

Associations Incorporation Act 2009

CONSTITUTION

of

Sydney Seals Freediving Club Incorporated

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Part 1 Preliminary

1 Definitions

(1) In this Constitution:

AFA means the Australian Freediving Association.

Association or Club means this association, that is, the legal entity Sydney Seals Freediving Club Incorporated.

Committee Member means an office-bearer or ordinary committee member.

Constitution means this Constitution, that is, of the Sydney Seals Freediving Club Incorporated.

exercise a function includes perform a duty.

Freediving Certification means a freediving certification confirmed by a recognised freediving education system, including but not limited to by Molchanovs, Professional Association of Diving Instructors (PADI), the International Development of Apnea (AIDA), and Scuba Schools International (SSI), etc.

function includes a power, authority or duty.

intellectual property means means all rights subsisting in copyright, business names, names, trade marks (or signs), logos, designs, equipment including computer software, images (including photographs, videos or films) or service marks relating to the Association, or any activity of or conducted, promoted or administered by the Association.

meeting includes in-person and/or online meetings.

Member means a member of the Association.

Member Protection Information Officer or MPIO means a Member Protection Information Officer who has completed the relevant training provided by Sport Integrity Australia or equivalent body.

Objects means the Objects of the association as provided for in Part 2 of this Constitution.

office-bearer means a committee member who is elected to an office referred to Part 4.

ordinary committee member means a committee member who is not an office-bearer.

Public Officer means the person appointed to be the public officer of the Association in accordance with the Act.

Register of Members means the register of members maintained under clause 6.

Secretary, of the Association, means:

- (a) the person holding office under this Constitution as secretary, or
- (b) if no person holds that office -the Public Officer of the Association.

special general meeting or SGM, of the Association, means a general meeting of the Association other than an annual general meeting.

Sport means the sport of freediving.

Sydney Seals Freediving Club Incorporated means this Association.

subcommittee means a subcommittee established under clause 25.

the Act means the *Associations Incorporation Act 2009*.

the Regulation means the *Associations Incorporation Regulation 2022*.

Note: The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this constitution.

- (2) The *Interpretation Act 1987* applies to this Constitution as if it were an instrument made under the Act.

Note: The Act, Part 4 deals with various matters relating to the management of associations.

2 Interpretation

- (1) In this Constitution:
- (a) words importing the singular include the plural and vice versa;
 - (b) words importing any gender include the other genders;
 - (c) references to persons include corporations and bodies politic;
 - (d) references to a person include the legal personal representatives, successors and permitted assigns of that person;
 - (e) 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).

3 The Act

- (1) Except where the contrary intention appears, in this Constitution, an expression that deals with a matter under the Act has the same meaning as that provision of the Act. Model rules under the Act are expressly displaced by this Constitution.

4 Powers of the Association

- (1) Solely for furthering the Objects, the Association has the rights, powers and privileges conferred on it under section 19 of the Act.

Part 2 Objects

1 Purposes

- (1) The Sydney Seals Freediving Club is established for the Objects of:
 - (a) participating as an affiliate of the Australian Freediving Association (**AFA**) to facilitate freediving to be conducted, encouraged, promoted, advanced and administered;
 - (b) creating an environment that encourages freedivers to reach their full potential, including through structured activities focused on safety, continuous learning, technique, physical development, healthy competition, and connection with water and community;
 - (c) fostering a collective of freedivers through events and activities, including to conserve, restore and care for marine ecosystems, and promoting environmentally friendly practices;
 - (d) promoting freediving as a clean and safe sport, providing education on water confidence and safety skills;
 - (e) undertaking and/or doing all such things or activities which are necessary, incidental or conducive to the advancement of these Objects.

2 Core values

- (1) The Association is grounded in the following core values:
 - (a) giving;
 - (b) volunteering;
 - (c) relationship building;
 - (d) positive and supportive attitude;
 - (e) continuous learning;
 - (f) reciprocity;
 - (g) respect;
 - (h) humility;
 - (i) camaraderie;
 - (j) caring for one another and the environment.

Part 3 Members of Association

3 Membership generally

- (1) An individual is taken to be a Member of the Association if:
 - (a) the person has applied to be a member under this Constitution, and the application has been approved, or
 - (b) the person was 1 of the individuals on whose behalf an application for registration of the association was made under the Act, section 6(1)(a), or
 - (c) the person was:
 - (i) for an unincorporated body registered as the association - a member of the body immediately before the registration, or
 - (ii) for a registrable corporation registered as the association - a member of the corporation immediately before the registration, or
 - (iii) for an association that was amalgamated to form the relevant association - a member of the existing association immediately before the amalgamation.
- (2) A person who is not an individual is not eligible to be a Member of the Association.

4 Eligibility for membership

- (1) A person is eligible to be a Member of the Association if:
 - (a) the person is aged 18 or over; and
 - (b) the person meets the requirements for AFA membership.

5 Membership applications

- (1) An application by a person to be a Member of the Association must be:
 - (a) made in writing, and
 - (b) in the form determined by the Committee, and
 - (c) lodged with the Secretary.
- (2) The Committee may determine that an application may be made or lodged by email or other electronic means.
- (3) The Secretary must refer an application to the Committee as soon as practicable after receiving the application.
- (4) The Committee must approve or reject the application.
- (5) As soon as practicable after the Committee has decided the application, the Secretary must:
 - (a) give the applicant written notice of the decision, including by email or other electronic means if determined by the committee, and
 - (b) if the application is approved - inform the applicant that the applicant is required to pay the fee payable under clause 7 within 28 days of the day the applicant received the notice.
- (6) The Secretary must enter the applicant's name in the Register of Members as soon as practicable after the applicant pays the fee in accordance with subclause (5)(b).
- (7) The applicant becomes a Member once the applicant's name is entered in the register.

