

Masters Swimming Australia Incorporated

Constitution

April 2018

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CLAUSE 1 NAME

The name of the Association shall be Masters Swimming Australia Inc., hereinafter referred to as “**the Association**”.

CLAUSE 2 CONDUCT

In the event of any inconsistency between the provisions of this Constitution and the provisions of the constitutions, by-law and rules of the Branches, the provisions of this Constitution shall prevail.

CLAUSE 3 DEFINITIONS

In this Constitution, unless the context otherwise requires:

- C3.1** “**Associate Members**” means adults who are members of the Association in accordance with C7.9 of this Constitution.
- C3.2** “**Board**” means the National Board of Management of the Association.
- C3.3** “**Branch**” and “**Member Branch**” mean a Branch affiliated with the Association in accordance with this Constitution.
- C3.4** “**Club Members**” means adults who are members of Clubs in accordance with this Constitution.
- C3.5** “**Clubs**” means clubs affiliated with a Branch in accordance with that Branch’s constitution, by-laws or rules.
- C3.6** “**Committee**” means a subsidiary committee duly formed by the Association or the Board.
- C3.7** “**Members**” means each of the Member Branches, Club Members and Associate Members.
- C3.8** “**Special Resolution**” means a resolution of the Association that requires not less than three-quarters of the Member Branches voting at a general meeting, whether in person or by proxy, to vote in favour of the resolution.
- C3.9** “**The Act**” means the *Associations Incorporation Reform Act 2012* (Victoria) and includes any regulations made under that Act.
- C3.10** “**The Registrar**” means the Registrar of Incorporated Associations.
- C3.11** Words importing the singular number only shall include the plural number and vice versa and words importing persons shall include corporations.

CLAUSE 4 PURPOSE

To provide at Club, State and National level an environment to encourage all adults, regardless of ability, to swim regularly and compete in order to promote fitness and improve their general well-being.

CLAUSE 5 OBJECTIVES

- C5.1** To co-ordinate the activities of individuals through Clubs and Branches so that they may meet together for training, competition and social interaction at local, inter-Branch and international levels in a safe and professional environment.
- C5.2** To publish results of these meetings to provide stimulus to others to take part in the Association's activities and to measure their own performance against those of a similar age.
- C5.3** To initiate, promote and assist in research into the benefits derived from swimming, and thereafter to publicise the results of that research.
- C5.4** To develop accredited coaches and safe coaching practices.
- C5.5** To develop accredited officials to provide fair competition.

CLAUSE 6 POWERS

- C6.1** The Association may at any time cause itself to be incorporated under the Act (or the equivalent legislation in any other State or Territory of Australia) in any manner that it sees fit.
- C6.2** The Association shall have the power:
 - C6.2.1** to form (or encourage the formation of) Branches and Committees; to organise classes and lectures; to publish and sell or distribute papers, books of instruction, pamphlets and information for the purpose of stimulating interest in and promoting the Association's objectives, and to take all other measures which may seem necessary for providing and maintaining an efficient organisation;
 - C6.2.2** to receive income derived from business conducted under a trading name or names in accordance with the Act;
 - C6.2.3** to receive and accept donations, endowments, gifts of money and any other asset whatsoever, either subject or not subject to any special trusts or conditions;

- C6.2.4 to borrow, raise or secure the payment of money with or without security for any of the Association's purposes, provided that no money shall be raised by mortgage of any the Association's property without the consent or approval of the Association;
- C6.2.5 to make and carry out any arrangements for joint working or co-operation by affiliation or otherwise with any organisation or body, whether incorporated or not, carrying on work similar to any work carried out by the Association and paying any monies incidental thereto;
- C6.2.6 to undertake, execute and perform any trusts and conditions affecting any real or personal property of any description acquired by the Association;
- C6.2.7 to enter into any arrangements with any authority or department of the Australian, State, Territory or Local Governments;
- C6.2.8 to apply for and exercise any powers obtained under any Charter or Act of the Australian, State, Territory or Local Governments that may be deemed expedient for any of the Association's purposes;
- C6.2.9 to accumulate, sell, improve, manage, develop, exchange, lease, mortgage or otherwise dispose of or deal with or turn to account all or any of the Association's property or rights, provided that no disposition of any real or leasehold property shall be made without such consent or approval, if any, as may be required by law;
- C6.2.10 to invest all of the Association's monies and funds which are not immediately required to be expended in authorised trustee investments;
- C6.2.11 to employ, hire, appoint, engage, remove or suspend such managers, secretaries, officers, clerks, agents or other servants for permanent, temporary, part-time or special services as may from time to time be thought fit and to determine their duties, and to grant, continue and pay such salaries, pensions, gratuities or other forms of enrolments in recognition of services as may from time to time be sanctioned by the Association or the Board;

- C6.2.12 to arrange for the importation, manufacture and distribution of awards, badges, clothing and other items of merchandise for the Association;
- C6.2.13 to do all such other acts and things as are or may be deemed incidental or conducive to the attainment of any of the Association's purposes;
- C6.2.14 to promote, organise and conduct entertainment and other functions, raffles and lotteries when legally permitted to do so for the raising of funds for the purpose of furthering the Association's aims and objectives;
- C6.2.15 to promote, conduct and organise swimming activities including swim meets, competitions and awards; and
- C6.2.16 to appoint disciplinary panels and tribunals, mediators, referees or other intermediaries for the purposes of carrying out the provisions of any Policy, Bylaw or Rule of the Association and to pay any of those so appointed such remuneration as sanctioned by the Association or the Board.

