



# **CONSTITUTION**

## **Tasmanian Softball Council Incorporated**

trading as

# **SOFTBALL TASMANIA**

### **UPDATES**

Clauses 12, 13, 17	Adopted Aug 18 <sup>th</sup> 2019

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# Associations Incorporation Tasmania 1964 (Tasmania)

## Constitution

of

### Tasmanian Softball Council Incorporated

#### 1. NAME OF ASSOCIATION

The name of the association is Tasmanian Softball Council Incorporated trading as Softball Tasmania.

#### 2. JURISDICTION

The Council claims absolute jurisdiction over all forms of the game of Softball in the State of Tasmania.

#### 3. DEFINITIONS AND INTERPRETATION

##### 3.1 Definitions

In this Constitution unless the contrary intention appears:

**Act** means the *Associations Incorporation Act 1964* (Tasmania).

**Affiliate Member** means a body affiliated with the Council which is responsible for the development of softball in a region, district or for a specific group and whose Members are Associate Members.

**AGM** or **Annual General Meeting** means the annual General Meeting of the Council as required under the Act to be held in each calendar year.

**Associate Member** means a softball club, team or specific group which is registered with an Affiliate Member.

**Board** means the body consisting of all or some of the Board Members acting as a Board.

**Board Member** means a member of the Board and includes elected and appointed Board Members.

**By-Laws** means any By-Laws made by the Board.

**Constitution** means this Constitution as amended from time to time and the reference to a particular clause is a reference to a clause of this Constitution.

**Council** means Tasmanian Softball Council Incorporated. [T.S.C. Inc] trading as Softball Tasmania.

**Executive Officer or EO** means the person appointed as the Executive Officer of the Council by the Board. Where the Council does not have an Executive Officer, a nominated Board Member may assume all or part of the functions of the Executive Officer under this Constitution.

**Financial year** means the year commencing on 1 July and ending on 30 June each year.

**General Meeting** means a general meeting of the Members and includes the AGM and any Special General Meetings.

**Individual Member** means a registered financial Individual Member of the Council, an Affiliate Member or an Associate Member.

**Intellectual Property** means all rights subsisting in copyright, business names, names, trademarks (or signs), logos, designs, equipment including computer software, images (including photographs, videos or films) or service marks relating to the Council or any activity of or conducted, promoted or administered by the Council in Tasmania.

**ISF** means the International Softball Federation.

**Life Member** means an individual appointed as a Life Member of the Council

**Member** means a member of the Council and includes Affiliate Members, Associate Members, Individual Members and Life Members of the Council.

**Membership Subscription** means an amount determined by the Board to be paid by members to maintain their financial Membership. This amount may vary between types of Membership and may be varied from time to time as determined by the Board.

**Objects** means the objects of the Council in clause 4.

**Public Officer** means the public officer of the Council as required under the Act

**Privacy Laws** means the Privacy Act 1988 (Commonwealth) and includes the National Privacy Principles set out in Schedule 3 of that Act, and where applicable, the SAL Privacy Policy.

**Register** means the register of the Council

**Representative** means the person(s) (other than a proxy) appointed from time to time to act for and on behalf of an Affiliate Member and to represent the Affiliate Member at General Meetings.

**SAL** means Softball Australia Limited.

**Softball** means the game of Softball as recognised by the ISF and includes all variations of Softball and includes modified versions for athletes with disabilities and Teeball.

**Special Resolution** means a resolution passed by not less than three-quarters of the Voting Members of the Council as may be present at a general meeting of which notice specifying the intention to propose the resolution as a special resolution was given.

**Voting Member** means, in relation to a General Meeting, those Members entitled to vote. This includes where a vote is cast by a Representative of Affiliate Members.

### **3.2 Interpretation**

In this Constitution:

- (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) a reference to a clause shall mean the complete section of the Constitution numbered for example as 1,2,3... etc and shall include any outlined sub-clauses numbered for example as 13.4, 13.5 13.6...etc. Any reference to a Clause includes all underlying sub-clauses;
- (d) words importing the singular include the plural and vice versa;
- (e) words importing any gender include the other gender;
- (f) references to person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (g) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- (h) a reference to a statute, ordinance, code or other law includes by-Laws 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); and
- (i) a reference 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.

### **3.3 Severance**

If any provision of this Constitution or any phrase contained in it is invalid or unenforceable, the phrase or provision is to be read down if possible, so as to be valid and enforceable, and otherwise shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Constitution.

