



2019 Swimming NSW Annual General Meeting

Notices of Motion

Notice of Motion

- A. Amendment to Clause 4.1
- B. Amendment to Clause 4.1
- C. Amendment to Clause 14.1 (c)
- D. Amendment of Clause 23.1
- E. Amendment to Clause 24.4 (b)
- F. Amendment to Clause 25.1 and 25.2
- G. Addition of Clause 39

Submitted By

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The Swimming NSW Board is responsible for the overall governance, management and strategic direction of the organisation and for delivering accountable corporate performance in accordance with our goals and objectives.

A critical element to Swimming NSW's success as organisation is ensuring that the Board has the necessary skills and attributes to carry out its duties effectively. As eight of the nine Swimming NSW Directors are currently elected to the Board, it is becoming increasingly difficult for the Board to have the right mix of skills and attributes, particularly as the operations of Swimming NSW have grown more complex.

Over the last three years, there has not been Director Elections due to no new members nominating for the Board. During the same period, we have had several casual vacancies arise and when we have called for nominations for these positions, we have received a minimum of six nomination, all from individuals with excellent skill sets.

This indicates to us that there are many members who have the necessary skills and attributes to be effective Swimming NSW Directors however due to them not being well known in the swimming community they are reluctant to nominate and go through the election process.

To help overcome this growing issue, the Board is proposing that the number of Elected Directors change from eight to six and to increase the number of Appointed Directors from one to three. This will enable the Board to appoint individuals with skill sets that will complement those of the Elected Directors whilst still giving the Member Organisations control over who is elected to the majority of the Board.

The majority of the Notices of Motion on the following pages propose to amend the Swimming NSW Constitution to enable the above to occur over a two-year period.

Notice of Motion: A

Clause Number	Proposed Change/Addition	Rationale
4.1	Addition of Definition of for Annual General Meeting.	Given that Annual General Meeting is used throughout the Constitution, the Board proposes to define this meeting.

"Annual General Meeting" means the annual General Meeting of the Company required to be held by the Company in each calendar year under the Act.

Notice of Motion: B

Clause Number	Proposed Change/Addition	Rationale
4.1	Amendment of Definition of President	The amendment of this Definition will allow the President to be Elected from all Directors not just those that are Elected.

“**President**” means the president for the time being of the Company, who shall be ~~an~~ **a** ~~Elected~~ Director.

Notice of Motion: C

Clause Number	Proposed Change/Addition	Rationale
14.1 (c)	Amend the Clause to add the word 'Elected'.	The Board is currently made up of both eight (8) Elected Directors and one (1) Appointed Director. However, a General Meeting can only elect or dismiss the Elected Directors and not Appointed Directors.

(c) elect / dismiss **Elected** Directors;

Notice of Motion: D

Clause Number	Proposed Change/Addition	Rationale
25.1	Amend the Clause to change the number of Elected Directors from eight (8) to six (6).	It is becoming increasingly difficult for the Board to have the right mix of competencies to meet the Swimming NSW's evolving needs. This is often difficult to manage through a democratic election of Directors onto the Board, so the Board is proposing the addition of two additional Appointed Directors to assist the Board in managing the correct skill matrix for the organisations needs.
25.2	Amend the Clause to change the number of Appointed Directors from one (1) to three (3).	As above.
23.1	Delete the words ' <i>with no more than two (2) members from any one (1) Club permitted to be Directors.</i> '	It is not possible to appropriately enforce this Clause as for example if two members nominate from the one Club, it is not possible to fairly exclude one of those Directors in order to enforce this Rule.

23.1 Composition

The Board will, subject to this Constitution, comprise no more than nine (9) Directors being:

- (a) ~~Eight (8)~~ Six (6) Elected Directors elected under Clause 24; and
- (b) ~~One (1)~~ Three (3) Appointed Directors appointed under Clause 25,

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

Notice of Motion: E

Clause Number	Proposed Change/Addition	Rationale
24.4 (b)	Amendment to Clause as below.	If it is approved that the Swimming NSW Board will have six (6) elected Directors instead of eight (8), it is proposed that two (2) Directors will retire each year, to ensure the continuation of three-year rotational terms.

- (b) The sequence of retirement for Elected Directors shall be staggered over three years. ~~Three (3)~~ Two (2) Elected Directors shall retire in year one, ~~three (3)~~ two (2) Elected Directors shall retire in year two and two (2) Elected Directors shall retire in year three, and after three (3) years the ~~eight (8)~~ six (6) original Elected Directors will have retired after which those Elected Directors (or their replacements) who first retired, shall retire and so on. If the Board cannot agree on the retirements, it shall be determined by lot.

Notice of Motion: F

Clause Number	Proposed Change/Addition	Rationale
25.1	Amendment to Clause as below.	If it is approved that the Swimming NSW Board will have three (3) Appointed Directors instead of one (1), this Clause needs to be amended to reflect this change.
25.2	Amendment to Clause as below.	If it is approved that the Swimming NSW Board will have three (3) Appointed Directors instead of one (1), this Clause has been amended to define the terms for the Appointed Directors and to also ensure that the nine (9) year term limit also applies to these Directors.

