



CONSTITUTION

OF

MANLY YACHT CLUB LIMITED

Australian Company Number (ACN) 000 489 421

Australian Business Number (ABN) 12 000 489 421

A company limited by guarantee

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Preliminary

1. Name of the company

The name of the **company** is Manly Yacht Club Limited (the **Club**).

2. Type of company

The **Club** is a public company limited by guarantee.

3. Limited liability of members

The liability of members is limited to the amount of the guarantee in clause

4. The guarantee

Each member must contribute an amount not more than \$20 (the **guarantee**) to the property of the **Club** if the **Club** is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

- (a) debts and liabilities of the **Club** incurred before the member stopped being a member, or
- (b) costs of winding up.

5. Definitions

In this constitution, words and phrases have the meaning set out in clauses 70 and 72.

Objects and powers

6. Object

The Club's objects are specified in Appendix 1.

7. Powers

Subject to clause 8, the Club has the following powers, which may only be used to carry out its objects set out in clause 6:

- (a) the powers of an individual, and
- (b) all the powers of a **company** limited by guarantee under the **Corporations Act**.

8. Not-for-profit

8.1 The **Club** must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2 and 69.

8.2 Clause 8.1 does not stop the **Club** from doing the following things, provided they are done in good faith:

- (a) paying or reimbursing a director in accordance with clause 45 below;
- (b) paying reasonable and proper remuneration to any member employed by the Club; or
- (c) paying a member for goods or services they have provided at fair and reasonable rates or rates more favourable to the Club.

9. Amending the constitution

- 9.1 Subject to clause 9.2, the members may amend this constitution by passing a **special resolution**.
- 9.2 The members must not pass a **special resolution** that amends this constitution if passing it causes the **Club** to no longer be a not for profit company as described in clause 8 above.
- 9.3 The Members must not without the prior written consent of the Minister for Sport pass a special resolution that amends the primary objects of the Club as described in Appendix 1.

Members

10. Membership and register of members

- 10.1 The classes of membership and the rights and membership fees of each class of member shall be as determined by the directors from time to time.
- 10.2 The classes of member of the **Club**, as at the date of this Constitution, are specified in Appendix 2.
- 10.3 The Club must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
- (a) for each current member:
 - i. name;
 - ii. address;
 - iii. any alternative address nominated by the member for the service of notices; and
 - iv. date the member was entered on to the register.
 - (b) for each person who stopped being a member in the last 7 years:
 - i. name;
 - ii. address;
 - iii. any alternative address nominated by the member for the service of notices; and
 - iv. dates the membership started and ended.
- 10.4 The **Club** shall give current members access to the register of members to the extent required by the Corporations Act or other applicable law and provided that the member has submitted to the Secretary a request in writing for such access.

11. Who can be a member

- 11.1 A person who supports the objects of the **Club** is eligible to apply to be a member of the **Club** under clause 12.
- 11.2 In this clause, 'person' means an individual but does not include an incorporated body.

12. How to apply to become a member

A person (as defined in clause 11.2) may apply to become a member of the Club by:

- (a) writing to the secretary stating that they:
 - i. want to become a member;
 - v. support the objects of the Club;

- vi. agree to comply with the Club's constitution, including paying the guarantee under clause 4 above if required.
 - (b) paying the Club any applicable membership fees; and
 - (c) complying with any other requirements for membership as may be specified by the directors from time to time (including by way of example, the requirement for one or more existing Club members to support the application).
- 13. Directors decide whether to approve membership**
- 13.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application. The directors may approve or reject an application at their absolute discretion.
- 13.2 If the directors approve an application, the secretary must promptly:
 - (a) enter the new member on the register of members; and
 - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 14).
- 13.3 If the directors reject an application, the secretary must promptly write to the applicant to tell them that their application has been rejected, but does not have to give reasons.
- 13.4 For the avoidance of doubt, the directors may:
 - (a) amend the application procedure as set out in 12.1 above;
 - (b) approve an application even if the application does not state the matters listed in clauses 12(a), 12(b) or 12(c). In that case, by applying to be a member, the applicant agrees to those three matters;
 - (c) delegate the approval of membership applications to an individual director or a subcommittee; or
 - (d) establish standing instructions for provisional approval of membership applications, subject to ratification by one or more directors.
- 14. When a person becomes a member**
- An applicant will become a member when they are entered on the register of members.
- 15. When a person stops being a member**
- 15.1 A person immediately stops being a member if they:
 - (a) die;
 - (b) resign, by writing to the secretary;
 - (c) are expelled under clause 18; or
 - (d) have failed to pay in full any arrears of membership fees or other amounts due to the Club within 1 month of a written request by the secretary (or his/her delegate) to do so.
- 16. Using technology to manage membership**
- 16.1 The Club may use any technology as determined by the directors to perform the functions referred to in clauses 10 to 15 above. This includes establishing and maintaining:
 - (a) an electronic register of members;
 - (b) arrangements for membership applications to be submitted and approved electronically; and

