

### **6.2 Admission of Clubs**

- (a) After receiving advice from SNSW SACT shall accept membership of a Club which has been assigned to SACT in accordance with the SNSW constitution.
- (b) The Executive Officer of SACT 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 SACT 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 SACT, 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 SACT and shall provide prompt and regular updates of that register to SACT when requested by the Board.

### **6.4 Operation of Constitution**

SACT 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 SACT and swimming;
- (e) to ensure that no Member acquires a material or financial advantage at the expense of SACT 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, SACT and the Members.

## **7. SUBSCRIPTIONS AND FEES**

- (a) The funds of SACT are to be derived from annual membership fees and such additional fees as decided by the Board of SACT.
- (b) Fees including annual membership fees payable by Members (or any category of Member) to SACT, the basis of, the time for and the manner of payment shall be as decided by the Board of SACT.
- (c) Monies payable to SACT by the Clubs under Clause 7(b) shall be forwarded to SACT for SACT's use by such dates as are prescribed by the Board.
- (d) Any Club which has not paid all monies due and payable by that Club to SACT, 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 11.1.
- (e) Where the Board exercises its discretion under Clause 7(d) and imposes a penalty on a Club which or who has not paid all monies due and payable by that Club to SACT, the rules of natural justice are hereby expressly excluded and do not apply to the imposition of that penalty.

## **8. SACT REGISTER OF MEMBERS**

### **8.1 SACT to Keep Register**

SACT shall keep and maintain a register of Members and Individual 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 SACT and they are bound by this Constitution, the By-Laws and the Policies;
- (b) they shall comply with and observe this Constitution, the By-Laws and the Policies 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 and the Policies they are subject to the jurisdiction of SACT;
- (d) this Constitution, the By-Laws and the Policies are made in pursuit of a common object, namely the mutual and collective benefit of SACT, the Members and swimming;
- (e) this Constitution, the By-Laws and the Policies 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 SACT membership.

## **10. DISCONTINUANCE OF MEMBERSHIP**

### **10.1 Notice of Cessation**

Where a Club ceases to be a member of SACT 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 SACT and its property including Intellectual Property. Any of SACT documents, records or other property in the possession, custody or control of that Club shall be returned to SACT 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 SACT

to the extent (if any) and for such time (if any) as is determined in the sole discretion of the Board.

## **11. DISCIPLINE OF MEMBERS**

### **11.1 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) acts in a way considered to be injurious or prejudicial to the objectives or interest of SACT, 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.

### **11.2 Discipline of Members**

- (a) Where the Board 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 any 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 SACT and/or swimming; or
  - (iii) brought SACT or swimming into disrepute;

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 of SACT 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 SACT but does not include a Club.

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

SACT may choose to not accept an appeal or other 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**

Each Club may appoint one (1) Delegate on such term as it deems appropriate provided that a Delegate must:

- (a) not also be a Director;
- (b) be an Individual Member of the Club which appoints him; and
- (c) be appropriately empowered by his Club to make decisions and vote 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**

Each Club must advise SACT of its appointed Delegate as soon as practicable after the appointment.

### **12.4 Alternate Delegates**

A Club may appoint an Alternate Delegate. An Alternate Delegate must comply with the requirements for Delegates set out in Clause 12.1 and has the same rights and powers as the original Delegate. Where a Club appoints an Alternate Delegate it shall advise SACT as soon as practicable after the appointment.

## **13. GENERAL MEETINGS**

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

SACT 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. SACT in General Meetings will act in the best interests of SACT and will in addition to its other powers and functions under the Act:

- (i) requisition a General Meeting;
- (ii) convene a General Meeting;
- (iii) elect / dismiss, Directors;
- (iv) alter the Constitution in accordance with Clause 37;
- (v) consider the Annual Report;
- (vi) consider Special Resolutions; and

(vii) be the final arbiter on matters referred to it by the Board.

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

- (a) An Annual General Meeting of SACT shall be held at least once in each calendar year and no later than 31 May in any year in accordance with this Constitution on a date and at a venue to be determined by the Board.
- (b) All General Meetings other than the Annual General Meeting shall be Special General Meetings and shall be held in accordance with this Constitution.

#### **15. NOTICE OF GENERAL MEETINGS**

##### **15.1 Notice of General Meetings**

- (a) Notice of every General Meeting shall be given to every Club, Life Member and Director at the address appearing in the register kept by SACT. No other person shall be entitled as of right to receive notices of General Meetings, except SACT's auditor(s).
- (b) At least twenty eight (28) days notice of the place, day and hour of the General Meeting shall be given.
- (c) At least seven (7) days 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 Board 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.