CLAUSE 7 MEMBERSHIP

- C7.1** The Association must have at least 5 members with only one organisation from each of the following sovereign jurisdictions able to affiliate as a Branch of the Association:
 - a) The State of New South Wales;
 - b) The State of Queensland;
 - c) The State of South Australia;
 - d) The State of Tasmania;
 - e) The State of Victoria;
 - f) The State of Western Australia;
 - g) The Australian Capital Territory; and
 - h) The Northern Territory.
- C7.2** A Branch Affiliation Fee shall be reviewed and set each year by the Association on the recommendation of the Board.
- C7.3** Branches shall pay the stipulated Branch Affiliation Fee prior to the commencement of the Association's financial year.

- C7.4** Branches may be suspended until all outstanding fees are paid in full, such suspension to be in accordance with this Constitution. Appeals against any such suspension are to be in accordance with this Constitution.
- C7.5** The Association's financial year and period of registration shall be from 1 January to 31 December in the same calendar year.
- C7.6** A Branch will cease to be affiliated with the Association:
- C7.6.1* upon the receipt by the Secretary of a notice of resignation; or
 - C7.6.2* upon the passing of a resolution at a general meeting expelling the Branch under C19.1.
- C7.7** Club membership of the Association is gained by;
- C7.7.1* agreeing to support the purposes of the Association;
 - C7.7.2* agreeing to comply with the Constitution, Bylaws, Rules and Policies of the Association;
 - C7.7.3* joining a Club that is affiliated with a Branch of the Association; and
 - C7.7.4* paying the required membership fees online.
- C7.8** An intending club member shall be deemed to be registered after the membership fee has been paid and the Club has made the member active online.
- C7.9** Associate membership of the Association is gained by;
- C7.9.1* agreeing to support the purposes of the Association;
 - C7.9.2* agreeing to comply with the Constitution, Bylaws, Rules and Policies of the Association;
 - C7.9.3* completing the Coaches, Technical Officials and Volunteers registration form online; and
 - C7.9.4* paying the required membership fee to the Association online.
- C7.10** Club membership and Associate membership of the Association is limited to individuals aged eighteen years and over.
- C7.11** Intending Club members and Associate members must provide proof of age by birth certificate, passport or similar original or certified document to their Club or to the Association.

- C7.12** Each Member shall pay a membership fee, the national component of which shall be reviewed and set each year by the Association on the recommendation of the Board.
- C7.13** Each Club must be affiliated with the Branch in the State or Territory in which it is located unless agreed otherwise by the Board and the relevant Branches.

CLAUSE 8 REGISTERS OF MEMBERS

- C8.1** The Association must keep and maintain:
- a) a Register of Member Branches;
 - b) a Register of Clubs; and
 - c) a Register of Club Members and Associate Members.
- C8.2** Each register shall contain the full name and address of each Member and such other information as the Association shall determine.
- C8.3** The Register of Member Branches shall include the date on which each Branch's name was entered in the register and, in the event that a Branch ceases to be affiliated with the Association, that date.
- C8.4** Any Member Branch may inspect the Register of Member Branches upon giving the Association reasonable notice and shall be entitled to make copies of any entry in such register subject to C29.
- C8.5** The Association shall permit any Member or Club to access any register or limited parts thereof kept by the Association for the purposes of the Association subject to C29.

CLAUSE 9 GENERAL RIGHTS OF MEMBERS

- C9.1** A Member Branch which is entitled to vote has the right to:
- C9.1.1** receive notice of general meetings and of proposed special resolutions in the manner and time prescribed by this Constitution;
 - C9.1.2** submit items of business for consideration at a general meeting;
 - C9.1.3** appoint a delegate to attend and be heard at general meetings;
 - C9.1.4** vote at a general meeting;

C9.1.5 have access to the minutes of general meetings and other documents of the Association as provided in C29; and

C9.1.6 inspect the registers of Members subject to the provisions of C29.4

C9.2 A Club Member of the Association has the right to:

C9.2.1 participate in National programs and competitions;

C9.2.2 participate in Branch programs and competitions; and

C9.2.3 utilise any rights applicable under their Branch Constitution and Rules.

CLAUSE 10 MANAGEMENT

C10.1 The Association's affairs shall be directed by the Association in general meeting and regulated in accordance with this Constitution and the By-Laws.

C10.2 The Association may delegate any of its powers to the Board.

C10.3 The Association shall specify limits on the expenditure which the Board may commit the Association to without prior reference to the Association.