6 Register of Members

- (1) The Secretary must establish and maintain a Register of Members of the Association.
- (2) The register:
 - (a) may be in written or electronic form, and
 - (b) must include, for each Member:
 - (i) the Member's full name, and
 - (ii) a residential, postal or email address, and
 - (iii) the date on which the person became a Member, and
 - (iv) if the person ceases to be a Member - the date on which the person ceased to be a Member, and
 - (c) must be kept in New South Wales:
 - (i) at the Association's main premises, or
 - (ii) if the Association has no premises - at the Association's official address, and
 - (d) must be available for inspection, free of charge, by members at a reasonable time, and
 - (e) if kept in electronic form - must be able to be converted to hard copy.
- (3) If the register is kept in electronic form, the requirements in subclause (2)(c) and (d) apply as if a reference to the register is a reference to a current hard copy of the register.
- (4) A Member may obtain a hard copy of the register, or a part of the register, on payment of a fee of not more than \$1, as determined by the committee, for each page copied.
- (5) Information about a Member, other than the Member's name, must not be made available for inspection if the Member requests that the information not be made available.
- (6) A Member must not use information about a Member obtained from the register to contact or send material to the Member, unless:
 - (a) the information is used to send the Member:
 - (i) a newsletter, or
 - (ii) a notice for a meeting or other event relating to the Association, or
 - (iii) other material relating to the Association, or
 - (b) it is necessary to comply with a requirement of the Act or the Regulation.

7 Fees

- (1) The entrance fee to be paid to the Association by a person whose application to be a Member of the Association has been approved is:
 - (a) \$125, or
 - (b) another amount determined by the Committee.

8 Members' liabilities

The liability of a Member of the Association to contribute to the payment of either of the following is limited to the amount of any outstanding fees for the Member under clause 5:

- (a) the debts and liabilities of the Association,
- (b) the costs, charges and expenses of the winding up of the Association.

9 Responsibilities of Members

- (1) Members acknowledge and agree:
 - (a) that this Constitution constitutes a contract between each of them and the Association, and that they are bound by this Constitution and any associated regulations, the AFA Constitution and any associated regulations, and to adhere to the AFA Code of Conduct;
 - (b) to comply with this Constitution, and all regulations, policies, rules and bylaws of the Association as amended from time to time;
 - (c) to abide by the rules of safe diving and training, including to adhere to any limits imposed by a members' Freediving Certification;
 - (d) to undergo onboarding and safety induction processes as required by the Association.

10 Effect of membership

- (1) Members acknowledge and agree that:
 - (a) membership of the Association does not give rise to:
 - (i) any proprietary right of Members in, to or over the Association or its property or assets;
 - (ii) any automatic right of a Member to renewal of membership with the Association;
 - (iii) subject to the Act and the Association acting in good faith, the right of Members to natural justice, unless expressly provided for in this Constitution;
 - (b) they are entitled to all benefits, advantages, privileges and services of Association Membership; and
 - (c) a right, privilege or obligation of a person by reason of their Membership of the Association:
 - (i) is not capable of being transferred or transmitted to another person; and
 - (ii) terminates upon the cessation of Membership whether by death, resignation or otherwise.

11 Disciplinary action against members

- (1) A person may make a complaint to the Committee that a Member of the Association has:
 - (a) failed to comply with a provision of this Constitution, or
 - (b) wilfully acted in a way prejudicial to the interests of the Association.
- (2) The Committee may refuse to deal with a complaint if the Committee considers the complaint is trivial or vexatious.
- (3) If the Committee decides to deal with the complaint, the Committee must:
 - (a) serve notice of the complaint on the Member, and
 - (b) give the Member at least 14 days from the day the notice is served on the Member within which to make submissions to the Committee about the complaint, and
 - (c) consider any submissions made by the Member.
- (4) The Committee may, by resolution, expel the Member from the Association or suspend the Member's membership if, after considering the complaint, the Committee is satisfied that:
 - (a) the facts alleged in the complaint have been proved, and
 - (b) the expulsion or suspension is warranted.
- (5) If the Committee expels or suspends the Member, the Secretary must, within 7 days of that action being taken, give the Member written notice of:
 - (a) the action taken, and
 - (b) the reasons given by the Committee for taking the action, and
 - (c) the Member's right of appeal under clause 12.
- (6) The expulsion or suspension does not take effect until the later of the following:
 - (a) the day the period within which the Member is entitled to exercise the Member's right of appeal expires, or
 - (b) if the Member exercises the Member's right of appeal within the period - the day the Association confirms the resolution under clause 13.

12 Right of appeal against disciplinary action

- (1) A Member may appeal against a resolution of the Committee under clause 11 by lodging a notice of appeal with the Secretary within 7 days of being served notice of the resolution.
- (2) The Member may include, with the notice of appeal, a statement of the grounds on which the Member intends to rely for the purposes of the appeal.
- (3) The secretary must notify the Committee that the Secretary has received a notice of appeal.
- (4) If notified that a notice has been received, the Committee must call a general meeting of the Association to be held within 28 days of the day the notice was received.
- (5) At the general meeting:
 - (a) no business other than the question of the appeal is to be transacted, and
 - (b) the Member must be given an opportunity to state the Member's case orally or in writing, or both, and
 - (c) the Committee must be given the opportunity to state the committee's

case orally or in writing, or both, and

- (d) the Members present must vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- (6) The appeal is to be determined by a simple majority of votes cast by the Members.

13 Resolution of internal disputes

- (1) The following disputes must be referred to a Community Justice Centre within the meaning of the *Community Justice Centres Act 1983* for mediation:
 - (a) a dispute between 2 or more Members of the Association, but only if the dispute is between the Members in their capacity as Members, or
 - (b) a dispute between 1 or more Members and the Association.
- (2) If the dispute is not resolved by mediation within 3 months of being referred to the Community Justice Centre, the dispute must be referred to arbitration.
- (3) The *Commercial Arbitration Act 2010* applies to a dispute referred to arbitration.

14 Membership entitlements not transferable

A right, privilege or obligation that a person has because the person is a Member of the Association:

- (a) cannot be transferred to another person, and
- (b) terminates once the person ceases to be a Member of the Association.

