

C O N S T I T U T I O N

**CONSTITUTION
of
SWIMMING AUSTRALIA LIMITED
ACN 109 333 628
31 October 2018**

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Corporations Act 2001 (Cth)
A Company Limited by Guarantee

CONSTITUTION
of
SWIMMING AUSTRALIA LIMITED
ACN 14 109 333 628

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Constitution, unless the context otherwise requires:

'Act' means the *Corporations Act 2001 (Cth)*;

'Affiliate' means and includes those entities recognised under **Rule 12.2**;

'ASI' means Australian Swimming Incorporated;

'Board' means the Board of Directors of SAL for the time being of SAL;

'By-Laws' means any by-laws made by the Board under **Rule 44**;

'Chief Executive Officer' means the Chief Executive Officer of SAL for the time being appointed under this Constitution;

'Clubs' means organisations affiliated to Affiliates or Member Associations;

'Competitions' means and includes:

- (a) any championship (national or otherwise) organised or conducted by a Member Association for or on behalf of SAL;
- (b) any championship, competition, series or meeting sponsored by or conducted by or on behalf of SAL; or
- (c) any international competition, series, meeting or championship at which SAL is represented.

'Competitor' means and includes a swimmer, diver, waterpolo player or synchronised swimmer;

'Constitution' means the Constitution for the time being of SAL;

'Delegate' means the persons elected or appointed from time to time by a Member Association to act for an on behalf of that Member Association and represent the

Member Association at General Meetings and includes Alternate State Delegates (where appointed);

'Director' means a member of the Board (other than the Chief Executive Officer) and includes any person acting in that capacity from time to time for the time being of SAL;

'FINA Bureau Member' means the FINA Bureau Member for Oceania as defined in Rule C17 of the FINA Constitution as amended from time to time and only where that person is an Australia Citizen and whose member federation is Swimming Australia;

'Financial year' means the year ending 30 June each year;

'General Meeting' means the annual or any special general meeting of SAL;

'Individual Member' means a registered financial member of a Member Association or an Affiliate;

'Intellectual Property' means all rights or goodwill subsisting in copyright, business names, names, trade marks (or signs), logos, designs, patents or service marks (whether registered or registrable) relating to SAL or any Event, competition, championship, meeting or swimming activity of or conducted, promoted or administered by SAL;

'Life Member' means an individual upon whom Life Membership of SAL has been conferred under **Rule 14.3**;

'Member' means a member for the time being of SAL under **Rule 14**;

'Member Association' means and includes those entities recognized under **Rule 12.1**;

'Objects' means the objects of SAL set out in **Rule 4**;

'Official' means any person elected or appointed to any position within SAL or the Member Associations;

'President' means the president for the time being of SAL;

'SAL' means Swimming Australia Limited;

'Special Resolution' means a resolution passed:

- (a) at a General Meeting of SAL of which 30 days notice, accompanied by notice of intention to propose a resolution as a special resolution, has been given to the Members in accordance with this Constitution; and
- (b) by at least three quarters of those Members who, being entitled to vote, vote in person at the meeting or by another form of visible or electronic communication approved by SAL from time to time.

‘State’ means a State of Australia and includes (where appropriate) the Territories of Australia;

‘State Acts’ means the state associations incorporation legislation (by whatever name called) governing the Members, including the Act; and

‘Swimmer’ means an Individual Member; and

- 1.2 Expressions referring to “writing” shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail.
- 1.3 In this Constitution, unless the context otherwise requires:
- (a) a reference to a function includes a reference to a power, authority and duty;
 - (b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty;
 - (c) words importing the singular include the plural and vice versa;
 - (d) words importing any gender include the other gender;
 - (e) references to persons include corporations and bodies politic;
 - (f) references to a person include the legal personal representatives, successors and permitted assigns of that person;
 - (g) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any legislative authority having jurisdiction).
 - (h) an expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has in any clause of this Constitution that deals with a matter with by that Part or Division the same meaning as in that Part or Division;
 - (i) all headings contained in this Constitution are for guidance and do not form part of the substance of the Constitution; and
 - (j) If any provision of this Constitution or any phrase contained in it is invalid or unenforceable in any jurisdiction, the phrase or provision is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable. If it cannot be read down it shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of the Constitution or affecting the validity or enforceability of that provision in any other jurisdiction.

2. EXCLUSION OF REPLACEABLE RULES

2.1 Subject to Part 2B.4 of the Act, the replaceable rules shall not apply to SAL.

3. PURPOSES

3.1 The Company:

- (a) is a company limited by guarantee;
- (b) will operate predominantly for the promotion and development of swimming in Australia in accordance with the Objects;
- (c) will apply its profits (if any) or other income in promoting its Objects; and
- (d) is not carried on for the purpose of profit or gain to its individual members.

4. OBJECTS

4.1 The Objects of SAL are to:

- (a) affiliate and otherwise liaise with the Federation Internationale de Natation or its successor or assign ("FINA") as the recognised international aquatics authority and such other bodies as may be desirable to achieve these Objects;
- (b) conduct, encourage, promote, advance, control and administer natatorial activities in and throughout Australia;
- (c) provide for the conduct, encouragement, promotion, advancement, and administration of natatorial activities in and throughout Australia for athletes with a disability;
- (d) provide for the conduct, encouragement, promotion, advancement, and administration of educational activities in and throughout Australia for technical officials, coaches, athletes and learn-to-swim programs;
- (e) provide for the conduct, encouragement, promotion and administration of natatorial activities through and by various Member Associations and Affiliates for the mutual and collective benefit of the Members;
- (f) act in good faith and loyalty to ensure the maintenance and enhancement of SAL and swimming, its standards, quality and reputation for the collective and mutual benefit of the Members and swimming;
- (g) at all times operate with and promote mutual trust and confidence between SAL and the Members in pursuit of these Objects;
- (h) at all times to act on behalf of, in the interests of, and in conjunction with, the Members;
- (i) promote the economic and sporting success, strength and stability of SAL and each Member Association and to act interdependently with each Member Association in pursuit of these Objects;

