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Associations Incorporation Act 2015 – Western Australia

Swimming WA Incorporated

Constitution

The amendments to the Association's rules have been accepted with effect from 8th October 2022

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Part One Preliminary

1. Terms used

In this Constitution unless the contrary intention appears -

Act means *Associations Incorporation Act 2015 (WA)*.

Affiliate Entity means an organisation as defined under Rule 8.3.

Annual General Meeting means a meeting referred to in Rule 38.

Appointed Director means a director appointed under Rule 21.3.

Association or Swimming WA means the incorporated association to which these Rules apply.

Board means the body consisting of the Directors under Rule 20.

Chief Executive Officer means the person who is appointed by the Board under Rule 36.

Commissioner means the person for the time being designated under section 153 of the Act.

Club Swimmer means a natural person as defined under Rule 8.5.

Club Non-Swimmer means a natural person as defined under Rule 8.6.

Delegate means the person appointed in writing from time to time by a Member Club, Region or Affiliate in accordance with Rule 41 to act for and on behalf of that Member at General Meetings or otherwise.

Director means a member of the Board elected or appointed in accordance with this Constitution and includes the terms **Elected Director** and **Appointed Director**.

Dispute means disputes as defined in Rule 15.

Elected Director means a director elected under Rule 21.2.

Entity Member means a Member defined in Rule 8.1(a).

Ex-Officio means a person appointed to the Board or a board committee by virtue of their position who has no voting rights.

Financial records includes —

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers;
- (b) documents of prime entry;

- (c) working papers and other documents needed to explain —
 - (i) the methods by which financial statements are prepared; and
 - (ii) adjustments to be made in preparing financial statements.

Financial Report of a tier 2 association or a tier 3 association has the meaning given in section 63 of the Act.

Financial Statements means the financial statements in relation to the Association required under Part 5 Division 3 of the Act.

Financial Year means the period defined in Rule 5.

General Meeting means the Annual General Meeting or any Special General Meeting.

Honorary Member means a natural person as defined in Rule 8.9.

Individual Member means a natural person defined in Rule 8.1(b).

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 Swimming WA or any event, competition or activity of or conducted, promoted or administered by Swimming WA.

Life Member means a natural person as defined in Rule 8.8.

Member means a entity or person referred to in Rule 8.

Member Club means a swimming club that has been recognised by the Board as a Member Club in accordance with Rule 8.2.

National Integrity Framework means the policy and rules adopted and published by SAL from time to time and known as the “*National Integrity Framework* “ (or such other name approved by SAL from time to time).

Non-delegable duty means a duty imposed on the Board by the Act or another law.

Objects means the objects of the Association defined in Rule 4.

Poll means a count of votes.

Policy means a policy adopted by the Board.

President means the Director holding office as the President of Swimming WA in accordance with Rule 23.

Record means any records of information however recorded and includes:

- (a) anything on which there is writing;
- (b) anything on which information has been stored or recorded, either mechanically,

- magnetically or electronically;
- (c) anything from which images, sounds or writings can be reproduced with or without the aid of anything else.

Records of the Association, includes the following:

- (a) a register;
- (b) Financial Records, Financial Statements or Financial Reports, however compiled, recorded or stored;
- (c) a document; and
- (d) any other record of information.

Region means a group of Member Clubs in a defined geographical area that has been recognised by the Board pursuant to Rule 8.

Register means the register of Members established under Rule 11.

Rules means the rules of the Association contained in this Constitution.

Seal means the common seal of Swimming WA.

SAL means Swimming Australia Limited (ACN 109 333 628).

Special General Meeting means a general meeting other than the Annual General Meeting.

Special Resolution means a resolution passed by Member Clubs at a General Meeting in accordance with section 51 of the Act.

Unattached Member means a natural person as defined in Rule 8.7.

2. Interpretation

In this Constitution unless the context otherwise requires:

- (a) a reference to a function includes a reference to a power, authority and duty;
- (b) words in the singular include the plural and vice versa;
- (c) words importing any gender include the other genders;
- (d) a reference to a person includes an organisation, corporation, company, trust, partnership, entity or incorporated association;
- (e) a reference to legislation or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) a reference to writing includes printing, lithography, photography and other modes of representing or reproducing words in a visible form;

- (g) all headings contained in this Constitution are for guidance and do not form part of the substance of the Constitution.

3. Name

The name of the Association is Swimming WA Incorporated (Swimming WA).

4. Objects

4.1 The Association is the peak body for the administration of swimming in Western Australia.

4.2 The Objects for which Swimming WA is established are to:

- (a) promote, encourage and develop participation in swimming and related activities as a lifelong contribution to deliver a healthy and safer community;
- (b) actively grow the sport of swimming in Western Australia;
- (c) enhance the sustainability of Swimming WA and its membership;
- (d) align infrastructure development and access to facilities with growth of participation;
- (e) increase the profile of swimming in Western Australia;
- (f) deliver competition and corporate events to the highest standards;
- (g) deliver sustained high performance by WA swimmers, coaches and officials; and
- (h) progressively and inclusively lead swimming and the aquatic sports in WA through good governance and management.

5. Financial Year

The financial year of the Association is the period commencing 1 July and ending 30 June in the following year.

Part Two Association to be Not for Profit Body

6. Sources and application of Funds

6.1 The funds of Swimming WA may be derived from entrance fees, annual subscriptions, donations, fund-raising activities, grants, interest and any other sources approved by the Board.

6.2 The property and income of Swimming WA must be applied solely towards the promotion of the Objects of the Association and no part of that property or income may be paid or distributed, directly or indirectly, to any member, except in good faith in the promotion of those objects.