C10.4 The Board shall, in exercise of its delegated powers, conform to any regulations or other restriction that may be imposed on it by the Association.

C10.5 The Board shall appoint a person as Secretary on such terms and conditions and for such period of time as the Board thinks fit. The Board may remove a person from the position of Secretary.

C10.6 The Board must not appoint a person as Secretary unless the person:

a) consents to being appointed as Secretary;

b) is at least 18 years of age; and

c) is resident in Australia.

C10.7 If the position of Secretary becomes vacant (through resignation, removal or otherwise), the Board must fill the vacancy within 14 days.

C10.8 The Secretary must give notice to the Registrar of their appointment within 14 days after their appointment.

C10.9 The Secretary must perform any duty or function required under the Act to be performed by the secretary of an incorporated association, including:

C10.9.1 maintain the Registers of Members in accordance with C8;

C10.9.2 keep custody of the common seal (if any) of the Association and, except for the financial records referred to in C11.15, all books, documents and securities of the Association;

C10.9.3 subject to the Act and this Constitution, provide Member Branches with access to the Registers of Members, the minutes of general meetings and other books and documents; and

C10.9.4 perform any other duty or function imposed on the Secretary by this Constitution.

CLAUSE 11 NATIONAL BOARD OF MANAGEMENT

C11.1 The Board shall consist of a President, a Finance Director and three Board Members

C11.2 Members of the Board must be Club Members.

C11.3 The Board's duties are to:

C11.3.1 recommend objectives for the coming year or years;

C11.3.2 review the past year's or years' activities;

C11.3.3 recommend the Branch Affiliation Fee and the national component of the membership fee;

C11.3.4 recommend the venues for future National Championships;

C11.3.5 confirm the elections of office bearers;

C11.3.6 appoint Committees as required;

C11.3.7 formulate Policies and Rules, and recommend changes to Policy and Rules to the Association; and

C11.3.8 do such other things as may be delegated to it from time to time by the Association.

C11.4 The Board may delegate any of its powers and duties to such executive or administrative employee of the Association as it sees fit, subject to any contrary directive from the Association.

- C11.5** The Board shall have at least two meetings between general meetings of the Association, a quorum for which shall be at least three Board members. No business may be conducted unless a quorum is present. If within half an hour of the time appointed for the meeting a quorum is not present the meeting shall stand adjourned to the same place and the same time and day in the following week.
- C11.6** All Board members have the right to vote.
- C11.7** Subject to this Constitution, a Board meeting will be held by such procedure as is determined by the Board including being held with members physically present, or in diverse locations through the medium of electronic communication
- C11.8** The Board shall provide copies of minutes of Board meetings to all Board Members and Member Branches within 14 days of each meeting.
- C11.9** In accordance with C29 the Board may limit access to the Member Branches in relation to provision of minuted information which relates to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the Association.
- C11.10** The Board shall provide a written report and statement of cash balances, a statement of actual against budget, a report and audited financial statements prior to the Annual General Meeting.
- C11.11** The Board shall have travel and accommodation expenses for attending meetings paid from the Association's funds, provided funds are available.
- C11.12** All members of the Board shall be accountable to the Board in the performance of their duties, and may be suspended or dismissed by the Board at a Board meeting or a specially convened general meeting of the Association in accordance with this Constitution.
- C11.13** The President shall:
- C11.13.1* preside at all Board Meetings when present. In the absence of the President, those qualified to vote shall elect a chair;
 - C11.13.2* have a casting vote in the event of a tied vote at a Board Meeting;
 - C11.13.3* guide the other Board members and officers and employees of the Association in the commission of their duties; and

C11.13.4 represent the Association at official functions when available.

C11.14 The Finance Director shall:

C11.14.1 monitor receipt of all moneys paid to or received by the Association and ensure the issue of receipts for those moneys in the name of the Association;

C11.14.2 make any payments authorised by the Board or by a general meeting of the Association from the Association's funds; and

C11.14.3 ensure payments are authorised by at least two Board members or delegated personnel.

C11.15 The Finance Director must:

C11.15.1 ensure that the financial records of the Association are kept in accordance with the Act; and

C11.15.2 coordinate the preparation of the financial statements of the Association and their certification by the Board prior to their submission to the Annual General Meeting of the Association.

C11.16 The Finance Director must ensure that at least one other Board member has access to the accounts and financial records of the Association.

CLAUSE 12 CONFLICT OF INTEREST

C12.1 A Board member who has a material personal interest in a matter being considered at a Board meeting must disclose the nature and extent of that interest to the Board.

C12.2 The Board member must not:

C12.2.1 be present while the matter is being considered at the meeting unless the Board determines that the member's input would assist the decision making of the Board; or

C12.2.2 vote on the matter.