##### **15.2 Entitlement to Attend General Meetings**

Notwithstanding any other clause of this Constitution, no Member shall be represented at, or take part in a General Meeting, unless all monies due and payable by that Member to SACT at the date of the General Meeting are paid.

#### **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 Board reports on the activities of SACT during the preceding 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 Board;
  - (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.

**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 Board for inclusion as Special Business at a General Meeting must be submitted in writing (in the required form) to SACT Executive Officer not less than nine (9) 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 Board may, whenever it thinks fit, convene a Special General Meeting of SACT 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 Board shall on the requisition in writing made by not less than three (3) clubs 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 Executive Officer. 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 Special General Meeting to be held within one (1) month after the date on which the requisition is sent to the Board, 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 Board.

## **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 five (5) of the Clubs being Members and at least two (2) Directors.

### **19.2 President to Preside**

The President shall, subject to this Constitution, preside at every General Meeting of SACT. If the President is not present, or unwilling or unable to preside, the Voting Members who are present shall elect one of the remaining Directors who shall, subject to this Constitution, preside as chairman for that meeting only. If there is no Director present willing or able to preside as chairman the Voting Members who are present shall elect one of their number to preside as chairman for that meeting only.

### **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 Board present 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 as in the case of an original meeting.
- (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 SACT 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 SACT 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 21 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. 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.
- (b) Each Director is entitled to notice of, and to attend, debate and vote at all General Meetings.

## **21. POWERS OF THE BOARD**

- (a) Subject to the Act and this Constitution, the business of SACT shall be governed, and the powers of SACT shall be exercised, by the Board. The Board shall act in accordance with the Objects of SACT and shall operate for the collective and mutual benefit of SACT, the Members and swimming.
- (b) The Board shall have the power to suspend or stand down a Director, if it has reasonable grounds to believe that the Director has been involved in any action which may be misconduct or a breach of the Constitution.

## **22. COMPOSITION OF THE BOARD**

### **22.1 Composition**

The Board will, subject to this Constitution, comprise no more than seven (7) Directors being:



- (i) Five (5) Directors including the President elected under Clause 23 (“Elected Directors”); and
- (ii) Two (2) Appointed Director(s) appointed under Clause 24

with no more than two (2) members from any one (1) Club permitted to be Directors.

## **22.2 Portfolios**

The Board may determine the interests of SACT are best served by the allocation of portfolios to Directors. The Board shall be entitled to vary the titles and portfolios of each of the Directors in accordance with the needs of SACT from time to time.

## **22.3 Qualifications of Directors**

Subject always to the law, the Board will determine necessary requirements and qualifications for eligibility as Directors from time to time. The Board shall advise the Members of any requirements, qualifications and modifications when determined.

## **22.4 President**

The position of President shall be appointed by the Board from amongst their lot as soon as practicable after each Annual General Meeting. The appointee will hold the position until the conclusion of the next Annual General Meeting following their appointment. A Director may be reappointed as President.

## **23. ELECTION OF ELECTED DIRECTORS**

### **23.1 Election of Elected Directors**

Elected Directors shall be subject to election each year. Nominations must be submitted to the Executive Officer six (6) weeks prior to the date specified for the Annual General Meeting in each year. Nomination details of the necessary requirements and qualifications (if any) applicable to the position shall also be provided.

### **23.2 Call for Nominations**

Notification of the call for nominations for Elected Directors shall be made to all Members at least twelve (12) weeks prior to the date specified for the Annual General Meeting in each year. Such notification may be in written form or may be in electronic form on the SACT web site or both at the discretion of the Executive Officer.

### **23.3 Form of Nomination**

Nominations must be:

- (a) in writing;
- (b) on the prescribed form (if any) provided for that purpose;
- (c) signed by a nominator and a seconder, who shall be Individual Members;

- (d) certified by the nominee expressing his willingness to accept the position for which he is nominated.

### **23.3 Election Process**

- (a) A list of the candidates' names in alphabetical order must be notified in writing to each Club at least four (4) weeks immediately preceding the Annual General Meeting.
- (b) The election of Board members shall be by secret ballot and in accordance with the By Laws.
- (c) If no more than five (5) nominations are received for the Board the candidates nominated as in Clause 23.2 are taken to be elected. Any vacant positions remaining on the Board are taken to be casual vacancies and dealt with as detailed in Clause 25.2.

### **23.4 Term of Directors**

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

## **24. APPOINTED DIRECTORS**

### **24.1 Appointment**

The Board will, as soon as practicable but in any event within six (6) months of a vacancy in the office of Appointed Director occurring, appoint up to two (2) Appointed Directors. Appointed Directors may have specific skills and should (but need not) have some experience in or exposure to swimming.