### **3.4 The Act**

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. OBJECTS OF THE COUNCIL**

The Council is established solely for the Objects, which shall be to:

- (a) act as the sole Member State (as defined in the SAL constitution) in Tasmania, recognised by SAL as the controlling body responsible for Softball in Tasmania;.
- (b) conduct, encourage, promote, advance, control, and manage all aspects of Softball at all levels in Tasmania interdependently with Members and others;
- (c) adopt, formulate, issue, interpret and amend by-laws, policies, rules and regulations for the control and conduct of Softball in Tasmania while ensuring these actions are consistent with the objects of SAL;
- (d) encourage the provision and development of appropriate facilities for participation in Softball;
- (e) maintain and enhance standards, quality and reputation of Softball for the collective and mutual benefit and interest of Members and Softball;
- (f) the only body entitled to prepare and enter or endorse Tasmanian teams involved in interstate Softball competition;
- (g) promote, control, manage and conduct Softball events, competitions, championships and development activities in conjunction with Members and others as appropriate;
- (h) promote the health and safety of Members and all other participants in Softball in Tasmania;
- (i) at all times operate with and promote mutual trust and confidence between the Council and the members and to work co-operatively with each other in pursuit of the Objects;
- (j) act as arbiter where required on matters pertaining to the conduct of Softball in Tasmania, including disciplinary matters and imposition of sanctions on Members;
- (k) protect the Intellectual Property of the Council; and
- (l) undertake other actions or activities necessary, incidental or conducive to advance these Objects.

#### **5. POWERS OF THE COUNCIL**

Solely for furthering the Objects, the Council has, in addition to the rights, powers and privileges conferred on it under the Act, the legal capacity and powers of a company as set out under section 124 of the Corporations Act 2001 (Cth).

## **6. MEMBERSHIP**

### **6.1 Categories of Members**

The Members of the Council shall consist of:

- (a) Affiliate Members (associations);
- (b) Associate Members (clubs/teams members of an association);
- (c) Individual Members, (registered members of clubs, teams and specific groups registered with an Affiliate Member or Associate Member) or individuals directly registered with the Council);
- (d) Life Members; and
- (e) any other categories of Members as may be established by SAL

### **6.2 Admission of Members**

Membership of the Council shall be granted to, associations, clubs, teams, specific groups and individuals applying directly to the Council provided they meet the criteria of the relevant category of Membership set out in this Constitution.

Each Membership application shall include a signed undertaking to:

- (a) be bound by this Constitution and the By-Laws of the Council (including By-Laws specific to the relevant category of Membership);
- (b) pay the fees and subscriptions determined by the Board to apply to that category of Membership; and
- (c) support the Council in the encouragement and promotion of its Objects.

The Board will consider each application on its merits.

### **6.3 Affiliate Members**

#### **(a) Eligibility**

- (i) To be eligible for Affiliate Membership, an applicant must be able to display that it is representative of a number of clubs, teams or specific groups participating in organised Softball competition.
- (ii) It is desirable that applicants should be incorporated or in the process of incorporation which must be completed within one year of applying for Membership under this Constitution.
- (iii) Failure of an organisation to complete its incorporation may result in the Affiliate Membership being suspended pending incorporation.
- (iv) Any dispute in relation to an application for Affiliate Membership shall be resolved by the Board which shall have sole discretion.

(b) **Application for Affiliation**

An application from an Association for affiliation must:

- (i) be in writing in a form prescribed from time to time by the Board from the applicant or its nominated representative and lodged with the Council;
- (ii) be accompanied by a copy of the applicant's constitution (which must substantially conform to the Objects and Membership requirements prescribed under this Constitution) and the applicant's register of Members; and
- (iii) where applicable include a copy of their Incorporation Certificate or proof of application to become Incorporated.

(c) **Discretion to Accept or Reject Application**

- (i) Council may accept or reject an application whether or not the applicant has complied with the requirements in this clause. .
- (ii) Where the Council accepts an application, the applicant shall become an Affiliate Member.
- (iii) The Board shall advise the successful applicant of their acceptance and of the applicable affiliation fee.
- (iv) Affiliation shall be deemed to commence upon receipt of such affiliation fee.
- (v) The Affiliate Member shall be added to the Membership Register.
- (vi) Where Council rejects an application, the applicant shall be advised of the Board's decision but the Board is not required to provide reasons for its decision.

(d) **Maintenance of Affiliation**

Each Affiliate Member must:

- (i) pay an annual Membership Subscription within the time frame determined by the Board;
- (ii) provide the Council with a current copy of it's constitution and up-to-date details of its Representative and any other information reasonably required by the Council;
- (iii) provide the Council with written details of its nominated Representatives prior to any General Meeting;
- (iv) provide the Council with copies of its audited accounts, annual financial reports and other associated documents as soon as practicable, following the Affiliate Member's Annual general meeting; and
- (v) ensure that its Objects are consistent with those of the Council.

(e) **Register**

Affiliate Members shall maintain, in a form acceptable to the Council, a register of all Members of the Affiliate Members. Each Affiliate Member shall provide a copy of the register at a time and in a form acceptable to the Council, and shall provide regular updates of the register to the Council.

(f) **Voting**

Affiliate Members shall be entitled to receive notice, attend and vote at General Meetings.



## **6.4 Associate Members**

- (a) A Softball club, team or specific group becomes an Associate Member upon registration with an Affiliate Member.
- (b) All Associate Members must:
  - (i) maintain their registration with their Affiliate Member in accordance with the procedures applicable from time to time; and
  - (ii) ensure they pay any Membership Subscription prescribed by their respective Affiliate Member.
- (c) An Associate Member shall not be entitled to receive notice, or vote at General Meetings of Council.