- (j) ensure compliance with the rules and regulations of FINA as amended from time to time;
- (k) make Australia the leader in world swimming;
- (l) apply the property and capacity of SAL towards the fulfilment and achievement of these Objects;
- (m) use and protect the Intellectual Property;
- (n) collect, distribute and publish information in connection with swimming;
- (o) promote and control national and international meetings, competitions and championships;
- (p) strive for governmental, commercial and public recognition of SAL, the Member Associations and swimming;
- (q) promulgate and secure uniformity in such rules as may be necessary or appropriate for the management and control of swimming and related activities in Australia;
- (r) promote swimming as a spectator sport;
- (s) through or in association with the Member Associations, the Affiliates or the entities or of itself, promote the health and safety of all Individual Members;
- (t) pursue through itself or others such commercial arrangements, including sponsorship and marketing opportunities as are appropriate, to further these Objects;
- (u) formulate or adopt and implement appropriate policies, including in relation to sexual harassment, equal opportunity, equity, drugs in sport, health, safety, junior and senior programs and such other matters as arise from time to time as issues to be addressed in swimming;
- (v) represent the interests of its Members and of swimming generally in any appropriate forum;
- (w) have regard to the public interest in its operations;
- (x) do all that is reasonably necessary to enable these Objects to be achieved and to enable the Members to receive the benefits which these Objects are intended to achieve;
- (y) encourage and promote performance-enhancing drug free competition; and
- (z) undertake and or do all things or activities which are necessary, incidental or conducive to advance these Objects.

4.2 SAL is established solely for the Objects.

5. POWERS

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

6. DOCTRINE OF ULTRA VIRES

- 6.1 It is intended that this Rule and the other provisions of this Constitution shall be construed to:
- (a) prevent the application of the doctrine of ultra vires to the powers of SAL to further its Objects; and
 - (b) ensure that SAL is able to give effect to its Objects set out in this Constitution without the necessity to specifically include a power.

7. INCOME AND PROPERTY

- 7.1 The income and property of SAL shall be applied solely towards the promotion of the Objects.
- 7.2 No portion of the income or property of SAL shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any Member.
- 7.3 No remuneration or other benefit in money or money's worth shall be paid or given by SAL to any Member who holds any office of SAL.
- 7.4 Nothing contained in **Rules 7.2** or **7.3** shall prevent payment in good faith to any Member:
- (a) for any services actually rendered to SAL whether as an employee or otherwise;
 - (b) for goods supplied to SAL in the ordinary and usual course of business;
 - (c) of interest on money borrowed from any Member;
 - (d) of rent of premises demised or let by any Member to SAL; or
 - (e) for any out-of-pocket expenses incurred by the Member on behalf of SAL; provided that any such payment shall not exceed the amount ordinarily payable between ordinary commercial parties dealing at arms length in a similar transaction.

8. ADDITION, ALTERATION OR AMENDMENT

- 8.1 No addition, alteration or amendment shall be made to this Constitution unless it has been approved by Special Resolution. Any such addition shall be submitted to FINA pursuant to FINA rules.

9. LIABILITY OF MEMBERS

9.1 The liability of the Members of SAL is limited.

10. MEMBER ASSOCIATIONS' CONTRIBUTIONS

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

11. DISTRIBUTION OF PROPERTY ON WINDING UP

11.1 If upon winding up or dissolution of SAL there remains after satisfaction of all its debts and liabilities any assets or property, the same shall not be paid to or distributed amongst the Members but shall be paid to or distributed to an organisation or organisations having objects similar to the Objects and which prohibits the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on SAL by **Rule 7**. Such organisation to be determined by the Members at or before the time of dissolution, and in default thereof by such judge of the Supreme Court of the Australian Capital Territory as may have or acquire jurisdiction in the matter.

12. MEMBER ASSOCIATIONS AND AFFILIATES

12.1 Recognition of Member Associations

The following entities are recognised by SAL as Member Associations. Each of them shall administer swimming in their particular State including any regional area as agreed by the Board from time to time with the consent of affected Stakeholders and administer their particular discipline in accordance with the Objects.

The Member Associations (as at the adoption of this constitution) are:

- (a) Swimming New South Wales Ltd;
- (b) Swimming Victoria Inc;
- (c) Queensland Swimming Association Inc;
- (d) Western Australian Swimming Association Inc;
- (e) Swimming SA Inc;
- (f) Tasmanian Swimming Inc;
- (g) Swimming Northern Territory Inc;
- (h) Australian Swimming Coaches and Teachers Association Ltd; and
- (i) Australian Swimmers Association Inc.

12.2 Recognition of Affiliates

- (a) The following entities are recognised by SAL as Affiliates (as at the adoption of this Constitution):
 - (i) Water Polo Australia Ltd;
 - (ii) Diving Australia Inc;
 - (iii) Synchronised Swimming Australia Inc; and
 - (iv) Masters Swimming Australia Inc.
- (b) New Affiliates may be recognised in accordance with this Constitution. New Affiliates must be incorporated prior to seeking affiliation.

12.3 Compliance of Member Associations

- (a) Each Member Association shall:
 - (i) be incorporated;
 - (ii) provide SAL with copies of its audited accounts, annual report and other associated documents immediately following its annual general meeting;
 - (iii) adopt the Objects and adopt rules which reflect and which are, to the extent permitted or required by the State Acts, generally in conformity with this Constitution;
 - (iv) apply its property and capacity solely in pursuit of the Objects, the Member Association and swimming;
 - (v) at all times act for the joint advantage of SAL and the Members and swimming;
 - (vi) do all that is reasonably necessary to enable the Objects to be achieved;
 - (vii) act in good faith and loyalty to maintain and enhance SAL and swimming, its standards, quality and reputation for the collective and mutual benefit of the Members and swimming;
 - (viii) at all times operate with and promote mutual trust and confidence between SAL and the Members in pursuit of the Objects; and
 - (ix) at all times act on behalf of and in the interests of the Members and swimming.

12.4 Operation of Constitution

- (a) SAL and the Member Associations agree:
- (i) that they are bound by this Constitution and that this Constitution operates to create uniformity in the way in which the Objects and the sport of swimming are to be conducted, encouraged, promoted and administered in Australia;
 - (ii) to act in good faith and loyalty to each other to ensure the maintenance and enhancement of swimming, its standards, quality and reputation for the collective and mutual benefit of the Members;
 - (iii) not to do or permit to be done any act or thing which might adversely affect or derogate from the standards, quality and reputation of swimming and its maintenance and enhancement;
 - (iv) to make full and proper disclosure to each other of all matters of importance to SAL and swimming;
 - (v) to ensure that no Member acquires a material for financial advantage at the expense of SAL or any Member Association or swimming;
 - (vi) to operate with mutual trust and confidence in pursuit of the Objects;
 - (vii) to promote the economic and sporting success, strength and stability of each other and act interdependently with each other in pursuit of the Objects;
 - (viii) to act for and on behalf of the interests of swimming, SAL and the Members; and
 - (ix) that should a Member Association or an Affiliate have administrative, operational or financial difficulties, the Board may, in its absolute discretion, act to assist that Member Association in whatever manner and on such conditions as it considers appropriate.