### **24.2 Appointment**

Appointed Directors shall remain in office for up to two (2) years following their appointment. An appointed Director may upon the expiration of his or her term of office be re-appointed.

## **25. VACANCIES OF DIRECTORS**

### **25.1 Grounds for Termination of Directors**

In addition to the circumstances (if any) 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) in the case of an Elected Director, 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 SACT;

- (f) is absent without the consent of the Board from three (3) consecutive Board meetings held during a period of six (6) months;
- (g) in the case of an Elected Director, without the prior consent or later ratification of the Members in General Meeting, holds any office of profit under SACT;
- (h) is directly or indirectly interested in any contract or proposed contract with SACT and fails to declare the nature of his interest;
- (i) is removed from office by Special Resolution; or
- (j) would otherwise be prohibited from being a director of a corporation under the *Corporations Act*.

## **25.2 Casual Vacancies**

The Board may fill any casual vacancy occurring in the office of Director from appropriately qualified persons and shall endeavour to do so within three (3) months of the vacancy arising.

## **25.3 Remaining Directors May Act**

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

## **26. MEETINGS OF THE BOARD**

### **26.1 Board to Meet**

- (a) The Board 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. Any Director may at any time convene a meeting of the Board within a reasonable time.
- (b) Notice of intention to attend a meeting of the Board shall be given to the Executive Officer by each Director at least seven (7) days prior to the scheduled day of meeting. Should the Executive Officer fail to receive notice that a quorum of members plan to be present at the meeting, the Executive Officer shall notify all members, by whatever means are appropriate, that the meeting is cancelled and consult the members of the Board as to the next appropriate date to hold such meeting.

### **26.2 Chair**

The President shall chair any Board meeting at which he is present. If the President is not present, or is unwilling or unable to preside, the remaining Committee members shall appoint one of their number to preside as chair for that meeting only.

### **26.3 Decisions of Board**

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

### **26.4 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 Directors shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form each signed by one (1) or more of the Diectors and the resolution is passed when the last Director signs.
- (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 Directors entitled to notice in accordance with the usual procedures agreed upon or laid down from time to time by the Board;
  - (iii) in the event of a failure in communications prevents Clause 26.4 (b) (i) from being satisfied and thereby a quorum does not exist then the meeting shall be suspended until Clause 26.4 (b) (i) is satisfied again and a quorum exists. 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 Director is physically present at the place for the meeting specified in the notice of meeting.

### **26.5 Quorum**

At meetings of the Board the number of Directors whose presence or participation under Clause 26.4 is required to constitute a quorum is three (3) Directors.

### **26.6 Notice of Board Meetings**

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

## **26.7 Validity of Board Decisions**

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

## **26.8 Minutes**

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

## **27. CONFLICTS**

### **27.1 Conflict of Interest**

A Director shall declare to the Board 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 Board, 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 Director to absent himself 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 Officer shall maintain a register of declared interests.

## **28. PUBLIC OFFICER**

- (a) The Board 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 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 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;
  - (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.

## **29. EXECUTICE OFFICER**

### **29.1 Appointment of Executive Officer**

The Executive Officer shall be appointed by the Board for such term and on such conditions as it thinks fit.

### **29.2 Appointment of Secretary**

The Board shall appoint the Executive Officer to be the Secretary.

### **29.3 Specific Duties**

The Executive Officer shall:

- (a) as far as practicable attend all Board meetings and General Meetings;
- (b) prepare the notice of and agenda for all Board meetings and all General Meetings;
- (c) ensure that minutes of the proceedings of all Board meetings and General Meetings are recorded and prepared;
- (d) regularly report to the Board on the activities of, and issues relating to, SACT; and
- (e) carry out the duties of the Secretary under the Act.

### **29.4 Board Power to Manage**

Subject to the Act, this Constitution, the By-Laws and any directive of the Board, the Executive Officer has power to perform all such things as appear necessary or desirable for the proper management and administration of SACT. No resolution passed by a General Meeting shall invalidate any prior act of the Executive Officer or the Board which would have been valid if that resolution had not been passed.

### **29.5 Executive Officer may employ**

The Executive Offer, in consultation with the Board, may employ such personnel as are deemed necessary from time to time. Such appointments shall be for such period and on such conditions as the Executive Officer and the Board determine.

## **30. DELEGATIONS**

### **30.1 Board may Delegate Functions**

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

### **30.2 Delegation by Instrument**

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

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

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

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

### **30.4 Procedure of Delegated Entity**

The procedures for any delegated entity shall, with any necessary or incidental amendment, be the same as that applicable to meetings of the Board under Clauses 26 and 27. The quorum shall be determined by the committee, but shall be no less than one half of the total number of committee members unless otherwise agreed by the Board.