7. Payments to Members and Directors

7.1 Nothing contained in Rule 6.2 shall prevent payment in good faith to any Member for:

- (a) services rendered to Swimming WA whether as an employee or otherwise;
 - (b) goods supplied to Swimming WA in the ordinary and usual course of business;
 - (c) interest on money borrowed from any Member;
 - (d) rent for premises demised or let by any Member to Swimming WA;
 - (e) the reimbursement of reasonable expenses properly incurred by the Member on behalf of Swimming WA; or
 - (f) any other reason.
- 7.2 Unless approved by the Board, a Director is not entitled to be paid out of the funds of the Association for any out-of-pocket expenses for travel and accommodation incurred:
- (a) attending a Board meeting;
 - (b) attending a General Meeting; or
 - (c) otherwise in connection with the Association's business.

Part Three Membership

8. Categories of Member and their rights and obligations

8.1 The Members of the Association shall consist of the following categories:

- (a) Entity Members, including:
 - (i) Member Club;
 - (ii) Affiliate Entity;
 - (iii) Region; and
 - (iv) such new categories (or subcategories) of Entity Member created by the Board from time to time. Any new category of Entity Member established by the Board cannot be granted voting rights without the approval of the Members of the Association in General Meeting.
- (b) Individual Members, including:
 - (i) Club Swimmer;
 - (ii) Club Non-Swimmer;
 - (iii) Unattached Member;
 - (iv) Life Member;
 - (v) Honorary Member; and
 - (vi) such new categories of Individual Member created by the Board from time to time. Any new category of Individual Member established by the Board cannot be granted voting rights without the approval of the Members of the Association in General Meeting

- 8.2 **Member Club** – to be, or remain, eligible for membership a Member Club must:
- (a) be incorporated under the Act, unless this requirement is waived by the Board (and will be subject to such other requirements imposed by the Board from time to time for unincorporated Member Clubs);
 - (b) sign and comply with the Association’s Annual Membership Affiliation Agreement;
 - (c) maintain the minimum number of Individual Members, as determined by the Board from time to time; and
 - (d) be represented by their Delegate who shall have the right to attend, speak, and vote at General Meetings for and on behalf of their Member Club.
- 8.3 **Affiliate Entity** – to be, or remain, eligible for membership an Affiliate Entity must:
- (a) be incorporated under the Act, unless this requirement is waived by the Board (and will be subject to such other requirements imposed by the Board from time to time for unincorporated Affiliates);
 - (b) sign and comply with the Association’s Annual Membership Affiliation Agreement; and
 - (c) will be represented by their Delegate who shall have the right to attend General Meetings but shall have no right to speak, or vote at General Meetings.
- 8.4 **Regions** – to be, or remain, eligible for membership a Region must:
- (a) be incorporated under the Act to represent a group of geographically bounded Member Clubs;
 - (b) sign and comply with the Association’s Annual Membership Affiliation Agreement; and
 - (c) will be represented by their Delegate who shall have the right to attend General Meetings but shall have no right to speak, or vote at General Meetings.
- 8.5 **Club Swimmer** – to be, or remain, eligible for membership a Club Swimmer must:
- (a) be a natural person;
 - (b) be a member of a Member Club;
 - (c) satisfy the requirements for this membership category or subcategory as determined by the Board from time to time; and
 - (d) will have the right to attend General Meetings but shall have no right to speak or vote at General Meetings.
- 8.6 **Club Non-Swimmer** – to be, or remain, eligible for membership a Club Non-Swimmer must:
- (a) be a natural person;
 - (b) be a member of a Member Club;
 - (c) satisfy the requirements for this membership category or subcategory determined by the Board from time to time; and

- (d) will have the right to attend General Meetings but shall have no right to speak or vote at General Meetings.
- 8.7 **Unattached Member** – to be, or remain, eligible for membership an Unattached Member must:
- (a) be a natural person;
 - (b) be approved by the Board to be an Unattached Member; and
 - (c) satisfy the requirements for this membership category or subcategory determined by the Board from time to time; and
 - (d) will have the right to attend General Meetings but shall have no right to speak or vote at General Meetings.
- 8.8 **Life Member** – to be, or remain, eligible for membership a Life Member must:
- (a) be a natural person;
 - (b) be nominated by the Board, and meet the criteria determined by the Board from time to time;
 - (c) be conferred life members by a resolution of the AGM; and
 - (d) will have the right to attend General Meetings but shall have no right to speak or vote at General Meetings.
- 8.9 **Honorary Member** – to be, or remain, eligible for membership an Honorary Member must:
- (a) be a natural person;
 - (b) be appointed by the Board, and meet the criteria determined by the Board from time to time; and
 - (c) will have the right to attend General Meetings but shall have no right to speak or vote at General Meetings.

9. [Becoming a Member](#)

- 9.1 An application to become an Entity Member, or to renew membership, must be:
- (a) in writing on the form prescribed from time to time by the Board;
 - (b) accompanied by a signed Annual Membership Affiliation Agreement; and
 - (c) accompanied by the appropriate membership fee (if any).
- 9.2 An application to become an Individual Membership, or to renew membership must be:
- (a) in writing on the form prescribed from time to time by the Board;
 - (b) made in conjunction with an application to become, or renew membership of a Member Club; and
 - (c) accompanied by the appropriate membership fee (if any).

- 9.3 The Board may accept or reject an application for membership, and shall not be required or compelled to provide any reason for such acceptance or rejection.
- 9.4 The applicant shall become a Member on the day the Board accepts the application.
- 9.5 Where the Board rejects an application for membership, any fees forwarded with the application shall be refunded to the applicant.

10. Membership Fees

- 10.1 The Board shall determine the annual membership fees, and any levies payable by Members, or any category (or subcategory) of Member, together with the due date for payment of these membership fees.
- 10.2 The annual membership year for Entity Members shall be determined by the Board from time to time.
- 10.3 The annual membership year for Individual Members shall be determined by the Board from time to time.
- 10.4 If a Member has not paid the annual membership fee within 3 months after the due date, the Member ceases to be a Member on the expiry of that period.
- 10.5 If a person (being an Individual Member) who has ceased to be a Member under Rule 10.4 offers to pay the annual membership fees after that period has expired:
 - (a) the Board may, in its discretion, accept that payment; and
 - (b) if the payment is accepted, the person's membership is reinstated from the date the payment is accepted.
- 10.6 Life Members and Honorary Members shall not be required to pay any membership fees.

