



# **CONSTITUTION OF SWIMMING VICTORIA INC.**

(Reg No A7221)

(August 2018)

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## 1. Name

The name of the association is Swimming Victoria Incorporated (in the Constitution called “SV”).

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## 2. Interpretation

(1) In this Constitution unless the contrary intention appears or is required by the Act:

**Act** means the *Associations Incorporation Reform Act 2012 (Vic)* and includes any regulations made under that Act;

**Appointed Director** means a director appointed pursuant to [Clause 15E](#);

**Board** means the Board of SV constituted under this Constitution;

**By Laws** means such By Laws passed pursuant to the power contained in [subclause 15A \(3\)](#);

**Chair** means the person chairing a General Meeting or Board meeting;

**Club** means an organisation whose primary purpose is to conduct activities related to Swimming and which is registered with SV;

**Competition** means and includes:

- (i) any championship (national or otherwise) organised or conducted by a District Association for or on behalf of SV;
- (ii) any championship, competition, series or swimming meet sponsored by or conducted by or on behalf of SV; or
- (iii) any international competition, series, meeting or championship at which SV is represented;

**Competitor** means and includes a Swimmer;

**Constitution** means this Constitution of SV;

**Council** means the body established pursuant to [clause 18](#);

**Delegate** means the person, elected or appointed from time to time by a Club, District Association or other Voting Member to act for and on its behalf and represent it at

General Meetings and Council Meetings and includes Alternate Delegates (where appointed);

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

**Disciplinary Action** has the meaning set out in clause 17(4);

**Disqualifying Position** means any one or more of the positions described in [subclause 15C \(2\)](#);

**District** means an organisation of Clubs within an area approved by SV;

**Elected Director** means a Director elected pursuant to [Clause 15D](#);

**FINA** means Federation Internationale de Natation;

**Financial year** means the year ending 30 June;

**General Meeting** means a general meeting of the Members convened in accordance with Part 5 of the Act and includes an Annual General Meeting and a Special General Meeting;

**Grievance** has the meaning set out in clause 17(3);

**Individual Member** means a person who is a registered financial member of a Club or other Voting Member;

**Insolvency Event** means:

- (a) being in liquidation or provisional liquidation or under administration,
- (b) having a controller (as defined in the Corporations Act 2001 (Cth)) or analogous person appointed to it or any of its property,
- (c) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand,
- (d) being unable to pay its debts or otherwise insolvent,
- (e) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event;

**Intellectual Property** means all rights or goodwill subsisting in copyright, business names, names, trademarks (or signs), logos, designs, patents or service marks (whether registered or registrable) relating to SV or any event, Competition, championship, meeting or swimming activity of or conducted, promoted or administered by SV;

**Life Member** means an individual upon whom Life Membership of SV has been conferred in accordance with the By Laws and by the passing of a [Special Resolution](#);

**Member** means a member for the time being of SV under [clause 7](#);

**Objects** means the Objects of SV set out in [clause 3](#);

**President** means the president for the time being of SV elected in accordance with [Clause 15G](#);

**Privacy Law** means any relevant commonwealth or state legislation or regulations relating to privacy of individuals;

**Register** means the register of Members required to be kept pursuant to [Clause 13](#);

**Registrar** means the Registrar of Incorporated Associations;

**Relevant Documents** means the records and other documents, however compiled, recorded or stored, that relate to the incorporation and management of SV and includes the following:

- (a) its membership records
- (b) its financial statements
- (c) its financial records
- (d) records and documents relating to transactions, dealings, business or property of SV
- (e) minutes of General Meetings, including financial statements submitted at a General Meeting
- (f) minutes of Board meetings;

**Safe Sport Framework** means the policy and rules adopted and published by SAL as amended from time to time and known as the Safe Sport Framework;

**SAL** means Swimming Australia Limited;

**Secretary** means the person appointed by the Board to act as Secretary for the purposes of the Act;

**Special General Meeting** means a General Meeting other than the Annual General Meeting;

**Special Resolution** means a resolution at a General Meeting that requires not less than three quarters of the Members entitled to vote at that meeting voting in favour of the resolution;

**Swimming** means the sport of swimming in all its forms; and

**Voting Member** means a member who under [Clause 11A \(1\)](#) is entitled to vote at a General Meeting.

(2) In addition

- (a) Words implying any gender include the other gender; and

- (b) Words implying the singular shall include the plural and vice versa.
  - (3) 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 purposes of that jurisdiction, if possible, so as to be valid and enforceable. If the rule or phrase cannot be so read down it will be severed to the extent of the invalidity or unenforceability. Such severance does not affect the remaining provisions of this Constitution or affect the validity or enforceability of any provision in any other jurisdiction.
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### **3. Objects**

SV is the peak body for the administration of Swimming in Victoria and is established solely to:

- (a) be a member association of and otherwise liaise with SAL and with such other bodies as may be desirable to achieve these Objects;
- (b) conduct, encourage, promote, advance, control and administer Swimming in Victoria for the mutual and collective benefit of the Members;
- (c) act in good faith to ensure the maintenance and enhancement of the standards, quality and reputation of SV and Swimming, for the collective and mutual benefit of the Members and Swimming;
- (d) at all times operate with and promote mutual trust and confidence between SV and the Members in pursuit of these Objects;
- (e) at all times act on behalf of and in the interests of the Members;
- (f) promote the economic and sporting success, strength and stability of SV and each Member and to act interdependently with each Member in pursuit of these Objects;
- (g) ensure compliance with the rules and by laws of SAL and FINA as amended from time to time;
- (h) apply the property and capacity of SV towards the fulfilment and achievement of these Objects;
- (i) use and protect the Intellectual Property;
- (j) collect, distribute and publish information in connection with Swimming;
- (k) promote and control state Competitions;
- (l) strive for governmental, commercial and public recognition of SV, the Clubs, the District Associations and Swimming;

- (m) promulgate and secure uniformity in such rules as may be necessary or appropriate for the management and control of Swimming and related activities in Victoria;
  - (n) promote the health and safety of all Individual Members;
  - (o) pursue through itself or others such commercial arrangements, including sponsorship and marketing opportunities as are appropriate to further these Objects;
  - (p) formulate or adopt and implement appropriate policies, including in relation to harassment, discrimination, 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;
  - (q) represent the interests of its Members and of Swimming generally in any appropriate forum;
  - (r) have regard to the public interest in its operation;
  - (s) 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;
  - (t) encourage and promote performance enhancing drug free competition; and
  - (u) undertake and or do all things or activities which are necessary, incidental or conducive to advance these Objects.
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#### **4. Powers of SV**

- (1) Subject to the Act, SV has power to do all things incidental or conducive to achieve the Objects.
- (2) Without limiting subclause (1), SV may:
  - (a) acquire, hold and dispose of real or personal property;
  - (b) open and operate accounts with financial institutions;
  - (c) invest its money in any security in which trust monies may lawfully be invested;
  - (d) raise and borrow money on any terms and in any manner as it thinks fit;
  - (e) secure the repayment of money raised or borrowed, or the payment of a debt or liability;
  - (f) appoint agents to transact business on its behalf; and



- (g) enter into any other contract it considers necessary or desirable.
  - (3) SV may only exercise its powers and use its income and assets (including any surplus) for the Objects.
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## **5. Application of Income**

- (1) The income and property of SV must be applied solely for the purpose of and toward the promotion of the Objects.
- (2) SV must not distribute any surplus, income or assets directly or indirectly to its Members.
- (3) Subclause (1) does not prevent SV from paying a Member:
  - (a) for any services actually rendered to SV whether as an employee or otherwise;
  - (b) for goods supplied to SV in the ordinary and usual course of business;
  - (c) for interest on money borrowed from any Member;
  - (d) for rent for premises demised or let by any Member to SV; or
  - (e) for any out of pocket expenses incurred by the Member on behalf of SV

provided that any such payment shall not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction.

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## **6. Clubs and Districts**

- (1) SV shall allocate Clubs to a District.
- (2) Each Club and District must:
  - (a) be an incorporated body;
  - (b) adopt the Objects and otherwise adopt rules which reflect, and which are, to the extent permitted or required by the applicable law, generally in conformity with this Constitution;
  - (c) apply its property and capacity in a manner consistent with the pursuit of the Objects, and Swimming;
  - (d) do all that is reasonably necessary and within its power to enable the Objects to be achieved;

- (e) ensure that its constituent documents clearly reflect and are consistent with the Objects and this Constitution;
  - (f) ensure that its constitution contains a clause approved by SV that provides for the assets of the Club or District to be transferred to SV if the Club or District is wound up or its incorporation is cancelled. In that case SV shall hold such assets on trust for 5 years. If the Club or District is not reinstated within that period those assets may be used by SV in the pursuit of the Objects;
  - (g) ensure that any amendment to its constitution is consistent with this Constitution in force from time to time and seek prior approval from SV of any such amendment; and,
  - (h) comply with all requirements set out in the By Laws.
- (3) Each District shall administer Swimming in its geographical area, determined by SV, subject always to the authority of SV.
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## **7. Members**

- (1) The members of SV are:
- a) Districts and Clubs;
  - b) Individual Members;
  - c) Life Members;
  - d) Such other class of Members with such rights as are determined by the Board pursuant to subclause 7(2).
- (2) The Board may create a new class or classes of membership with such rights privileges and obligations as it sees fit notwithstanding that the creation of such class or classes may affect the rights privileges or obligations of existing Members. No new category of membership may be granted voting rights without a Special Resolution.
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## **8. Application for membership**

- (1) An application for membership shall be made in the form and in the manner prescribed by SV from time to time.
- (2) The Board may impose additional qualifications or requirements for particular classes of membership as it considers appropriate from time to time. Such qualifications or requirements shall be set out in the By Laws.