- (c) arrangements for the register of members to be updated electronically.

Dispute resolution and disciplinary procedures

17. Dispute resolution

17.1 The dispute resolution procedure in this clause applies to disputes (**disagreements**) under this constitution between a member or director and:

- (a) one or more members;
- (b) one or more directors; or
- (c) the **Club**.

17.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 18 or has already been determined by such disciplinary procedure.

17.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.

17.4 If those involved in the dispute do not resolve it under clause 17.3, they must within 10 days:

- (a) tell the directors about the dispute in writing;
- (b) agree or request that a mediator be appointed; and
- (c) attempt in good faith to settle the dispute by mediation.

17.5 The mediator must:

- (a) be chosen by agreement of those involved; or
- (b) where those involved do not agree:
 - i. for disputes between members, a person chosen by the directors; or
 - ii. for other disputes, a person chosen by the president of the Law Society of New South Wales (or any successor organisation).

17.6 A mediator chosen by the directors under clause 17.5(b)(i):

- (a) may be a member or former member of the **Club**, subject to (b) and (c) below;
- (b) must not have a personal interest in the dispute; and
- (c) must not be biased towards or against anyone involved in the dispute.

17.7 When conducting the mediation, the mediator shall support the parties to resolve their dispute by agreement but shall not evaluate or advise on the merits of, or determine the outcome of the dispute.

17.8 If the mediation process does not resolve the dispute, the parties may seek to resolve the dispute in accordance with the Corporations Act or otherwise at law.

18. Disciplining members

18.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the **Club** if the directors consider that:

- (a) the member has breached this constitution;
- (b) the member has committed an act of “misconduct”, as described Rule 69 of the Racing Rules of Sailing; or

- (c) the member's behaviour is causing, has caused, or is likely to cause harm to the **Club**.
- 18.2 At least 14 days before the directors' meeting at which a resolution under clause 18.1 will be considered, the secretary must notify the member in writing:
 - (a) that the directors are considering a resolution to warn, suspend or expel the member;
 - (b) that this resolution will be considered at a directors' meeting and the date of that meeting;
 - (c) what the member is said to have done or not done;
 - (d) the nature of the resolution that has been proposed; and
 - (e) that the member may provide an explanation to the directors, and details of how to do so.
- 18.3 Before the directors pass any resolution under clause 18.1, the member must be given a chance to explain or defend themselves by:
 - (a) sending the directors a written explanation before that directors' meeting; and/or
 - (b) speaking at the meeting.
- 18.4 After considering any explanation under clause 18.3, the directors may:
 - (a) take no further action;
 - (b) warn the member;
 - (c) suspend the member's rights as a member for a period of no more than 12 months;
 - (d) expel the member;
 - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause); or
 - (f) require the matter to be determined at a **general meeting**.
- 18.5 The directors cannot fine a member.
- 18.6 The secretary must give written notice to the member of the decision under clause 18.4 as soon as reasonably practicable.
- 18.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 18.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

General meetings of members

19. General meetings called by directors

- 19.1 The directors may call a **general meeting**.
- 19.2 If members with at least 5% of the votes that may be cast at a **general meeting** make a written request to the **Club** for a **general meeting** to be held, the directors must:
 - (a) within 21 days of the members' request, give all members notice of a **general meeting**; and
 - (b) hold the **general meeting** within 2 months of the members' request.