15 Member resignation

- (1) A Member of the Association may resign from being a Member by giving the Secretary written notice of at least 1 month, or another period determined by the committee, of the Member's intention to resign.
- (2) The Member ceases to be a Member on the expiration of the notice period.

16 Cessation of membership

A person ceases to be a Member of the Association if the person:

- (a) dies, or
- (b) resigns from being a Member, or
- (c) is expelled from the Association, or
- (d) fails to pay the annual fee payable under clause 7 within 3 months of the due date.

Part 4 Committee

Division 1 Constitution

17 Functions of committee

- (1) Subject to the Act, the Regulation, this Constitution and any resolution passed by the Association in general meeting, the Committee:
 - (a) is to control and manage the affairs of the Association, and
 - (b) may exercise all the functions that may be exercised by the Association, other than a function that is required to be exercised by the Association in general meeting, and
 - (c) has power to do all things that are necessary or convenient to be done for the proper management of the affairs of the Association.

18 Composition of Committee

- (1) The Committee must have at least 5 Committee Members, as elected in accordance with clause 19, consisting of:
 - (a) the following office-bearers:
 - (i) the President,
 - (ii) the Vice-President,
 - (iii) the Secretary,
 - (iv) the Treasurer, and
 - (b) at least 1 ordinary committee member.

Note - The Act, section 28 contains requirements relating to membership eligibility and composition of the committee.
- (2) Any Committee Member may be appointed as the Public Officer.
- (3) An office-bearer may hold up to 2 offices, other than both the offices of President and Vice-President.
- (4) Ordinary committee members may have titles as agreed by the Committee from time to time.
- (5) The Committee should have duty statements for each office-bearer, and may provide duty statements for specific responsibilities of ordinary committee members, as required.
- (6) The Committee must ensure that at all times:
 - (a) There is a Public Officer appointed;
 - (b) there is at least one Member Protection Information Officer (**MPIO**);
 - (c) there is at least one Committee Member nominated to be a representative of the Association to liaise with AFA, including for AFA meetings and decision-making processes.
- (7) The Committee must have an uneven number of Committee Members at all times (e.g. 5, 7, 9, etc).
- (8) To the extent practicable, the Committee:
 - (a) shall comprise 50% female and 50% male Committee Members;
 - (b) shall strive to be comprised of a spread of diverse lived experiences and perspectives (including race, cultural and linguistic background, gender and sexual identity, age, disability, socioeconomic background, etc).

19 Election of Committee Members

- (1) Any Member of the Association may be nominated as a candidate for election as an office-bearer or ordinary Committee Member.
- (2) The nomination must be:
 - (a) made in writing, and
 - (b) signed by at least 2 Members of the Association, not including the candidate, and
 - (c) accompanied by the written consent of the candidate to the nomination, and
 - (d) given to the Secretary at least 7 days before the date fixed for the annual general meeting at which the election is to take place.
- (3) If insufficient nominations are received to fill all vacancies:
 - (a) the candidates nominated are taken to be elected, and
 - (b) a call for further nominations must be made at the meeting.
- (4) A nomination made at the meeting in response to a call for further nominations must be made in the way directed by the Committee Member presiding at the meeting.
- (5) Vacancies that remain after a call for further nominations are taken to be casual vacancies.
- (6) If the number of nominations received is equal to the number of vacancies to be filled, the individuals nominated are taken to be elected.
- (7) If the number of nominations received is more than the number of vacancies to be filled, a ballot must be held at the meeting in the way directed by the Committee.

20 Terms of office

- (1) Committee Members elected under this clause shall be elected for a term of one (1) year.
- (2) Subject to provisions in this Constitution relating to earlier retirement or removal of Committee Members, elected Committee Members shall remain in office from the conclusion of the AGM at which the election occurred until the conclusion of the second AGM following.
- (3) A Committee Member is eligible, if otherwise qualified, for re-election.
- (4) There is no limit on the number of consecutive terms for which a Committee Member may hold office.
- (5) To the extent practicable, the Committee shall endeavour for rotational terms to prevent an entire changeover of the Committee at any one time. For example, the Committee should strive to prevent a situation where all Committee Members do not renominate for the following year. For the avoidance of doubt, an entire changeover of the Committee at any given time does not amount to a breach of this Constitution.

21 Vacancies in office

- (1) A casual vacancy in the office of a Committee Member arises if the individual:
 - (a) dies, or
 - (b) ceases to be a Member of the Association, or
 - (c) resigns from office by written notice given to the Secretary, or
 - (d) is removed from office by the Association under this clause, or
 - (e) is absent from 3 consecutive meetings of the Committee without the consent

- of the Committee, or
 - (f) becomes insolvent under administration within the meaning of the Corporations Act 2001 of the Commonwealth, or
 - (g) is prohibited from being a director of a company under the *Corporations Act 2001* of the Commonwealth, Part 2D.6, or
 - (h) is convicted of an offence involving fraud or dishonesty for which the maximum penalty is imprisonment for at least 3 months, or
 - (i) becomes a mentally incapacitated person.
- (2) The Association in general meeting may, by resolution:
- (a) remove a Committee Member from office at any time, and
 - (b) appoint another Member of the Association to hold office for the balance of the Committee Member's term of office.
- (3) A Committee Member to whom a proposed resolution referred to in subclause (2) relates may:
- (a) give a written statement, of a reasonable length, to the President or Secretary, and
 - (b) request that the Committee send a copy of the statement to each Member of the Association at least 7 days before the general meeting at which the proposed resolution will be considered.
- (4) If the Committee fails to send a copy of a statement received under subclause (3)(a) to each Member in accordance with a request made under subclause (3)(b), the statement must be read aloud by the Committee Member presiding at the general meeting at which the proposed resolution will be considered.
- (5) The Committee may, by resolution, appoint a Member of the Association to fill a casual vacancy other than a vacancy arising from the removal from office of a Committee Member.
- (6) Subject to this Constitution, a Committee Member appointed to fill a casual vacancy holds office until the next annual general meeting.

