



**CONSTITUTION
OF
SWIMMING NSW LTD.**

Adopted or Amended	By Whom	Date
Adopted	Special General Conference	17 th March 2007
Amended	Annual General Meeting	13 th June 2009
Reviewed	Board of Directors	29 th May 2012
Amended	Annual General Meeting	27 th July 2013
Amended	Annual General Meeting	25 th July 2015
Amended	Annual General Meeting	22 nd July 2017
Amended	Annual General Meeting	27 th July 2019
Amended	Annual General Meeting	24 th July 2021

TABLE OF CONTENTS

1. NAME	4
2. OBJECTS OF THE COMPANY	4
3. POWERS OF THE COMPANY	5
4. DEFINITIONS AND INTERPRETATION	6
5. MEMBERS	8
6. MEMBER ASSOCIATIONS AND ASSOCIATE MEMBERS	9
7. MEMBER ASSOCIATION CONSTITUTIONS	12
8. SUBSCRIPTIONS AND FEES	12
9. COMPANY REGISTER OF MEMBERS	13
10. EFFECT OF MEMBERSHIP	13
11. DISCONTINUANCE OF MEMBERSHIP	14
12. DISCIPLINE OF MEMBERS	15
13. DELEGATES	16
14. GENERAL MEETINGS	16
15. ANNUAL GENERAL MEETING TO BE HELD	17
16. NOTICE OF GENERAL MEETINGS	17
17. BUSINESS OF GENERAL MEETINGS	17
18. NOTICES OF MOTION	17
19. SPECIAL GENERAL MEETINGS	18
20. PROCEEDINGS AT GENERAL MEETINGS	18
21. ENTITLEMENTS AT GENERAL MEETINGS	19
22. POWERS OF THE BOARD	20
23. COMPOSITION OF THE BOARD	20
24. ELECTION OF ELECTED DIRECTORS	21
25. APPOINTED DIRECTOR	22
26. VACANCIES OF DIRECTORS	23
27. MEETINGS OF THE BOARD	24
28. CONFLICTS	25
29. CHIEF EXECUTIVE OFFICER	26
30. DELEGATIONS	26
31. BY-LAWS AND POLICIES	28
32. RECORDS AND ACCOUNTS	28
33. APPLICATION OF INCOME AND PROPERTY	29
34. AUDITOR	30
35. NOTICES	30
36. ADDITION ALTERATION OR AMENDMENT	30

37. WINDING UP OF COMPANY AND LIABILITY OF MEMBERS.....	30
38. INDEMNITY	31

CORPORATIONS ACT (2001) (CTH)
CONSTITUTION
OF
SWIMMING NEW SOUTH WALES LTD

1. NAME

The name of the Company is Swimming New South Wales Ltd.

2. OBJECTS OF THE COMPANY

The objects of the Company are to:

- (a) affiliate and otherwise liaise with SAL or its successor or assign and such other bodies as may be desirable to achieve these Objects;
- (b) conduct, encourage, promote, advance, control and administer swimming activities in and throughout New South Wales;
- (c) provide for the conduct, encouragement, promotion and administration of swimming activities through and by various Member Associations for the mutual and collective benefit of the Members;
- (d) provide for the conduct, encouragement, promotion and administration of educational activities through and by various Member Associations and Associate Members for technical officials, coaches, athletes and learn to swim programs for the mutual and collective benefit of the Members;
- (e) act in good faith and loyalty to ensure the maintenance and enhancement of the Company and swimming, its standards, quality and reputation for the collective and mutual benefit of the Members and swimming;
- (f) at all times operate with and promote mutual trust and confidence between the Company and the Members in pursuit of these Objects;
- (g) at all times to act on behalf of, in the interests of, and in conjunction, with the Members;
- (h) promote the economic and sporting success, strength and stability of the Company, and each Member Association and to act interdependently with each Member Association in pursuit of these Objects;
- (i) ensure compliance with the by-laws, policies and rules as amended from time to time of FINA, SAL and the Company;
- (j) make New South Wales the leader in Australian swimming;
- (k) apply the property and capacity of the Company towards the fulfilment and achievement of these Objects;
- (l) use and protect the Intellectual Property;