## **6.5 Individual Members**

- (a) An individual who is recognized by, and registered with an Affiliate Member or Associate Member, or who registers directly with Council will, upon such registration become an Individual Member and is subject to the provisions of this Constitution.
- (b) The Council will only accept such applications directly where it can be shown that it is appropriate (at the sole discretion of the Council) for the applicant to enter into Membership directly with the Council and not with an Affiliate Member or Associate Member or any other type of Membership.
- (c) All Individual Members must pay such fees as may be prescribed by the Council in respect of their membership, affiliation, accreditation or registration, from time to time.
- (d) An Individual Member shall not be entitled to receive notice or vote at General Meetings.

## **6.6 Life Members**

- (a) Life Membership is the highest honour which can be bestowed by the Council for longstanding and valued service to Softball in Tasmania.
- (b) On the nomination of a Voting Member, any individual may be elected as a Life Member at any AGM by Special Resolution.
- (c) Nominations for Life Membership shall include a written report outlining the history of services of any nominee, together with comments on the suitability of the honour.
- (d) The By-Laws will set out the criteria to be met by individuals to be considered for Life Membership.
- (e) A Life Member shall be entitled to receive notice and attend, but not to vote at General Meetings.
- (f) At the time of adoption of this Constitution, the existing Life Members of the Council upon approval of this Constitution shall be the persons listed as Life Members in Schedule 1 to this Constitution and shall continue to be Life Members.

## **6.7 Deemed Membership**

- (a) All Members which or who were, prior to the approval of this Constitution, members of the Council, shall be deemed Members from the time of approval of this Constitution under the Act and be bound subject to the requirements and benefits prescribed under this Constitution.
- (b) Members shall provide the Council with such updated or additional details as are reasonably required by the Council under this Constitution within one (1) month of the approval of this Constitution under the Act.

## **7. REGISTER OF MEMBERS**

### **7.1 Council to keep Register**

- (a) The Council shall keep and maintain a Register of all Members directly registered with the Council in which shall be entered (as a minimum):
  - (i) the full name, address, category of Membership and date of entry to Membership;
  - (ii) the full name, residential address, phone number, date of birth, gender and date of entry to Membership of each Individual Member, Life Member, Board Member or any other established category of Membership;
  - (iii) any other information required by the Council for the purpose of achieving its Objects; and
  - (iv) where applicable, the date of discontinuance or suspension of Membership.
- (b) Affiliate Members shall provide details of all their Associate and all Individual Members (including Individual Members registered with Associate Members) with details and updates provided at least annually to the Council.
- (c) Members shall provide notice of any change to required details to the Council within one month of such change.
- (d) The Council shall provide a copy of the Register upon request to SAL.

### **7.2 Inspection of Register**

Having regard to the Act, confidentiality considerations and the Privacy Laws, an extract of the Register, including the name, type of Membership and other Membership details, but excluding any personal information shall be available for inspection by Members, upon reasonable request.

### **7.3 Use of Register**

Subject to the Act, confidentiality considerations and the Privacy Laws, the Register may be used to further the Objects, in such manner as the Board considers appropriate.

## **8. EFFECT OF MEMBERSHIP**

Members acknowledge and agree that:

- (a) this Constitution constitutes a contract between each Member and the Council and 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 ratified by the Board, a General Meeting or any duly authorised committee;
- (c) by submitting to this Constitution and By-Laws they are subject to the jurisdiction of the Council;
- (d) the Constitution and By-Laws are necessary and reasonable for promoting the Objects; and
- (e) they are entitled to all benefits, advantages, privileges and services of Membership.

## **9. CESSATION OF MEMBERSHIP**

A person ceases to be a Member on:

- (a) resignation;
- (b) death;
- (c) the termination by the Council of their Membership according to this Constitution or the By-Laws;
- (d) an Affiliate Member being dissolved or otherwise ceasing to exist; and
- (e) that Member no longer meeting the requirements for Membership

### **9.2 Notice of Resignation**

- (a) A Member may resign as a member of the Council by giving 14 days written notice to the Board and only after:
  - (i) having paid all arrears of fees payable to the Council; and
  - (ii) in the case of an Affiliate Member, getting approval by a special resolution at a general meeting of the Affiliate Member. A copy of the relevant minutes of the general meeting showing that the special resolution has been passed by the Affiliate Member must be provided to the Council.
- (b) Upon the Council receiving notice of resignation of Membership an entry in the Register shall be made recording the date on which the Member ceased to be a Member.

### **9.3 Termination or Suspension of Membership for Breach**

Membership of the Council may be terminated or suspended by the Board upon breach of any clause of this Constitution or the By-Laws, including but not limited to:

- (a) failure to pay any fees or levies owed to the Council; or
- (b) failure to comply with this Constitution or By-Laws or any resolutions or determinations made or passed by the Board or any duly authorised committee.

### **9.4 Discipline of a Member**

- (a) Where the Board is advised or considers that a Member has allegedly:
  - (i) breached, failed, refused or neglected to comply with a provision of this Constitution, the By-Laws, the SAL constitution or regulations or any resolution or determination of the Board or any duly authorised committee; or
  - (ii) acted in a manner unbecoming of a Member, or prejudicial to the purposes and interests of the Council, SAL and/or Softball; or
  - (iii) brought the Council, SAL any other Member or Softball into disrepute,

the Board may commence or cause to be commenced, disciplinary proceedings against that Member, and that Member, will be subject to, and submits unreservedly to the jurisdiction, procedures, penalties and the appeal mechanisms of the Council set out in the By-Laws.