19.3 The percentage of votes that members have (in clause 19.2) is to be worked out as at midnight before the members request the meeting.

19.4 The members who make the request for a **general meeting** must:

- (a) state in the request any resolution to be proposed at the meeting;
- (b) sign the request; and
- (c) give the request to the **Club**.

19.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

20. General meetings called by members

20.1 If the directors do not call the meeting within 21 days of being requested under clause 19.2, 50% or more of the members who made the request may call and arrange to hold a **general meeting**.

20.2 To call and hold a meeting under clause 20.1 the members must:

- (a) as far as possible, follow the procedures for **general meetings** set out in this constitution;
- (b) call the meeting using the list of members on the **Club's** member register, which the **Club** must provide to the members making the request at no cost; and
- (c) hold the **general meeting** within three months after the request was given to the **Club**.

21. Annual general meeting

21.1 A **general meeting**, called the annual **general meeting**, must be held at least once in every calendar year.

21.2 Even if these items are not set out in the notice of meeting, the business of an annual **general meeting** may include:

- (a) a review of the **Club's** activities;
- (b) a review of the **Club's** finances;
- (c) any auditor's report;
- (d) the election of directors; and
- (e) the appointment and payment of auditors, if any.

21.3 Before or at the annual **general meeting**, the directors must give information to the members on the **Club's** activities and finances during the period since the last annual **general meeting**.

21.4 The chairperson of the annual **general meeting** must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **Club**.

22. Notice of general meetings

22.1 Notice of a **general meeting** must be given to:

- (a) each member entitled to vote at the meeting;
- (b) each director; and
- (c) the auditor (if any).

- 22.2 Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 22.3 Subject to clause 22.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an annual **general meeting**, all the members entitled to attend and vote at the annual **general meeting** agree beforehand; or
 - (b) for any other **general meeting**, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 22.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director;
 - (b) appoint a director in order to replace a director who was removed; or
 - (c) remove an auditor.
- 22.5 Notice of a **general meeting** must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - (b) the general nature of the meeting's business;
 - (c) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution;
 - (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
 - i. the proxy shall be a member of the **Club**;
 - ii. the proxy form must be delivered to the **Club** at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
 - iii. the proxy form must be delivered to the **Club** at least 48 hours before the meeting.
- 22.6 If a **general meeting** is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.
- 23. Quorum at general meetings**
- 23.1 For a **general meeting** to be held, at least 20 members (a **quorum**) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).
- 23.2 No business may be conducted at a **general meeting** if a quorum is not present.
- 23.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of **general meeting**, the **general meeting** is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week;
 - (b) if the time is not specified – the same time; and

(c) if the place is not specified – the same place.

23.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

24. Auditor's right to attend meetings

24.1 The auditor (if any) is entitled to attend any **general meeting** and to be heard by the members on

any part of the business of the meeting that concerns the auditor in the capacity of auditor.

24.2 The **Club** must give the auditor (if any) any communications relating to the **general meeting** that a member of the **Club** is entitled to receive.

25. Using technology to hold meetings

- 25.1 The **Club** may hold a **general meeting** at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard either directly or by proxies or representatives.
- 25.2 Anyone using this technology is taken to be present in person at the meeting.

26. Chairperson for general meetings

- 26.1 The **President** is entitled to chair **general meetings**.
- 26.2 The members present and entitled to vote at a **general meeting** may choose a director or member to be the chairperson for that meeting if:
- (a) there is no **President**; or
 - (b) the **President** is not present within 30 minutes after the starting time set for the meeting; or
 - (c) the **President** is present but says they do not wish to act as chairperson of the meeting.

27. Role of the chairperson

- 27.1 The chairperson is responsible for the conduct of the **general meeting**, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 27.2 The chairperson does not have a casting vote.

28. Adjournment of meetings

- 28.1 If a quorum is present, a **general meeting** must be adjourned if a majority of **members present** direct the chairperson to adjourn it.
- 28.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Members' resolutions and statements

29. Members' resolutions and statements

- 29.1 Members with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice to the **Club** of a resolution they propose to move at a **general meeting** (members' resolution), and/or
 - (b) a written request to the **Club** that the **Club** give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (members' statement).
- 29.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 29.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 29.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- 29.5 The percentage of votes that members have (as described in clause 29.1) is to be worked out as at midnight before the request or notice is given to the **Club**.