12.5 Resignation

A Member Association may resign from SAL upon giving written notice to SAL. The resignation shall come into effect upon receipt of the notice by SAL.

12.6 Obligations after resignation

In the event that a Member Association resigns from SAL, the Member Association must fulfil all its obligations to SAL up to and including the date of resignation.

12.7 New Member Associations and Affiliates

- (a) SAL may, by Special Resolution, grant Member Association or Affiliate status to new organisations subject to such organizations complying with such membership and/or affiliation procedures as may be prescribed by SAL from time to time.

- (b) Affiliate status may be granted by SAL for such term and upon such terms and conditions as SAL considers appropriate. New Member Associations will be governed by this Constitution.

13. MEMBER ASSOCIATION CONSTITUTIONS

13.1 Constitution

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

13.2 Amendments to Member Association Constitutions

Each Member Association shall take all steps necessary to ensure its constituent documents are in a form acceptable to SAL and shall ensure its documents are amended in conformity with future amendments to this Constitution, subject to any prohibition or inconsistency in any relevant State Act.

14. MEMBERS

14.1 The Members of SAL shall consist of:

- (a) The Member Associations, which subject to this Constitution, shall be represented by their Delegates who have the right to be present, debate and vote at General Meetings for and on behalf of the Member Associations;
- (b) The Affiliates, which are entitled to be represented at General Meetings, but have no right to debate or vote at General Meetings;
- (c) Clubs which have no right to attend, debate or vote at General Meetings;
- (d) Individual Members who may attend General Meetings but otherwise have no right to debate or vote at General Meetings (unless also a Delegate or a Director);
- (e) Life Members, who may attend and debate at General Meetings, but otherwise have no right to vote at General Meetings; and
- (f) such new categories of Members, as may be created in accordance with Rule **14.2** of this Constitution.

14.2 Creation of New Categories of Membership

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

14.3 Life Members

- (a) SAL may, from among persons who have provided extraordinary service to swimming that must have gone above and beyond what could be reasonably expected, within the swimming community, appoint Life Members in recognition of their efforts in furthering the interests of SAL;
- (b) A Life Member may only be elected by Special Resolution at an Annual General Meeting;
- (c) Nominations for life membership must be reviewed and endorsed by the Board of the nominating Member Association prior to submission to SAL and must be received by the Chief Executive Officer 120 days prior to the relevant Annual General Meeting; and
- (d) Upon life membership being conferred, the person's details shall be entered upon the register. A person shall become a Life Member from the time their life membership is formally announced not from the time of entry of their details on the register.

14.4 Register of Members

Each Member Association and Affiliates shall maintain, in a form and with such details as are acceptable to SAL, a register of all their respective Clubs and Individual Members. Each Member Association and Affiliate shall provide a copy of the register at a time and in a form acceptable to SAL and shall provide prompt and regular updates of that register to SAL when required by the Board.

15. SUBSCRIPTIONS AND FEES

- 15.1 Fees including annual membership fees, capitation fees and levies payable by Members (or any category of Member) to SAL, the basis of, the time for and the manner of payment, shall be determined by the Board.
- 15.2 Monies payable to SAL by the Members under **Rule 15.1** shall be forwarded to SAL for SAL's use by such dates as are prescribed by the Board.
- 15.3 Any Member which has not paid all monies due and payable by that Member to SAL shall (subject to the Board's discretion) have all rights under this Constitution immediately suspended from the expiry of the time prescribed for payment of those monies. Such rights will be suspended until the monies are fully paid or otherwise in the Board's discretion. The Member shall be dealt with in the Board's discretion, which includes the right to suspend, disqualify, discipline or retain (but not impose a financial penalty) that a Member as a Member, or impose such other condition or requirements as the Board considers appropriate.
- 15.4 Where the Board exercises its discretion under **Rule 15.3** and imposes a penalty on a Member which or who has not paid all monies due and payable by that Member to SAL, the rules of natural justice are hereby expressly excluded and do not apply to the imposition of that penalty.

16. SAL REGISTER OF MEMBERS

16.1 Chief Executive Officer to Keep Register

The Chief Executive Officer shall keep and maintain a register of Members in which shall be entered such information as is required under the Act from time to time.

16.2 Inspection of Register

Having regard to privacy and confidentiality considerations, an extract of the register, excluding the address of any Life Member, Director or Delegate, shall be available for inspection (but not copying) by Member Association, upon reasonable request.

17. EFFECT OF MEMBERSHIP

17.1 Members acknowledge and agree that:

- (a) this Constitution constitutes a contract between each of them and SAL and that they are bound by this Constitution and the By-Laws;
- (b) they shall comply with and observe this Constitution and the By-Laws and any determination, resolution or policy which may be made or passed by the Board or any duly authorised committee; (c) by submitting to this Constitution and the By-Laws they are subject to the jurisdiction of SAL;
- (c) this Constitution is made in pursuit of a common object, namely the mutual and collective benefit of SAL, the Members and swimming;
- (d) this Constitution and the By-Laws are necessary and reasonable for promoting the Objects and particularly the advancement and protection of swimming; and
- (e) they are entitled to all benefits, advantages, privileges and services of SAL membership.

18. DISCONTINUANCE OF MEMBERSHIP

18.1 Member's Failure to Comply

Notwithstanding **Rule 19**, where a Member Association fails to comply with its financial and reporting obligations under this Constitution, the Board may determine that Member Association to be not of good standing. On determination that a Member Association is not of good standing, the Board may give notice to the Member Association of:

- (a) the Board's determination; and
- (b) the grounds for the Board's determination.

and request that the Member Association show cause within 21 days from the date of that notice as to why some action should not be taken against the Member Association. The Member Association's failure to respond or act to the Board's satisfaction (including assurances or compliance with its obligations) may result in the Board suspending or terminating the Member Association's membership of SAL,

or otherwise imposing such conditions on its membership as the Board sees fit. A penalty of termination imposed on a Member Association by the Board must be ratified by SAL in General Meeting. Such penalty (other than termination) will take effect upon notification by the Board. Nothing in this Rule affects the operation of **Rules 15.3 and 15.4.**

18.2 Forfeiture of Rights

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

18.3 Representation Rights

Where a Member Association ceases to be a Member, it shall also forfeit all representation rights at General Meetings. A Member Association shall return any SAL documents, records or other property in its possession, custody or control to SAL immediately upon cessation of membership.