- (b) The Board may appoint a Judiciary Committee to deal with any disciplinary matter referred to it. Such a Judiciary Committee shall operate in accordance with the procedures expressed in the By-Laws but subject always to the Act.

### **9.5 Termination of Membership**

- (a) No recommendation can be made by the Board under this clause unless all avenues of appeal available to the relevant Member under the By-Laws have been exhausted.
- (b) Subject to compliance with sub clause (a) and the By-Laws, the Board may recommend to a General Meeting to terminate the Membership of a Member.
- (c) Upon recommendation from the Board under sub clause (b), a General Meeting may, by Special Resolution, terminate the Membership of a Member.

### **9.6 Suspension for Failure to Maintain Membership**

Membership of the Council may be suspended by the Board if a Member fails to maintain their Membership with the Council or comply with their obligations as a Member. The Register shall be amended to reflect any suspension of as soon as practicable.

### **9.7 Lifting of Suspension**

A Member whose Membership has been suspended:

- (a) may seek the lifting of that suspension in accordance with this Constitution; and
- (b) may be re-instated at the discretion of the Board.

## **9.8 Forfeiture of Rights**

- (a) A Member that ceases to be a Member or has their Membership suspended or terminated, for whatever reason, shall forfeit all rights:
  - (i) in and claims upon the Council and its property and shall not use any property of the Council, including Intellectual Property;
  - (ii) to copy, use or control any Council documents, records or other property in their possession. All Council documents shall be returned to the Council immediately;
  - (iii) to be represented on the Board, at General Meetings or in any other official position; and
  - (iv) forfeit all rights to participate in the Council's events, tournaments or championships.
- (b) The position of a Representative shall lapse immediately on cessation of the Membership of the Affiliate Member they represented.

## **9.9 Refund of Membership Fees**

Membership fees or levies paid by the suspended or terminated Member may upon application be refunded on a pro-rata basis at the discretion of the Board.

## **10. GRIEVANCES AND DISCIPLINE OF MEMBERS**

### **10.1 Jurisdiction**

- (a) All Members will be subject to, and submit unreservedly to the jurisdiction, procedures, sanctions and appeal mechanisms of the Council as prescribed by this Constitution or the Council's By-Laws.

### **10.2 Member Protection Policy**

- (a) The Council will comply with the SAL Member Protection Policy, including for the investigation, hearing and determination of complaints and grievances and disputes between Members; and: between a Member and the Council.

### **10.3** During investigatory or disciplinary proceedings under this clause, a respondent may be suspended from participation in any Softball activities, pending the determination of such proceedings.

## **11. FEES AND SUBSCRIPTIONS**

### **11.1 Membership Fees**

- (a) The Board must determine from time to time:
  - (i) the amount (if any) payable by an applicant for Membership;
  - (ii) the amount of the annual subscription fee payable by each Member, or any class of Members;
  - (iii) any other amount (including any levies) to be paid by each Member, or any class of Members, whether of a recurrent or any other nature; and
  - (iv) the due date for payment.
- (b) Any increase in the annual subscription fee will take effect from the first day of the next Financial Year unless approved otherwise by Special Resolution of a General Meeting.
- (c) Each Member must pay to the Council the amounts determined under this clause.

### **11.2 Non-Payment of Fees**

- (a) Any member suspended by the Board for non-payment of fees is not entitled to attend, debate or vote at a General Meeting.
- (b) Deferral or Reduction of Subscriptions

The Board may defer the obligations of a Member to pay a subscription or other amount, or reduce (including to zero) the subscription or other amount payable by a Member, if the Board considers:

- (i) there are reasonable grounds for doing so;
  - (ii) the material affect on the Council as a result;
  - (iii) the material affect on the Member should the payment of the subscription or other amount be enforced; and
  - (iv) whether the Member is committed to pay the deferred or reduced subscription or other amount within a time fixed by the Board.
- (c) If the Board defers or reduces a subscription or other amount payable by a Member, that Member will retain their rights to attend and vote at a General Meeting, unless otherwise specified by the Board.

## **12. THE BOARD**

### **12.1 Powers of the Board**

- (a) Subject to the Act and this Constitution, the business of the Council shall be managed, and the powers of the Council shall be exercised, by the Board.
- (b) The Board shall be responsible for acting in accordance with the Objects of the Council.

### **12.2 Composition of the Board**

- (a) The Board shall comprise between five (5) and eight (8) elected Board Members with up to two (2) additional Board Members who may be appointed by the Board.

### **12.3 Interim Board Members**

- (a) The members of the Board of the Council in office immediately prior to approval of this Constitution under the Act shall continue in those positions until the next General Meeting following the adoption of this Constitution.
- (b) As soon as is practicable following the approval of this Constitution under the Act the interim Board of the Council shall convene a General Meeting for the express purpose of filling the positions of the new Board of the Council.