CLAUSE 13 BOARD ELECTIONS AND APPOINTMENTS

- C13.1** Whenever election or nomination of officers is required, the Association shall request in writing to all Branches at least 120 days before the date of the Annual General Meeting nominations for the positions of:
- C13.1.1* President;
 - C13.1.2* Finance Director; and
 - C13.1.3* The number of Board members as prescribed in C13.17.
- C13.2** Nominations are to be submitted in writing using the nomination form contained in the By-Laws. The nomination must be signed by the nominee and endorsed by the nominating Branch, and must be received by the Association no later than 90 days prior to the Annual General Meeting.
- C13.3** Eighty days prior to the Annual General Meeting the Association shall forward a postal ballot to each Branch that includes a list of candidates for each position. The list shall show each candidate's name and club, the position for which that candidate is standing, up to 100 words of background information about each candidate, and if available, a recent photograph.
- C13.4** In the event no written nominations are received in accordance with this Clause, the President may accept late nominations.
- C13.5** The Board shall appoint one of its members, or one of its executive or administrative employees, to act as returning officer in relation to all Board elections.
- C13.6** The method of voting shall be to place a distinctive mark against a name on the ballot paper for the candidate preferred for each position.
- C13.7** The candidate or candidates receiving the greatest number of votes cast shall be elected. Where candidates are unopposed, they will be declared elected subject to receiving over 50% acceptance by those eligible to vote. If 50% acceptance is not reached, then this will be considered a casual vacancy and C13.11 will apply. The declaration shall be announced to the successful candidates, the Board, and Branches within seven days of the result being known.
- C13.8** In the event of a tied vote, a second ballot shall be held.
- C13.9** In the event of a second tied vote, the President shall have the casting vote.

- C13.10** Should a Branch wish to lodge an objection to the election of any nominee, such objection, stating the grounds on which the objection is raised, must be lodged with the President within 14 days of the appointment being announced.
- C13.11** The Board may appoint a person to fill any casual vacancy on the Board and such other officers as deemed necessary.
- C13.12** The Board has the power to fill casual vacancies if such a vacancy occurs at any time in the positions of Board member, President or Finance Director by reason of death, resignation by written notice, dismissal under this Constitution (C19.2) or removal from office under the following clause.
- C13.13** The Board may remove a Board member (including the President or Finance Director) from office if that Board member has missed three consecutive Board meetings without furnishing a satisfactory reason for such absence, becomes insolvent under administration or otherwise ceases to be a Board member by operation of section 78 of the Act.
- C13.14** An appointment to fill a casual vacancy may be made at a Board meeting, or by a postal election.
- C13.15** A person appointed to fill a casual vacancy on the Board may hold that appointment only until the next Annual General Meeting but is eligible to stand for election to the Board at the next election of Board members.
- C13.16** Changes to the Board shall become effective 21 days after the Annual General Meeting, except in the case of an appointment to fill a casual vacancy, which becomes effective immediately.
- C13.17** The election of the President and one Board member shall be held in each odd-numbered year, and the election of the Finance Director and two Board members shall be held in each even-numbered year.
- C13.18** The term of office for the President, Finance Director and Board members is two years. No person may hold the same office for more than three successive two-year terms and may not hold membership of the Board for more than ten successive years.

CLAUSE 14 NATIONAL COMMITTEES

- C14.1** The Association may establish committees to undertake specified activities.
- C14.2** The Association may disband any committee.
- C14.3** Nomination, appointment and term for Committee Members shall be specified in the By-Laws.

CLAUSE 15 ANNUAL GENERAL MEETING

- C15.1** The Annual General Meeting shall be held each year in conjunction with the National Championships, unless the Association determines otherwise.
- C15.2** The business to be conducted at the Annual General Meeting is to:
- C15.2.1* accredit Branch Delegates;
 - C15.2.2* accept apologies;
 - C15.2.3* confirm the Minutes of the previous Annual General Meeting and any subsequent general meeting;
 - C15.2.4* receive the annual reports from the following:
 - (a) the President;
 - (b) the Finance director;
 - (c) the chief executive employee of the Association, if any and if required by that employee's contract of employment;
 - (d) each Branch; and
 - (e) all Committees.
 - C15.2.5* receive and review the audited financial statements as required by the Act and any other statutory requirements.
 - C15.2.6* ratify the postal ballot for the election of:
 - (a) the President, the Finance Director and
 - (b) three Board members;
 - C15.2.7* appoint the Auditor; and
 - C15.2.8* consider matters described in C16.4
- C15.3** At every general meeting of the Association, each Branch shall be represented by a Delegate duly appointed by that Branch and accredited at the beginning of each general meeting. Each Delegate is entitled to one vote at any general meeting. The President, the Finance Director and Board members may not be accredited as a Branch Delegate.
- C15.4** The travel and accommodation expenses of Branch Delegates attending general meetings of the Association shall be paid from

the Association's funds, provided that the Board determines that sufficient funds are available for this purpose.

- C15.5** A Branch Delegate having any interest, direct or indirect, in any contract or proposed contract with the Association or any other material personal interest in a matter being considered, shall not vote in respect of that contract or matter.
- C15.6** Each Branch Delegate shall, either at the request of the Association or upon ceasing to be a Branch Delegate, provide to the Association copies of any materials, documents or files completed or being undertaken on behalf of the Association.