18.4 Membership May be Reinstated

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

18.5 Clubs and Individual Members

Where a Member Association or Affiliate ceases to be a Member in accordance with this Constitution or the Act, the Clubs and Individual Members of that Member Association or Affiliate may continue to be recognised by SAL to the extent (if any) and for such time (if any) as is determined in the sole discretion of the Board.

19. DISCIPLINE OF MEMBERS

19.1 The Board may, in its sole discretion, refer the following matters for investigation or determination by a Judiciary Panel:

- (a) breach of Constitution: an allegation or grievance (not being vexatious, trifling or frivolous) by a complainant (who may be, but need not be, a Member) that a Member or past member has:
 - (i) breached, failed, refused or neglected to comply with a provision of this Constitution, the By-Laws or any other resolution or determination of the Board or duly authorized committee; or
 - (ii) acted in a manner unbecoming of a Member or past Member, or prejudicial to the Objects and interests of SAL and/or swimming; or
 - (iii) brought SAL or swimming into disrepute; or
- (b) disciplinary matter: where the Board (in its sole discretion) considers a matter is of a serious enough nature, an appeal from an Individual Member, past

Member or Club who has received a penalty or an adverse finding in disciplinary proceedings conducted by a Member Association or Affiliate, provided that the Individual Member, past Member or Club has first exhausted all avenues of appeal available under the constitutions of the Member Association, Affiliate or Club.

19.2 Members and past Members will be subject to, and submit unreservedly to the jurisdiction, procedures, penalties and appeal mechanisms of SAL set out in this Constitution and the By-Laws.

20. DELEGATES

20.1 Appointment of Delegates

Each Member Association shall be entitled to appoint 1 Delegate. Member Associations shall appoint their Delegates for such term as is deemed appropriate by the Member Association. A Delegate must:

- (a) not also be a Director;
- (b) be an Individual Member of the Member Association which appoints him; and
- (c) be appropriately empowered by their Member Association to make decisions at General Meetings.

20.2 Delegates as Representative

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

20.3 Member Associations to advise

Each Member Association shall advise the Chief Executive Officer of its appointed Delegate prior to any General Meeting.

20.4 Alternate Delegates

A Member Association may appoint an Alternate Delegate. An Alternate Delegate must comply with the requirements for Delegates set out in **Rule 20.1** and has such rights and powers as does a Delegate. Where a Member Association appoints an Alternate Delegate it shall advise the Chief Executive Officer as soon as practicable after the appointment.

21. GENERAL MEETINGS

21.1 SAL Powers of the General Meeting

- (a) SAL in General Meeting shall act in accordance with the Objects and for the mutual and collective benefit of the Members, swimming and the general community throughout Australia. SAL in General Meetings will act in the best interests of SAL and will in addition to its other powers and functions under the Act:
- (i) Requisition a General Meeting;
 - (ii) Convene a General Meeting;
 - (iii) Elect/dismiss Directors;
 - (iv) Determine Directors fees (as applicable);
 - (v) Alter the Constitution (subject to **Rule 8**);
 - (vi) Accept or reject the Annual Report;
 - (vii) Pass or reject Special Resolutions;
 - (viii) Power to admit new Member Associations and Affiliates; and
 - (ix) Be the final arbiter on matters referred to it by the Board.

22. ANNUAL GENERAL MEETINGS TO BE HELD

- 22.1 An Annual General Meeting of SAL shall be held in accordance with the Act and this Constitution on a date and at a venue to be determined by the Board.
- 22.2 All General Meetings other than the Annual General Meeting shall be Special General Meetings and shall be held in accordance with this Constitution.

23. NOTICE OF GENERAL MEETINGS

- 23.1 Notice of every General Meeting shall be given to every Member Association, Delegate, Life Member and Director at the address appearing in the register kept by SAL. No other person shall be entitled as of right to receive notices of General Meetings, except SAL's auditor(s) and FINA.
- 23.2 At least 60 days notice of the place and day and hour of the General Meeting shall be given.
- 23.3 At least 30 days notice of the business to be transacted at a General Meeting shall be given, together with:
- (a) any notice of motion received from any Member Association, Director or the Board in accordance with this Constitution;
 - (b) relevant accounts and reports in accordance with this Constitution and the Act;

- (c) a list of all nominations received for positions to be elected at the relevant General Meeting; and
- (d) the agenda for the meeting.

24. ENTITLEMENT TO ATTEND GENERAL MEETING

Notwithstanding any other clause of this Constitution, no Member shall be represented at, or take part in a General Meeting, unless all monies then due and payable by that Member to SAL are paid.

25. BUSINESS OF GENERAL MEETINGS

25.1 Business to be transacted

- (a) The business to be transacted by the Annual General Meeting includes the consideration of the accounts and the reports of the Board, Member Associations (if any) and the auditors, the election of Directors (as relevant), the appointment of auditors and (if required) the appointment of patrons; and
- (b) All business that is transacted at a General Meeting, with the exception of those matters set out in Rule **25.1** shall be Special Business. "Special Business" is business of which a notice of motion has been submitted in accordance with Rule **26** and includes amendments to the Constitution.

25.2 No Other Business

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

26. NOTICES OF MOTION

- 26.1 All notices of motion from Member Associations for inclusion as Special Business at a General Meeting must be submitted in writing (in the required form) to the Chief Executive Officer not less than 40 days (excluding receiving date and meeting date) prior to the General Meeting.
- 26.2 All notices of motion from the Board for inclusion as Special Business at a General Meeting must be submitted in writing (in the required form) to the Chief Executive Officer not less than 40 days (excluding receiving date and meeting date) prior to the General Meeting.