- 29.6 If the **Club** has been given notice of a members' resolution under clause 29.1(a), the resolution must be considered at the next **general meeting** held no more than two months after the notice is given.
- 29.7 This clause does not limit any other right that a member has to propose a resolution at a **general meeting**.
- 30. Club must give notice of proposed resolution or distribute statement**
- 30.1 If the **Club** has been given a notice or request under clause 29:
- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the **Club's** cost; or
 - (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the **Club** in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a **general meeting**, the members may pass a resolution that the **Club** will pay these expenses.
- 30.2 The **Club** does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
- (a) it is more than 1 000 words long;
 - (b) the directors consider it may be defamatory;
 - (c) clause 30.1(b) applies, and the members who proposed the resolution or made the request have not paid the **Club** enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members; or
 - (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the members.

Voting at general meetings

32. How many votes a member has

Each financial member (other than a junior member or honorary member or temporary member) is entitled to vote and shall have one vote at general meetings.

33. Challenge to member's right to vote

33.1 A member or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.

33.2 If a challenge is made under clause 33.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

34. How voting is carried out

34.1 Voting must be conducted and decided by:

- (a) a show of hands;
- (b) a vote in writing; or

- (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 34.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 34.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 34.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.
- 35. When and how a vote in writing must be held**
- 35.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
 - (a) at least five **members present**;
 - (b) **members present** with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded); or
 - (c) the chairperson.
- 35.2 A vote in writing must be taken when and how the chairperson directs, unless clause 35.3 applies.
- 35.3 A vote in writing must be held immediately if it is demanded under clause 35.1:
 - (a) for the election of a chairperson under clause 26.2; or
 - (b) to decide whether to adjourn the meeting.
- 35.4 A demand for a vote in writing may be withdrawn.
- 36. Appointment of proxy**
- 36.1 A member may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 36.2 A proxy shall be a member of the Club.
- 36.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
 - (a) speak at the meeting;
 - (b) vote in a vote in writing (but only to the extent allowed by the appointment); and
 - (c) join in to demand a vote in writing under clause 35.1.
- 36.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
 - (a) the member's name and address;
 - (b) the **Club's** name;
 - (c) the proxy's name or the name of the office held by the proxy; and
 - (d) the meeting(s) at which the appointment may be used.
- 36.5 A proxy appointment may be standing (ongoing) for a period not exceeding 12 months.
- 36.6 Proxy forms must be received by the **Club** at the address stated in the notice under clause 22.5(d) or at the **Club's** registered address at least 48 hours before a meeting.
- 36.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.

- 36.8 Unless the **Club** receives written notice before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) dies;
 - (b) is mentally incapacitated;
 - (c) revokes the proxy's appointment; or
 - (d) revokes the authority of a representative or agent who appointed the proxy.
- 36.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.
- 37. Voting by proxy**
- 37.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).
- 37.2 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;
 - (b) if the way they must vote is specified on the proxy form, must vote that way; and
 - (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

Directors

38. Number of directors

- 38.1 The Club must have at least five and no more than thirteen (13) directors.
- 38.2 As at the date of this Constitution, the directors of the Club should include the following office bearers (the "**office bearers**"):
- (a) President;
 - (b) Vice President;
 - (c) Commodore;
 - (d) Vice Commodore;
 - (e) Treasurer;
 - (f) Club Captain;
 - (g) Membership.

- 38.3 Each office bearer shall have such powers and functions as specified in this Constitution or as determined by the directors from time to time.