11. Register of Members

- 11.1 The Chief Executive Officer is responsible to maintain the Register of Members and shall ensure that the Register of Members is kept up to date with the information as required under the Act including:
 - (a) Member's name;
 - (b) Member's address which can be:
 - (i) residential address;
 - (ii) postal address; or
 - (iii) email address.
 - (c) class of membership to which each Member belongs; and
 - (d) date on which each member becomes a Member.

12. Effect of Membership

12.1 Members acknowledge and agree that:

- (a) this Constitution constitutes a contract between each of them and Swimming WA and that they are bound by and shall comply with this Constitution and Policies and any determination or any resolution which may be made or passed by the Board or any authorised committee;
- (b) by submitting to this Constitution and the Policies they are subject to the jurisdiction of Swimming WA;
- (c) this Constitution is made in pursuit of a common object, namely the mutual and collective benefit of Swimming WA, the Members, the sport of swimming and its related disciplines;
- (d) this Constitution and Policies are necessary and reasonable for promoting the objects of Swimming WA particularly the advancement and protection of the sport of swimming or its related disciplines;
- (e) they will act for and on behalf of the interests of the sport of swimming or its related disciplines, Swimming WA and the Members; and
- (f) they are entitled to all benefits, advantages, privileges and services of membership.

13. When membership ceases

13.1 A person ceases to be a Member when any of the following take place:

- (a) for a member who is an individual, the individual dies;
- (b) for a member who is a body corporate, the body corporate is wound up;
- (c) the Member resigns from the Association under Rule 13.2;
- (d) the Member fails to meet the Membership requirements determined by the Board under Rule 8;
- (e) the Member ceases to be a member under Rule 18.3(a) (expulsion); or
- (f) the Club Swimmer Member or Club Non-Swimmer Member ceases to be a member of a Member Club, unless approval is given by the Board to become an Unattached Member.

13.2 A Member may resign by giving written notice of their resignation to both the Chief Executive Officer and the Secretary of their Member Club (unless an Unattached Member).

13.3 The resignation shall take effect when the notice is received by the Chief Executive Officer

13.4 Where a Member Club ceases to be a Member of the Association,

- (a) any natural person who is a member of that Member Club shall remain a Member of the Association for a period three months; and
 - (b) before the end of that three month period, the person must become a member of another Member Club or they shall cease to be a Member of the Association.
- 13.5 A Member who or which ceases to be a Member, for whatever reason, shall forfeit all rights in and claim upon the Association or its property including Intellectual Property.
- (a) Any documents, records or other property of the Association in the possession, custody or control of that Member shall be returned to the Association immediately.
 - (b) The rights of a Member are not transferable and end when membership ceases.
- 13.6 The appointment of a Delegate shall lapse immediately on cessation of the Delegate's membership of the Member Club, Region, or Affiliate Entity (as the context requires) which appointed the Delegate.
- 13.7 A Member who has been expelled as a Member of the Association under Rule 18.3(a), or whose Membership has ceased under this Constitution may be reinstated as a Member at the discretion of the Board, on application being made by the Member in accordance with this Constitution.

Part Four Dispute Resolution, Mediation and Disciplinary Action

14. Application of the National Integrity Framework

- 14.1 Where the Complaints, Disputes and Discipline Policy under the National Integrity Framework applies (or any equivalent policy approved by SAL) the matter will be dealt with in accordance with that Policy.
- 14.2 Where the Complaints, Disputes and Discipline Policy under the National Integrity Framework does not apply (or any equivalent policy approved by SAL) the matter will be dealt with pursuant to this Part.

15. Dispute resolution procedure

- 15.1 This Rule applies to Disputes:
- (a) between Members; or
 - (b) between one or Members and the Association.
- 15.2 The parties involved in the Dispute must try to resolve the Dispute between themselves within 14 days following the occurrence of the Dispute.
- 15.3 In the event that a Dispute is not resolved within the period in Rule 15.2, any party to the Dispute may refer the matter in writing to the Chief Executive Officer stating:
- (a) the parties to the Dispute;

(b) the matters that are the subject of the Dispute; and
requesting the Dispute be referred to mediation in accordance with Rule 17.

15.4 The cost of the mediation is to be paid by the party or parties to the mediation that requested the appointment of the mediator.

16. Appointment of mediator

16.1 The mediator must be a person chosen by agreement between the parties to the Dispute.

16.2 If there is no agreement for the purposes of Rule 15.2, the Board must appoint the mediator.

16.3 Once the mediator has accepted the appointment, the parties to the Dispute must comply with the mediator's instructions.

16.3 Any mediator appointed may be a Member or former Member of the Association but must not:

- (a) have a personal interest in the Dispute; and
- (b) be biased in favour of or against any party to the mediation.

17. Conduct of mediation

17.1 All parties to a Dispute must attend the mediation and attempt in good faith to settle the Dispute within 30 days of the appointment of the mediator.

17.2 The mediation shall be conducted pursuant to the processes and procedures determined by the Board from time to time.

17.4 When conducting the mediation, the mediator must:

- (a) allow those involved a reasonable chance to be heard;
- (b) allow those involved a reasonable chance to review any written statements;
- (c) ensure that those involved are given natural justice; and
- (d) not make a decision on the grievance or dispute.

17.5 If —

- (a) mediation takes place because a Member whose membership is suspended or who is expelled from the Association gives notice under Rule 18(3); and
- (b) as the result of the mediation, the decision to suspend the Member's membership or expel the Member is revoked,

that revocation does not affect the validity of any decision made at a Board meeting or a General Meeting during the period of suspension or expulsion of that Member.