- (3) The Board may determine to approve or to reject an application for membership, without having to give reasons.
  - (4) An applicant for membership becomes a Member and, subject to [subclause 10 \(2\)](#), is entitled to exercise their rights of membership from the date, whichever is the later, on which—
    - a) the Board approves the Member's membership; or
    - b) the Member pays the all relevant fees.
  - (5) In order to retain the rights and privileges of membership all Members must renew their membership annually in accordance with the requirements determined by the Board from time to time.
  - (6) SV may accept or reject an application for renewal of membership or require the Member to provide further information or comply with such other reasonable requirements as the Board sees fit.
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## **9. Effect of membership**

Each Member agrees:

- a) that this Constitution creates a contract between each of them and SV and that they are bound by this Constitution and the By Laws;
- b) that the Member will comply with and observe this Constitution and the By Laws and any determination, resolution or policy which may be made or passed by the Board or any duly authorised Board;
- c) that the Member will act in good faith and loyalty to each other to ensure the maintenance and enhancement of the standards, quality and reputation of Swimming, and for the collective and mutual benefit of the Members and Swimming;
- d) that the Member will not do or permit to be done any act or thing which might adversely affect or derogate from the standards, quality and reputation of SV or Swimming;
- e) that the Member will make full and proper disclosure to other Members of all matters of importance to SV and Swimming;
- f) that the Member may not acquire a material or financial advantage at the expense of SV, another Member or Swimming;
- g) to operate with mutual trust and confidence in pursuit of the Objects;
- h) 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
- i) to act for and on behalf of the interests of Swimming, SV and the Members.

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## 10. Membership fees

- (1) The Board shall determine all matters relating to fees payable by Members (or any category of Member) to SV including but not limited to annual membership fees, application fees, entry fees, fines, and levies and any interest payable on any overdue amount owed by that Member to SV.
- (2) Where:
  - a) a Member has not paid an amount due by that Member to SV (**Debt**) by the due date for payment the Board may suspend that Member's rights on such terms as it sees fit; or;
  - b) a Member fails, repeatedly, to pay a Debt that Member may be subject to discipline by SV in accordance with any applicable By Laws, rules or regulations of SV.

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## 11. Rights of Members

### A. *Voting Rights*

- (1) Subject to subclause (2) the following classes of members) may attend debate and vote at a General Meeting:

Districts and Clubs via a Delegate or proxy holder who must be identified in writing to SV no later than 7 days prior to the General Meeting;
- (2) A Voting Member may not attend, debate or vote at a General Meeting if—
  - a) less than 10 business days have passed since they became a Member of SV;
  - b) all monies due and payable by the Member to SV have not been paid by the date of the General Meeting; or
  - c) the Member's membership rights are, at the date of the General Meeting, suspended for any reason.
- (3) Life Members and Directors may attend and debate at a General Meeting but, subject to subclause (4), may not vote.
- (4) A Life Member or Director who is also a Delegate or a proxy holder for a Voting Member may vote in that capacity only.

## **B. General Rights**

A Voting Member has the right to:

- a) receive notice of General Meetings and of proposed [Special Resolutions](#) in the manner and time prescribed by the Constitution;
- b) to submit items of business for consideration at a General Meeting;
- c) to have access to the minutes of General Meetings and the [Relevant Documents](#) as provided under [subclause 16\(D\) \(1\)\(d\)](#); and
- d) to inspect, but not copy, the Register or any part of it in accordance with the Act and subject to the [Privacy Law](#).

## **C. Rights not transferable**

The rights of a Member are personal to that Member and are not transferable.

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## **12. Cessation of membership**

- (1) The membership of a Member ceases on resignation, expulsion, death or, in the case of an incorporated Voting Member, on the occurrence of an Insolvency Event.
- (2) A Member may resign by notice in writing given to SV.
- (3) In addition, a Member is taken to have resigned if:
  - a) the Member's annual subscription or renewal fee is more than 3 months in arrears; or,
  - b) where no annual subscription or renewal fee is payable—
    - (i) the Secretary has made a written request to the Member to confirm that the Member wishes to remain a Member; and
    - (ii) the Member has not, within 3 months after receiving that request, confirmed in writing that the Member wishes to remain a memberunless the Board in its sole discretion determines otherwise.
- (4) Notwithstanding the resignation of a Member pursuant to either clause 12(2) or clause 12(3) any monies owing by that Member to SV at the date of resignation shall remain a debt due and owing to SV.
- (5) The Secretary must, as soon as practicable, enter the date the Member ceased to be a member in the Register.
- (6) Upon cessation of membership all rights and entitlements of that Member whatsoever shall cease and the Member must return to SV immediately all documents, records or any other property of SV in whatever form.

