

# **New South Wales Team Sailing Association (NSWTSA)**

## **Constitution October 2016**

***Associations Incorporation Act 2009 (NSW) (Act)***

### **Introduction**

This draft constitution has been based on the NSW Sport and Recreation as a guide for NSWTSA to become incorporated or, if already incorporated, to update their existing constitutions.

The template has been designed specifically for Sports so it is more detailed than the model rules available on the Office of Fair Trading website. It takes into account issues which a general community organisation might not need to include; for example, Team Sailing operates under a national system where the national body can make rulings and set policy that will flow through the Team Sailing and affect those competing at Club level.

This model constitution assumes that the NSWTSA will be aligned with ATSA and will ultimately be affiliated with Australian Sailing and will in turn have members aligned to it.

The benefit of such a structure is that all levels of the Team Sailing are working together for the advancement of the Team Sailing and therefore share common purposes, structures, policies and procedures. It also makes it easy to address issues of joint concern, to share information and to maximise the Team Sailing's marketability.

Finally, with the increasing amount of legislation affecting Sport, the structure enables organisations to enact consistent and complementary policies and strategies that address areas of common risk and that flow effectively through the organisation.

Attached to the constitution, we have developed a set of regulations that provide more detail on sections of the constitution. These regulations (sometimes called rules or by-laws) are more easily adjusted and have a more operational tone to them. They include more detail of the policies and procedures that underpin the constitution.

Within this template there will be references to sections that would be detailed in the regulations developed to accompany your constitution. These are marked by ®.

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**ASSOCIATIONS INCORPORATION ACT 2009 (NSW)**

**CONSTITUTION**

of

**NEW SOUTH WALES**

**TEAM SAILING ASSOCIATION INCORPORATED**

**(NSWTSA)**

**1. NAME OF ASSOCIATION**

The name of the Association is the **New South Wales Team Sailing Association Incorporated** ("Association"), referred to as **NSWTSA**.

**2. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Constitution unless the contrary intention appears:

**"Act"** means the *Associations Incorporation Act 2009 (NSW)*.

**"Active Team Sailor"** means an individual within a group member category, be it a school, university or the other member, who is enrolled or registered to participate in Team Sailing, noting any Active Team Sailor is to be a member of a club affiliated to Australian Sailing.

**"Affiliate Member"** means an individual who is an umpire, referee, coach or other official who is associated with the Association but who is not an Individual Member.

**"AS"** means Australian Sailing, the national sporting organisation that governs Sailing in Australia.

**"Association"** means the New South Wales Team Sailing Association Incorporated (NSWTSA).

**"ATSA"** means the Australian Team Sailing Association Incorporated, and the national body that governs Team Sailing and Team Racing in Australia.

**"Board"** means the body consisting of the Directors.

**"Constitution"** means this Constitution of the Association.

**"Delegate"** means the person(s) appointed from time to time to act for and on behalf of a Team Member category and to represent that category on the Board as a Director.

**"Director"** means a member of the Board and includes any person acting in that capacity from time to time appointed in accordance with this Constitution but does not include the Executive Director.

**"Executive Director"** means the Executive Director of the Association for the time being appointed under this Constitution. Where the Association does not have an Executive Director, the Association Secretary or Public Officer will, subject to confirmation by the Board, assume the functions of the Executive Director under this Constitution.

**“Financial year”** means the year ending on the next 31 August following incorporation and thereafter a period of 12 months commencing on 1 September and ending on 31 August each year.

**“General Meeting”** means the annual or any special general meeting of the Association.

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

**“Life Member”** means an individual appointed as a Life Member of the Association under **clause 5.5**.

**“Member”** means a member for the time being of the Association under **clause 5**.

**“Objects”** means the objects of the Association in **clause 2**.

**“Public Officer”** means the person appointed to be the public officer of the Association in accordance with the Act, and resident in the state of New South Wales.