18. Disciplinary Action

18.1 Subject to Rule 14, 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 Policies or any resolution or determination of the Board or any duly authorised committee; or
- (b) acted in a manner unbecoming of a Member or prejudicial to the objects and interests of Swimming WA and/or the sport of Swimming and its related disciplines; or
- (c) brought Swimming WA, the sport of swimming or its related disciplines into disrepute;

the Board may commence disciplinary proceedings against that Member in accordance with processes and procedures determined by the Board and that Member will be subject to, and submits to the jurisdiction, procedures, penalties and appeal mechanisms as determined by the Board.

18.2 Disciplinary procedures must be completed as soon as reasonably practical.

18.3 The Board may:

- (a) suspend the Member's membership or expel the Member from the Association with immediate effect; and
- (b) give the Member written notice of its decision, and the reasons for the decision, within 7 days after the Board meeting at which the decision is made.

18.4 The Board may appoint a Judiciary Committee to deal with any disciplinary matter referred to it. Such a Judiciary Committee shall operate in accordance with the procedures determined by the Board.

18.5 Where a Member is suspended pursuant to Rule 18.3, their rights as a Member pursuant to this Constitution are suspended for the period of suspension, including but not limited to:

- (a) their right to compete, officiate or coach at Club, Swimming WA or SAL meets anywhere in Australia or internationally; and
- (b) their right to attend and vote or engage in debate at Annual General Meetings or General Meetings of the Association.

Part Five The Board

19. Authority to Act

19.1 Subject to the Act and this Constitution, the business of the Association shall be managed, and the powers of the Association shall be exercised, by the Board.

19.2 In particular, the Board as the governing body for the sport of swimming in Western Australia shall be responsible for acting on State and local issues in accordance with the Objects and shall operate for the benefit of the Members and the community throughout Western Australia and shall govern the sport of swimming in Western Australia in accordance with this Constitution and in particular the Objects.

- 19.3 Subject to the Act, this Constitution, and any resolution passed at a General Meeting, the Board has the power to do all things necessary or convenient to be done for the proper management of the affairs of the Association.
- 19.4 The Board must take all reasonable steps to ensure that the Association complies with the Act and the Constitution.

20. Board Composition and Director Qualifications

- 20.1 The Board shall comprise:
- (a) five Elected Directors elected in accordance with Rule 21.2;
 - (b) between two and four Appointed Directors appointed in accordance with Rule 21.3.
- 20.2 Director's must:
- (a) be 18 years or older; and
 - (b) become Members within 30 days of their election or appointment.
- 20.3 A Director must not:
- (a) be ineligible to accept an appointment, or act, as a Director under section 39 of the Act
 - (b) be employed by the Association or a Member Club, Region, or Affiliate Entity;
 - (c) have served as Chief Executive Officer within the previous three years;
 - (d) hold the position of President, Vice-President, Secretary, or Treasurer in a Member Club, Region or Affiliate Entity (or resign from a such position within 30 days of their election or appointment); or
 - (e) be a Technical Official (unless the Board in its absolute discretion, approves them being a Technical Official while they are also a Director).

21. Election, Appointment and Term of Directors

21.1 **Nomination of Elected Directors**

- (a) At least 42 days before an Annual General Meeting, the Chief Executive Officer must send written notice to all Members stating the number of Elected Directors which are up for election and seeking nominations from Members.
- (b) Nominations must be:
 - i. in writing on the form provided in the General Meetings Policy;
 - ii. signed by the nominee;
 - iii. signed by a witness, who shall be a Member of Swimming WA over the age of 18 years.
- (c) Nominations must be received by the Chief Executive Officer at least 21 days prior to the Annual General Meeting.

21.2 Election of Directors

- (a) The Board may determine the procedures for electing Directors either at an Annual General Meeting, or through the use of electronic voting referred to in Rule 46, prior to an Annual General Meeting.
- (b) The Board will publish the voting procedure for an Annual General Meeting when the notice is given to Members under Rule 21.1(a).
- (c) If the number of people nominating for the position of Elected Director is not greater than the number to be elected, the chairperson of the Annual General Meeting must declare each of those people to be elected as Elected Directors.
- (d) If the number of nominations exceeds the number of vacancies to be filled, a vote shall be taken.
- (e) Any remaining vacant Director positions are casual vacancies, to be dealt with in accordance with Rule 27.

21.3 Appointed Directors

- (a) The Directors shall appoint between two and four Appointed Directors.
- (b) The appointed Directors may have specific skills, background, experience, or gender which complement the Board composition.
- (c) The Board will consider the recommendations of the Nominations Committee (appointed in accordance with Rule 35,2) in appointing the Appointed Directors.

21.4 Term of Office for Directors

- (a) The term of an Elected Director shall commence at the conclusion of the Annual General Meeting at which they are elected and conclude at the end of the second Annual General Meeting following their election.
- (b) The term of an Appointed Director shall commence at the end of first Board meeting after the Annual General Meeting and conclude at the end of the first Board meeting following the second Annual General Meeting after their appointment.
- (c) The term of a Director appointed to fill a casual vacancy shall commence on the date of their appointment and conclude at the end of the term of the Director vacancy to which they were appointed.
- (d) A person may not serve a continuous term of more than six years as an Elected Director or Appointed Director. Part terms are not considered in this requirement.
- (e) Despite clause 21.4(d) a person is eligible to be an Elected Director or Appointed Director 12 months after the conclusion of their previous term as a Director.

22. Transitional Provisions

- 22.1 Directors holding office at the time of the adoption of this Constitution shall have terms in accordance with the previous Constitution. In particular Elected Directors elected at the Annual General Meeting in 2022 shall have 3 year terms.