CLAUSE 16 GENERAL MEETINGS

- C16.1** Two general meetings of the Association shall be held annually, one being the Annual General Meeting held in accordance with C15.1, and the second meeting in September or October.
- C16.2** A general meeting may also be summoned by the Board or a simple majority of Branches. Such a request shall set forth the matters to be discussed.
- C16.3** A general meeting may be held with Branch Delegates physically present, or in diverse locations, through the medium of electronic communication.
- C16.4** A general meeting shall consider:
- C16.4.1* motions and agenda items of which due notice has been given,
 - C16.4.2* motions and agenda items of which due notice has not been given, provided that discussion of and voting upon any such motion or agenda item:
 - (a) has the sanction of three quarters of the votes of the Branch Delegates of the meeting present and voting, and
 - (b) shall not concern a clause of the Constitution or the amendment or rescission of a previous resolution of the meeting.
 - C16.4.3* general business, provided that such business shall not involve a resolution other than to:
 - (a) make a recommendation to the Board; or
 - (b) deal with a matter of procedure in the conduct of the meeting and then only subject to and in accordance with this Constitution.

- C16.5** Any matters of meeting procedure not dealt with in this Constitution and the By-Laws shall be governed by the principles set out in the latest edition of *Guide for Meetings and Organisations* by N E Renton to the extent that they are not inconsistent with the Association's Constitution, By-Laws, Rules or resolutions.
- C16.6** Any person other than a Branch Delegate, a Board member or a Life Member of the Association who is permitted by the Chairperson to attend a general meeting of the Association may not address the meeting except at the invitation of the Chairperson, and in such cases no voting privilege shall be thereby conferred upon that person.
- C16.7** Any business transacted at general meetings may, at the discretion of the Association, be published for the information of the public and the advantage of the Association.
- C16.8** The Association must ensure that minutes are taken and kept of each general meeting, Board meeting and Committee meeting.
- C16.8.1** The minutes must record the following:
- (a) the names of the members in attendance at the meeting;
 - (b) the business considered at the meeting;
 - (c) any resolution on which a vote is taken and the result of the vote; and
 - (d) any material personal interest disclosed by any member.
- C16.8.2** Within 28 days of a general meeting, minutes of the business transacted at the meeting shall be issued to each Board Member, Branch Delegate and Branch, together with updated Constitution, By-Laws or Rules clauses, if applicable.
- C16.9** All Board members shall attend all general meetings of the Association. The President shall be the Chairperson of all general meetings of the Association or, in the absence of the President, a person in attendance elected by a simple majority of the Branch Delegates personally present. The Chairperson of a general meeting shall not vote on any matter except to exercise a casting vote in the event of a tied vote. The other Board Members shall not have a vote at any general meeting of the Association.
- C16.10** The Association shall give each Branch and Board member 90 days' written notice of the time, date and venue of all general meetings and call for notices of motion and agenda items.

- C16.11** Agenda items must be in the hands of the Association 60 days prior to the meeting.
- C16.12** A final agenda for the meeting shall be circulated to the Board and Branches at least 35 days prior to the meeting.
- C16.13** Final reports for the meeting shall be circulated to the Board and Branches at least 21 days prior to the meeting.
- C16.14** The accidental omission to give any notice to any person entitled to attend the Annual General Meeting or other general meeting of the Association shall not invalidate the meeting or its proceedings, including any resolution passed or appointment made at it.
- C16.15** Delegates representing a simple majority of the affiliated Branches personally present at a general meeting shall form a quorum.
- C16.16** If within 30 minutes after the appointed time of a general meeting of the Association a quorum is not present, the meeting shall be adjourned to a time and place to be determined.
- C16.17** The Chairperson of a meeting may, with the consent of the meeting, adjourn it from time to time and from place to place.
- C16.18** If requested by a majority of Branch Delegates, a secret ballot shall be held when voting on any matter.
- C16.19** Unless otherwise stipulated by this Constitution, all motions at general meetings shall be determined by a simple majority of Branch Delegates.
- C16.20** If a question arising at a general meeting of the Association is determined on a show of hands:
- C16.20.1* A declaration by the Chairperson that a resolution has been:
- (a) carried;
 - (b) carried unanimously;
 - (c) carried by a particular majority; or
 - (d) lost; and
- C16.20.2* An entry to that effect in the minute book of the Association is evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

CLAUSE 17 PROXIES

- C17.1** Each Branch is entitled to appoint another Branch as a proxy by giving notice to the Association no later than 24 hours before the time of the meeting in respect of which proxy is appointed.
- C17.2** The notice appointing the proxy must be:
- C17.2.1* for a meeting convened under C19, in the form set out in Appendix 1; or
 - C17.2.2* in any other case, in the form set out in Appendix 2.