39. Election and appointment of directors

- 39.1 The directors (including each of the office bearers) shall be elected annually by a resolution passed in a general meeting. Directors (including each office bearer) may also be appointed under clause 39.3 below
- 39.2 A person is eligible for election as a director of the **Club** if they:
- (a) are a financial member of the **Club** over the age of 18 years;

- (b) are nominated by two members or representatives of members entitled to vote (unless the person was previously elected as a director at a **general meeting** and has been a director since that meeting);
 - (c) give the **Club** their signed consent to act as a director of the **Club**; and
 - (d) are not ineligible to be a director under the **Corporations Act**.
- 39.3 The directors may appoint a person as a director to fill a casual vacancy (including a casual vacancy for any role as an office bearer) or as an additional director if that person:
 - (a) is a member of the **Club** over the age of 18 years;
 - (b) gives the **Club** their signed consent to act as a director of the **Club**; and
 - (c) is not ineligible to be a director under the **Corporations Act**.
- 39.4 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a **general meeting**, but for no other purpose.
- 40. Election of chairperson**

The President shall be entitled to act as the chairperson for all meetings of the directors.
- 41. Term of office**
 - 41.1 Other than a director appointed under clause 39.3 above, a director's term of office starts at the end of the annual **general meeting** at which they are elected and ends at the end of the annual **general meeting** at which they retire.
 - 41.2 Each director must retire at each annual general meeting.
 - 41.3 A director who retires under clause 41.2 may nominate for election or re-election, subject to clause 41.4 below.
 - 41.4 A director who has held office for a continuous period of [ten] years or more may only be reappointed or re-elected by a **special resolution**

42. When a director stops being a director

A director stops being a director if he/she:

- (a) gives written notice of resignation as a director to the **Club**;
- (b) dies;
- (c) is removed as a director by a resolution of the members;
- (d) stops being a member of the **Club**;
- (e) is absent for 3 consecutive directors' meetings without approval from the directors; or
- (f) becomes ineligible to be a director of the **Club** under the **Corporations Act**.

Powers of directors

43. Powers of directors

- 43.1 The directors are responsible for managing and directing the activities of the **Club** to achieve the purpose(s) set out in clause 6.
- 43.2 The directors may use all the powers of the **Club** except for powers that, under the **Corporations Act** or this constitution, may only be used by members.

- 43.3 The directors must decide on the responsible financial management of the **Club** including:
- (a) any suitable written delegations of power under clause 44 below; and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.

- 43.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a **general meeting**.

44. Delegation of directors' powers

- 44.1 The directors may delegate any of their powers and functions to a committee, a single director, a member, an employee of the **Club** or any other person, as they consider appropriate.
- 44.2 A committee, director, employee or other person to whom any powers have been delegated must exercise the powers delegated in accordance with any directions or conditions given by the directors from time to time. The directors may modify or revoke any delegation under this clause as they consider appropriate.
- 44.3 The provisions of this constitution that apply to meetings and resolutions of directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee to which powers have been delegated under this clause.
- 44.4 Pursuant to the power in clause 44.1 above, the directors have established the sailing committee to advise and assist the directors with the conduct and administration of on water sailing activities at the Club. Details of the delegation to the sailing committee may be set out in notices of delegation or other directions issued by the directors from time to time.
- 44.5 Any delegation other than the delegation to the Sailing Committee recorded in clause 44.4 above must be recorded in the Club's minute book.

45. Payments to directors

- 45.1 The **Club** must not pay fees to a director for acting as a director.
- 45.2 The **Club** may:
- (a) pay a director for work they do for the **Club**, other than as a director, if the amount is no more than a reasonable fee for the work done; or
 - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the **Club**.
- 45.3 Any payment made under clause 45.2 must be approved by the directors.
- 45.4 The Club may pay premiums for insurance indemnifying directors or other persons participating in the conduct of the Club's activities, as allowed for by law (including the Corporations Act) and this constitution.

46. Execution of documents

- 46.1 The Club may execute a document without using a common seal if the document is signed by:
- (a) two directors of the **Club**;
 - (b) a director and the secretary ;or
 - (c) such other person or persons who has/have been authorised by the directors to execute such a document or class or document.

Duties of directors

47. Duties of directors

47.1 The directors must comply with their duties as directors under legislation and common law (judge-made law). The duties as directors shall include, among other things, duties:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **Club**;
- (b) to act in good faith in the best interests of the **Club** and to further the objects of the **Club** set out in clause 6;
- (c) not to misuse their position as a director;
- (d) not to misuse information they gain in their role as a director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 48;
- (f) to ensure that the financial affairs of the **Club** are managed responsibly; and
- (g) not to allow the **Club** to operate while it is insolvent.