- (m) collect, distribute and publish information in connection with swimming;
- (n) promote and control state meetings, competitions and championships and to the extent relevant, promote and assist in conducting national and international meetings, competitions and championships;
- (o) strive for governmental, commercial and public recognition of the Company, the Member Associations and swimming;
- (p) promulgate and secure uniformity in such rules as may be necessary or appropriate for the management and control of swimming and related activities in New South Wales;
- (q) promote swimming as a spectator sport;
- (r) through or in association with the Member Associations or other entities or of itself, promote the health and safety of all Individual Members;
- (s) pursue through itself or others such commercial arrangements, including sponsorship and marketing opportunities as are appropriate, to further these Objects;
- (t) formulate or adopt and implement appropriate policies, including in relation to member protection, equal opportunity, equity, drugs in sport, health, safety, junior and senior programs and such other matters as arise from time to time as issues to be addressed in swimming;
- (u) represent the interests of its Members and of swimming generally in any appropriate forum;
- (v) have regard to the public interest in its operation;
- (w) do all that is reasonably necessary to enable these Objects to be achieved and to enable the Members to receive the benefits which these Objects are intended to achieve;
- (x) encourage and promote performance-enhancing drug free competition;
and
- (y) undertake and or do all things or activities which are necessary, incidental or conducive to advance these Objects.

The Company is established solely for the Objects.

3. POWERS OF THE COMPANY

Solely for furthering the Objects, the Company, in addition to any powers it has under the Act, has the legal capacity and powers of a company as set out under section 124 of the Act.

4. DEFINITIONS AND INTERPRETATION

4.1 Definitions

In this Constitution, unless the context otherwise requires:

“**Act**” means in the context of the Company, the Corporations Act 2001 (Cth).

“**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.

“**Appointed Director**” means a Director appointed in accordance with Clause 25.

“**Area**” means a part of New South Wales having boundaries as approved by the Board from time to time and as defined in the By-Laws. It includes those organizations admitted to this category of membership in accordance with Clause 6.

“**ASCTA (NSW)**” means Australian Swim Coaches and Teachers Association – NSW Branch or its successors or assigns.

“**Associate Members**” means and includes those organizations admitted to this category of membership in accordance with Clause 6.

“**Board**” means the Board of the Company constituted under this Constitution.

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

“**Company**” means Swimming New South Wales Ltd or its successors or assigns.

“**Chief Executive Officer**” means the Chief Executive Officer of the Company for the time being appointed under this Constitution.

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

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

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

“**Director**” means a member of the Board and includes an Appointed Director and Elected Director.

“**Elected Director**” means a Director elected to the Board in accordance with Clause 24 and includes the President.

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

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

“**Incorporation Act**” means the Associations Incorporation Act (ACT) or the Associations Incorporation Act (NSW) as required.

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

“Intellectual Property” means all rights or goodwill subsisting in copyright, business names, names, trade marks (or signs), logos, designs, patents or service marks (whether registered or registrable) relating to the Company or any event, competition, championship, meeting or swimming activity of or conducted, promoted or administered by the Company.

“Life Member” means an Individual Member upon whom life membership of the Company has been conferred under Clause 5.3.

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

“Member Association” means and includes an Area and a Club.

“New South Wales” means the state of New South Wales and the Australian Capital Territory where the context requires.

“Objects” means the objects of the Company in Clause 2.

“Policy” means the policies made by the Board under Clause 31.

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

“Rules” means the rules of swimming as adopted by the Company.

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

“Special Resolution” means the same meaning as in the Act.