22 Secretary

- (1) As soon as practicable after being elected as Secretary, the Secretary must lodge a notice with the Association specifying the Secretary's address.
- (2) The Secretary must keep minutes of:
- (a) all elections of Committee Members, and
 - (b) the names of Committee Members present at a meeting of the Committee or a general meeting, and
 - (c) all proceedings at Committee Meetings and general meetings.
- (3) The minutes must be:
- (a) kept in written or electronic form, and
 - (b) for minutes of proceedings at a meeting -signed, in writing or by electronic means, by:
 - (i) the Committee Member who presided at the meeting, or
 - (ii) the Committee Member presiding at the subsequent meeting.

23 Treasurer

- (1) The treasurer of the Association must ensure—
 - (a) all money owed to the Association is collected, and
 - (b) all payments authorised by the Association are made, and
 - (c) correct books and accounts are kept showing the financial affairs of the Association, including full details of receipts and expenditure relating to the Association's activities.

24 Appointed Committee Members

- (1) The elected Committee Members may appoint up to two (2) appointed Committee Members.
- (2) The appointed Committee Members may have specific skills in commerce, finance, marketing, law or business generally or such other skills which complement the Committee composition. They do not need to be Members of the Association but must be natural persons.
- (3) Appointed Committee Members may be appointed by the elected Committee Members under this Constitution for a term of one (1) year, which shall commence from the first Committee Meeting after the AGM until after the conclusion of the second AGM following.
- (4) Following the adoption of this Constitution, no person who has served as an appointed Committee Member for a period of four (4) consecutive full terms shall be eligible for appointment as an appointed Committee Member until the next AGM following the date of conclusion of their last term as an appointed Committee Member.

25 Delegations

- (1) The Committee may, by instrument in writing, create, establish or appoint special committees, individual officers and consultants to carry out specific duties and functions.
- (2) The Committee may:
 - (a) establish 1 or more subcommittees to assist the Committee to exercise the Committee's functions, and
 - (b) appoint 1 or more Members of the Association to be the members of the subcommittee.
- (3) The Committee may provide to a subcommittee a specific Terms of Reference or other instructions in writing to guide the subcommittee as to its scope and remit.
- (4) The Committee may delegate to the subcommittee the exercise of the Committee's functions specified in the instrument, other than:
 - (a) this power of delegation, or
 - (b) a duty imposed on the Committee by the Act or another law.

Note: The *Interpretation Act 1987*, section 49 deals with various matters relating to delegations.

26 Policies

- (1) The Committee may establish policies as relevant for the Association, including but not limited to:
 - (a) strategic planning;
 - (b) confidentiality;
 - (c) intellectual property;
 - (d) conflict of interest;
 - (e) risk management.

Division 2 Procedure

27 Committee Meetings

- (1) The Committee must meet at least 4 times in each 12-month period at the place and time determined by the Committee.
- (2) Additional meetings of the Committee may be called by any Committee Member.
- (3) The procedure for calling and conducting business at a meeting of a subcommittee is to be as determined by the subcommittee.

Note: The Act, section 30(1) provides that committee meetings may be held as and when the association's constitution requires.
- (4) Committee Meetings may be conducted in-person, and/or online.

28 Notice of Committee Meeting

- (1) The Secretary must give each Committee Member oral or written notice of a meeting of the Committee at least 48 hours, or another period on which the Committee Members unanimously agree, before the time the meeting is due to commence.
- (2) The notice must describe the general nature of the business to be transacted at the meeting.
- (3) The only business that may be transacted at the meeting is:
 - (a) the business described in the notice, and
 - (b) business that the Committee Members present at the meeting unanimously agree is urgent business.

29 Quorum

- (1) The quorum for a meeting of the Committee is:
 - (a) If 5 Committee Members – 3 must be present;
 - (b) If 7 Committee Members – 5 must be present (and so on).
- (2) No business may be transacted by the Committee unless a quorum is present.
- (3) A quorum must remain present throughout the meeting.
- (4) If a quorum is not present within half an hour of the time the meeting commences, the meeting is adjourned:
 - (a) to the same place, and
 - (b) to the same time of the same day in the following week.

- (5) If a quorum is not present within half an hour of the time the adjourned meeting commences, the meeting is dissolved.
- (6) If the number of Committee Members is less than the number required to constitute a quorum for a Committee Meeting, the Committee Members may appoint 1 or more Members of the Association as Committee Members to enable the quorum to be constituted.
- (7) A Committee Member appointed under subclause (5) holds office, subject to this Constitution, until the next annual general meeting.
- (8) This clause does not apply to the filling of a casual vacancy.

Note: The Act, section 28A provides for the filling of vacancies on the committee to constitute a quorum.

30 Chair

- (1) The Committee shall appoint a Chair from amongst its Committee Members. The Chair shall be the nominal head of the Association and will act as Chair of any Committee Meeting or General Meeting at which they are present. If the Chair is not present, or is unwilling or unable to preside at a Committee Meeting the remaining Committee Members shall appoint another Committee Member to preside as Chair for that meeting only.
- (2) For the avoidance of doubt, a Chair may or may not also occupy the role of President of the Association.

31 Presiding Committee Member

- (1) The following Committee Member presides at a meeting of the Committee:
 - (a) the President,
 - (b) if the President is absent - the Vice-President,
 - (c) if both the President and Vice-President are absent - 1 of the Committee Members present at the meeting, as elected by the other Committee Members.
- (2) The Committee Member presiding at the meeting has:
 - (a) a deliberative vote, and
 - (b) in the event of an equality of votes - a second or casting vote.

32 Voting

- (1) Subject to this Constitution, questions arising at any meeting of the Committee shall be decided by a majority of votes and a determination of a majority of Committee Members shall for all purposes be deemed a determination of the Committee. All Committee Members shall have one (1) vote on any question. Where voting is equal, there is no casting vote and the motion will be lost.
- (2) A decision supported by a majority of the votes cast at a meeting of the Committee or a subcommittee at which a quorum is present is the decision of the Committee or subcommittee.