27. SPECIAL GENERAL MEETINGS

- 27.1 The Board may, whenever it thinks fit, convene a Special General Meeting of SAL and, where but for this Rule more than 15 months would elapse between Annual General Meetings, shall convene a Special General Meeting before the expiration of that period.
- 27.2 The Board shall on the requisition in writing of 5 Member Associations convene a Special General Meeting.

- 27.3 The requisition for a Special General Meeting shall state the object(s) of the meeting, shall be signed by the Delegates of the Member Association making the requisition and be sent to SAL. The requisition may consist of several documents in a like form, each signed by 1 or more of the Member Associations making the requisition.
- 27.4 If the Board does not cause a Special General Meeting to be held within 1 month after the date on which the requisition is sent to SAL, the Member Associations making the requisition, or any of them, may convene a Special General Meeting to be held not later than 3 months after that date.
- 27.5 A Special General Meeting convened by Member Associations under this Constitution shall be convened in the same manner, or as nearly as possible as that, in which meetings are convened by the Board.

28. PROCEEDINGS AT GENERAL MEETINGS

28.1 Quorum Present

No business shall be transacted at any General Meeting unless a quorum is present at the time when the meeting proceeds to business. A quorum for General Meetings shall be 5 Member Associations represented by their notified Delegates.

28.2 President to preside

The President shall, subject to this Constitution, preside at every General Meeting of SAL. If the President is not present, or is unwilling or unable to preside, the Members shall elect one of the remaining Directors who shall, subject to this Constitution, preside as chairman for that meeting only.

28.3 Adjournment of Meeting

- (a) If within half an hour from the time appointed for the General Meeting a quorum is not present the meeting shall be adjourned to such other day and at such other time and place as the chairman may determine. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the meeting will lapse.
- (b) The chairman may, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a General Meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (d) Except as provided in Rule **28.3(c)** it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

28.4 Poll

At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded:

- (a) by the chairman; or
- (b) by over half the Delegates present.

28.5 Recording of Determinations

Unless a poll is demanded under **Rule 28.4**, a declaration by the chairman that a resolution has on a show of hands been carried, or carried unanimously, or by a particular majority or lost, and an entry to that effect in the book containing the minutes of the proceedings of SAL shall be conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution.

28.6 Where Poll demanded

If a poll is duly demanded under **Rule 28.4** it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

28.7 Resolutions not in Meeting

- (a) Except:
 - (i) in the case of an Annual General Meeting; or
 - (ii) where a Special Resolution is required under this Constitution or under the Act; a resolution in writing signed or assented to by facsimile or other form of visible or other electronic communication by all the Members entitled to vote shall be as valid and effectual as if it had been passed at a meeting of Members entitled to vote duly convened and held. Any such resolution may consist of several documents in like form each signed by 1 or more of the Members entitled to vote.
- (b) Without limiting the power to hold Special General Meetings in accordance with this Constitution, a Special General Meeting may be held where 1 or more of the Members entitled to vote is not physically present at the meeting, provided that:
 - (i) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously whether by means of telephone or other form of communication;
 - (ii) notice of the meeting is given to all persons entitled to notice in accordance with this Constitution;
 - (iii) in the event that a failure in communications prevents **Rule 28.7(b)(i)** from being satisfied by a quorum then the meeting shall be suspended

until **Rule 28.7(b)(i)** is satisfied again. If such is not satisfied within 15 minutes from the interruption the meeting shall be deemed to have terminated; and

- (iv) no meeting shall be invalidated merely because no Member entitled to vote is physically present at the place for the meeting specified in the notice of meeting.

29. ENTITLEMENTS AT GENERAL MEETINGS

29.1 Each Member Association shall have voting rights. Delegates shall represent their respective Member Associations. Each Delegate shall have one vote. The chairman shall not have a casting vote. Where voting is equal the vote shall be lost. No other person shall be entitled to vote but shall, subject to this Constitution, have and be entitled to exercise those rights set out in **Rule 14**.

29.2 Each Director is entitled to notice of, and to attend and debate at all General Meetings.

29.3 Delegates may vote by proxy in accordance with this Rule 29.3 as follows:

- (a) The instrument appointing a proxy shall be in writing under the hand of the appointor or of a duly authorised attorney in writing or, if the appointor is a corporation, either under seal or under the hand of a director, secretary or duly authorised attorney. The instrument appointing a proxy shall confer authority on the holder to demand, or join in demand a written poll. An eligible member shall be entitled (but is not obliged) to instruct a proxy to vote in favour of or against any proposed resolution. Unless otherwise instructed, the proxy may vote as he or she thinks fit.
- (b) The instrument appointing a proxy may be in the following form or in a common or usual form as directed by the Board from time to time:

I, _____ of _____
being a member the Swimming Australia Limited (called "**SAL**")
and eligible to vote pursuant to Rule 29.1 hereby appoint _____
of _____ failing that person _____
of _____ as my proxy to vote for me on my
behalf at the (Annual General or General as the case may be) Meeting of SAL,
to be held on the _____ day of _____
and at any adjournment thereof.

My proxy is hereby authorised to vote in favour of/against the following resolutions.

Signed this _____ day of _____ .

(Note: *If the Delegate wishes to vote for or against any resolution he or she shall instruct the proxy accordingly. Unless otherwise instructed, the proxy may vote as he or she thinks fit and this paragraph may be deleted.)

- (c) The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a copy (certified as a true copy by a solicitor or a Justice of the Peace) of that power or authority shall be deposited at the registered office of the SAL or at any other place within Australia that is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 48 hours before the time appointed for the taking of the poll and in default of compliance with this provision, the instrument of proxy shall be invalid.
- (d) A vote, given in accordance with the terms of a proxy or power of attorney, shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the proxy or power under which the instrument was executed provided no notice in writing of that death, unsoundness of mind or revocation shall have been received by SAL at its registered office before the commencement of the meeting or adjourned meeting.

30. POWERS OF THE BOARD

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

31. COMPOSITION OF THE BOARD

31.1 Composition

The Board will, subject to this Constitution, comprise no more than 9 Directors being 7 Directors elected under **Rule 32** ("Elected Directors"), and 2 Appointed Directors appointed under **Rule 37** ("Appointed Directors").

31.2 Qualifications of Directors

Subject always to the law, the Board will determine necessary requirements and qualifications for eligibility as Directors from time to time. An officer of a Member Association can not retain that position if elected to the Board. The Board shall advise the Member Associations of any requirements, qualifications and modifications when determined.