CLAUSE 18 AMENDMENT TO CONSTITUTION

- C18.1** This Constitution must not be amended except in accordance with the Act.
- C18.2** The provision in this Constitution for trading and winding up shall not be amended without the consent of the Minister, in accordance with the Act. Any part of this Constitution shall otherwise be subject to amendment according to the procedure prescribed in the following clauses.
- C18.3** This Constitution may be amended at any general meeting of the Association by a three quarters majority of the Branch Delegates present and voting, or by a three quarters majority of the votes cast, provided that any such amendment shall have been submitted to the Association in writing no less than 60 days prior to the date of the meeting at which the proposed amendment is to be voted upon.
- C18.4** Proposals for amendment of the Constitution may be proposed by the Board or by written submission to the Association from any Branch. They shall be accompanied by a statement of the rationale behind the proposed amendment.
- C18.5** The Board shall consider each proposed amendment before it is submitted to the Association. The Board shall determine its support for, or opposition to, the amendment and the view of the Board shall be expressed to the Branches prior to the general meeting at which the amendment is to be voted on.
- C18.6** Fifty days before the nominated closing date at which the amendment is to be voted upon, the Association shall arrange to send to each Branch and Board member a document including:
- C18.6.1* the clause(s) proposed for deletion;
 - C18.6.2* the clause(s) proposed for acceptance; and

C18.6.3 the statement of the rationale behind the proposed amendment provided by the body proposing it.

C18.7 Any amendment of this Constitution agreed upon by the Association shall become effective upon approval by the Department of Justice, Consumer and Business Affairs Victoria in accordance with the Act, or upon the date on which the Association resolves that it will become effective, whichever is the later. Where a later date is resolved under this clause for an amendment to become effective the amendment must still first be approved by the Department in accordance with the Act

CLAUSE 19 SUSPENSION AND EXPULSION

C19.1 Suspension and Expulsion of Branches

C19.1.1 Subject to this Constitution, if a Branch or the Board is of the opinion that a Branch (“**the defaulting Branch**”) has refused or neglected to comply with any provision of this Constitution or any Policy, By-Law or Rule of the Association, or has been guilty of conduct unbecoming of an affiliate or prejudicial to the interests of the Association, that Branch or the Board may recommend to the Association that it by resolution:

- (a) suspend the defaulting Branch from the Association for a specified period; or
- (b) expel the defaulting Branch from the Association.

C19.1.2 A resolution of the Association to consider a recommendation of a Branch or the Board made under the preceding Clause shall only be considered at a general meeting held in accordance with this Constitution.

C19.1.3 A meeting of the Association to consider a resolution to suspend or expel a Branch must be held not earlier than 14 days, and not later than 28 days, after notice has been given to the defaulting Branch in accordance with this Clause.

C19.1.4 For the purposes of giving notice in accordance with this Clause the Association must, as soon as practicable, cause to be given to the defaulting Branch a written notice:

- (a) setting out the resolution and the grounds on which it is based;
- (b) stating that the defaulting Branch may address the Association at a meeting to be held not earlier than 14 days and not later than 28 days after the notice has been given to that Branch;
- (c) stating the date, place and time of that meeting; and
- (d) informing the defaulting Branch that it may do one or both of the following:
 - (i) attend that meeting;
 - (ii) give to the Association before the date of that meeting a written statement.

C19.1.5 At a meeting to consider a recommendation made under this Clause, the Association must:

- (a) give the defaulting Branch an opportunity to be heard;
- (b) give due consideration to any written statement submitted by the defaulting Branch;
- (c) determine by special resolution whether to suspend or expel the defaulting Branch by a three quarters majority;
- (d) consider no business other than the motion to suspend or expel the defaulting Branch; and
- (e) vote by secret ballot.

C19.2 Suspension and Dismissal of Board Members

C19.2.1 Subject to this Constitution, if the Board is of the opinion that a Board Member, the Finance Director or the President (“**the defaulting Board member**”) has refused or neglected to comply with this Constitution or any Policy, By-Laws or Rules of the Association, or has been guilty of conduct unbecoming of a member of the Board, or prejudicial to the Association’s interests, the Board may by resolution:

- (a) suspend the defaulting Board Member from the Board for a specified period; or
- (b) dismiss the defaulting Board Member from the Board.

C19.2.2 A resolution of the Board under this Clause does not take effect unless:

- (a) at a meeting held in accordance with this Clause, the Board confirms the resolution; or
- (b) if the defaulting Board Member exercises a right of appeal to the Association under this Clause, the Association in general meeting confirms the resolution in accordance with this Clause.

C19.2.3 A meeting of the Board to confirm or revoke a resolution passed under this Clause must be held not earlier than 14 days, and not later than 28 days, after notice has been given to the defaulting Board Member in accordance with this Clause.