23. President

- 23.1 If the office of President becomes vacant, the Directors must elect a Director to fill the vacancy, and the elected President will hold office for the balance of their current term as a Director.
- 23.2 The process for the election of the President will be determined by the Board.
- 23.3 The President may resign as President (but not as Director) by giving notice in writing to the Chief Executive Officer.
- 23.4 The President may be removed as President by a written resolution of the majority of the Board of Directors. In this case the President would remain a Director.

24. Vice-President

- 24.1 If the office of Vice-President becomes vacant, the Directors must elect a Director to fill the vacancy, and the elected Vice-President will hold office for the balance of their current term as a Director.
- 24.2 The process for the election of the Vice-President will be determined by the Board.
- 24.3 The Vice-President may resign as Vice-President (but not as Director) by giving notice in writing to the Chief Executive Officer.
- 24.4 The Vice-President may be removed as Vice-President by a written resolution of the majority of the Board of Directors. In this case the Vice-President would remain a Director.
- 24.5 If the President is unable or unwilling to act, the Vice-President will undertake the role of the President. If there is no President, then the Vice-President will act as President until the Board appoints a new President.

25. Resignation or Removal of Director

- 25.1 A Director may resign by notice in writing to the President or, if the resigning Director is the President, by notice in writing to the Chief Executive Officer.
- 25.2 The Director's resignation takes effect when the notice is received by the President or Chief Executive Officer (if resigning Director is the President).
- 25.3 At a General Meeting, the Association may by resolution:
 - (a) remove a Director from office; and
 - (b) elect a Member who is eligible under Rule 20 to fill the vacant position.

26. When a person ceases to be a Director

- 26.1 A person ceases to be a Director if the person:
 - (a) dies;
 - (b) resigns, or is removed from office under Rule 25;

- (c) becomes ineligible to accept an appointment or act as a Director under section 39 of the Act;
- (d) becomes permanently unable to act as a Director because of a mental or physical disability; or
- (e) fails to attend three consecutive Board Meetings, of which the person has been given notice, without having notified the Board that the person will be unable to attend.

27. Filling Casual Vacancies

27.1 The Board may appoint a person who is eligible under Rule 20 to fill a position on the Board that:

- (a) has become vacant under Rule 26; or
- (b) was not filled by election at the most recent Annual General Meeting and so remained unfilled under Rule 21.2(e); and

27.2 A person appointed under Rule 27.1 as a Director holds office for the remainder of the term of the Director they replaced.

28. Remaining Directors may act

28.1 Subject to the requirement for a quorum under Rule 32.1 the Board may continue to act despite any vacancy in its membership.

28.2 If there are fewer Directors than required for a quorum, the Board may act only for the purpose of appointing Directors under Rule 27, or convening a General Meeting.

29. Validity of Acts

The acts of a Board, a Director, or member of a Board Committee, are valid despite any defect that may afterwards be discovered in the election, appointment or qualification of a Director or member of a Board committee.

30. Board Meetings

30.1 The Board shall meet at least ten times each year.

30.2 The President shall be the chairperson at each Board meeting. If the President is unable or unwilling to act as chairperson, the Vice-President shall be the chairperson at that Board Meeting. If both the President and the Vice-President are unable or unwilling to act as chairperson, the Directors shall choose one of their number to be the chairperson for that meeting only.

30.3 Special Board meetings may be convened by the President, or any two Directors.

30.4 The Board shall approve a Board Charter which sets out the procedures and order of business for meetings of the Board.

31. Use of technology to be present at Board meetings

- 31.1 The presence of a Director at a Board meeting need not be by attendance in person but may be by that Director and each other Director at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.
- 31.2 A Director who participates in a Board meeting as allowed under Rule 31.1 is taken to be present at the meeting and, if the Director votes at the meeting, the Director is taken to have voted in person.

32. Quorum

- 32.1 At a Board meeting 50% of current Directors, rounded down to the nearest whole number plus one, constitutes a quorum.
- 32.2 Subject to Rule 28.2, no business is to be conducted at a Board meeting unless a quorum is present.

33. Voting at Board Meetings

- 33.1 Each Director present at a Board meeting has one vote on any question arising at the meeting.
- 33.2 A motion is carried if a majority of the Directors present at the board meeting vote in favour of the motion.
- 33.3 If the votes are equally divided on a question, the chairperson has a second, casting vote.

34. Minutes of Board Meetings

- 34.1 The Board must ensure that minutes are taken and kept of each Board meeting.
- 34.2 The chairperson must ensure that the minutes of a Board meeting are reviewed and signed as correct by:
 - (a) the chairperson of the meeting; or
 - (b) the chairperson of the next Board Meeting.

35. Directors' Interests

Directors have an obligation to perform their official duties in the interest of the Association and its Members and not to use their position or authority for personal gain or to cause detriment to others. This includes identifying, declaring and appropriately managing any conflicts of interest as prescribed in the Board Charter referred to in Rule 30.4 and at law.

36. Board Committees

- 36.1 The Board may establish one or more Board Committees.

- 36.2 The Board shall establish a Nominations Committee which shall advise the Board and Club Members on the skills and experience of candidates to be either Appointed Directors or Elected Directors, with a view of having a Board with a broad range of skills and experience.
- 36.3 A Board committee may consist of the number of people, whether or not Directors, that the Board considers appropriate.
- 36.4 Subject to any directions and delegation (in writing) given by the Board, a Board Committee may meet and conduct business as it considers appropriate.

37. Chief Executive Officer

- 37.1 The Chief Executive Officer shall:
- (a) be appointed by the Board for such term and on such conditions as it may determine;
 - (b) be an Ex-Officio member of the Board and shall act as and perform the duties of Secretary and Public Officer of Swimming WA;
 - (c) administer and manage Swimming WA in accordance with this Constitution and the Policies.
- 37.2 The role, responsibilities and duties of the Chief Executive Officer shall be in accordance with the job description, as determined and approved by the Board from time to time.
- 37.3 Subject to the Act, this Constitution, the Policies and any directive of the Board, the Chief Executive Officer has the power to do all things necessary or convenient to be done for the proper management of the day-to-day operations of Swimming WA.
- 37.4 The Chief Executive Officer may employ staff from time to time for a period and on conditions as determined by the Chief Executive Officer.