### **12.4 Eligibility**

- (a) A Person is disqualified from becoming a Board Member if they:
  - (i) are an employee of the Council, an Affiliate Member or Associate Member; or
  - (ii) hold a position with an organisation where that position may place the person in a conflict or potential conflict with his or her role as a Board Member.
- (b) A person elected or appointed as a Board Member while holding a disqualifying position must advise the Board immediately of that fact. The Board may determine that the member will be suspended from Board activities relating to the disqualified position pending the resignation from that position.
- (c) A Board Member who accepts a disqualifying position must notify the other Board Members of that fact immediately and is deemed to have vacated office as a Board Member.

## **13. BOARD MEMBERS**

### **13.1 Nominations**

- (a) Nominations to fill vacancies on the Board shall be when required called for at least twenty eight (28) days prior to the AGM. .
- (b) Nominees for elected Board positions must declare if they occupy a position which may potentially conflict with the position of Board Member.

### **13.2 Form of Nomination**

Nominations must be:

- (a) in writing in the prescribed form provided for that purpose;
- (b) proposed by a Member with the proposer's signature certifying their support of the nomination;
- (c) certified by the nominee expressing their willingness to accept the position for which they are nominated; and
- (d) delivered to the Council no less than prior 21 days to the General Meeting dealing with the election of Board Members

### **13.3 Filling the Board**

- (a) Subject to clause 13.3(e), at least three quarters of Board Member positions will be filled through election.
- (b) If the number of nominations received for the Board is equal to the number of vacancies to be filled or if there are insufficient nominations received to fill all vacancies on the Board, then those nominated shall be declared elected.
- (c) If the number of nominations exceeds the number of vacancies to be filled, voting papers shall be prepared containing the names of the candidates in alphabetical order, for each vacancy on the Board.
- (d) Voting shall be conducted by way of a secret ballot in such manner and by such method as may be determined by the Board from time to time.
- (e) Where Board vacancies occur following an election of Board Members, the Board may appoint Members to fill any of the remaining vacancies.
- (f) In appointing Board Members, the Board will take into account the existing Board Members' skills. The appointed Board Members should have specific skills which complement those of the other Board Members.
- (g) Board Members once elected or appointed become Individual Members of the Council and are subject to the provisions of this Constitution



### **13.4 Tenure of Board Members**

- (a) Elected Board Members shall hold office from the time of their election for a term of three years except in the year of 2019 when all Board positions shall be spilled and new elections shall take place at the Annual General Meeting.
- (b) Three Elected Directors shall retire at the end of the first year after the 2019 election. Three Elected Directors shall retire at the end of the second year after election and the remaining two Elected Directors shall retire at the end of the third year after election, until the eight (8) Elected Directors have retired, after which those Elected Directors elected to the vacancies after the first year shall retire and so on. The Elected Directors to retire and the year in which they retire, will be determined by the Board at the first board meeting following the 2019 Annual General Meeting. If the Board cannot agree, retirements will be determined by lot.
- (c) For each three year interval after the 2019 election, up to three Board Members shall be elected at the end of the first year, up to three Board Members shall be elected at the end of the second year and up to two Board Members shall be elected at the end of the third year.
- (d) Should any adjustment to the term of Board Members elected under this Constitution be necessary to ensure rotational terms in accordance with this Constitution, this shall be determined by the Board. Elections to subsequent Boards shall then proceed in accordance with the procedures in this Constitution.
- (e) Board Members shall be limited to three (3) terms of 3 years, however in exceptional circumstances Board Membership may be extended by an additional year by Special Resolution of a General Meeting.
- (f) Board Members will commence their role at the next Board meeting following their election or appointment.

### **13.5 Vacancies**

- (a) The Board may at any time appoint a person to be a Board Member to fill a casual vacancy.
- (b) A Board Member appointed to fill a vacancy must have their position as a Board Member confirmed by resolution at the next Annual General Meeting.

### **13.6 Removal of Board Member**

- (a) Subject to the provisions of the Act, the Council may in General Meeting, for which notice has been provided, by ordinary resolution remove any Board Member prior to the expiration of that Board Member's term of office.
- (b) A Board Member may be removed by the Board before the end of the specified period if at least two thirds of all the Board Members vote in favour of the removal.

### **13.7 Vacation of Office**

The office of a Board Member becomes vacant if the Board Member:

- (a) completes his/her term of appointment or election is removed in accordance with sub clause 13.6;
- (b) dies or becomes unwell to the extent that their capacity to perform their role of a Board Member is seriously diminished;
- (c) resigns office by notice in writing to the Board;
- (d) becomes ineligible for reasons prescribed in sub clause 12.4
- (e) is not present personally at three consecutive Board Members' meetings without leave of absence from the Board;
- (f) becomes bankrupt or makes any arrangement or composition with their creditors;
- (g) fails to declare any conflict of interest; or
- (h) in the opinion of the Board (but subject always to this Constitution) has:
- (i) acted in a manner unbecoming or prejudicial to the Objects and interests of the Council; or
- (ii) brought the Council into disrepute.

## **14. MEETINGS OF THE BOARD**

### **14.1 Board to Meet**

- (a) The Board Members may meet together in person, via teleconference or videoconference for conducting business, adjourn and otherwise regulate their meetings as they think fit.
- (b) The Board will meet as often and at times deemed necessary by the Board.