33 Running of meetings

- (1) The first agenda item for every meeting must include a conflict of interest register, that includes the nature of the conflict and mitigation strategies.

34 Acts valid despite vacancies or defects

- (1) Subject to clause 21(1), the Committee may act despite there being a casual vacancy in the office of a Committee Member.
- (2) An act done by a Committee or subcommittee is not invalidated because of a defect relating to the qualifications or appointment of a Committee Member or subcommittee.

35 Transaction of business outside meetings or by telephone or other means

- (1) The Committee may transact its business by the circulation of papers, including by electronic means, among all Committee Members.
- (2) If the Committee transacts business by the circulation of papers, a written resolution, approved in writing by a majority of Committee Members, is taken to be a decision of the Committee made at a meeting of the Committee.
- (3) The Committee may transact its business at a meeting at which 1 or more Committee Members participate by telephone or other electronic means, provided a Committee Member who speaks on a matter can be heard by the other Committee Members.
- (4) The Committee Member presiding at the meeting and each other Committee Member have the same voting rights as they would have at an ordinary meeting of the Committee for the purposes of:
 - (a) the approval of a resolution under subclause (2), or
 - (b) a meeting held in accordance with subclause (3).
- (5) A resolution approved under subclause (2) must be recorded in the minutes of the meetings of the Committee.

Note: The Act, section 30(2) and (3) contains requirements relating to meetings held at 2 or more venues using technology.

36 Committee Members' Interests

- (1) A Committee Member is ineligible to hold office and is also disqualified from office by:
 - (a) holding or assuming any place of profit or position of employment in the Association, in any Member or in any company or incorporated association in which the Association is a shareholder or otherwise interested; or
 - (b) contracting with the Association either as vendor, purchaser or otherwise except with express resolution of approval of the Committee. Any such contract or any contract or arrangement entered into by or on behalf of the Association, in which any Director is in any way interested, will be voided for such reason.
- (2) A Committee Member who has a material personal interest in a matter that relates to the affairs of the Association must declare that interest to the Committee.
- (3) A Committee Member who has an interest in a matter, may give the Committee standing notice of the nature and extent of the interest in the matter. The notice may be given at any time and whether or not the matter relates to the affairs of Association at the time the notice is given.
- (4) The Secretary shall record in the minutes any declaration made or any general notice given by a Committee Member under clauses 36(2) and 36(3) and the action decided upon by the Committee in relation to that declaration.
- (5) A Committee, notwithstanding the interest, may be counted in the quorum present at any meeting, but cannot remain in the meeting whilst the matter in which the

Committee Member is interested is being debated and cannot vote in respect of any matter in which the Committee Member is interested. If the Committee Member remains and votes in such matter, the vote shall not be counted.

- (6) This clause 36 applies to Appointed Committee Members.

Part 5 General meetings

37 Annual general meetings

- (1) The Association must hold the Association's first annual general meeting within 18 months of the day the Association was registered under the Act.
 - (2) The Association must hold subsequent annual general meetings within:
 - (a) 6 months of the last day of the Association's financial year, or
 - (b) the later period allowed or prescribed in accordance with the Act, section 37(2)(b).
 - (3) Subject to the Act and subclauses (1) and (2), the annual general meeting is to be held at the place and time determined by the Committee.
 - (4) The business that may be transacted at an annual general meeting includes the following:
 - (a) confirming the minutes of the previous annual general meeting and any special general meetings held since the previous annual general meeting,
 - (b) receiving reports from the Committee on the Association's activities during the previous financial year,
 - (c) electing office-bearers and ordinary committee members,
 - (d) receiving and considering financial statements or reports required to be submitted to Members of the Association under the Act.
- Note:** The Act, section 37(1) and (2) provides for when annual general meetings must be held.
- (5) Annual general meetings may be conducted in-person and/or online.

38 Special general meetings

- (1) The Committee may call a special general meeting (**SGM**) whenever the Committee thinks fit.
- (2) The Committee must call a SGM if the Committee receives a request made by at least 5% of the total number of Members.
- (3) The request:
 - (a) must be in writing, and
 - (b) must state the purpose of the meeting, and
 - (c) must be signed by the Members making the request, and
 - (d) may consist of more than 1 document in a similar form signed by 1 or more Members, and
 - (e) must be lodged with the Secretary, and
 - (f) may be in electronic form and signed and lodged by electronic means.
- (4) If the Committee fails to call a SGM within 1 month of the request being lodged, 1 or more of the Members who made the request may call a SGM meeting to be held within 3 months of the date the request was lodged.
- (5) A SGM held under subclause (4) must be conducted, as far as practicable, in the

same way as a general meeting called by the Committee.

- (6) SGMs may be conducted in-person and/or online.

39 Notice of general meeting

- (1) The Secretary must give each Member notice of a general meeting:
- (a) if a matter to be determined at the meeting requires a special resolution - at least 21 days before the meeting, or
 - (b) otherwise - at least 14 days before the meeting.
- (2) The notice must specify:
- (a) the place and time at which the meeting will be held, and
 - (b) the nature of the business to be transacted at the meeting, and
 - (c) if a matter to be determined at the meeting requires a special resolution - that a special resolution will be proposed, and
 - (d) for an annual general meeting - that the meeting to be held is an annual general meeting.
- (3) The only business that may be transacted at the meeting is:
- (a) the business specified in the notice, and
 - (b) for an annual general meeting - business referred to in clause 37(4).
- (4) A Member may give written notice to the Secretary of business the Member wishes to raise at a general meeting.
- (5) If the Secretary receives a notice under subclause (4), the Secretary must specify the nature of the business in the next notice calling a general meeting.

40 Notices of Motion

- (1) Members entitled to vote may submit notices of motion for inclusion as special business at a general meeting. All notices of motion must be submitted in writing to the Association no less than thirty-five days (excluding receiving date and meeting date) prior to the general meeting.