### **13. Register of Members**

- (1) The Secretary must keep and maintain a Register that includes, for each current Member:
    - a) the Member's name;
    - b) the address for notice last given by the Member;
    - c) the date of becoming a Member;
    - d) which class of Member (if any) that Member is;
    - e) any other information reasonably determined by the Board; and
    - f) for each former Member, the date of ceasing to be a Member.
  - (2) Subject to the Act and the [Privacy Law](#) a Member may, at a reasonable time and free of charge, inspect but not copy the Register.
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### **14. General Meetings**

#### **A. Annual General Meetings**

- (1) The Board must convene an Annual General Meeting of SV to be held in accordance with the Act and with the Constitution.
- (2) The Board may determine the date, time and place of the Annual General Meeting.
- (3) The ordinary business of the Annual General Meeting is as follows:
  - a) apologies;
  - b) to confirm the minutes of the previous Annual General Meeting and of any Special General Meeting held since then;
  - c) to receive and consider:
    - (i) the annual report of the Board on the activities of SV during the preceding financial year; and
    - (ii) the financial statements of SV for the preceding financial year submitted by the Board in accordance with Part 7 of the Act;
  - d) to be advised of the outcome of any election of Directors conducted in accordance with [clause 15D](#);
  - e) The Annual General Meeting may also conduct any other business of which notice has been given in accordance with the Constitution including but not limited to any notice of motion proposed by the Board or, subject to compliance with subclause 14C (2), by a Voting Member.

- (4) Save as provided in this clause 14A no business other than that stated on the notice of meeting shall be conducted at the Annual General Meeting.

**B. *Special General Meetings***

- (1) The Board may convene a Special General Meeting at any time provided notice of such meeting is given in accordance with the Constitution.
- (2) In addition, the Board must convene a Special General Meeting if a request to do so is made by at least 30 Voting Members.
- (3) A request for a Special General Meeting pursuant to subclause (2) must—
  - a) be in writing;
  - b) state the business to be considered at the meeting and any resolutions to be proposed;
  - c) include the names and signatures of the members requesting the meeting; and
  - d) be given to the Secretary.
- (4) If the Board does not convene a Special General Meeting within one month after the date on which the request is made, the Members making the request (or any of them) may convene the Special General Meeting.
- (5) A Special General Meeting convened under subclauses (2) or (4):
  - a) shall be convened in the same manner or as nearly as possible as that, in which a General Meeting is convened;
  - b) must be held within 3 months after the date on which the original request was made; and
  - c) may only consider the business stated in that request.
- (6) SV must reimburse all reasonable expenses incurred by the Members convening a Special General Meeting under subclause (4).
- (7) No business other than that stated in the notice of the meeting given in accordance with the Constitution may be conducted at a Special General Meeting.

**C. *Notice of Motion from Members***

Subject to clause 15D(3):

- (1) By 31 July each year a Voting Member may submit a notice of motion for consideration at the next Annual General Meeting. This does not apply to a Special General Meeting convened under subclauses 14B (2) or (4).
- (2) Any such notice of motion must:
  - a) be in writing;

and

- b) if a [Special Resolution](#) is to be proposed—
  - (i) state in full the proposed resolution; and
  - (ii) state the intention to propose the resolution as a Special Resolution.

**D. Notice of General Meetings**

- (1) The Secretary (or, in the case of a Special General Meeting convened under subclause 14B (4), the Members convening the meeting) must give to each Voting Member at least 21 days' notice of a General Meeting.
- (2) The notice must—
  - a) specify the date, time and place of the meeting;
  - b) indicate the general nature of each item of business to be considered at the meeting including any notices of motion from the Board or from Voting Members pursuant to subclause 14C (2); and
  - c) if a [Special Resolution](#) is to be proposed—
    - (i) state in full the proposed resolution; and
    - (ii) state the intention to propose the resolution as a Special Resolution.

**E. Proceedings at General Meetings:**

*Quorum*

- (1) No business may be transacted at a General Meeting unless a quorum is present. A quorum for a General Meeting is 30 Voting Members present in person or by proxy.

*President to preside*

- (2) Subject to the Constitution the President shall preside as Chair of a General Meeting.
- (3) If the President is not present or is unable or unwilling to preside the Voting Members present shall elect one of the remaining Directors to preside.
- (4) If no such Director is present or none of them are able or willing to preside the Voting Members shall elect one of their number to preside.

*Conduct of the meeting*

- (5) Subject to the Act and this Constitution the conduct of a General Meeting is to be determined by the Board.
- (6) If any question arises at a General Meeting in relation to the order of business, procedure or conduct of the meeting such question shall be referred to the Chair whose decision shall be final.



## **F. *Adjournment of a General Meeting***

- (1) 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.
- (2) The Chair may and shall if so directed by an ordinary resolution of 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.
- (3) No notice of the adjourned meeting is required unless it is adjourned for 30 days or more in which case notice shall be in the same manner as required by clause 14D.

## **G. *Voting***

- (1) At any General Meeting:
  - a) proxy voting is permitted save that a person may not hold more than 5 proxies;
  - b) a Voting Member has one vote only;
  - c) Directors shall not be entitled to vote in that capacity but may vote in their capacity as a properly authorised Delegate or proxy holder if applicable;
  - d) a vote shall be conducted by a show of hands or such other method as determined by the Chairman unless a poll is demanded in accordance with subclause 14G (2); and
  - e) where the vote is equal the Chair shall not have a casting vote and the motion shall be lost.
- (2) A poll may be only demanded prior to the declaration of the result on a show of hands or other method of voting determined by the Chair in accordance with rule 14G (1) by either:
  - (a) the Chair; or
  - (b) more than 50% of the Voting Members present in person.