48. Conflicts of interest

- 48.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
- (a) to the other directors; or
 - (b) (if all of the directors have the same conflict of interest), to the members at the next **general meeting**, or at an earlier time if reasonable to do so.
- 48.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 48.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 48.4:
- (a) be present at the meeting while the matter is being discussed; or
 - (b) vote on the matter.
- 48.4 A director may still be present and vote if:
- (a) their interest arises because they are a member of the **Club**, and the other members have the same interest;
 - (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the **Club** (see clause 66);
 - (c) their interest relates to a payment by the **Club** under clause 65 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**;
 - (d) the Australian Securities and Investments Commission (**ASIC**) makes an order allowing the director to vote on the matter; or
 - (e) the directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the **Club**; and
 - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

Directors' meetings

49. When the directors meet

The directors may decide how often, where and when they meet.

50. Calling directors' meetings

- 50.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.
- 50.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

51. Chairperson for directors' meetings

- 51.1 The **President** is entitled to chair directors' meetings.
- 51.2 The Vice President shall be the chairperson for that meeting if the **President** is:

- (a) not present within 30 minutes after the starting time set for the meeting; or
 - (b) present but does not want to act as chairperson of the meeting.
- 51.3 Otherwise, the directors at a directors meeting may choose a director to be chairperson for that meeting.
- 52. Quorum at directors' meetings**
- 52.1 Unless the directors determine otherwise, the quorum for a directors' meeting is a majority (more than 50%) of directors.
- 52.2 A quorum must be present for the whole directors' meeting.
- 53. Using technology to hold directors' meetings**
- 53.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- 53.2 The directors' agreement may be a standing (ongoing) one.
- 53.3 A director may only withdraw their consent within a reasonable period before the meeting.
- 54. Passing directors' resolutions**
- Subject to clause 55 below, a directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.
- 55. Circular resolutions of directors**
- 55.1 The directors may pass a circular resolution without a directors' meeting being held.
- 55.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 55.3 or clause 55.4.
- 55.3 Each director may sign:
 - (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
 - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 55.4 The **Club** may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 55.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 55.3 or clause 55.4.

Secretary

56. Appointment and role of secretary

- 56.1 The **Club** must have at least one secretary, who may also be a director.
- 56.2 A secretary must be appointed by the directors (after giving the **Club** their signed consent to act as secretary of the **Club**) and may be removed by the directors.
- 56.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration in the case of a secretary who is not a director of the Club.
- 56.4 The role of the secretary includes:
 - (a) maintaining a register of the **Club's** members; and
 - (b) maintaining the minutes and other records of general meetings (including notices of meetings), directors' meetings and circular resolutions.
- 56.5 The functions of the secretary may from time to time be shared with one or more directors (subject to the consent of the secretary and the applicable director(s)).

Minutes and records

57. Minutes and records

- 57.1 The **Club** must, within one month, make and keep the following records:
 - (a) minutes of proceedings and resolutions of **general meetings**;
 - (b) minutes of circular resolutions of members;
 - (c) a copy of a notice of each **general meeting**; and
 - (d) a copy of a members' statement distributed to members under clause 29.
- 57.2 The **Club** must, within one month, make and keep the following records:
 - (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees); and
 - (b) minutes of circular resolutions of directors.
- 57.3 To allow members to inspect the **Club's** records:
 - (a) the **Club** must give a member access to the records set out in clause 57.1; and
 - (b) the directors may authorise a member to inspect other records of the **Club**, including records referred to in clause 57.2 and clause 58.1.
- 57.4 The directors must ensure that minutes of a **general meeting** or a directors' meeting are signed within a reasonable time after the meeting by:
 - (a) the chairperson of the meeting; or
 - (b) the chairperson of the next meeting.
- 57.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.
- 57.6 The **Club** may make and keep minutes and records under this clause in electronic form to the extent permitted by the Corporations Act and any other applicable laws.