31.3 Portfolios

The Board may determine the interests of SAL are best served by the allocation of portfolios to Directors. The Board shall be entitled to vary the titles and portfolios of each of the Directors in accordance with the needs of SAL from time to time.

31.4 FINA Bureau Member

The FINA Bureau Member shall be entitled to receive notice of, to attend, ex-officio and to speak at Board meetings but shall have no right to vote.

32. ELECTION OF DIRECTORS AND PRESIDENT

32.1 Election of Elected Director

Seven (7) Elected Directors will be elected at a General Meeting in accordance with this Constitution. Nominations must be submitted to a Member Association and must be received by SAL from persons to be considered for election as Elected Directors 40 days prior to the relevant General Meeting. When calling for nominations, details of the necessary requirements and qualifications (if any) applicable to the position shall also be provided.

32.2 Following the election of Directors pursuant to **Rule 32.1**, or otherwise whenever required, the Board will appoint the President from one of the Directors elected pursuant to **Rule 32.1** or appointed pursuant to **Rule 37**. The mechanism applied to the process of appointment of the President will be determined at the discretion of the Board.

33. FORM OF NOMINATION

33.1 Nominations for election to the Board pursuant to **Rule 32** must be:

- (a) in writing;
- (b) on the prescribed form (if any) provided for that purpose;
- (c) signed by a nominator and a seconder, who shall be Individual Members;
- (d) certified by the nominee expressing their willingness to accept the position for which they are nominated; and
- (e) endorsed by the nominee's Member Association confirming the nominee is an Individual Member.

34. ELECTIONS

34.1 Elections for Elected Directors under **Rule 32** shall be by preferential voting ballot to be conducted in accordance with the By-Laws under the direction of the Chief Executive Officer prior to the relevant General Meeting.

35. TERM OF DIRECTORS AND PRESIDENT

35.1 Subject to the provisions in this Constitution relating to the earlier retirement or removal of Directors, each Elected Director shall hold office for 3 years but is eligible for re-election subject to having the required qualifications and complying with the job description.

35.2 The terms of office of Elected Directors shall rotate in accordance with **Rule 36**.

35.3 Elected Directors are unable to hold office for a period of greater than nine consecutive years from the date of their initial election. This maximum period can be extended beyond nine years where, as a result of the transitional arrangements from two to three year terms, the nine year maximum is reached by an Elected Director during the three year period following their most recent election.

35.4 A Director appointed as President pursuant to **Rule 32.2**:

- (a) will serve a term of appointment as President determined by the Board provided that it is not longer than his or her remaining term as Director;
- (b) will be eligible for re-election as President:
 - (i) provided he or she does not hold office for any period greater than six consecutive years; or
 - (ii) notwithstanding 35.4(b)(i), if his or her term as President expires before his or her term as Director expires, the Board may re-elect that Director as President for the remainder of his or her current term;
- (c) may resign from his or her position as President by notice in writing to the Board;
- (d) may be removed from his or her position as President by a written resolution of the Board signed, in one or more counterparts, by at least a majority of Directors; and
- (e) will be deemed to have vacated his or her position as President if he or she ceases to be a Director.

36. ROTATIONAL TERMS

36.1 A minimum of 2 Elected Directors shall retire each year. Any adjustment to the term of Elected Director(s) to ensure rotational terms in accordance with this Constitution, shall be determined by the Board and in the event of the Board failing to agree, by lot. Elections to, and vacancies on, subsequent Boards shall then proceed in accordance with the procedures in this Constitution and this **Rule 36**.

37. APPOINTMENT OF APPOINTED DIRECTORS

37.1 Appointment

The Board may appoint up to 2 persons as Appointed Directors. Appointed Directors may have specific skills and should (but need not) have some experience in or exposure to swimming.

37.2 Term

Subject to provisions in this Constitution relating to the earlier retirement or removal of Directors and particularly **Rule 36**, Appointed Directors may remain in office for up to 3 years following their appointment. An Appointed Director may upon the expiration of their term of office be re-appointed provided that the term of the reappointment does not cause the appointee to exceed nine consecutive years as a Director calculated from the date of initial appointment.

38. CHAIRMAN

The President shall chair any Board meeting at which they are present. If the President is not present, or is unwilling or unable to preside the remaining Directors shall appoint one of their number to preside as chairman for that meeting only.

39. VACANCIES OF DIRECTORS

39.1 Grounds for Termination of Director

In addition to the circumstances (if any) in which the office of a Director becomes vacant by virtue of the Act, the office of a Director becomes vacant if the Director:

- (a) dies;
- (b) becomes bankrupt or makes any arrangement or composition with his/her creditors generally;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (d) resigns their office by providing notice in writing to SAL;
- (e) is absent without the consent of the Board from Board meetings held during a period of 6 months;
- (f) without the prior consent or later ratification of the Members in General Meeting, holds any office of profit under SAL;
- (g) is directly or indirectly interested in any contract or proposed contract with SAL and fails to declare the nature of their interest;
- (h) is removed from office by Special Resolution; or
- (i) would otherwise be prohibited from being a director of a corporation under the Act.

39.2 Casual Vacancies

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

39.3 Remaining Directors May Act

In the event of a casual vacancy or vacancies in the office of a Director, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a Board meeting, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum.

40. MEETINGS OF THE BOARD

40.1 Board to Meet

The Board shall meet as often as is deemed necessary, but no less than five times, in every Financial Year for the dispatch of business and may adjourn and, subject to this Constitution, otherwise regulate its meetings as it sees fit. Any Director may at any time convene a meeting of the Board within a reasonable time.

40.2 Decisions of Board

Subject to this Constitution, questions arising at any meeting of the Board shall be decided by a majority of votes and a determination of a majority of Directors present and entitled to vote shall for all purposes be deemed a determination of the Board. All Directors shall have 1 vote on any question. The Chairman shall also have a casting vote where voting is equal.