### **14.2 Decisions of Board**

- (a) Questions arising at any meeting of the Board shall be decided by a majority of votes of the Board Members present in person and entitled to vote.
- (b) All Board Members are entitled to one (1) vote on any question.
- (c) Where voting is equal, the President or if absent the chair of the meeting will not have a casting vote.
- (d) Where an equal number of votes are cast in favour of and against the resolution, the resolution is not carried.

### **14.3 Quorum**

The number of Board Members whose presence is required to constitute a quorum is at least two thirds (rounded down to the lowest whole number) of the total Board Membership.

### **14.4 Effect of Vacancy**

- (a) The Board may continue to act despite a vacancy in their number.
- (b) However, if the number of Board Members is reduced below five (5), the remaining Board Members may act only for the purpose of filling the vacancies to the extent necessary to bring their number up to that required for a quorum or to convene a General Meeting.

### **14.5 Election of President**

- (a) The Board Members shall elect one of their number to the office of President
- (b) The Board may also elect one of their number to the Office of Vice President

### **14.6 Convening meetings**

- (a) A Board Member may, and the Executive Officer on the request of a Board Member must, convene a Board meeting.
- (b) Except in exceptional circumstances not less than fourteen (14) days written notice shall be given of a Board meeting. The agenda and relevant papers shall be forwarded to each Board Member not less than four (4) days prior to each meeting.

### **14.7 Chair of Board Meetings**

- (a) The President will act as chair at all Board Meetings unless unable or unwilling to do so in which case the Vice President (if one elected) will act as chair.
- (b) In the absence the President or the Vice President the Board will elect one of their number to act as chair.

### **14.8 Circulating resolutions**

- (a) The Board Members may pass a resolution without a formal Board meeting being held if the resolution is passed unanimously by all Board Members. Board Members will be required to provide written statement that they are in favour of the resolution set out in the document.
- (b) The resolution is passed when the last Board Member provides written endorsement.

### **14.9 Validity of acts of the Board**

Everything done at a properly convened Board Meeting or a committee meeting, is valid even if it is discovered later that there was some defect in the appointment, election or qualification of any of them or that any of them was disqualified or had vacated office.

#### **14.10 Conflicts**

- (a) A Board Member shall declare to the Board that Board Member's interest in any matter in which any conflict or potential conflict of interest arises. Unless otherwise determined by the Board Members, that Board Member must absent themselves from discussion of such matter and shall not be entitled to vote in respect of such matter.
- (b) In the event of any uncertainty in this regard, the issue shall immediately be determined by a vote of the remaining Board Members or, if this is not possible, the matter shall be adjourned or deferred to the next meeting.
- (c) The Executive Officer shall maintain a register of declared interests.

#### **14.11 Minutes**

The Board Members must cause minutes of all meetings to be made. As a minimum, the minutes should reflect the date, time and place of the meeting, those in attendance, any apologies and clear details of any resolutions or motions discussed and their outcomes.

### **15. POWERS AND DUTIES OF THE BOARD**

#### **15.1 Executive Officer**

- (a) **Appointment of an Executive Officer**

An Executive Officer may be appointed by the Board for such term and on such conditions as the Board thinks fit.

- (b) **Powers, duties and authorities of Executive Officer**

- (i) The Executive Officer holds office on the terms and conditions (including as to remuneration if any) and with the powers, duties and authorities, determined by the Board.
- (ii) The exercise of those powers and authorities and the performance of those duties by the Executive Officer is subject at all times to the control of the Board.
- (iii) The Executive Officer's role will be to implement the strategies, plans and policies approved by the Board and will be responsible for the management and direction of the Council and its finances.
- (iv) The Executive Officer is entitled, subject to a determination otherwise by the Board, to attend all meetings of the Council, all meetings of the Board and any Committees and may speak on any matter, but does not have a vote.

- (c) **Suspension or removal of Executive Officer**

Subject to the terms and conditions of the appointment, the Board by a vote of at least two thirds of Board Members may suspend or remove the Executive Officer from office.

## **15.2 Committees**

- (a) The Board may where relevant delegate appropriate powers to Committees of the Council
- (b) The Board may revoke any issued delegations to Committees
- (c) A Committee must exercise the powers delegated to it according to the terms of the delegation and directions of the Board.
- (d) Powers delegated to and exercised by a Committee are taken to have been exercised by the Board.
- (e) Committee meetings are governed by the provisions of this Constitution dealing with Board meetings in so far they are capable of application.

## **15.3 By-Laws**

### **(a) Making and amending By-laws**

- (i) The Board may from time to time make By-laws which they deem necessary or desirable for the control, administration and management of the Council's affairs at all times ensuring that these By-laws are consistent with the Objects of the Council and Objects of SAL.
- (ii) The Board may amend, repeal and replace those By-laws.
- (iii) The Council in General Meeting may, by Special Resolution, make, amend, repeal or replace any By-Law made by the Board.
- (iv) New By-laws will take effect 28 days after the date of adoption by the Board.