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;
 - (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.
 - (d) The replaceable rules referred to in section 141 of the Act do not apply to the Company and are replaced by the Clauses set out in this Constitution.

5. MEMBERS

5.1 Members of Company

The Members of the Company shall consist of:

- (a) the Areas, which subject to this Constitution, shall be represented by its Delegate who has the right to attend, debate and vote at General Meetings for and on behalf of the Area;
- (b) the Clubs, which subject to this Constitution, shall be represented by its Delegate who has the right to attend, debate and vote at General Meetings for and on behalf of the Club;
- (c) the Associate Members who shall abide by conditions as identified by the Board under Clause6.3 but otherwise have no right to debate or vote at General Meetings;
- (d) Individual Members who may attend General Meetings but otherwise have no right to debate or vote at General Meetings (unless also a Delegate);
- (e) Life Members, who may attend and debate at General Meetings, but otherwise have no right to vote at General Meetings (unless also a Delegate); and
- (f) such new categories of Members as may be created in accordance with Clause5.2 of this Constitution.

5.2 Creation of New Categories of Membership

The Board has the right and power from time to time to create new categories of membership with such rights (other than voting rights), privileges and obligations as are determined applicable, even if the effect of creating a new category is to alter rights, privileges or obligations of an existing category of Members. No new category of membership may be granted voting rights. The Board shall advise the Members of the new categories and the associated rights.

5.3 Life Members

- (a) The Company may, from among persons who have provided long and meritorious service with the Company, appoint Life Members in recognition of their efforts in furthering the interests of the Company.
- (b) A Life Member may only be elected by Special Resolution at an Annual General Meeting.
- (c) Nominations for life membership must be submitted to the Company and must be received by the Chief Executive Officer one hundred and twenty (120) days prior to the relevant Annual General Meeting.
- (d) 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.
- (e) 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.

5.4 Company Members also Members of SAL

All Members, by becoming a Member, also agree to be members of SAL and to comply with any SAL constitution, by-laws, policies and rules.

6. MEMBER ASSOCIATIONS AND ASSOCIATE MEMBERS

6.1 Areas

- (a) The Company shall consist of such Areas as are recognised by the Board from time to time in accordance with this Clause. Where an area is part of an Area and wishes to become a separate Area it shall make application to the Company in accordance with this Constitution.
- (b) The boundaries of each Area shall be as decided by the Board from time to time.
- (c) An Area must accept the membership of a Club which has been assigned to the Area in accordance with Clause 6.2(c).
- (d) Subject to this Constitution, each Area shall administer the sport of swimming in its area.

6.2 Clubs

- (a) The Company shall consist of such Clubs as are recognised by the Board from time to time in accordance with this Clause.
- (b) In order to be granted membership, the club must have a minimum number of registered members in accordance with the By-Laws from time to time.
- (c) Upon affiliation the Board shall assign a Club membership of an Area.

6.3 Associate Members

- (a) The Board may from time to time admit such organisations as Associate Members upon such terms and conditions as they deem fit.
- (b) In order to be granted Associate Membership, an organisation must function for particular purposes connected with any of the Objects.

6.4 Application for Membership

An application for membership as an Area, Club or Associate Member must be:

- (a) in writing on the form prescribed from time to time by the Board, from a nominated representative of the applicant and lodged with the Company;
- (b) accompanied by a copy of the applicant's constitution (which must be acceptable to the Company and be in conformity in all material respects with this Constitution) and if required by this Constitution, the register of members; and
- (c) accompanied by the appropriate fee, if any.

6.5 Discretion to Accept or Reject Application for Membership

- (a) The Board may accept or reject an application and shall not be required or compelled to provide any reason for such acceptance or rejection.
- (b) Where the Board accepts an application, the applicant shall become a Member. Membership of the Company shall be deemed to commence upon acceptance of the application by the Board. The Chief Executive Officer shall amend the register accordingly as soon as practicable.
- (c) Where the Board rejects an application, the Company shall refund any fees forwarded with the application and the application shall be deemed rejected by the Company.