C19.2.4 For the purposes of giving notice in accordance with this Clause the Board must, as soon as practicable, cause to be given to the defaulting Board Member a written notice:

- (a) setting out the resolution and the grounds on which it is based;
- (b) stating that the defaulting Board Member may address the Board at a meeting to be held not earlier than 14 days and not later than 28 days from receipt of the notice;
- (c) stating the date, place and time of that meeting;
- (d) stating that the defaulting Board Member may do one or both of the following:
 - (i) attend that meeting;
 - (ii) give to the Board before the date of that meeting a written statement seeking the revocation of the resolution; and
- (e) stating that, if at that meeting, the Board passes the resolution, the defaulting Board Member may not later than 48 hours after that meeting notify the Board that the

defaulting Board Member wishes to appeal to the Association in general meeting against the resolution

C19.2.5 At a meeting to confirm or revoke a resolution passed under this Clause the Board must:

- (a) give the defaulting Board Member an opportunity to be heard;
- (b) give due consideration to any written statement submitted by the defaulting Board Member;
- (c) determine by resolution whether to pass the resolution;
- (d) consider no business other than the resolution or suspend or dismiss the defaulting Board Member; and
- (e) vote by secret ballot.

C19.2.6 If at the meeting of the Board, the resolution is passed, the defaulting Board Member may, not later than 48 hours after that meeting, notify the Board that the defaulting Board Member wishes to appeal to the Association in General Meeting against the resolution.

C19.2.7 If the Board receives a notice under this Clause, the Board must convene a Special General Meeting to be held within 28 days after the date on which the notice was received.

C19.2.8 The resolution is confirmed if, at the Special General Meeting convened under the preceding Clause, not less than three quarters of the Branch Delegates vote in person in favour of the resolution. In any other case, the resolution is revoked.

C19.2.9 At a meeting to confirm or revoke a resolution passed under this Clause the Association must:

- (a) give the defaulting Board member an opportunity to be heard;
- (b) give due consideration to any written statement submitted by the defaulting Board member;
- (c) determine by resolution whether to pass the resolution

(d) consider no business other than the resolution or suspend or dismiss the defaulting Board member; and

(e) vote by secret ballot.

C19.2.10 A notice of a meeting pursuant to this clause must be given to each Member of the Association who is entitled to vote as soon as practicable and must:

(a) specify the date, time and place of the meeting;

(b) state:

(i) the name of the person against whom the disciplinary action has been taken;

(ii) the grounds for taking that action; and

(iii) that at this meeting the members present must vote on whether the decision to suspend or expel the person should be upheld or revoked.

CLAUSE 20 DISPUTES AND MEDIATION

C20.1 The dispute resolution procedure as set out in this Clause applies to disputes under this Constitution between:

C20.1.1 a Member Branch and another Branch;

C20.1.2 a Member Branch and the Association;

C20.1.3 a Member Branch and the Board; and

C20.1.4 Board Members.

C20.2 A Member must not initiate a procedure under this Clause in relation to a matter that is the subject of a disciplinary procedure until the disciplinary procedure has been completed.

C20.3 The parties to the dispute must meet and discuss the matter in dispute and, if possible, resolve the dispute within 14 days. If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within 10 days, notify the Board of the dispute and hold a meeting in the presence of a mediator.

C20.4 The mediator must be:

C20.4.1 a person chosen by agreement between the parties; or

C20.4.2 in the absence of agreement:

- (a) in the case of a dispute between a Branch and another Branch, a person appointed by the Board; or
- (b) in the case of a dispute between a Branch and either the Board or the Association, or involving a Board Member, a person who is a mediator appointed or employed by the Dispute Settlement Centre of Victoria (Department of Justice).

C20.5 The mediator can be a Club Member or former Member.

C20.6 The mediator cannot be a person who is a party to the dispute or be biased in favour of or against any party.

C20.7 The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.

C20.8 The mediator, in conducting the mediation, must:

C20.8.1 give the parties to the mediation process every opportunity to be heard;

C20.8.2 allow due consideration by all parties of any written statement submitted by any party; and

C20.8.3 ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.

C20.9 The mediator must not determine the dispute.

C20.10 If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

CLAUSE 21 DISCIPLINE OF ASSOCIATION MEMBERS

C21.1 The Association may commence disciplinary proceedings against any Club Member, Club or Member Branch in accordance with the provisions of any current or future Policy, Rules or Bylaws of the Association which has been published after being approved by a General Meeting of the Association and implemented in accordance with the provisions of the relevant Policy, Rules or Bylaws.

C21.2 Disputes between any Club Member, Club or Member Branch of the Association in relation to matters contained in the provisions of any current or future Policy, Rules or Bylaws of the

Association which have been published after approval by a General Meeting of the Association and implemented in accordance with the provisions of the relevant Policy, Rules or Bylaws shall be dealt with in accordance with the relevant Policy, Rules or Bylaws.

CLAUSE 22 INCOME AND PROPERTY

C22.1 The Association's funds shall be derived from entrance fees, annual subscriptions, donations, income derived from business conducted under a trading name or names, and such other sources as the Association or Board determines.

C22.2 The Association is a Not for Profit organisation.

C22.1.1 The Association must not distribute any surplus, income or assets directly or indirectly to its Members.