40.3 Resolutions not in meeting

- (a) A resolution in writing, signed or assented to by facsimile or other form of visible or other electronic communication by all the Directors shall be as valid and effectual as if it had been passed at a meeting of Directors duly convened and held. Any such resolution may consist of several documents in like form each signed by 1 or more of the Directors.
- (b) Without limiting the power of the Board to regulate their meetings as they think fit, a meeting of the Board, may be held where 1 or more of the Directors is not physically present at the meeting, provided that:
 - (i) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously, whether by means of telephone or other form of communication;
 - (ii) notice of the meeting is given to all the Directors entitled to notice in accordance with the usual procedures agreed upon or laid down from time to time by the Board;
 - (iii) in the event of a failure in communications prevents **Rule 40.3(b)(i)** from being satisfied by a quorum of Directors then the meeting shall be suspended until **Rule 40.3(b)(i)** is satisfied again. If such is not satisfied within 15 minutes from the interruption, the meeting shall be deemed to have terminated; and
 - (iv) no meeting shall be invalidated merely because no Director is physically present at the place for the meeting specified in the notice of a meeting.

40.4 Quorum

At meetings of the Board the number of Directors whose presence (or participation) under **Rule 41.3** is required to constitute a quorum is 5 Directors.

40.5 Notice of Board meetings

Unless all Directors agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their presence), not less than 14 days' written notice of the meeting of the Board shall be given to each Director. The agenda shall be forwarded to each Director not less than 7 days prior to such meeting.

40.6 Validity of Board decisions

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

41. CONFLICTS

41.1 A Director shall declare to the Board their interest in any:

- (a) contractual matter;
- (b) selection matter;
- (c) disciplinary matter; or
- (d) other financial matter;

in which a conflict of interest arises or may arise and shall, unless otherwise determined by the Board, absent himself from discussion of such matter and shall not be entitled to vote in respect of such matter. In the event of any uncertainty as to whether it is necessary for a Director to absent himself from discussions and refrain from voting, the issue should be immediately determined by vote of the Board, or if this is not possible, the matter shall be adjourned or deferred. The Chief Executive Officer shall maintain a register of declared interests.

42. CHIEF EXECUTIVE OFFICER

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

42.2 The Chief Executive Officer shall:

- (a) as far as practicable attend all Board meetings and General Meetings;
- (b) prepare the notice of and agenda for all Board meetings and all General Meetings;
- (c) ensure that minutes of the proceedings of all Board meetings and General Meetings are recorded and prepared; and
- (d) regularly report to the Board on the activities of, and issues relating to, SAL.

42.3 Subject to the Act, this Constitution, the By-Laws and any directive of the Board, the Chief Executive Officer has power to perform all such things as appear necessary or desirable for the proper management and administration of SAL, including without limitation establishing management advisory committees as required from time to

time. No resolution passed by the General Meeting shall invalidate any prior act of the Chief Executive Officer or the Board which would have been valid if that resolution had not been passed.

42.4 The Chief Executive Officer, in consultation with the Board, may employ such office personnel as are deemed necessary from time to time. Such appointments shall be for such period and on such conditions as the Chief Executive Officer and the Board determine.

42.5 The Chief Executive Officer is ineligible for election or appointment to the Board as a Director within a period of three years following his or her departure from the role of Chief Executive Officer.

43. DELEGATIONS

43.1 Board may Delegate Functions

The Board may by instrument in writing create or establish or appoint from among the Directors or otherwise, committees, individual officers or consultants to carry out such duties and functions and with such powers, as the Board determines.

43.2 Delegation by Instrument

The Board may in the establishing instrument delegate such functions as are specified in the instrument, other than:

- (a) this power of delegation; and
- (b) a function imposed on the Board or the Chief Executive Officer by the Act or any other law or this Constitution.

43.3 Delegated function exercised in accordance with terms

A function, the exercise of which has been delegated under this Rule, may whilst the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.

43.4 Procedure of delegated entity

The procedures for any delegated entity shall, with any necessary or incidental amendment, be the same as that applicable to meetings of the Board under **Rule 40**. The quorum shall be determined by the committee, but shall be no less than one half of the total number of committee members.

43.5 Delegation may be conditional

A delegation under this clause may be made subject to such conditions or limitations as to the exercise of any function or at the time or circumstances as may be specified in the delegation.

43.6 Revocation of delegation

The Board may by instrument in writing, revoke wholly or in part any delegation made under this Rule, and may amend, repeal or veto any decision made by such body or person under this Rule.

43.7 Committees

The following committees shall be established by the Board:

- (a) Risk and Audit Committee;
- (b) Nomination and Remuneration Committee;
- (c) Business Development and Strategy Committee;
- (d) Technical Swimming Committee;
- (e) High Performance Committee;
- (f) Participation and Sport Development Committee; and
- (g) Integrity Panel,

the composition and functions of which shall be set out by the Board in the By-Laws.

43.8 Operation of committees

Any committees created under this **Rule 43** will function as committees of the Board. For the avoidance of doubt the committees and their members are responsible to the Board and are subject to the direction of, and delegation prepared by, the Board in accordance with this **Rule 43**.

44. INTERNATIONAL COMMITTEE

44.1 In addition to the committees set out at Rule 43.7, there shall be an International Committee which will:

- (a) comprise the Presidents, or their nominees, of SAL, Diving Australia Inc, Synchronized Swimming Australia Inc, Water Polo Australia Ltd and the FINA Bureau Member;
- (b) have the following functions:
 - (i) to facilitate consultation and cooperation across the various disciplines of each member of the International Committee;
 - (ii) to discuss and agree on nominations to the various FINA bodies as required;
 - (iii) to coordinate international competition and team selection where necessary; and

- (iv) to conciliate in any matter of disputation concerning the sport of swimming, diving, synchronised swimming and water polo in Australia; and
- (c) meet when and as often and by such means as may be necessary to transact the business referred to in Rule 44.1(b). Any two International Committee Members may convene a meeting of the International Committee. The President of Swimming Australia shall chair all meetings of the Committee and Swimming Australia will provide secretarial support.

45. BY-LAWS

45.1 Board to formulate By-Laws

The Board may (by itself or by delegation to a committee) formulate, approve, issue, adopt, interpret and amend such By-Laws for the proper advancement, management and administration of SAL, the advancement of the Objects as it thinks necessary or desirable. Such By-Laws must be consistent with this Constitution.

45.2 By-Laws binding

All By-Laws made under this clause shall be binding on SAL and Members.

45.3 By-Laws deemed applicable

All rules, regulations and by-laws of ASI in force at the date of the approval of this Constitution under the Act insofar as such rules, regulations or by-laws are not inconsistent with, or have been replaced by this Constitution, shall be deemed to be By-Laws under this Rule.