6.6 Membership Renewal

- (a) Areas, Clubs and Associate Members must reapply for membership with the Company in accordance with the procedures set down by the Board in By-Laws from time to time.
- (b) Upon reapplying an Area, Club or Associate Member must lodge with the Company an updated copy of its constitution, including all amendments and if required by this Constitution, provide details of any change in its

Delegate, and any other information reasonably required by the Board. Each Member Association is to ensure that its constitution is amended in conformity with amendments made to this Constitution.

6.7 Compliance of Member Associations

Each Member Association shall:

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

6.8 Operation of Constitution

The Company 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 New South Wales;
- (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 Company and swimming;

- (e) to ensure that no Member acquires a material or financial advantage at the expense of the Company 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;
- (h) to act for and on behalf of the interests of swimming, the Company and the Members; and
- (i) that should an incorporated Member Association have administrative, operational or financial difficulties, the Board may, in its absolute discretion, act to assist that Member Association in whatever manner and on such conditions as it considers appropriate.

6.9 Register of Members

Each Member Association shall maintain, in a form and with such details as are acceptable to the Company, a register of all its members. Each Member Association shall provide a copy of the register at a time and in a form acceptable to or required by the Company and shall provide prompt and regular updates of that register to the Company when requested by the Board.

7. MEMBER ASSOCIATION CONSTITUTIONS

7.1 Constitution

The constituent documents of each Member Association shall clearly reflect the Objects with such incidental variations as are necessary or appropriate, having regard to the Incorporation Act.

7.2 Amendments to Member Association Constitutions

Each Member Association shall take all steps necessary to ensure its constituent documents are in a form acceptable to the Company and shall ensure its documents are amended in conformity with future amendments to this Constitution, subject to the Incorporation Act.

8. SUBSCRIPTIONS AND FEES

- (a) Fees including annual membership fees, registration fees and levies payable by Members (or any category of Member) to the Company, the basis of, the time for and the manner of payment shall be determined by the Board.
- (b) Monies payable to the Company by the Members under Clause 8(a) shall be forwarded to the Company for the Company's use by such dates as are prescribed by the Board.
- (c) Any Member which has not paid all monies due and payable by that Member to the Company, 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 Member shall be dealt with in the Board's discretion, which includes the right to suspend, disqualify, discipline or retain (but not impose a financial penalty) that Member as a Member, or impose such other conditions or requirements as the Board considers appropriate.

- (d) Where the Board exercises its discretion under Clause 8(c) and imposes a penalty on a Member which or who has not paid all monies due and payable by that Member to the Company, the rules of natural justice are hereby expressly excluded and do not apply to the imposition of that penalty.

9. COMPANY REGISTER OF MEMBERS

9.1 Chief Executive Officer to Keep Register

The Chief Executive Officer 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.

9.2 Inspection of Register

- (a) Having regard to privacy and confidentiality considerations and subject to Clause 9.2(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 Member Associations. Areas may only inspect the register in relation to the members of their Area. Clubs may only inspect the register in relation to Individual Members in their Club.

10. EFFECT OF MEMBERSHIP

Members acknowledge and agree that:

- (a) this Constitution constitutes a contract between each of them and the Company and they are bound by this Constitution, the By-Laws, the Policies and the Rules;
- (b) they shall comply with and observe this Constitution, the By-Laws, the Policies and the Rules and any determination, resolution or policy which may be made or passed by the 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 Company;
- (d) this Constitution, the By-Laws, the Policies and the Rules are made in pursuit of a common object, namely the mutual and collective benefit of the Company, the Members and swimming;
- (e) this Constitution, the By-Laws, the Policies and the Rules are necessary and reasonable for promoting the Objects and particularly the advancement and protection of swimming; and

- (f) they are entitled to all benefits, advantages, privileges and services of the Company membership.