38. Delegations

- 38.1 The Board may by instrument in writing, delegate such functions as are specified in the instrument, other than:
- (a) the power to delegate; and
 - (b) a non-delegable duty.
- 38.2 The delegation does not prevent the Board from exercising or performing at any time the power or duty delegated.
- 38.3 Any act or thing done by a Board committee or the Chief Executive Officer under the delegation has the same force and effect as if it had been done by the Board.
- 38.4 The Board may, in writing, amend or revoke the delegation.

Part Six General Meetings of the Association

39. Annual General Meeting

39.1 The Board must determine the date, time and place of the Annual General Meeting.

39.2 The Annual General Meeting must be held no more than 6 months after the end of the Association's financial year.

39.3 The ordinary business of the Annual General Meeting is as follows:

- (a) to confirm the minutes of the previous annual general meeting and of any special general meeting held since then if the minutes of that meeting have not yet been confirmed;
- (b) to receive and consider —
 - (i) the Board's annual report on the Association's activities during the preceding financial year; and
 - (ii) if the Association is a tier 1 association, the financial statements of the Association for the preceding financial year presented under Part 5 of the Act; and
 - (iii) if the Association is a tier 2 association or a tier 3 association, the financial report of the Association for the preceding financial year presented under Part 5 of the Act;
 - (iv) if required to be presented for consideration under Part 5 of the Act, a copy of the report of the review or auditor's report on the financial statements or financial report;
- (c) to elect the Directors;
- (d) if applicable, to appoint or remove a reviewer or auditor of the Association in accordance with the Act;
- (e) any other business of which notice has been given in accordance with these Rules may be conducted at the annual general meeting.

40. General Meetings

All General Meetings other than the Annual General Meeting shall be Special General Meetings and shall be held in accordance with this Constitution and any procedures determined by the Board from time to time.

41. Chairperson

41.1 The President shall preside as chairperson at every General Meeting.

41.2 If the President is unable or unwilling to act as chairperson, the Vice-President shall act as chairperson of that General Meeting only.

41.3 If both the President and Vice-President are unwilling or unable to act as chairperson, the Directors shall choose one of their number to act as chairperson for that meeting only.

42. Delegates

42.1 Each Member Club, Region, and Affiliate Entity are represented by one Delegate.

42.2 A Delegate must:

- (a) be a natural person over the age of 18 years;
- (b) be a Member of the Association and of the Member Club, Region or Affiliate Entity that they represent;
- (c) be appointed by the appointing Member Club, Region, or Affiliate Entity in accordance with the procedures determined by the appointing entity;
- (d) not be a Director of Swimming WA;
- (e) not be an employee of Swimming WA; and
- (f) not be a Delegate for more than one Member Club, Region, or Affiliate Entity.

42.3 A Member Club, Region, or Affiliate Entity must advise the Chief Executive Officer within 14 days of any change to their nominated Delegate.

43. Notice of Motion

43.1 Club Members and Directors may submit notices of motion for inclusion as special business at a General Meeting.

43.2 All notices of motion must be submitted in writing to the Chief Executive Officer not less than 28 days (excluding receiving date and meeting date) prior to the General Meeting.

44. Notice of General Meetings

44.1 The Chief Executive Officer or, in the case of a General Meeting convened under Rule 52.2, the Members convening the meeting, must give to each Member:

- (a) at least 42 days' notice of an Annual General Meeting;
- (b) at least 14 days' notice of a General Meeting other than the Annual General Meeting;
or
- (c) at least 21 days' notice of a General Meeting if a Special Resolution is to be proposed at the meeting.

44.2 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;
- (c) if the meeting is the Annual General Meeting, include the names of the Members who have nominated for election to the Board under Rule 21.1; and
- (d) if a Special Resolution is proposed:—
 - (i) set out the wording of the proposed resolution as required by section 51(4) of the Act; and
 - (ii) state that the resolution is intended to be proposed as a Special Resolution.

45. Entitlement to Attend General Meeting

45.1 All Members are entitled to attend General Meetings.

45.3 Notwithstanding any other Rule, no Member shall be represented at, or take part in a General Meeting, unless all monies referred to in Rule 10 as being due and payable to Swimming WA are paid.

46. Use of technology to be present at General Meetings

46.1 The presence of a Delegate of a Member Club at a General Meeting need not be by attendance in person but may be by that Delegate and each other Delegate at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.

46.2 A Delegate of a Member Club who participates in a General Meeting as allowed under Rule 46.1 is taken to be present at the meeting and, if the Delegate votes at the meeting, the Delegate is taken to have voted in person [and such Delegate will be counted towards a quorum under Rule 50.1].

47. Electronic Voting

47.1 The Board may decide that a Delegate of a Member Club who is entitled to attend and vote on a resolution (including a Special Resolution) at a General Meeting may cast their vote by providing it to the Association before the meeting by electronic means.

47.2 Where the Board has determined that a Delegate of a Member Club may lodge an electronic vote, the procedures determined by the Board will apply, including:

- (a) the form, method and manner of voting by electronic means; and
- (b) when electronic votes must be received by the Association to be valid and effective.

48. Proxy Voting

48.1 Subject to Rule 47.2, a Delegate may appoint an individual who is a Member a Member Club as his or her proxy to vote and speak on his or her behalf at a general meeting.

48.2 The appointment of a proxy must be in writing and signed by the Delegate making the appointment.

48.3 The number of proxies held by a Delegate will be no more than five.

48.4 If the Board has approved a form for the appointment of a proxy, the Delegate may use that form or any other form —

- (a) that clearly identifies the person appointed as the member's proxy; and
- (b) that has been signed by the member.