### **30.5 Delegation may be Conditional**

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

### **30.6 Revocation of Delegation**

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

### **30.7 Standing Committees**

- (a) There will be standing committees appointed by the Board to deal with matters as described in the By-Laws.
- (b) 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.

- (c) The standing committees appointed under this Clause will function as committees of the Board in accordance with this Clause 30. 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 30.

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

### **31.1 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 SACT and, the advancement of the Objects as it thinks necessary or desirable. Such By-Laws and Policies must be consistent with this Constitution.

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

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

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

All powers, rules, regulations, policies and by-laws of SACT 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.

### **31.4 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 Board and prepared and issued by SACT. Clubs shall be obliged to draw such notices to the attention of its respective members. Notices are binding upon all Members.

## **32. RECORDS AND ACCOUNTS**

### **32.1 Custody and Inspection of Books**

(a) Except as otherwise provided by this Constitution, the Board must keep in its custody or under its control all records, books and other documents relating to SACT.

(b) The records, books and other documents of SACT must be open to inspect, free of charge, by a Club at any reasonable hour.

### **32.2 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.

### **32.3 SACT to Retain Records**

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



#### **32.4 Board to Submit Accounts**

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

#### **32.5 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.

#### **32.6 Accounts to be Provided to Members**

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

#### **32.7 Negotiable Instruments**

All cheques and other negotiable instruments shall be signed or otherwise executed, by two (2) Directors or by one(1) Director and the Executive Officer or in such other manner and by such persons the Board determines.

#### **32.8 Funds and Accounts**

- (a) The funds of SACT must be kept in an account in the name of SACT in a financial institution decided by the Board.
- (b) Records and accounts must be kept in the english language showing full and accurate particulars of the financial affairs of SACT.
- (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 Board meeting.

#### **32.9 Financial Year**

The financial year of SACT closes on 31 December in each year.

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

- (a) The income and property of SACT shall be applied solely towards the promotion of the Objects.
- (b) No portion of the income or property of SACT 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 SACT to any Member who holds any office of SACT.

- (d) Nothing contained in Clauses 33(b) or 33(c) shall prevent payment in good faith to any Member:
- (i) for any services actually rendered to SACT whether as an employee or otherwise;
  - (ii) for goods supplied to SACT 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 SACT; or
  - (v) for any out-of-pocket expenses incurred by the Member on behalf of SACT;
- provided that any such payment shall not exceed the amount ordinarily payable between ordinary commercial parties dealing at arms length in a similar transaction.

#### **34. 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 Board. The auditor's duties shall be regulated in accordance with the Act.
- (b) The accounts of SACT including the profit and loss accounts and balance sheet shall be examined by the auditor or auditors at least once in every year.

#### **35. RESOLUTION OF INTERNAL DISPUTES**

- (a) Disputes between Members (in their capacity as Members) of SACT, and disputes between Members and SACT, are to be referred to a mediator who is accredited with the Mediator Standards Board and agreed by the parties. If the parties cannot agree a mediator then:
  - (i) if the dispute is between Members – then to a mediator nominated by the President of SACT; or
  - (ii) if the dispute is between Members and SACT – then to a mediator nominated by the Chief Executive of SNSW.
- (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.
- (c) If a dispute is not resolved by mediation within 3 months of being referred to a mediator in accordance with clause 35 (a) then the dispute is to be referred to arbitration. The *Commercial Arbitration Act 1986* (ACT) applies to any such dispute referred to arbitration.

#### **36. NOTICES**

##### **36.1 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 five (5) 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.

### **37. ADDITION ALTERATION OR AMENDMENT**

- (a) Subject to the Act, this Constitution may be amended, repealed or added to following the specific approval of SACT 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.

### **38. WINDING UP OF ASSOCIATION AND LIABILITY OF MEMBERS**

#### **38.1 Club Contributions**

Each Club undertakes to contribute to the assets of SACT 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 SACT 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).

#### **38.2 Distributions of Property on Winding Up**

If upon winding up or dissolution of SACT 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 SACT by Clause 33. 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 the Australian Capital Territory as may have or acquire jurisdiction in the matter.

#### **38.3 Liability of Members**

The liability of the Members of SACT is limited.

### **39. INDEMNITY**

#### **39.1 Board Members to be Indemnified**

Every Board member, auditor, employee or agent of SACT shall be indemnified out of the property or assets of SACT against any liability incurred by him in his

capacity as a Board 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.

### **39.2 SACT to Indemnify Board Members**

SACT shall indemnify its Board members and employees against all damages and costs (including legal costs) for which any such Board 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 Board member, performed or made whilst acting on behalf of and with the authority, express or implied of SACT; and
- (b) in the case of an employee, performed or made in the course of, and within the scope of his employment by SACT.