## **H. *Recording of Determinations***

Unless a poll is demanded under subclause 14G (2), a declaration by the Chair that a resolution has been carried, carried unanimously or by a particular majority, or lost, shall be conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution and an entry to that effect shall be made in the minutes of the meeting.

## **I. *Use of Technology at General Meetings***

A General Meeting may be held where 1 or more of the Members entitled to vote is not physically present at the meeting, provided that:

- a) 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;
- b) notice of the meeting is given to all persons entitled to notice in accordance with the Constitution;
- c) if a failure in communications prevents subclause 14I (2)(a) from being satisfied then the meeting shall be suspended until subclause 14I (2)(a) is satisfied again provided that if it cannot be satisfied within 15 minutes from the interruption the meeting shall be deemed to be adjourned in accordance with [subclause 14F \(1\)](#); and
- d) no meeting shall be invalidated merely because no Voting Member is physically present at the place for the meeting specified in the notice of meeting.

#### **J. *Minutes of General Meetings***

- (1) The Secretary or a person nominated by the Secretary must keep minutes of resolutions and proceedings of each General Meeting together with a record of persons present at all meetings.
- (2) In addition, the minutes of each Annual General Meeting must include:
  - (a) the financial statements submitted to the Members in accordance with [subclause 14A \(3\)](#);
  - (b) a certificate signed by two Directors certifying that the financial statements give a true and fair view of the financial position and performance of SV; and
  - (c) any audited accounts and auditor's report or report of a review accompanying the financial statements that are required under the Act.

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## **15. SV Board**

### **A. *Role and powers***

- (1) The business of SV must be managed by or under the direction of the Board.
- (2) Subject to the Constitution and the Act the Board may perform all such acts as it deems essential for the proper management of SV.
- (3) Without limiting this Clause 15 the Board shall have the power to create or amend By Laws for the efficient operation of SV. Such By Laws shall be published to the Members from time to time for their information and are binding on all Members.

- (4) All by laws in place at the date of approval of this Constitution shall be deemed to be By Laws under subclause 15A (3).
- (5) The Board must act in accordance with Part 6 of the Act and in pursuance of the Objects for the collective benefit of SV, the Members and Swimming.

**B. *Delegation***

- (1) The Board may delegate to a Director, a subcommittee or SV staff, any of its powers and functions other than:
  - a) this power of delegation; or
  - b) a duty imposed on the Board by the Act or any other law.
- (2) The delegation must be in writing and may be subject to any conditions and limitations the Board considers appropriate.
- (3) The Board may amend, repeal or veto any decision made by any person or groups of people to whom a delegation has been given.
- (4) The Board may, in writing, revoke a delegation wholly or in part.

**C. *Composition and eligibility***

- (1) The Board shall consist of no more than 9 Directors comprised as follows:
  - a) Up to 7 Elected Directors; and
  - b) Up to 2 Appointed Directors.
- (2) A person who:
  - a) is an employee of SV;
  - b) has been CEO of SV within the period of 3 years prior to election or appointment to the Board;
  - c) holds any position, whether elected or appointed, as an office bearer or committee member of a Member; or
  - d) is banned or disqualified from being a Director of a company under the Corporations Act 2001 (Cth)may not stand for or hold office as a Director of SV.
- (3) A Director who accepts or becomes the holder of a Disqualifying Position must notify the other Directors of that fact immediately and upon the giving of such notice or 7 days after the Director accepts or becomes a holder of a Disqualifying Position, whichever is the earlier, that Director's position becomes vacant.
- (4) There shall be established a Nominations and Remuneration Committee which shall be responsible for advising the Board on:
  - a) matters relating to the composition and structure of the Board;

- b) matters relating to senior executive selection and remuneration; and
- c) other matters as required.

**D. Election of Directors**

- (1) Subject to clause 15D (3) a nomination from any person seeking to be elected to the Board must be submitted to the CEO of SV by no later than 30 June in each year.
- (2) Where an election is required it shall be conducted by an electronic ballot of Voting Members under a 'first past the post' system. Unless otherwise determined by the Board such ballot shall:
  - (a) be conducted prior to the next Annual General Meeting; and
  - (b) open at least 5 weeks and close 2 weeks prior to the date of the next Annual General Meeting; and
  - (c) the order of names on the ballot paper shall be determined randomly by drawing each name out of a container.

*Transitional provisions*

- 3. For the purpose of implementing:
  - (a) 3 year terms of office for all Directors as provided in subclause 15F (3);
  - (b) a formal system of rotation of Directors; and
  - (c) a practical process for the nomination of candidates for election and submission of motions at the first Annual General Meeting after this Constitution comes into effect (in this clause referred to as **First AGM**)

the following shall apply at the First AGM:

- I. Subject to paragraph (iii), candidates for a position as an Elected Director,
  - (i) must submit a nomination in writing by a date notified to all Members by SV provided that such date must be at least 7 weeks prior to the First AGM;
  - (ii) who receive the first and second highest number of votes shall be elected for a 3 year term;
  - (iii) who receive the third and fourth highest number of votes shall be elected for a 2 year term;  
  