48.5 Notice of a General Meeting given to an ordinary member under Rule 52 must —

- (a) state that the member may appoint an individual who is an ordinary member as a proxy for the meeting; and
- (b) include a copy of any form that the committee has approved for the appointment of a proxy.

48.6 A form appointing a proxy must be given to the Chief Executive Officer before the commencement of the general meeting for which the proxy is appointed.

48.7 A form appointing a proxy sent by post or electronically is of no effect unless it is received by the Association not later than 24 hours before the commencement of the meeting.

49. Voting at General Meetings

49.1 A Delegate of a Member Club is entitled to one vote at a General Meeting.

49.2 Except in the case of a Special Resolution, a motion is carried if a majority of Delegates present at the General Meeting vote in favour of the motion.

49.3 If votes are divided equally on a question, the chairperson of the General Meeting has a casting vote (but no deliberate vote).

50. Quorum

50.1 At a General Meeting the higher of 25% of total Member Clubs rounded down to the nearest whole number or ten Member Clubs, constitutes a quorum.

50.2 No business is to be conducted at a General Meeting unless a quorum is present.

50.3 If a quorum is not obtained within 30 minutes of the time appointed for the General Meeting:

(a) in the case of a Special General Meeting convened under Rule 52.2, the meeting will lapse;

(b) in the case of an Annual General Meeting, the meeting will be adjourned to the same day, time and location the following week unless determined otherwise by the chairperson.

51. Adjournment of meeting

51.1 The chairperson of a General Meeting at which a quorum is present may, with the consent of a majority of the Delegates present, adjourn the meeting to another time at the same place or as otherwise determined:

(a) if there is insufficient time to deal with all of the business at hand, to deal with the remaining items of business; or

(b) to give the Members more time to consider an item of business.

51.2 No business may be conducted on the resumption of an adjourned General Meeting other than the business that remained unfinished when the meeting was adjourned.

51.3 Notice of the adjournment of a meeting under this Rule is not required unless the meeting is adjourned for 14 days or more, in which case notice of the meeting must be given in accordance with Rule 44.1.

52. Special General Meetings

52.1 The Board may convene a Special General Meeting.

- 52.2 The Board must convene a Special General Meeting if at least 20% of Delegates require a Special General Meeting to be convened.
- 52.3 The Members requiring a Special General Meeting to be convened must:
- (a) make the requirement by written notice given to the Chief Executive Officer;
 - (b) state in the notice the business to be considered at the meeting; and
 - (c) each sign the notice.
- 52.4 The Special General Meeting must be convened within 28 days after notice is given under Rule 52.3.
- 52.5 If the Board does not convene a Special General Meeting within that 28-day period, the Members requiring the meeting (or any of them) may convene the Special General Meeting.
- 52.6 A Special General Meeting convened by Members:
- (a) must be held within 3 months after the date the original request was made; and
 - (b) may only consider the business stated in the notice by which the request was made.
- 52.7 The Association must reimburse any reasonable expenses incurred by the Members convening a Special General Meeting under Rule 52.5.

53. Special Resolutions

- 53.1 If a Special Resolution is proposed at a General Meeting it must:
- (a) set out the wording of the proposed resolution as required by section 51(4) of the Act; and
- state that the resolution is intended to be proposed as a special resolution in accordance with section 51 of the Act, 52.2 A resolution is a Special Resolution if it is passed by the votes of not less than 75% of the Delegates of Member Clubs present.

54. Determining Whether Resolution Carried

- 54.1 Subject to Rule 54.3, the chairperson of a General Meeting may, on the basis of agreement or disagreement or by a show of hands, declare that a resolution has been;
- (a) carried; or
 - (b) carried unanimously; or
 - (c) carried by a particular majority; or
 - (d) lost.
- 54.2 If the resolution is a Special Resolution, the declaration under Rule 52.1 must identify the resolution as a Special Resolution.
- 54.3 If a poll is demanded on any question by the chairperson of the meeting or by at least three Delegates present in person:
- (a) the poll must be taken at the meeting in the manner determined by the chairperson; and

- (b) the chairperson must declare the determination of the resolution on the basis of the poll.
- 54.4 If a poll is demanded:
 - (a) on a question of an adjournment, the poll must be taken immediately; or
 - (b) on any other question, the poll must be taken before the close of the meeting at a time determined by the chairperson.
- 54.5 A declaration under Rules 54.1 and 54.3 must be entered in the minutes of the meeting, and the entry is, without proof of the voting in relation to the resolution, evidence of how the resolution was determined.
- 55. [Minutes of General Meeting](#)
- 55.1 The Chief Executive Officer, or a person authorised by the Board from time to time, must take and keep minutes of each General Meeting.
- 55.2 The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.
- 55.3 The President must ensure that the minutes of a General Meeting are reviewed and signed as correct by:
 - (a) the chairperson of the meeting; or
 - (b) the chairperson of the next General Meeting.

Part Seven Financial Matters

- 56. [Control of Funds](#)
- 56.1 The Association must open an account or accounts in the name of the Association with a financial institution from which all expenditure of the Association is made and into which all funds received by the Association are deposited.
- 56.2 Subject to any restrictions imposed at a General Meeting, the Board may approve expenditure on behalf of the Association.
- 56.3 The Board may authorise the Chief Executive Officer to expend funds on behalf of the Association up to a specified limit without requiring approval from the Board for each item on which the funds are expended.
- 57. [Financial statements and financial reports](#)
- 57.1 For each Financial Year, the Board must ensure that the requirements imposed on the Association under Part 5 of the Act relating to the financial statements or financial report of the Association are met.
- 57.2 Without limiting Rule 57.1, those requirements include —
 - (a) if the Association is a tier 1 association, the preparation of the financial statements; and

- (b) if the Association is a tier 2 association or tier 3 association, the preparation of the financial report; and
- (c) if required, the review or auditing of the financial statements or financial report, as applicable; and
- (d) the presentation to the annual general meeting of the financial statements or financial report, as applicable; and
- (e) if required, the presentation to the annual general meeting of the copy of the report of the review or auditor's report, as applicable, on the financial statements or financial report.