41 Quorum

- (1) The quorum for a general meeting is 5 Members of the Association entitled to vote under this Constitution.
- (2) No business may be transacted at a general meeting unless a quorum is present.
- (3) If a quorum is not present within half an hour of the time the meeting commences, the meeting:
- (a) if called on the request of Members - is dissolved, or
 - (b) otherwise - is adjourned:
 - (i) to the same time of the same day in the following week, and
 - (ii) to the same place, unless another place is specified by the Committee Member presiding at the meeting at the time of the adjournment or in a written notice given to Members at least 1 day before the adjourned meeting.
- (4) If a quorum is not present within half an hour of the time an adjourned meeting commences, but there are at least 3 Members present, the Members present constitute a quorum.

42 Adjourned meetings

- (1) The Committee Member presiding at a general meeting may, with the consent of the majority of the Members present, adjourn the meeting to another time and place.
- (2) The only business that may be transacted at the adjourned meeting is the business remaining from the meeting at which the adjournment took place.
- (3) If a meeting is adjourned for at least 14 days, the Secretary must give each Member oral or written notice, at least 1 day before the adjourned meeting, of:
 - (a) the time and place at which the adjourned meeting will be held, and
 - (b) the nature of the business to be transacted at the adjourned meeting.

43 Presiding Committee Member

- (1) The following Committee Member presides at a general meeting:
 - (a) the President,
 - (b) if the President is absent - the Vice-President,
 - (c) if both the President and Vice-President are absent - 1 of the Members present at the meeting, as elected by the other Members.
- (2) The Committee Member presiding at the meeting has:
 - (a) a deliberative vote, and
 - (b) in the event of an equality of votes - a second or casting vote.

44 Voting

- (1) A Member is not entitled to vote at a general meeting unless the Member:
 - (a) is at least 18 years of age, and
 - (b) has paid all money owed by the Member to the Association.
- (2) Each Member has 1 vote.
- (3) A question raised at the meeting must be decided by:
 - (a) a show of hands, or
 - (b) a written ballot, but only if:
 - (i) the Member presiding at the meeting moves that the question be decided by ballot, or
 - (ii) at least 5 Members agree the question should be determined by ballot.
- (4) If a question is decided using a method referred to in subclause (3)(a) or (b), either of the following is sufficient evidence that a resolution has been carried, whether unanimously or by a majority, or lost, using the method:
 - (a) a declaration by the Member presiding at the meeting,
 - (b) an entry in the Association's minute book.
- (5) A written ballot must be conducted in accordance with the directions of the Member presiding.

45 Proxy voting

- (1) Proxy voting shall be permitted at all General Meetings provided a proxy form in the form approved by the Committee from time to time, has been duly completed and executed and is lodged with the Committee at or before the commencement of the meeting. Proxies shall only be exercised by Members entitled to vote. No Member entitled to vote shall exercise more than one (1) proxy vote at any one (1) time.
- (2) The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. A Delegate shall be entitled to instruct their proxy to vote in favour of or against any proposed resolutions. Unless otherwise instructed the proxy may exercise the proxy vote as they think fit.

46 Postal or electronic ballots

- (1) The Association may hold a postal or electronic ballot, as determined by the Committee, to decide any matter other than an appeal under clause 12.
- (2) The ballot must be conducted in accordance with Schedule 2 of the Regulation.

47 Transaction of business outside meetings or by telephone or other means

- (1) The Association may transact its business by the circulation of papers, including by electronic means, among all Members of the Association.
- (2) If the Association transacts business by the circulation of papers, a written resolution, approved in writing by a majority of Members, is taken to be a decision of the Association made at a general meeting.
- (3) The Association may transact its business at a general meeting at which 1 or more Members participate by telephone or other electronic means, provided a Member who speaks on a matter can be heard by the other Members.
- (4) The Committee Member presiding at the meeting and each other member have the same voting rights as they would have at an ordinary meeting of the Association for the purposes of:
 - (a) the approval of a resolution under subclause (2), or
 - (b) a meeting held in accordance with subclause (3).
- (5) A resolution approved under subclause (2) must be recorded in the minutes of the meetings of the Association.

Note: The Act, section 37(3) and (4) contains requirements relating to meetings held at 2 or more venues using technology.

48 Strategic Forums

- (1) The Association may hold a strategic forum at least once per year. The object of the strategic forum is to:
 - (a) inform the Committee of significant membership issues;
 - (b) assist the Committee to design or review the Association's strategic plan and direction;
 - (c) discuss issues relating to the Sport within the Association's remit; and
 - (d) provide feedback to the Committee on the results of its governance decisions in practice at Member level.
- (2) For the avoidance of doubt, the Committee cannot make decisions within a Strategic Forum. However, the Committee may consider information gleaned from strategic forums to inform itself for future decisions.

49 Attendees at Strategic Forums

- (1) The following persons may attend strategic fora of the Association:
 - (a) the Committee;
 - (b) Members;
 - (c) such other persons the Committee considers should be invited.

50 Grievance Procedure

- (1) Clause 11 (Disciplinary action against Members) is to be observed in the first instance regarding complaints of Members of the Association acting inconsistently with this Constitution or in the best interests of the Club. This clause 50 (Grievance Procedure) is to be followed in all other instances.
- (2) The grievance procedure set out in this clause applies to disputes arising under this Constitution between a Member and:
 - (a) another Member; or
 - (b) the Association.
- (3) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within fourteen (14) days after the dispute comes to the attention of all parties.
- (4) If the parties are unable to resolve the dispute at the meeting or if a party fails to attend that meeting, then the parties may refer the dispute to:
 - (a) any independent tribunal established by the Association in accordance with the procedures determined by the Committee from time to time; or
 - (b) a community justice centre for mediation under the *Community Justice Centres Act 1983*.
- (5) The Committee may prescribe additional grievance procedures consistent with this Constitution.
- (6) If the dispute is not resolved the Committee may take whatever steps it considers appropriate in regard to the dispute in the best interests of the Association and the Members concerned.