### **(b) Effect of By-laws**

A By-law:

- (i) is subject to this Constitution;
- (ii) must be consistent with this Constitution, its Objects and the Objects of SAL;
- (iii) when in force, is binding on all Members and has the same effect as a provision in this Constitution; and

## **16. GENERAL MEETINGS**

### **16.1 Annual General Meeting**

An AGM of the Council shall be held in accordance with the Act and this Constitution and on a date and at a venue to be determined by the Board.

### **16.2 Power to Convene a General Meeting**

- (a) The Board may convene a General Meeting when they see fit.
- (b) The Board must convene a General Meeting if required to do so by any legislation.
- (c) A Voting Member may request the Board to convene a General Meeting, such request should be complied with where such request is made in accordance with this Constitution.

### **16.3 Notice of General Meeting**

- (a) Notice of every General Meeting shall be given to all Voting Members entitled to attend the General Meeting, the Board Members and the auditor of the Council.
- (b) At least 35 days prior to the proposed date of a General Meeting (including an AGM) the Executive Officer or Board will request from Voting Members notices of motion and nominations for Board Membership (if applicable), which must be received no less than 21 days prior to the AGM. The Board may in exceptional circumstances at its discretion accept notices of motion inside this timeframe.
- (c) At least 14 days prior to the General Meeting notice of the time and place of the Meeting must be given to those Members entitled to receive notice, together with:
  - (i) the agenda for the meeting;
  - (ii) any notice of motion received from any Voting Member;
  - (iii) in the case of a proposed Special Resolution, the intention to propose the Special Resolution and the terms of the proposed Special Resolution;
  - (iv) where applicable, a list of all nominations received for positions to be elected at the relevant General Meeting; and
  - (v) forms of authority in blank for proxy votes.
- (d) Notice of every General Meeting shall be given in the following manner:
  - (i) Notices may be given by the Council to any person entitled under this Constitution to receive any notice by sending the notice by electronic mail (Email), facsimile or pre-paid post, to the Member's or Representative's Email address, facsimile number or registered address
  - (ii) Electronic mail is the preferred method of communication and other methods will only be used where no Email address has been provided.
  - (iii) Where a notice is sent by electronic mail, service of the notice shall be deemed to be effected the next business day after it was sent.

- (iv) 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.
- (v) 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 two (2) days after posting.
- (e) The non-receipt of a notice convening, cancelling or postponing a General Meeting by, or the accidental omission to give a notice of that kind to, a person entitled to receive it, does not invalidate any resolution passed at a General Meeting.

#### **16.4 Business at General Meetings**

The business to be transacted at a General Meeting is limited to that stated in the notice of the meeting.

#### **16.5 Members Entitled to Attend and Vote**

##### **(a) Attendance**

All members and Board Members are entitled to attend General Meetings and to debate agenda issues.

##### **(b) Vote**

Only Voting Members may vote at a General Meeting.

#### **16.6 Right to Appoint a Proxy**

- (a) A Voting Member entitled to attend and vote at a General Meeting is entitled to appoint a person as their proxy to attend the meeting in their place.
- (b) A proxy has the same rights as the Voting Member in relation to the General Meeting for which they are appointed proxy.
- (c) A proxy may be appointed in respect of more than one meeting.
- (d) The instrument appointing a proxy shall be in a form approved by the Board from time to time, provided it complies with the requirements of the Act and has been duly completed, executed and lodged with the Executive Officer at or before the commencement of the meeting.

### **17. PROCEEDINGS AT GENERAL MEETINGS**

#### **17.1 Quorum**

- (a) The number of Voting Members who must be present and eligible to vote for a quorum to exist at a General Meeting is at least fifty one percent of the total number of Voting Members registered with the Council, e.g. where the total number of registered voting members is three, a quorum requires a minimum of two voting members present.
- (b) No business may be transacted at a General Meeting until a quorum is present.

- (c) If within 30 minutes after the time appointed for a General Meeting, a quorum is not present, the meeting stands adjourned to such other, day time and place as determined by the Board.

## **17.2 Adjournment of Meeting**

The chairman will if directed by any meeting at which a quorum is present, adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting.

## **17.3 Notice of adjourned Meeting**

- (a) It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for 30 days or more.
- (b) In that case, at least seven (7) days notice must be given for the adjourned meeting.

## **17.4 Chair of General Meetings**

- (a) The President is entitled to preside as chairman at General Meetings.
- (b) If a General Meeting is convened and the President is not present within 15 minutes after the time appointed for the meeting or unwilling to act, the following may preside as chair (in order of entitlement):
  - (i) the Vice President, if one has been elected;
  - (ii) a person chosen by a majority of the Board Members present;
  - (iii) the only Board Member present; or
  - (iv) a Representative of a Voting Member who is entitled to vote and is chosen by a majority of the Voting Members present.

## **18. VOTING AT GENERAL MEETINGS**

### **18.1 Voting Procedure**

- (a) At any meeting a resolution put to the vote of the meeting shall be decided on a show of hands of Voting Members. Each Voting Member shall have a single vote only.

### **18.2 Passing of Resolutions**

Special Resolutions will be passed by a majority of not less than three quarters of the Voting Members present. Subject to this Constitution, all other resolutions will be passed by a simple majority.