11. DISCONTINUANCE OF MEMBERSHIP

11.1 Notice of Resignation

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

11.2 Expiration of Notice Period

Upon the expiration of any notice period applicable under Clause 11.1 an entry, recording the date on which the Member who or which gave notice ceased to be a Member shall be recorded in the register.

11.3 Member's Failure to Comply

- (a) Notwithstanding Clause 12, where a Member Association fails to comply with its financial and reporting obligations under this Constitution, the Board may determine that Member Association to be not of good standing. On determination that a Member Association is not of good standing, the Board may give notice to the Member Association of:

- (i) the Board's determination; and
- (ii) the grounds for the Board's determination;

and request that the Member Association show cause within twenty one (21) days from the date of that notice as to why some action should not be taken against the Member Association. The Member Association'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 Member Association's membership of the Company, 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 the Board. Nothing in this Clause affects the operation of Clause 8(c) and 8(d).

11.4 Forfeiture of Property Rights

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

11.5 Forfeiture of Representation Rights

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

11.6 Membership May be Reinstated

Membership which has lapsed, been withdrawn or terminated under this Constitution may be reinstated at the discretion of the Company, on application in accordance with this Constitution and otherwise on such conditions as the Board sees fit.

11.7 Individual Members and Clubs

- (a) Where a Club ceases to be a Member in accordance with this Constitution or the Act, the Individual Members of that Club may continue to be recognised by the Company to the extent (if any) and for such time (if any) as is determined in the sole discretion of the Board.
- (b) Subject to this Constitution, where an Area ceases to be a Member in accordance with this Constitution or the Act, the Clubs which are members of that Area will continue to be recognised by the Company and assigned to another Area by the Board.

12. DISCIPLINE OF MEMBERS

12.1 Disciplinary Action

Where the Board is advised or considers that a Member has allegedly:

- (a) 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
- (b) acted in a manner unbecoming of a Member or prejudicial to the Objects and interests of the Company and/or swimming; or
- (c) brought the Company 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 (if any) of the Company set out in the By-Laws.

12.2 Jurisdiction to Hear Matters

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

12.3 Non Application of Clause12

This Clause12 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.

13. DELEGATES

13.1 Appointment of Delegates

- (a) Each Member Association shall be entitled to appoint one (1) Delegate. Member Associations shall appoint their Delegates for such term as is deemed appropriate by the Member Association.
- (b) A Delegate must:
 - (i) not also be a Director of the Company;
 - (ii) be an individual member of the Member Association which appoints him; and
 - (iii) be appropriately empowered by his Member Association to make decisions at General Meetings.

13.2 Delegates as Representative

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

13.3 Member Association to Advise

The Member Association must advise the Chief Executive Officer of its appointed Delegate by a specified time determined by the Board and in writing signed on behalf of the governing body of the Member Association.

14. GENERAL MEETINGS

14.1 Powers of the General Meeting

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

- (a) requisition a General Meeting;
- (b) convene a General Meeting;
- (c) elect / dismiss Elected Directors;
- (d) determine Directors fees (as applicable);
- (e) alter the Constitution;
- (f) consider the annual report;
- (g) consider Special Resolutions; and
- (h) be the final arbiter on matters referred to it by the Board.

15. ANNUAL GENERAL MEETING TO BE HELD

- (a) An Annual General Meeting of the Company shall be held in accordance with the Act and 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.

16. NOTICE OF GENERAL MEETINGS

- (a) Notice of every General Meeting shall be given to every Member Association, Life Member and Director at the address appearing in the register kept by the Company. No other person shall be entitled as of right to receive notices of General Meetings, except the Company's auditor(s).
- (b) At least sixty (60) days notice of the place, day and hour of the General Meeting shall be given.
- (c) At least thirty (30) 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 Member Association, Director 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.