Part 5 Status and Compliance

51 Compliance

- (1) The Members acknowledge and agree the Association shall:
 - (a) apply its capacity solely in pursuit of the Objects and the Sport;
 - (b) do all that is reasonably necessary to enable the Objects to be achieved;
 - (c) act in good faith and loyalty to ensure the maintenance and enhancement of the Sport, its standards, quality and reputation for the benefit of the Members and the Sport;
 - (d) at all times act in the interests of the Members and the Sport;
 - (e) not resign, disaffiliate or otherwise seek to withdraw from AFA without approval by Special Resolution; and
- (2) abide by the AFA constitution and the rules of the Sport as they apply.

52 Operation of Constitution

- (1) The Association and the Members acknowledge and agree:
 - (a) that they are bound by this Constitution and that this Constitution operates to create uniformity in the way in which the Objects and the Sport are to be conducted, promoted, encouraged, advanced and administered;
 - (b) to ensure the maintenance and enhancement of the Sport, its standards, quality and reputation for the benefit of the Members and the Sport;
 - (c) not to do or permit to be done any act or thing which might adversely affect or derogate from the standards, quality and reputation of the Sport and its maintenance and enhancement;
 - (d) to act in the interests of the Sport and the Members.

Part 6 Administration

53 Change of name, objects or constitution

- (1) This Constitution shall not be altered except by resolution at an AGM or SGM.
- (2) An application for registration of a change in the Association's name, objects or Constitution made under the Act, section 10 must be made by:
 - (a) the Public Officer, or
 - (b) a Committee Member.

54 Funds

- (1) Subject to a resolution passed by the Association, the Association's funds may be derived from the following sources only:
 - (a) the entrance fees payable by Members,
 - (b) donations,
 - (c) other sources as determined by the Committee.
- (2) Subject to a resolution passed by the Association, the Association's funds and assets must be used to pursue the Association's Objects in the way that the Committee determines.
- (3) As soon as practicable after receiving money, the Association must:
 - (a) deposit the money, without deduction, to the credit of the Association's authorised deposit-taking institution account, and
 - (b) issue a receipt for the amount of money received to the person from whom the money was received.
- (4) A cheque or other negotiable instrument must be signed by 2 authorised signatories.

Note: The Act, section 36 provides for the appointment of authorised signatories.

55 Insurance

The Association may take out and maintain insurance as appropriate for the Association's assets and liabilities.

56 Non-profit status

- (1) Subject to the Act and the Regulation, the Association must not conduct the Association's affairs in a way that provides a pecuniary gain for a Member of the Association.

Note: See the Act, section 40.

57 Independence from commercial activities

- (1) The Association's independence must be maintained from:
 - (a) activities of commercial dive stores;
 - (b) equipment retailers;
 - (c) and/or professional freediving instructors.
by, for example, having separate websites, and the Association as an entity should not obviously promote one commercial interest to the exclusion of others.

58 Service of notices

- (1) For the purposes of this Constitution, a notice may be given to or served on a person:
 - (a) by delivering the notice to the person personally, or
 - (b) by sending the notice by pre-paid post to the address of the person, or
 - (c) by sending the notice by electronic transmission to an address specified by the person for giving or serving the notice.
- (2) A notice is taken to have been given to or served on a person, unless the contrary is proved:
 - (a) for a notice given or served personally - on the date on which the notice is received by the person, or
 - (b) for a notice sent by pre-paid post - on the date on which the notice would have been delivered in the ordinary course of post, or
 - (c) for a notice sent by electronic transmission:
 - (i) on the date the notice was sent, or
 - (ii) if the machine from which the transmission was sent produces a report indicating the notice was sent on a later date—on the later date.

59 Electronic communication and meetings

- (1) The Association may use electronic means, including email, online platforms, and other technology, for the purposes of:
 - (a) Sending notices, documents, and other communications to members.
 - (b) Facilitating meetings, including general meetings and committee meetings.
- (2) Meetings of the Association, including AGMs, SGMs and Committee meetings, may be held partially or wholly via electronic means, provided that:
 - (a) All participants have reasonable access to the necessary technology.
 - (b) Participants can hear and be heard by each other throughout the meeting.
- (3) Documents, including resolutions or agreements, may be signed or approved using electronic signatures, provided the method used identifies the signer and indicates their approval of the document's content.

- (4) Resolutions passed at virtual meetings or through electronic ballots shall have the same force and effect as those passed at physical meetings, provided they comply with the requirements of this constitution and applicable law.

60 Records and accounts

- (1) The Association shall establish and maintain proper records and minutes concerning all transactions, business, meetings and dealings of the Association and the Committee and shall produce these as appropriate at each Committee or General Meeting.
- (2) Proper accounting and other records of the Association including books, minutes, documents and securities shall be kept in accordance with the Act.
- (3) Subject to the Act, the Committee may determine whether and to what extent, and at what times and places and under what conditions, the financial records, accounts, books, securities or other relevant documents of the Association will be open for inspection by the Members.
- (4) The Association shall retain such records for seven (7) years after the completion of the transactions or operations to which they relate.
- (5) The Board shall submit to the Members at the AGM the statements of account of the Association in accordance with this Constitution and the Act.
- (6) The statements of account when approved or adopted by an AGM shall be conclusive except as regards any error discovered in them within three months (3) after such approval or adoption.
- (7) The Executive Director shall ensure all persons entitled to receive notice of AGMs under this Constitution, receive or have access to a copy of the statements of account, the Board's report, the auditor's report and every other document required under the Act (if any).
- (8) All negotiable instruments, and all receipts for money paid to the Association, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two (2) duly authorised Directors or in such other manner as the Board determines.

61 Custody of records and books

- (1) Except as otherwise provided by this Constitution, all records, books and other documents relating to the Association must be kept in New South Wales:
 - (a) at the Association's main premises, in the custody of either of the following persons, as determined by the Committee:
 - (i) the Public Officer,
 - (ii) a Member of the Association, or
 - (b) if the Association has no premises - at the Association's official address, in the custody of the Public Officer.