45.4 Notices binding on members

Amendments, alterations, interpretations or other changes to By-Laws shall be advised to Member Associations by means of notices approved by the Board and prepared and issued by the Chief Executive Officer. Member Associations shall be obliged to draw such notices to the attention of their respective Members. Notices are binding upon all Members.

46. RECORDS AND ACCOUNTS

46.1 Chief Executive Officer to Keep Records

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

46.2 Records Kept in Accordance with the Act

Proper accounting and other records shall be kept in accordance with the Act, generally accepted accounting principles and/or any applicable code of conduct. The books of account shall be kept in the care and control of the Chief Executive Officer.

46.3 SAL to retain records

SAL shall retain such records for not less than 7 years after the completion of the transactions or operations to which they relate.

46.4 Board to submit accounts

The Board shall submit to the Annual General Meeting the accounts of SAL in accordance with this Constitution and the Act.

46.5 Accounts Conclusive

The accounts when approved or adopted by an Annual General Meeting shall be conclusive except as regards any error discovered in them within 3 months after such approval or adoption.

46.6 Accounts to be sent to Members

The Chief Executive Officer shall cause to be sent to all persons entitled to receive notice of Annual General Meetings of SAL in accordance with this Constitution, a copy of the accounts, the Board's report, the auditor's report and every other document required under the Act or *Act* (if any).

46.7 Inspection of accounts

Subject to any reasonable restrictions as to time and manner of inspecting the same that may be imposed in accordance with this Constitution, the accounts shall be open to inspection (but not copying) by the Delegates.

46.8 Negotiable Instruments

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments and all receipts for money paid to SAL, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any 2 authorised Directors or by 1 authorised Director and the Chief Executive Officer or in such other manner and by such persons the Directors determine.

47. AUDITOR

47.1 A properly qualified auditor or auditors shall be appointed and the remuneration of such auditor or auditors fixed by the Board. The auditor's duties shall be regulated in accordance with the *Act*, or if no relevant provisions exist under the *Act* in accordance with generally accepted principles, or any applicable code of conduct.

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

48. NOTICES

48.1 Manner of Notices

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

49. NOTICE OF GENERAL MEETING

Notice of every General Meeting shall be given in the manner authorized and to the persons entitled to receive notice under this Constitution.

50. COMMON SEAL

50.1 SAL has elected not to use a Common Seal.

50.2 Any document, that would have required the use of the Common Seal, shall be authorised by the Board and shall be countersigned by 2 Directors.

51. PATRONS AND VICE PATRONS

SAL at its Annual General Meeting may appoint on the recommendation of the Board a Chief Patron and such number of Patrons and Vicepatrons as it considers necessary.

52. INDEMNITY

52.1 Directors to be Indemnified

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

52.2 SAL to Indemnify Directors

- (a) SAL shall indemnify its Directors and employees against all damages and costs (including legal costs) for which any such Director or employee may be or become liable to any third party in consequence of any act or omission except willful misconduct:
 - (i) in the case of a Director, performed or made whilst acting on behalf of and with the authority, express or implied of SAL; and
 - (ii) in the case of an employee, performed or made in the course of, and within the scope of their employment by SAL.

53. DISSOLUTION

53.1 SAL may be wound up in accordance with the provisions of the Act.

53.2 The provisions of **Rules 10 and 11** of this Constitution relating to the winding up and dissolution of SAL shall take effect and be observed as if the same were repeated in this clause.

54. COLOURS

54.1 The colours of SAL shall be dark green and gold.

55. BADGES AND LOGO

55.1 The badge of SAL shall incorporate the Australian Coat of Arms.

55.2 The logo of SAL shall be such as is prescribed by By-Law from time to time.

56. LAWS AND RULES GOVERNING SWIMMING AUSTRALIA

56.1 Where no provision is made in the Constitution or any rules or By-Laws made under the Constitution, SAL may apply to FINA for a ruling.

56.2 The technical laws of FINA as set out in the handbook of FINA with regard to swimming, shall (where practicable) be binding on all competitions held in Australia. Any alterations or amendments to the FINA technical laws shall be immediately notified to all Member Associations and Affiliates by SAL and shall become operative 2 months after the date of approval by FINA.

57. ELIGIBILITY

57.1 To be eligible to compete in any Competition any Competitor must be an Individual Member or a Member of a national federation affiliated to FINA.

58. JURISDICTION OVER SWIMMERS

58.1 The eligibility definition in **Rule 56** shall be binding on all Competitors and Individual Members.

- 58.2 Sentences of suspension or disqualification or expulsion by a Member Association or Affiliate shall be binding on every other Member Association and Affiliate and such suspension or disqualification shall be notified to SAL immediately. All matters affecting the status or reinstatement of any Swimmer shall be forwarded to SAL by the relevant Member Association or Affiliate of which the Swimmer is an Individual Member and SAL will alone or with reference to the FINA Bureau give a decision. All such applications first shall be submitted to the relevant Member Association or Affiliate, and this recommendation forwarded with the said application. An application for reinstatement shall first be submitted to the relevant Member Association or Affiliate which originally dealt with the matter.
- 58.3 A Swimmer who has broken the Eligibility Law knowingly, may not be requalified, provided that:
- (a) a Swimmer who has been suspended, disqualified or expelled shall not compete until the term of suspension has been served, the disqualification lifted or the expulsion reversed; and
 - (b) in all cases where “permits” to hold meets are granted, each Member Association and Affiliate agrees to ensure that the Rules governing the sport are strictly enforced and each Member Association and Affiliate shall insist that all swimming races, competitions and water polo matches, shall be stated in entry forms, programs and all official notices as going to be held and shall actually be held under the Rules of SAL. N.B. In connection with this Rule, the words “conducted under the Rules of SAL” shall appear in every entry form and program and each Member Association and Affiliate is responsible to see this direction is implemented.

59. MASTERS PROGRAMS

- 59.1 SAL or a Member Association may recognise masters swimming, diving, water polo or synchronised swimming organisations who administer and control a program of competition for adults 25 years of age and older who are interested in the physical fitness and social benefits to be derived from pursuing such a program.
- 59.2 Members of any such organisation so recognised shall be entitled to compete in any competition.
- 59.3 The following regulations shall apply for each of the four masters disciplines:
- (a) Member Associations may establish a special category membership in each of the four disciplines, with a minimum age limit of 25 years and for a fee to be determined by that Member Association; and
 - (b) Competitions: Shall be closed to any persons 24 years of age or younger.