**“Register”** means a register of Members kept and maintained in accordance with **clause 8**.

**“Regulations”** mean any Regulations made by the Board under **clause 35**.

**“Seal”** means the common seal of the Association (if any).

**“State Delegate”** means the person(s) appointed from time to time to act for and on behalf of the Association and to represent the Association as a member of ATSA, the national body for Team Sailing.

**“Special Resolution”** means a special resolution defined in the Act.

**“Team Sailing”** means the sport of Team Sailing or Team Racing.

## **1.2 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) words importing the singular include the plural and vice versa;
- (d) words importing any gender include the other genders;
- (e) references to persons include corporations and bodies politic;
- (f) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- (a) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any legislative authority having jurisdiction); and

- (b) 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.

### **1.3 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.

### **1.4 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.

## **3. OBJECTS OF THE ASSOCIATION**

The Association is established solely for the Objects. The Objects of the Association are:

- (a) To serve as the state body for the promotion, advancement and administration of team sailing throughout New South Wales, so team sailing can be conducted, encouraged, promoted, advanced and administered in New South Wales;
- (b) To adopt and implement policies for the benefit of team sailing in New South Wales, to ensure the maintenance and enhancement of the Association, the Members and Team Sailing, its standards, quality and reputation for the benefit of the Members and Team Sailing;
- (c) To form such partnerships and joint venture arrangements as are beneficial to the advancement of team sailing, and promote the economic and community service success, strength and stability of the Association, the Members and Team Sailing in New South Wales;
- (d) To plan for and conduct annually, or otherwise, the New South Wales Team Racing Championships and the New South Wales Schools Team Racing Championships;
- (e) To plan for and conduct team racing and schools team racing Events, as agreed by the Committee;
- (f) To abide by, promulgate, enforce and secure uniformity in the application of, the rules of Team Sailing as may be determined from time to time ATSA and AS and as may be necessary for the management and control of Team Sailing and related activities in New South Wales;
- (g) To invest monies of the association on interest bearing deposit and in the promotion and advancement of team sailing and these objectives;
- (h) To use and protect the Intellectual Property of the Association;
- (i) To take such steps to become recognised by ATSA and other Associations or bodies that promote the advancement and administration of Team Sailing as may be required, and represent the interests of its Members and of Team Sailing generally in any appropriate forum in New South Wales and Australia;

- (j) To at all times promote mutual trust and confidence between the Association, and the Members in pursuit of these Objects, and at all times act on behalf of, and in the interest of, the Members and Team Sailing in New South Wales;
- (k) To adopt and implement such policies as may be developed by AS and ATSA, including (as relevant and applicable) member protection, anti-doping, health and safety, junior Team Sailing, infectious diseases and such other matters as may arise as issues to be addressed in Team Sailing;
- (l) To review and/or determine any matters relating to Team Sailing which may arise, or be referred to it, by any Member;
- (m) To recognise any penalty imposed by any Member;
- (n) To act as arbiter (as required) on all matters pertaining to the conduct of Team Sailing in New South Wales, including disciplinary matters;
- (o) To do all that is reasonably necessary to enable these Objects to be achieved and enable Members to receive the benefits which these Objects are intended to achieve;
- (p) To undertake and or do all such things or activities which are necessary, incidental or conducive to the advancement of these Objects; and
- (q) To further these Objects, the Association shall be governed by a committee of management (the "Board"), who may delegate the day-to-day administration as required.

#### 4. POWERS OF THE ASSOCIATION

Solely for furthering the Objects, the Association has, in addition to the rights, powers and privileges conferred on it under section 25 of the Act, the legal capacity and powers of a company as set out under section 124 of the *Corporations Act 2001 (Cth)*.