62 Inspection of records and books

- (1) The following documents must be available for inspection, free of charge, by Members of the Association at a reasonable time:
 - (a) this Constitution,
 - (b) minutes of Committee Meetings and general meetings of the Association,
 - (c) records, books and other documents relating to the Association.
- (2) A Member may inspect a document referred to in subclause (1):
 - (a) in hard copy, or

- (b) in electronic form, if available.
- (3) A Member may obtain a hard copy of a document referred to in subclause (1) on payment of a fee of not more than \$1, as determined by the Committee, for each page copied.
- (4) The Committee may refuse to allow a Member to inspect or obtain a copy of a document under this clause:
 - (a) that relates to confidential, personal, privacy, intellectual property, commercial, employment or legal matters, or
 - (b) if the Committee considers it would be prejudicial to the interests of the Association for the Member to do so.
- (5) The Committee, in providing documents, may make redactions of those documents where necessary to preserve confidential, personal, privacy, intellectual property, commercial, employment or legal matters.

63 Auditor

- (1) If required by the Act:
 - (a) a properly qualified auditor or auditors shall be appointed by the Association in General Meeting. The auditor's duties shall be regulated in accordance with the Act, or if no relevant provisions exist under the Act, in accordance with the Corporations Act and generally accepted principles, and/or any applicable code of conduct. The auditor may be removed by the Board; and
 - (b) the accounts of the Association shall be examined and the correctness of the profit and loss accounts and balance sheets ascertained by an auditor or auditors at the conclusion of each Financial Year.

64 Financial year

- (1) The Association's financial year is:
 - (a) the period commencing on the date of incorporation of the Association and ending on the following 30 June, and
 - (b) each period of 12 months after the expiration of the previous financial year, commencing on 1 July and ending on the following 30 June.

Note: The Regulation, section 21 contains a substitute clause 44 for certain associations incorporated under the *Associations Incorporation Act 1984*.

65 Income

- (1) Income and property of the Association shall be:
 - (a) derived from such sources; and
 - (b) managed in such manner;
 as the Committee determines from time to time subject to the Act and this Constitution.
- (2) The income and property of the Association shall be applied solely towards the promotion of the Objects.
- (3) Except as prescribed in this Constitution or the Act:
 - (a) no portion of the income or property of the Association shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any Member or Committee Member; and
 - (b) no remuneration or other benefit in money or money's worth shall be paid or given by the Association to any Member who holds any office of the

Association.

- (4) Nothing in this clause 64 shall prevent payment in good faith of or to any Member for:
 - (a) any services actually rendered to the Association whether as an employee, Committee Member or otherwise;
 - (b) goods supplied to the Association in the ordinary and usual course of operation;
 - (c) interest on money borrowed from any Member;
 - (d) rent for premises demised or let by any Member to the Association;
 - (e) any out-of-pocket expenses incurred by the Member on behalf of the Association;

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

66 Winding up

- (1) Subject to this Constitution the Association may be wound up or cancelled in accordance with the Act.
- (2) The liability of the Members of the Association is limited.
- (3) Members undertake to contribute to the assets of the Association if it is wound up while a Member, or within one (1) year after ceasing to be a Member, for payment of the debts and liabilities of the Association contracted before the time at which it ceases to be a Member and the costs, charges and expenses of winding up the Association, such an amount not exceeding one dollar (\$1.00).

67 Distribution of property on winding up

- (1) Subject to the Act and the Regulation, in a winding up of the Association, the surplus property and/or funds of the Association must be transferred to another organisation:
 - (a) with similar objects, and
 - (b) which is not carried on for the profit or gain of the organisation's Members.
- (2) In this clause:

surplus property has the same meaning as in the Act, section 65.

68 Regulations

- (1) The Committee may formulate, issue, adopt, interpret and amend such Regulations for the proper advancement, management and administration of the Association, the advancement of the Objects and the Sport. Such Regulations must be consistent with the Constitution and any policy directives of the Committee
- (2) All Regulations are binding on the Association and all Members.
- (3) All clauses, rules, by-laws and regulations of the Association (by whatever name) in force at the date of the approval of this Constitution insofar as such clauses, rules, by-laws and regulations are not inconsistent with, or have been replaced by this Constitution, shall be deemed to be Regulations and shall continue to apply and be in operation.
- (4) Amendments, alterations, interpretations or other changes to Regulations shall be advised to Members by such means as are determined and approved by the Committee from time to time. The Committee shall take reasonable steps to distribute such changes to Individual Members. All changes are binding on all Members.

69 Indemnity

- (1) The Association shall indemnify its Committee Members, employees, and volunteers out of the property and assets of the association against any liability incurred by them:
 - (a) In the course of performing their duties in good faith on behalf of the Association.
 - (b) While defending any civil or criminal proceedings in which they are acquitted, or in which judgment is given in their favour.
 - (c) In connection with any application under relevant legislation where relief is granted by a court.
- (2) A Committee Member, employee, or volunteer is not liable for:
 - (a) Any loss or damage incurred by the Association arising from any act or omission made in good faith while discharging their duties on behalf of the Association.
 - (b) Any acts of negligence or misconduct by other members, unless they personally contributed to or were directly responsible for such acts.
- (3) This indemnity covers:
 - (a) Legal costs incurred in defending proceedings.
 - (b) Damages or settlements resulting from actions undertaken on behalf of the Association, except in cases of willful misconduct, gross negligence, or fraud.
- (4) The Association must maintain appropriate insurance policies to cover:
 - (a) Public liability.
 - (b) Directors' and officers' liability.
 - (c) Volunteer workers' liability.
 - (d) Other relevant risks as determined by the Committee.
- (5) The indemnity shall not apply in cases where:
 - (a) The individual has acted dishonestly, with fraudulent intent, or in breach of their fiduciary duties.
 - (b) The liability arises from an act or omission not authorized by the association.
- (6) Any individual who has been indemnified by the Association and subsequently receives reimbursement from an external source (e.g., insurance) must return the indemnified amount to the Association.