Part Eight General Matters

58. Policies

58.1 The Board may from time to time make policies:

- (a) that are required to be made under this Constitution; and
- (b) that, in their opinion, are necessary or desirable for the control, administration, management and protection of the Company's affairs and may amend, repeal and replace those policies.

58.2 The Policies will take effect 7 days after the Policy is published on the Associations website and shall be in force and effect on that date.

58.3 A Policy:

- (a) is subject to this Constitution;
- (b) must be consistent with this Constitution;
- (c) when in force, is binding on all Members and has the same effect as a provision in this Constitution; and
- (d) may be overruled if a resolution to that effect is passed by the Members at a General Meeting.

59. Executing Documents

59.1 The Association may execute a document without using a common seal if the document is signed by:

- (a) two Directors; or
- (b) one director and the Chief Executive Officer.

59.2 If the Association has a common seal:

- (a) the name of the Association must appear in legible characters on the common seal; and
- (b) a document may only be sealed with the common seal by the authority of the Board and in the presence of:

- (i) two Directors; or
- (ii) one Director and a person authorised by the Board,

and each of them is to sign the document to attest that the document was sealed in their presence.

59.3 The common seal must be kept in the custody of the Chief Executive officer or another Director authorised by the Board.

59.4 The Chief Executive Officer must make a written record of each use of the common seal.

60. Giving Notices to Members

A notice or other document that is to be given to a Member under the Constitution is taken not to have been given to the Member unless it is in writing and delivered to the Member at the recorded address in the Register of Members, via:

- (a) hand delivery; or
- (b) sent by prepaid post; or
- (c) facsimile or electronic transmission.

61. Custody of Books and Securities

61.1 The books and any securities of the Association must be kept in the Chief Executive Officer's custody or under the Chief Executive Officer's control.

61.2 The Financial Records and, as applicable, the Financial Statements or Financial Reports of the Association must be kept in the Chief Executive Officer's custody or under the Chief Executive Officer's control.

61.3 The Records of the Association must be retained for at least seven years.

62. Record of Office Holders

The record of Directors and other persons authorised to act on behalf of the Association is required to be maintained under section 58(2) of the Act and must be kept in the Chief Executive Officer's custody or under the Chief Executive Officer's control.

63. Inspection of Records and Document

63.1 In accordance with the requirements of the Act, a Member who wishes to inspect:

- (a) the Register of Members under section 54(1) of the Act;
- (b) the record of the names and addresses of Directors, and other persons authorised to act on behalf of the Association, under 58(3) of the Act; or
- (c) any other record or document of the Association.

must contact the Chief Executive Officer to make the necessary arrangements for the inspection.

63.2 The Member may make a copy or take an extract from a record or document referred to in

62.1(c) but does not have the right to remove the record or document for that purpose.

63.3 If the Member wants to inspect a document that records the minutes of a Board meeting, the right to inspect that document is subject to any decision the Board has made about minutes of Board meetings generally, or the minutes of a specific Board meeting, being available for inspection by Members.

63.4 The Board may determine a fee to be paid for a request under Rule 62.1 and may require the Member to provide a statutory declaration setting out the purpose for which the copy or extract is required and declaring that the purpose is connected with the affairs of the Association and not for use to contact or send material to Members for the purposes of advertising for political, religious, charitable or commercial purposes.

64. Publication by Directors of Statements About Association

A Director must not publish, or cause to be published, any statement about the business conducted by the Association at a General Meeting or Board Meeting unless:

- (a) the Director has been authorised to do so at a Board meeting; and
- (b) the authority given to the Director has been recorded in the minutes of the Board meeting at which it was given.

65. Indemnity

Directors, and officers authorised by the Board to act on behalf of the Association are indemnified by the Association against personal liability for actions taken for or on behalf of the Association in accordance with the proper discharge of their duties.

66. Winding up of Swimming WA or cancellation of Incorporation

Swimming WA may, by Special Resolution, resolve that its incorporation under the Act be cancelled, or that it be voluntarily wound up.

67. Distribution of surplus property

67.1 If upon winding up or cancellation of the Association 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.

67.2 Instead, the assets or property shall be given or transferred to another organisation(s) that has objects similar to the Objects and meet the requirements of the Act. Such organisation(s):

- (a) must prohibit the distribution of its or their income and property among its members to an extent at least as great as is imposed on the Association by this Constitution.
- (b) will be determined by the Members in General Meeting at or before the time of winding up or cancellation. If this does not occur, the decision is to be made by such judge of the Supreme Court of Western Australia or other Court as may have or acquire jurisdiction in the matter.

68. Alterations to the Constitution

- 68.1 If the Association wants to alter or rescind any Rules of the Constitution, or to make additional Rules, the Association may do so only by Special Resolution and by otherwise complying with Part 3 Division 2 of the Act.
- 68.2 Amendments to the Constitution do not take effect until required documents are lodged with the Commissioner within one month after the Special Resolution is passed.
- 68.3 The following amendments to the Constitution do not take effect until the requirements of Part 3 Division 2 of the Act are complied with, and in particular until approved by the Commissioner:
- (a) Change of the name of the association;
 - (b) Change of the objects or purposes of the Association' or
 - (c) The manner in which surplus property of the Association must be distributed or dealt with of the Association is wound up or its incorporation is cancelled.

69. Membership of SAL

- 69.1 The Association is a member of SAL and is recognised by Swimming Australia as the controlling authority for the sport of swimming in Western Australia and subject to compliance with this Constitution and the SAL's Constitution shall continue to be so recognised and shall administer the sport swimming in Western Australia in accordance with the Objects.
- 69.2 As a result of the Association's membership of SAL, Individual Members of the Association shall also be individual members of SAL.