#### 5. MEMBERS ®

##### 1.5 Categories of Members

The Members of the Association shall consist of:

- (a) **Individual Members**, who subject to this Constitution, shall have the right to receive notice of General Meetings and to be present, debate and vote on behalf at General Meetings;
- (a) **Team Members**, which may include
  - (i) **School Members**, which subject to this Constitution, shall have the right to receive notice of General Meetings and to be present, debate and vote on behalf at General Meetings;
  - (ii) **University Members**, which subject to this Constitution, shall have the right to receive notice of General Meetings and to be present, debate and vote on behalf at General Meetings;
  - (iii) **Club Members**, which subject to this Constitution, shall have the right to receive notice of General Meetings and to be present, debate and vote on behalf at General Meetings;

- (b) **Affiliate Members**, who subject to this Constitution, shall have the right to receive notice of General Meetings and to be present, debate and vote on behalf at General Meetings;
- (c) Appointed Directors who shall have the right to be present at General meetings but shall have no rights, to debate or to vote at General Meetings; and
- (d) Such new or other categories of Members, as may be established by the Board. Any new category of Member established by the Board cannot be granted voting rights without the approval of the Association in General Meeting.

## 1.6 Individual Member

In the case of an **Individual Member**, the person is a natural person with an interest in competing in or promoting the interests of team sailing and is not an employee of any other category. An **Individual Member** is required to be a member of a club affiliated to Australian Sailing.

## 1.7 Team Member

In the case of a **Team Member**, the entity is a group with an interest in competing in or promoting the interests of team sailing, including:

- (e) School Members

In the case of a **School Member**, the entity is a secondary school with registered **Active Team Sailors** participating in team sailing competitions.

- (f) University Members

In the case of a **University Member**, the entity is a university with registered **Active Team Sailors** participating in team sailing competitions.

- (g) Club Members

In the case of a **Club Member**, the entity is a sailing club with an interest in competing in or promoting the interests of team sailing and team sailing competition.

## 1.8 Affiliate Members

In the case of an **Affiliate Member**, the person is an individual who is an umpire, referee, coach or other official who is associated with the Association but who is not an Individual Member.

## 1.9 Life Members

- (h) The Board may recommend to the Annual General Meeting that any natural person who has rendered distinguished service to the Association or Team Sailing, where such service is deemed to have assisted the advancement of Team Sailing in New South Wales, be appointed as a Life Member.
- (i) A resolution of the Annual General Meeting to confer life membership (subject to clause 5.5(c)) on the recommendation of the Board must be a Special Resolution.
- (j) A person must accept or reject the Association's resolution to confer life membership in writing. Upon written acceptance, the person's details shall be entered upon the Register, and from the time of entry on the Register the person shall be a Life Member.

## **6. MEMBERSHIP APPLICATION ®**

### **1.10 Application for Membership**

An application for membership must be:

- (a) In writing on the form prescribed from time to time by the Board (if any), from the applicant or its nominated representative and lodged with the Association; and
- (b) Accompanied by the appropriate fee (if any).

### **1.11 Discretion to Accept or Reject Application**

- (c) The Association may accept or reject an application whether the applicant has complied with the requirements in clause 6.1 or not. The Association shall not be required or compelled to provide any reason for such acceptance or rejection.
- (d) Where the Association accepts an application, the applicant shall become a Member. Membership shall be deemed to commence upon acceptance of the application by the Association. The Register shall be amended accordingly as soon as practicable.
- (e) Where the Association rejects an application, it shall refund any fees forwarded with the application and the application shall be deemed rejected by the Association.

### **1.12 Renewal**

Members (other than Life Members) must renew their membership annually in accordance with the procedures set down by the Association in Regulations from time to time.

### **1.13 Deemed Membership**

All persons who are, prior to the approval of this Constitution under the Act, Members of the Association shall be deemed Members from the time of approval of this Constitution under the Act.

Any Members of the Association, prior to approval of this Constitution under the Act, who are not deemed Members under clause 6.4(a) shall be entitled to carry on such functions analogous to their previous functions as are provided for under this Constitution.