(collectively referred to in this subclause as **Candidates**)
  - (iv) if 2 or more Candidates receive an equal number of votes they shall be elected in the following order:

- (a) where those Candidates include Directors currently in office, whether appointed or elected, (in this paragraph and paragraph (b) referred to as **Existing Candidates**), and persons who are not Directors, referred to in this paragraph and paragraph (b) as **New Candidates**, then:
- New Candidates shall be elected first;
  - Where all vacancies have not been filled by the procedure immediately above then the Existing Candidates shall be elected by reference to the order of their place on the ballot paper i.e. starting with first the person whose name was listed first on the ballot paper, then second and so on;
- (b) where those Candidates consist of Existing Candidates or of only New Candidates then those Candidates shall be elected by reference to the order of their place on the ballot paper i.e. starting with first the person whose name was listed first on the ballot paper, then second and so on.

II. Any notice of motion for inclusion as business at the First AGM pursuant to clause 14C must be received by SV by a date notified to all Members by SV provided that such date must be at least 6 weeks prior to the First AGM.

**E. *Appointed Directors***

- (1) The Board may appoint up to 2 persons who have such skills and experience as the Board considers are necessary to complement the composition of the Board ().
- (2) Appointed Directors shall hold office for such period as the Board determines up to a maximum of 3 years.
- (3) An Appointed Director may be reappointed at the end of his or her term of office.

**F. *Term of office of Directors***

- (1) A Director shall not serve more than 3 consecutive terms whether as an Elected Director or Appointed Director or a combination of both. Any consecutive terms of office served by a Director prior to this constitution coming into effect shall be counted when calculating the maximum term of office of a Director pursuant to subclause 15F (1).
- (2) For the purposes of this clause 15F, where a Director does not serve the full period of a particular term of office that period shall be deemed as a full term for the purposes of subclause 15F (1).
- (3) Subject to subclause 15D (4) the term of office of an Elected Director commences from the end of the Annual General Meeting at which that Director's election is announced and ends at the end of the third Annual General Meeting thereafter.
- (4) If:

- (a) a Director (**Vacating Director**) resigns or otherwise vacates office prior to the end of the Vacating Director's term; and,
- (b) the Board does not appoint a replacement pursuant to subclause 15H (3)

a person elected to fill that position at any Annual General Meeting prior to the end of the Vacating Director's term shall hold office until the end of the Vacating Director's term and such term shall be counted as a full term for the purposes of subclause 15F (1).

#### **G. *President***

The Board shall by resolution appoint one of the Directors to fulfil the office of President for a term not exceeding 3 years. That Director may be reappointed as President by a resolution of the Board.

#### **H. *Casual Vacancy and Cessation of Office***

- (1) In subclauses 14H(2)-(3) **Casual Vacancy** means a vacancy that is caused if the Director:
  - a) ceases to be a Member:
  - b) becomes insolvent under administration within the meaning of the Corporations Law:
  - c) becomes ineligible by virtue of subclause 15C (3); or
  - d) resigns from office by written notice given to the Secretary or the President.
- (2) If there is a Casual Vacancy in any position on the Board, that position may be filled by the Board from appropriately qualified persons as soon as practicable and such person shall hold office until the end of the term of office of the Director who causes the Casual Vacancy.
- (3) If there is a casual vacancy or vacancies in the office of Director, the remaining Directors may act provided the number of Directors remaining is sufficient to constitute a quorum at a meeting of the Board. If there is not a sufficient number of remaining Directors, they may only act for the purpose of increasing the number of Directors to constitute such a quorum.
- (4) A Director may be disciplined in accordance with SV's Disciplinary Procedure.
- (5) Regardless of whether or not a Director is a Member all Directors are subject to the By Laws and all other documents governing Members in force from time to time.
- (6) A person ceases to be a Director if that person –
  - a) fails to attend 3 consecutive Board meetings (other than special or urgent Board meetings) without leave of absence under subclause 15H (7);
  - b) is removed from office by a [Special Resolution](#) pursuant to subclause 15H (8)(a); or

- c) otherwise ceases to be a Director by operation of section 78 of the Act.
- (7) The Board may grant a Director leave of absence from Board meetings for a period not exceeding 6 months.
- (8) A General Meeting may by Special Resolution:
  - a) remove a Director from office; and
  - b) elect an eligible person to fill the vacant position in accordance with this rule.
- (9) A Director who is the subject of a proposed Special Resolution under subclause 15H (8)(a) may, at the Director's election:
  - a) make representations in writing to the President of SV (not exceeding a reasonable length) and may request that the representations be provided to the Voting Members either before or at the commencement of the meeting;  
or
  - b) make oral submissions to the meeting  
at which the Special Resolution is to be proposed

**I. *General Duties of Directors***

- (1) As soon as practicable after being elected or appointed to the Board, each Director must become familiar with the Constitution and the Act.
- (2) The Board is collectively responsible for ensuring that SV complies with the Act and that individual Directors comply with the Constitution.
- (3) Directors must exercise their powers and discharge their duties with reasonable care and diligence.
- (4) Directors must exercise their powers and discharge their duties:
  - (a) in good faith in the best interests of SV; and
  - (b) for a proper purpose.
- (5) Directors and former Directors must not make improper use of:
  - (a) their position; or
  - (b) information acquired by virtue of holding their position:  
so as to gain an advantage for themselves or any other person or to cause detriment to SV.
- (6) In addition to any duties imposed by the Constitution, a Director must perform any other duties imposed from time to time by a resolution at a General Meeting or by the Act.