C22.1.2 this Clause does not prevent the Association from paying a Member:

- (a) reimbursement for expenses properly incurred by the Member; or
- (b) for goods or services provided by the Member - if this is done in good faith on terms no more favourable than if the Member was not a Member.

CLAUSE 23 BANK SIGNATORIES

The signatories of all accounts shall be any two members of the Board, or one Board member and the chief executive employee of the Association, if any.

CLAUSE 24 COMMON SEAL

C24.1 The Common Seal of the Association must be kept in the custody of the Association.

C24.2 The Common Seal must not be affixed to any instrument except by the authority of the Board and the affixing of the Common Seal must be attested by the signatures either of two members of the Board or one member of the Board and the Secretary of the Association.

CLAUSE 25 LIFE MEMBERS

- C25.1** Life membership may be conferred upon a person who complies with the following principles:
- C25.1.1* The person's contribution must be of sustained excellence to the furtherance of the Association's ideals.
 - C25.1.2* The nomination must come from at least two Branches, both of which will submit the application to the Association. The nomination will be submitted to the Association as a Motion on Notice at the next Annual General Meeting unless it fails to meet the criteria set out in this Clause.
- C25.2** Any such nomination, with a full history of the nominee's service, must be circulated to Branches 35 days prior to the Annual General Meeting at which it will be considered.
- C25.3** Life Members of the Association shall be presented with a life membership lapel badge replica of the Association's logo and a plaque.
- C25.4** Life Members will be invited to such functions and activities as the Association or Board deems appropriate.
- C25.5** Life Members may attend general meetings at their own expense. They may have a voice but are not eligible to vote.

CLAUSE 26 PATRONS

The Association or Board may at any time appoint Patrons of the Association.

CLAUSE 27 TRUSTEES

Two members of the Board will be appointed as Trustees for the Association when trustee services are required.

CLAUSE 28 DISSOLUTION

- C28.1** The Association may only be dissolved at an extraordinary general meeting duly convened for the sole purpose of considering any such proposed dissolution. A special resolution to dissolve the Association must be passed by a three quarters majority of all Branch Delegates present and voting.
- C28.2** At least 60 days' notice by registered mail must be given to the Branches for the holding of any extraordinary general meeting convened to consider a motion to dissolve the Association, the

reasons being set out in the notice calling the meeting. No other business shall be transacted at any such meeting.

- C28.3** On the dissolution of the Association, if there remains after the satisfaction of all its debts, liabilities and obligations any property whatsoever, that property shall not be paid or distributed amongst Members but shall, subject to any trust affecting it, be given or transferred to some body or bodies having objectives similar to the Association’s objectives to be determined by the Association or Board at, or before, the time of dissolution.

CLAUSE 29 CUSTODY AND INSPECTION OF BOOKS AND RECORDS

- C29.1** Except as otherwise provided in this Constitution or the By-Laws, the Association must keep in its custody or under its control all books, documents and securities of the Association.
- C29.2** All accounts, books, securities and any other relevant documents of the Association must be available for inspection by any Member Branch upon request free of charge upon reasonable notice.
- C29.3** A Member Branch may, on request to the Association inspect free of charge:
- C29.3.1** the Registers of Members;
 - C29.3.2** the minutes of general meetings; and
 - C29.3.3** subject to C29.4, the financial records, books, securities and any other relevant document of the Association, including minutes of Board meetings.
- C29.4** The Board may refuse to permit any Member to inspect records of the Association that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the Association.
- C29.5** The Board must, on request, make copies of this Constitution available free of charge to Members and applicants for membership.
- C29.6** Subject to C29.4, a Member may make a copy of any of the other records of the Association referred to in this Clause and the Association may charge a reasonable fee for provision of a copy of such a record.
- C29.7** For purposes of this Clause “**relevant documents**” means the records and other documents, however compiled, recorded or stored, that relate to the incorporation and management of the Association and includes its membership records, financial statements, financial records and records and documents

relating to transactions, dealings, business or property of the Association.

APPENDICES

APPENDIX 1

FORM OF APPOINTMENT OF PROXY FOR MEETING OF ASSOCIATION CONVENED UNDER CLAUSE C19

I,

(name)

of

(address)

being the Delegate of the Branch of Masters Swimming Australia Inc. (“the Association”) appoint theBranch as my proxy to vote for me on behalf of my Branch at the Special General Meeting of the Association convened under Clause 19 to be held on

(date of meeting)

and at any adjournment of that meeting.

I authorise my proxy to vote on my behalf at their discretion in respect of the following resolution (insert details of the resolution passed under Clause19.)

Signed

Date

APPENDIX 2

FORM OF APPOINTMENT OF PROXY

I,

(name)

of

(address)

being the Delegate of the Branch of Masters Swimming Australia Inc. (“the Association”) appoint the Branch of the Association as my proxy to vote for me on behalf of my Branch at the annual / special* general meeting of the Association to be held on

(date of meeting)

and at any adjournment of that meeting.

My proxy is authorised to vote in favour or / against* following resolution
(insert details of resolution)

Signed

Date