17. BUSINESS OF GENERAL MEETINGS

17.1 Business to be Transacted

- (a) The business to be transacted at the Annual General Meeting includes the consideration of the accounts and the reports of the Board and the auditors, the declaration of Directors and the appointment of auditors.
- (b) All business that is transacted at a General Meeting, with the exception of those matters set out in Clause 17.1(a) shall be Special Business. "Special Business" is business of which a notice of motion has been submitted in accordance with Clause 18.

17.2 No Other Business

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

18. NOTICES OF MOTION

All notices of motion from Member Associations and/or the Board for inclusion as Special Business at a General Meeting must be submitted in writing (in the required form) to the Chief Executive Officer not less than fifty (50) days (excluding receiving date and meeting date) prior to the General Meeting.

19. SPECIAL GENERAL MEETINGS

19.1 Special General Meetings may be Held

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

19.2 Requisition of Special General Meetings

- (a) The Board shall on the requisition in writing made by not less than twenty (20) Clubs from at least three (3) Areas 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 Member Associations making the requisition and be sent to the Company. The requisition may consist of several documents in a like form, each signed by one (1) or more of the Member Association making the requisition.
- (c) If the Board does not cause a Special General Meeting to be held within three (3) months after the date on which the requisition is sent to the Company, the Member Associations 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 Member Associations 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.

20. PROCEEDINGS AT GENERAL MEETINGS

20.1 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 twenty (20) Clubs.

20.2 President to Preside

The President shall, subject to this Constitution, preside at every General Meeting of the Company. 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.

20.3 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 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 meeting will lapse.

- (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 20.3(c) it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

20.4 Poll

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 Delegates present.

20.5 Recording of Determinations

Except when a poll is conducted in terms of Clause 20.4, 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 Company shall be conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution.

20.6 Where Poll Demanded

If a poll is conducted under Clause 20.4 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.

21. ENTITLEMENTS AT GENERAL MEETINGS

- (a) Each Area and Club shall have voting rights. Delegates shall represent their respective Area and Club. Each Delegate shall have one (1) vote. 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 and Life Member is entitled to notice of, and to attend and debate at all General Meetings.
- (c) Notwithstanding any other Clause of this Constitution, no Member shall be represented at, or take part in a General Meeting, unless all monies then due and payable by that Member to the Company are paid.

22. POWERS OF THE BOARD

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

23. COMPOSITION OF THE BOARD

23.1 Composition

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

- (a) Six (6) Elected Directors elected under Clause 24; and
- (b) Three (3) Appointed Directors appointed under Clause 25.

23.2 President

- (a) 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 re-appointed as President.

23.3 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 Company 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 Member Associations of any requirements, qualifications and modifications when determined.

23.4 Portfolios

The Board may determine the interests of the Company 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 the Company from time to time.

24. ELECTION OF ELECTED DIRECTORS

24.1 Nominations for Elected Directors

Nominations must be received by the Company from Individual Members to be considered for election as Directors fifty (50) days prior to the relevant General Meeting. When calling for nominations details of the necessary requirements and qualifications (if any) applicable to the position shall also be provided.

24.2 Form of Nomination

Nominations for election to the Board pursuant to Clause 24.1 must be in writing on the prescribed form provided for that purpose.

24.3 Election Process

Elections for Elected Directors shall be conducted using a 'first past the post' method. A ballot shall be conducted in accordance with procedures defined in the By Laws and the result of the ballot shall be declared at the Annual General Meeting.

24.4 Term of Elected Directors

- (a) Elected Directors that are elected under this Clause 24 shall be elected for a term of three (3) years. Subject to provisions in this Constitution relating to early retirement or removal of Directors, Elected Directors shall remain in office from the conclusion of the annual general meeting at which the election occurred until the conclusion of the third annual general meeting following.
- (b) The sequence of retirement for Elected Directors shall be staggered over three years. Two (2) Elected Directors shall retire in year one, 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 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.
- (c) Should any adjustment to the term of an Elected Director elected under this Constitution be necessary to ensure:
 - (i) the sequence of retirements under Clause 24.4 (b); and
 - (ii) the rotational terms under Clause 24.4 (a);

such adjustment shall be determined by the Board. If the Board cannot agree it will be determined by lot. Elections to, and vacancies on, subsequent Boards shall then proceed in accordance with the procedures in this Constitution.