### **18.3 Voting Deadlock**

In the event of a deadlock the resolution shall be deemed to be lost as the number of votes cast in favour do not constitute the required majority. The Chair does not have a casting vote.

### **18.4 Objection to attendance and voting qualification**

An objection to the right of a person to attend or vote at any General Meeting must be referred to the chair, whose decision will be final.



## **18.5 Written notice of cancellation or postponement**

Notice of the cancellation or postponement of a General Meeting must state the reasons for doing so and be given to each Member entitled to receive notice of the General Meeting.

## **18.6 Contents of notice of postponement**

A notice postponing a General Meeting must specify:

- (a) the new date and time for the meeting; and
- (b) the place where the meeting is to be held.

## **19. RECORDS AND ACCOUNTS**

### **19.1 Records**

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

### **19.2 Records kept in accordance with the Act**

Proper accounting and other records shall be kept in accordance with the Act.

### **19.3 Council to retain Records**

The Council shall in accordance with the Act retain such records for seven (7) years after the completion of the transactions or operations to which they relate.

### **19.4 Board to submit Accounts**

The Board shall submit to the Members at the Annual General Meeting the statements of account of the Council in accordance with this Constitution and the Act.

### **19.5 Accounts Conclusive**

The statements of account when approved or adopted by an Annual General Meeting shall be conclusive except as regards any error discovered in them within three months (3) of such approval or adoption.

### **19.6 Payments and Receipts**

- (a) All payments made by the Council will be endorsed by any two (2) duly authorised Board Members or in such other manner as the Board determines.
- (b) Any receipts or monies paid to the Council shall be acknowledged by a written receipt of which a copy will be kept for Council records

## **20. AUDITOR**

- (a) A properly qualified auditor or auditors shall be appointed 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 the *Corporations Act* and generally accepted principles, and/or any applicable code of conduct.

- (b) The accounts of the Council 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.

## **21. APPLICATION OF INCOME**

- 21.1** Income and property of the Council shall be derived from such sources as the Board determines from time to time.
- 21.2** The income and property of the Council shall be applied solely towards the promotion of the Objects.
- 21.3** Except as prescribed in this Constitution or the Act:
  - (a) no portion of the income or property of the Council shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any Member; and
  - (b) no remuneration or other benefit in money or money's worth shall be paid or given by the Council to any Member who holds any office of the Council.
- 21.4** Nothing in this clause shall prevent payment in good faith of or to any Member for:
  - (a) any services rendered to the Council whether as an employee, Board Member or otherwise;
  - (b) goods supplied to the Council in the ordinary and usual course of operation;
  - (c) interest on money borrowed from any Member;
  - (d) rent for premises leased or let by any Member to the Council; or
  - (e) any out-of-pocket expenses incurred by the Member on behalf of the Council,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.

## **22. WINDING UP**

- 22.1** Subject to this Constitution the Council may be wound up in accordance with the Act.
- 22.2 Contribution of Members**
  - (a) The liability of the Members of the Council is limited.
  - (b) In the event of the Council being wound up, the liability on each member shall not exceed one dollar (\$1.00).
- 22.3 Distribution of Property on Winding Up**
  - (a) If upon winding up or dissolution of the Council any asserts remain, those assets shall be transferred to another body or bodies with similar Objects and whose constitution precludes distribution of those assets to its members.
  - (b) Such a body or bodies are to be determined by the Members in General Meeting at or before the time of dissolution or, failing that, by a Court of competent jurisdiction.

**23. ALTERATION OF CONSTITUTION**

This Constitution shall not be altered except by Special Resolution.

**24. PUBLIC OFFICER**

The Executive Officer or nominated Board Member (if an Executive Officer is not appointed) shall act as and carry out the duties of secretary and Public Officer of the Council and shall administer and manage the Council in accordance with the Act and this Constitution.

**25. CONFORMATION WITH SAL**

- (a) This Constitution will clearly reflect the Objects of SAL and will conform to the SAL constitution, subject always to the Act.
- (b) The Council will take all reasonable steps to ensure this Constitution conforms to the SAL constitution subject always to the Act.
- (c) The Council shall provide to SAL a copy of this Constitution and all amendments to this document. The Council acknowledges and agrees that the SAL has power to veto any provision in this Constitution which, in SAL's opinion, is contrary to the Objects of SAL.
- (d) The Council shall maintain, in a form acceptable to SAL but otherwise in accordance with the Act, a register of all Members.

**26. INDEMNITY**

- (a) Every Board Member and employee of the Council shall be indemnified out of the property and assets of the Council against any liability incurred by them in their capacity as Board Member or employee 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 granted by the Court.
- (b) The Council shall indemnify its Board Members and employees against all damages and losses (including legal costs) for which any such Board Member or employee may be or become liable to any third party in consequence of any act or omission except wilful misconduct:
  - i. in the case of a Board Member, performed or made whilst acting on behalf of and with the authority, express or implied of the Council; and
  - ii. in the case of an employee, performed or made in the course of, and within the scope of their employment by the Council.

**27. AUTHORITY TO TRADE**

The Council is authorised to trade in accordance with the Act.