**J. *Proceedings of the Board:***

- (1) The Board shall meet as often as is deemed necessary in every Financial Year for the dispatch of business and may adjourn and, subject to this Constitution, otherwise regulate its meetings as it thinks fit.
- (2) Any Director may at any time convene a meeting of the Board provided no less than 7 days' notice is given unless all Directors agree to hold a meeting at shorter notice.
- (3) The quorum for a Board meeting shall be more than one half of the Directors whether present in person or participating in accordance with rule 15J (1). If a quorum is not present within 30 minutes of the starting time for the meeting, the meeting shall be deferred for a week at the same place and time.
- (4) At Board meetings:
  - a) the President shall preside; or
  - b) in the absence of the President, the Board, shall appoint a Chairman from among its number; and
  - c) minutes shall be taken by a member of SV staff approved by the Board from time to time.
- (5) On any motion each Director shall have one vote. If there is a tie the President shall not have a second or casting vote.
- (6) The Board may act on any matter, subject to the presence of a quorum, notwithstanding the absence of any Director or a vacancy on the Board.
- (7) A procedural defect in decisions taken by the Board shall not result in such decision being invalid.

**K. *Use of technology***

- (1) A Director not physically present at a Board meeting may be permitted to participate in the meeting by the use of technology that allows that Director and the Directors present at the meeting to clearly and simultaneously communicate with each other.
- (2) If there is a failure in communications which prevents subclause 15K (1) from being satisfied and thereby a quorum does not exist, then the meeting shall be suspended until subclause 15K (1) is satisfied again and a quorum exists. If such is not satisfied within 15 minutes from the interruption the meeting shall be adjourned.
- (3) For the purposes of this Clause 15K, a Director participating in a Board meeting as permitted under subclause (1) is taken to be present at the meeting and, if the Director votes at the meeting, is taken to have voted in person.

**L. *Resolutions not in meeting***

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 1 or more of the Directors and the resolution is passed when the last director signs.

#### **M. *Indemnity of Directors***

- (1) To the extent permitted by law SV shall indemnify its Directors, employees, agents and committee members out of the assets of SV for any liability (including legal costs) incurred by any such person:
    - a) in or arising out of the conduct of:
      - (i) the business of SV, or
      - (ii) the discharge of the duties of the Director, employee or agent, as the case may be; and
    - b) to a person other than SV or a related body corporate of SV (whether civil or criminal) unless the liability arises out of the conduct by or on the part of the Director, employee or agent which:
      - (i) is outside the scope of the duties of that person;
      - (ii) involves a lack of good faith;
      - (iii) involves a breach of a Director's obligations under the Act; or
      - (iv) is a liability for a pecuniary penalty or compensation order under the Act.
  - (2) The Board may enter into or be an insured party under a contract of insurance in respect of any liability covered by the indemnity referred to in subclause 15M (1).
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## **16. Management**

### **A. *Chief Executive Officer***

- (1) The Chief Executive Officer (**CEO**) shall be appointed by the Board for such term and on such conditions as it thinks fit.
- (2) 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 General Meetings are recorded and prepared;

- d) regularly report to the Board on the activities of, and issues relating to, SV. carry out the duties of the Secretary under the Act; and
  - e) be responsible for keeping the Relevant Documents for a minimum of 7 years after the completion of the relevant transactions or circumstances to which those documents relate.
- (3) The Chief Executive Officer may employ such persons as are deemed necessary from time to time subject to the limits of any delegation provided by the Board.

**B. *Board 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 SV. No resolution passed by a 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.

**C. *Finance***

- (1) The funds of SV shall be derived from the annual membership fees, capitation fees, levies, donations, sponsorships and such other sources as the Board determines.
- (2) All cheques and other negotiable instruments shall be signed or otherwise executed by 2 persons who are authorised signatories to the SV bank account.
- (3) SV may execute any other document without using a common seal.
- (4) A properly qualified auditor or auditors shall be appointed by the Board and the remuneration of such auditor or auditors shall be fixed by the Board. The auditor's duties shall be regulated in accordance with the Act, and generally accepted principles, or any applicable code of conduct.
- (5) The accounts of SV including the profit and loss accounts and balance sheet shall be examined by the auditor or auditors at least once in every year.
- (6) For each financial year, the Board must ensure that the requirements under the Act relating to the financial statements of SV are met.
- (7) Without limiting subclause 16C (1), those requirements include—
  - a) the preparation of the financial statements;
  - b) if required, the review or auditing of the financial statements;
  - c) the certification of the financial statements by the Board;
  - d) the submission of the financial statements to the Annual General Meeting of SV;
  - e) the lodgement with the Registrar of the financial statements and accompanying reports, certificates, statements and fee.