- (d) An Elected Director may not serve more than three consecutive terms as a Director, including where one of the terms is as an Appointed Director. For the purpose of this Clause 24.4(d) service:
 - (i) of each full term as an Elected Director is to count as one term toward the three term limit under Clause 24.4(d);

- (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 one term towards the three-term limit under Clause 24.4(d). For the avoidance of doubt, this is regardless of whether a Director only served one year of a three-year term, a period of one term is to be applied for the purposes of calculating the three term limit under Clause 24.4(d).
 - (iii) of each full term served as an Appointed Director under Clause 25 is to count as one third of a term toward the three term limit under Clause 24.4(d); 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 third of a term toward the three term limit under Clause 24.4(d).
 - (v) the calculation of time served by a Director toward the three-term limit under Clause 24.4(d) 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 three term limit under Clause 24.4(d) (i.e. as at the completion of the 2014 Annual General Meeting each Director shall start at 0 for the purposes of the three term limit under Clause 24.4(d)).
- (e) A Director who has served a maximum term in accordance with Clause 24.4(e) shall not be eligible to be a Director until the third annual general meeting following the date of conclusion of his last term as an Elected Director.

25. APPOINTED DIRECTOR

25.1 Appointment of Appointed Director

The Elected Directors may appoint:

- (a) up to one (1) person to be an Appointed Director on recommendation from ASCTA (NSW), subject to the approval of the Elected Directors of that recommended nominee; 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) 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);
 - (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 part term served as an Appointed Director under Clause 25.2(a), will count towards the nine year limit under Clause 25.2(b); and
 - (iv) the calculation of time served by a Director toward the nine year time limit under Clause 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(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(b).
- (c) An Appointed Director who has served a maximum term in accordance with Clause 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.

26. VACANCIES OF DIRECTORS

26.1 Grounds for Termination of Director

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) is no longer an Individual Member;
- (b) dies;
- (c) becomes bankrupt or makes any arrangement or composition with his creditors generally;
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in anyway under the law relating to mental health;

- (e) resigns his office by providing notice in writing to the Company;
- (f) is absent without the consent of the Board from three (3) consecutive Board meetings held during a period of six (6) months;
- (g) without the prior consent or later ratification of the Members in General Meeting, holds any office of profit under the Company;
- (h) is directly or indirectly interested in any contract or proposed contract with the Company 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 Act.

26.2 Casual Vacancies

Any casual vacancy occurring in the office of a Director will be filled by the Board from appropriately qualified persons within three (3) months of the vacancy arising. Any such vacancy shall only be filled for the remainder of the Director's term under this Constitution.

26.3 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.

27. MEETINGS OF THE BOARD

27.1 Board to Meet

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.

27.2 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 Directors shall appoint one of their number to preside as chair for that meeting only.

27.3 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 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 chair shall also have a casting vote where voting is equal.

27.4 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 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;
 - (iii) in the event of a failure in communications prevents Clause 27.4(b)(i) from being satisfied by a quorum of Directors then the meeting shall be suspended until Clause 27.4(b)(i) is satisfied again. If such is not satisfied within fifteen (15) minutes from the interruption the meeting shall be deemed to have terminated; and
 - (iv) no meeting shall be invalidated merely because no Director is physically present at the place for the meeting specified in the notice of meeting.

27.5 Quorum

At meetings of the Board the number of Directors whose presence or participation under Clause 27.4 is required to constitute a quorum is five (5) Directors.

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

27.7 Validity of Board Decisions

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

28. CONFLICTS

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 Chief Executive Officer shall maintain a register of declared interests.