58. Financial and related records

- 58.1 The **Club** must make and keep written financial records that:

- (a) correctly record and explain its transactions and financial position and performance; and
 - (b) enable true and fair financial statements to be prepared and to be audited.
- 58.2 The **Club** must also keep written records that correctly record its operations.
- 58.3 The **Club** must retain its records for at least 7 years.
- 58.4 The directors must take reasonable steps to ensure that the **Club's** records are kept safe.
- 58.5 The **Club** may make and keep financial and related records in electronic form to the extent permitted by the Corporations Act and any other applicable laws.

By-laws

59. By-laws

- 59.1 The directors may pass a resolution to make by-laws to give effect to this constitution. For the avoidance of doubt the directors may also amend or terminate by-laws.
- 59.2 Members and directors must comply with by-laws as if they were part of this constitution.

Notice

60. What is notice

- 60.1 Anything written to or from the **Club** under any clause in this constitution is written notice and is subject to clauses 61 to 63, unless specified otherwise.
- 60.2 Clauses 61 to 63 do not apply to a notice of proxy under clause 36.6.

61. Notice to the Club

- 61.1 Written notice or any communication under this constitution may be given to the Club, the directors or the secretary by:
 - (a) delivering it to the **Club's** registered office;
 - (b) posting it to the **Club's** registered office or to another address chosen by the **Club** for notice to be provided;
 - (c) sending it to an email address or other electronic address notified by the **Club** to the members as the **Club's** email address or other electronic address.

62. Notice to members

- 62.1 Written notice or any communication under this constitution may be given to a member:
 - (a) in person;
 - (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices;
 - (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any); or
 - (d) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).

62.2 If the **Club** does not have an address for the member, the **Club** is not required to give notice in person.

63. When notice is taken to be given

63.1 A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
- (c) sent by email or other electronic method, is taken to be given on the business day after it is sent; and
- (d) given under clause 62.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

Financial year

64. Club's financial year

The **Club's** financial year is from 1 May to 30 April, unless the directors pass a resolution to change the financial year.

Indemnity, insurance and access

65. Indemnity

65.1 The **Club** indemnifies each officer of the **Club** out of the assets of the **Club**, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **Club**.

65.2 In this clause, 'officer' means a director or secretary or delegate of the Board (including any member of the Sailing Committee).

65.3 In this clause, 'to the relevant extent' means:

- (a) to the extent that the **Club** is not precluded by law (including the **Corporations Act**) from doing so; and
- (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).

65.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **Club**.

66. Insurance

To the extent permitted by law (including the **Corporations Act**), and if the directors consider it appropriate, the **Club** may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the **Club** against any liability incurred by the person as an officer of the **Club**.

67. Directors' access to documents

67.1 A director has a right of access to the financial records of the **Club** at all reasonable times.

- 67.2 If the directors agree, the **Club** must give a director or former director access to:
- (a) certain documents, including documents provided for or available to the directors; and
 - (b) any other documents referred to in those documents.

Winding up

68. Surplus assets not to be distributed to members

If the **Club** is wound up, any **surplus assets** must not be distributed to a member or a former member of the **Club**.

69. Distribution of surplus assets

- 69.1 Subject to the **Corporations Act** and any other applicable Act, and any court order, any **surplus assets** that remain after the **Club** is wound up must be distributed to one or more sailing clubs or similar entities:

- (a) with purpose(s) similar to, or inclusive of, the purpose(s) in clause 6; and
- (b) which also prohibit the distribution of any **surplus assets** to its members to at least the same extent as the **Club**.

- 69.2 The decision as to the sailing club or other entity to be given the **surplus assets** must be made by a **special resolution** of members at or before the time of winding up. If the members do not make this decision, the **Club** may apply to the Supreme Court to make this decision.

Definitions and interpretation

70. Definitions

In this constitution:

Club means the company referred to in clause 1

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

President means a person elected by the members to be the President of the Club under clause 38,

or any person appointed to fill any casual vacancy in that role.

financial member of the Club means a member of the Club who has paid in full any membership fees which are due and payable for his or her applicable class of membership. An honorary life member shall be deemed to be a financial member of the Club. A determination of the President that a member is “financial” shall be conclusive, in the absence of manifest error.

general meeting means a meeting of members and includes the annual **general meeting**, under clause 21.1

member present means, in connection with a **general meeting**, a **member present** in person, by representative or by proxy at the venue or venues for the meeting.

racing rules of sailing means the “2021-2024 Racing Rules of Sailing of World Sailing, and the Prescriptions of Australian Sailing”, and every amendment, re-enactment, or replacement of it. **special resolution** means a resolution:

- i. of which notice has been given under clause 22.5(c), and
- ii. that has been passed by at least 75% of the votes cast by **members present** and entitled to vote on the resolution, and

surplus assets means any assets of the **Club** that remain after paying all debts and other liabilities of the **Club**, including the costs of winding up.