25.1 Appointment of Appointed Director

The Elected Directors ~~shall~~ may appoint:

- (a) up to one (1) person to be an Appointed Director on recommendation from ASCTA (NSW), ~~and~~ subject to the approval of the Elected Directors of that recommended nominee, ~~appoint an Appointed Director;~~ and
- (b) up to two (2) other persons to be Appointed Directors,
provided such appointments are in accordance with this Constitution.

25.2 Term of Appointed Director

- (a) ~~The~~ Subject to clause 25.2(b), an Appointed Director:
 - (i) under Clause 25.1(a) shall be appointed for the term determined by the Elected Directors, provided such term is not greater than one (1) year; and
 - (ii) under Clause 25.1(b) shall be appointed for the term determined by the Elected Directors.
- (b) An Appointed Director may not serve more than nine years as a Director, including where any of the time is served as an Elected Director. For the purposes of this Clause 25.2 service:
 - (i) of each full term as an Elected Director is to count as three years toward the nine year limit under Clause 25.2(b) ~~25.2(a)~~;
 - (ii) of each part term served by filling a casual vacancy in an Elected Director position under Clause 26.2 is to be treated as a full term of an Elected Director and is to count as three

years towards the nine year limit under Clause 25.2(b). For the avoidance of doubt, this is regardless of whether a Director only served one year of a three year term, a three year time period is to be applied for the purposes of calculating the nine year limit under Clause 25.2(b);

(iii) of each ~~full~~ part term served as an Appointed Director under Clause ~~25.2(a)~~, ~~is to count as one year~~ will count towards the nine year limit under Clause ~~25.2(a)~~ 25.2(b); and

~~(iv) of each part term served by a Appointed Director under Clause 25.2(a) is to be treated as a full term of an Appointed Director and is to count as one year toward the nine year limit under Clause 25.2(a).~~

(v) the calculation of time served by a Director toward the nine year time limit under Clause ~~25.2(a)~~ 25.2(b) is to commence from the completion of the 2014 Annual General Meeting. For the avoidance of doubt, any time period spent by any Director prior to the commencement of the 2014 Annual General Meeting (as either an Elected Director or an Appointed Director) shall not be relevant or applicable to the nine year limit under Clause ~~25.2(a)~~ 25.2(b) (i.e. as at the completion of the 2014 Annual General Meeting each Director shall start at 0 for the purposes of the 9 year time limit under Clause ~~25.2(a)~~ 25.2(b).

(c) An Appointed Director who has served a maximum term in accordance with Clause ~~25.2(a)~~ 25.2(b) shall not be eligible to be a Director until the third Annual General Meeting following the date of conclusion of his last term as a Director.

Notice of Motion: G

Clause Number	Proposed Change/Addition	Rationale
39	Additional Clause added as below.	If it is approved that the Swimming NSW Board will have six (6) elected Directors instead of eight (8) and three (3) Appointed Directors instead of one (1), The Clauses below allow this transition to occur at the 2020 and 2021 Annual General Meetings.

39. BOARD TRANSITIONAL ARRANGEMENTS

39.1 Terms used

In this clause:

- (a) **Transition Period** means the period commencing on the date of the 2019 Annual General Meeting up to and including the date of the 2021 Annual General Meeting; and
- (b) **Transitioning Directors** means the eight (8) Elected Directors named in the register of office holders of the Company immediately prior to the 2019 Annual General Meeting.

39.2 Retirement of Transitioning Directors

- (a) Notwithstanding any other clause in this Constitution, the Transitioning Directors must retire as follows:
 - i. two (2) of the Transitioning Directors elected in 2016 shall retire at the conclusion of the 2019 Annual General Meeting and be replaced by two (2) Elected Directors;
 - ii. three (3) Transitioning Directors elected in 2017 shall retire at the conclusion of the 2020 Annual General Meeting and be replaced by two (2) Elected Directors and, in addition, one (1) Appointed Director may be appointed in accordance with clause 25.1; and
 - iii. three (3) Transitioning Directors elected in 2018 shall retire at the conclusion of the 2021 Annual General Meeting and be replaced by two (2) Elected Directors in addition, one (1) Appointed Director may be appointed in accordance with clause 25.1,and, subject to this Constitution, in each case the retiring Transitioning Directors are eligible for re-election.
- (b) The order in which the Transitioning Directors will retire under clause 39.2(a) will be determined by agreement of the Transitioning Directors, or failing such agreement, by lot.

39.3 Composition of Directors during Transition Period

- (a) Notwithstanding clause 23.1, during the Transition Period, the Board will comprise no more than nine (9) Directors with a combination of:
 - (i) at least six (6) and no more than eight (8) Elected Directors;
and
 - (ii) at least one (1) and no more than three (3) Appointed Directors,with no more than two (2) members from any one (1) Club permitted to be Directors.

- (b) For the avoidance of doubt, following the conclusion of the elections at the 2021 Annual General Meeting, the Company shall have no more than six (6) Elected Directors and have up to three (3) Appointed Directors.