29. CHIEF EXECUTIVE OFFICER

29.1 Appointment of Chief Executive Officer

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

29.2 Specific Duties

The Chief 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; and
- (d) regularly report to the Board on the activities of, and issues relating to, the Company.

29.3 Broad Power to Manage

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

29.4 Chief Executive Officer May Employ

The Chief Executive Officer, in consultation with the Board, may employ such office personnel as are deemed necessary from time to time. Such appointments shall be for such period and on such conditions as the Chief 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, 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 or the Chief Executive Officer 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 27 and 28. The quorum shall be determined by the committee, but shall be no less than one half of the total number of committee members.

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 audit, risk and finance 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 (by itself or by delegation to a committee) formulate, approve, issue, adopt, interpret and amend such By-Laws and Policies for the proper advancement, management and administration of the Company 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 the Company and Members.

31.3 By-Laws and Policies Deemed Applicable

All powers, rules, regulations, policies and by-laws of the Company 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 Member Associations by means of notices approved by the Board and prepared and issued by the Chief Executive Officer. Member Associations 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 Chief Executive Officer to Keep Records

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

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. The books of account shall be kept in the care and control of the Chief Executive Officer.

32.3 The Company to Retain Records

The Company 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 the Company 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

The Chief Executive Officer shall cause to be provided to all persons entitled to receive notice of Annual General Meetings of the Company 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 Chief Executive Officer or in such other manner and by such persons the Board determines.

33. APPLICATION OF INCOME AND PROPERTY

- (a) The income and property of the Company shall be applied solely towards the promotion of the Objects.
- (b) No portion of the income or property of the Company shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any Member.
- (c) No remuneration or other benefit in money or money's worth shall be paid or given by the Company to any Member who holds any office of the Company.
- (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 the Company whether as an employee or otherwise;
 - (ii) for goods supplied to the Company in the ordinary and usual course of business;
 - (iii) of interest on money borrowed from any Member;
 - (iv) of rent for premises demised or let by any Member to the Company; or
 - (v) for any out-of-pocket expenses incurred by the Member on behalf of the Company;

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 the Company including the profit and loss accounts and balance sheet shall be examined by the auditor or auditors at least once in every year.

35. NOTICES

35.1 Manner of Notice

- (a) Notices may be given to any Member by sending the notice by pre-paid post or facsimile transmission or where available, by electronic mail, to the Member's registered address or facsimile number or electronic mail address.
- (b) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting the notice. Service of the notice is deemed to have been effected two (2) days after posting.
- (c) Where a notice is sent by facsimile transmission, service of the notice shall be deemed to be effected upon receipt of a confirmation report confirming the facsimile was sent to/or received at the facsimile number to which it was sent.
- (d) Where a notice is sent by electronic mail, service of the notice shall be deemed to be effected upon receipt of a confirmation report confirming the electronic mail message was received at the electronic mail address to which it was sent.

36. ADDITION ALTERATION OR AMENDMENT

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

37. WINDING UP OF COMPANY AND LIABILITY OF MEMBERS

37.1 Member Association Contributions

Each Member Association undertakes to contribute to the assets of the Company in the event of it being wound up while a Member, or within one(1) year after ceasing to be a Member, for payment of the debts and liabilities of the Company contracted before the time at which it ceases to be a Member, and the costs, charges and expenses of winding up and for an adjustment of the rights of contributors among themselves, such amount as may be required not exceeding one dollar (\$1).

37.2 Distributions of Property on Winding Up

If upon winding up or dissolution of the 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 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 New South Wales as may have or acquire jurisdiction in the matter.

37.3 Liability of Members

The liability of the Members of the Company is limited.

38. INDEMNITY

38.1 Directors to be Indemnified

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

38.2 The Company to Indemnify Directors

The Company shall indemnify its Directors and employees against all damages and costs (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:

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