71. Reading this constitution with the Corporations Act

71.1 The replaceable rules set out in the **Corporations Act** do not apply to the **Club**.

71.2 The **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act.

71.3 A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this constitution.

72. Interpretation

In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression,
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

APPENDIX 1

The objects of the *Club* are as follows:

Primary

Primary Objects:

- **Promote Sailing:** To promote sailing as a sport and pastime for individuals of all ages and abilities, and for a diverse range of boats, through:
 - Organising sailing races.
 - Hosting sailing events.
 - Providing sailing education and training.
 - Offering facilities to support the above activities.

Incidental Objects:

- **General Powers:** To undertake all acts, deeds, matters, and things, and to enter into and make such agreements as are incidental or conducive to achieving the primary objects of the Club, including:
 - **Social Activities:** To promote, foster, encourage, and support social activities of all kinds among Club members.
 - **Licensing:** To apply for, obtain, and hold any necessary licences, including those for the sale and consumption of alcohol, and to appoint licensees on behalf of the Club.
 - **Employment:** To engage, employ, and dismiss secretaries, managers, sailing instructors, and other employees, and to remunerate them for services rendered to the Club.
 - **Property Acquisition:** To purchase, lease, license, or hire any real or personal property and any rights or privileges deemed necessary or convenient by the Club.
 - **Building Maintenance:** To erect, maintain, improve, or alter any buildings for the Club's purposes.
 - **Provision of Goods:** To provide meals and refreshments, and to purchase and sell foodstuffs, drinks, equipment, and other goods likely required by members.
 - **Subleasing:** To sublease, license, or hire out any part of the Club's premises or other assets on terms deemed necessary or convenient by the Club.
 - **Endowment Fund Management:**
 - To establish, maintain, and manage an Endowment Fund, the income of which is for the purpose of supporting the Club's objects, including the subsidising of operating expenses.
 - To solicit and accept donations, grants, and other contributions to the Endowment Fund.
 - To invest the assets of the Endowment Fund in accordance with an investment policy approved by the Board of Directors.
 - To distribute funds from the Endowment Fund in furtherance of the Club's objects as specified in Appendix 1, with the restriction that:

- The contributions made to the fund shall not be used for general operational expenses.
- All distributions must directly support the designated purpose or beneficiary as outlined in the Club's objects.

APPENDIX 2

Classes of Member as at the date of this Constitution – Clause 10

Class	Eligibility	Voting Member – yes or no?	Other Comment
Adult members	Adult membership is available to all members over 18 years of age	Yes	
Under 30s Members	Under 30's membership is available to all members under 30 years of age	Yes	
Youth Members - Over 18	Youth membership is available to members over 18 years and under 25.	Yes	
Youth Members - Under 18	Youth membership is available to members under 18 years	No	
Sailability Members	Sailability membership is available to mobility impaired sailors and their volunteer assistants.	Yes	
Junior Members	Junior Membership is available to children who are below the age of 18 years	No	

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Class	Eligibility	Voting Member – yes or no?	Other Comment
Honorary Life Membership	Honorary Life Membership, also known as life membership, may be awarded to members who have made an extraordinary contribution to the good running and management of the Club.	Yes Note that honorary life members are deemed to be “financial” and eligible to vote or participate as a Board member even though membership fees may not be payable for this class of membership	Honorary life membership is awarded by resolution of the Club’s Board of Directors and shall continue unless the Board of Directors determines otherwise at its discretion.
Honorary	Honorary membership may be awarded to non-sailing volunteers who assist with the management of races.	No	Honorary membership is awarded by resolution of the Club’s Board of Directors and shall be reviewed annually by the Board of Directors at its discretion.