- (8) SV must retain the financial records for 7 years after the transactions covered by the records are completed.

**D. Secretary**

- (1) The Secretary must perform any duty or function required under the Act to be performed by the Secretary.
- (2) The Secretary must—
- a) maintain the Register in accordance with Clause 13;
  - b) keep custody of the common seal (if any) of SV and all [Relevant Documents](#);
  - c) subject to the Act, [the Privacy Law](#) and the Constitution, provide Members with access to the Register and the Relevant Documents;
  - d) perform any other duty or function imposed on the Secretary by the Constitution or the Act; and,
  - e) give to the Registrar notice of his or her appointment within 14 days after the appointment.
- (2) A request for inspection may be refused by the Secretary where:
- a) such documents relate to confidential, personal, employment, commercial or legal matters;
  - b) to do so may be prejudicial to the interests of SV; or
  - c) SV is legally entitled or obliged to do so.

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## 17. Grievances and Discipline

- (1) This section does not apply to the subject matter of any Grievance or Disciplinary Action that is covered by the Safe Sport Framework and such matters must be dealt with in accordance with that document.
- (2) The Board shall make a By Law that deals with Grievances and Disciplinary Action (**Grievance and Discipline By Law**) provided that such By Law must ensure that the principles of natural justice are preserved in dealing with such Grievances and Disciplinary Action.

### *Grievances*

- (3) Subject to subclause 17 (1) where a Member has a Grievance arising from their involvement in the activities of SV, whatever that may be, with;
- a) another Member;
  - b) a Director or employee of SV;

- c) the Board; or
- d) SV

such Grievance shall be dealt with in accordance with the Grievance and Discipline By Law.

*Disciplinary Action*

- (4) Subject to subclause 17 (1) SV may take Disciplinary Action against a Member or other person (in this clause 17 referred to as **Other Person**) bound by:
  - (i) the Constitution,
  - (ii) the By Laws,
  - (iii) any other rule, regulation or policy of SV; or
  - (iv) a resolution or determination of the Board;

(in this clause 17 referred to as **SV Rules**) where SV has a reasonable belief that the Member or Other Person has:

  - a) breached, refused, failed or neglected to comply with any one or more of the SV Rules:
  - b) engaged in conduct which is or is reasonably likely to be prejudicial to SV;
  - c) acted in a manner which is unbecoming of a Member or is or is reasonably likely to be prejudicial to the Objects or the interests of SV; or
  - d) by the Member's conduct or omission brought or is reasonably likely to bring SV, SAL, FINA or Swimming into disrepute.
- (5) Any such Disciplinary Action will be taken in accordance with the Grievance and Discipline By Law and each Member and Other Person submits unreservedly to the jurisdiction, procedures, penalties and appeal mechanisms (if any) of SV set out in that By Law which shall be final and binding.

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## 18. The Council

- (1) There shall be established a Council which shall consist of:
  - a) The members of the Board;
  - b) 1 Delegate from each Country District;
  - c) 2 Delegates from each Metropolitan District; and
  - d) All Life Members
- (2) The Board may invite other persons to attend meetings of Council as it sees fit.

- (3) Council shall meet at least quarterly and shall:
    - a) receive reports from Board members for dissemination within their District;  
and
    - b) advise the Board on matters affecting their District and swimming in general.
  - (4) The Board shall not be bound by decisions of Council.
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## **19. General Provisions**

### **A. *Addition, alteration or amendment***

No addition, alteration or amendment to this Constitution may be made unless the same has been approved by a [Special Resolution](#).

### **B. *Winding up***

- (1) Subject to this clause SV may be wound up or dissolved in accordance with the Act.
- (2) The liability of Members is limited in accordance with the Act.
- (3) If SV is wound up or dissolved each Member who is a Member at the time of or within 12 months of the winding up or dissolution undertakes to contribute to the assets of SV for the payment of debts and liabilities of SV contracted before the time at which the Member ceases to be a Member and the costs charges and expenses of winding up or dissolution and for an adjustment of the rights of contributors among themselves such amount as may be required not exceeding one dollar (\$1).
- (4) Any surplus assets or property of SV remaining after the conclusion of the winding up or dissolution of SV shall:
  - a) not be paid to or distributed amongst Members; and
  - b) must be paid or distributed to SAL or such other organisation which has objects similar to the Objects and which prohibits the distribution of its income and property amongst its Members at least to the same extent as is imposed on SV by Clause 5 of the Constitution.

### **C. *Notices***

- (1) 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.

- (2) 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 2 business days after posting.
- (3) 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.
- (4) 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.

**D. *Patrons and Vice Patrons***

On the recommendation of the Board SV may, at its Annual General Meeting, appoint a Chief Patron and such other Patrons and Vice Patrons as it considers necessary.

**E. *Jurisdiction and enforceability***

- (1) Each Member submits to the non exclusive jurisdiction of the courts of Victoria and any courts which may hear appeals therefrom.
- (2) Any provision of, or the application of any provision of, these clauses which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- (3) Any provision of, or the application of any provision of, these clauses which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.