## **7. AFFILIATION OF CLUB MEMBERS ®.**

### **1.14 Affiliation Process for Club Members**

- (a) To be, or remain, eligible for membership, a Club Member must be incorporated or in the process of incorporation, or be a designated representation of an incorporated body. This process must be complete within one year of applying for membership under this Constitution.
- (b) For such time as the Club is not incorporated, the secretary of any such unincorporated Club shall be deemed to be the Member (on behalf of the unincorporated entity), and shall be entitled to exercise the same voting and other rights and have the same obligations and shall follow such procedures on behalf of the unincorporated Club as incorporated Members, to the extent that this is possible.
- (c) The Board in its sole discretion shall resolve any dispute or uncertainty, as to the application of this Constitution to an unincorporated Club.
- (d) Failure to incorporate within the period stated in **clause** Error! Reference source not found.**1.14** shall result in the expulsion of the secretary (acting on behalf of the

unincorporated Club) from membership. The expelled unincorporated entity shall not be entitled to re-apply for membership until it becomes incorporated.

### **1.15 Application for Affiliation**

An application for affiliation must be:

- (e) In writing on the form prescribed from time to time by the Board (if any), from the applicant or its nominated representative and lodged with the Association;
- (f) Accompanied by a copy of the applicant's constitution (which must be acceptable to the Association and must substantially conform to this Constitution) and the applicant's register of members; and
- (g) Accompanied by the appropriate fee (if any).

### **1.16 Discretion to Accept or Reject Application**

- (h) The Association may accept or reject an application whether the applicant has complied with the requirements in **clauses 7.1 and 1.15** or not. The Association shall not be required or compelled to provide any reason for such acceptance or rejection.
- (i) Where the Association accepts an application, the applicant shall, become a Member. Membership shall be deemed to commence upon acceptance of the application by the Association. The Executive Director shall amend the Register accordingly as soon as practicable.
- (j) Where the Association rejects an application the Association shall refund any fees forwarded with the application and the application shall be deemed rejected by the Association.

### **1.17 Re-Affiliation**

- (k) Club Members must re-affiliate annually with the Association in accordance with the procedures set down by the Association in Regulations from time to time.
- (l) Upon re-affiliation a Club must lodge with the Association an updated copy of its constitution (including all amendments) and must provide details of any change in its delegate and any other information reasonably required by the Association.

### **1.18 Deemed Membership**

- (m) All members which or who are, prior to the approval of this Constitution under the Act, members of the Association, shall be deemed Members from the time of approval of this Constitution under the Act.
- (n) Club Members shall provide the Association with such details as are reasonably required by the Association under this Constitution within one (1) month of the approval of this Constitution under the Act.

## **8. REGISTER OF MEMBERS ®**

### **1.19 Association to keep Register**

The Association shall keep and maintain a Register in which shall be entered (as a minimum):

- (a) the full name, address, and date of entry to membership of each Individual Member; and

- (b) the full name, address, and date of entry to membership of each Team Member, and the full name and address of their authorised representative; and
- (c) the full name, residential address and date of entry to membership of each Director and Life Member; and
- (d) where applicable, the date of termination of membership of any Member.

All Members shall provide notice of any change and required details to the Association within one month of such change.

## **1.20 Inspection of Register**

Having regard to the Act, confidentiality considerations and privacy laws, an extract of the Register, excluding the address or other direct contact details of any Life Member or Director, shall be available for inspection (but not copying) by Members, upon reasonable request.

## **1.21 Use of Register**

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

## **9. EFFECT OF MEMBERSHIP**

1.22 Members acknowledge and agree that:

- (a) this Constitution constitutes a contract between each of them and the Association and that they are bound by this Constitution and the Regulations;
- (b) they shall comply with and observe this Constitution and the Regulations and any determination, resolution or policy which may be made or passed by the Board or other entity with delegated authority;
- (c) by submitting to this Constitution and Regulations they are subject to the jurisdiction of the Association;
- (d) the Constitution and Regulations are necessary and reasonable for promoting the Objects and particularly the advancement and protection of Team Sailing in Australia; and
- (e) they are entitled to all benefits, advantages, privileges and services of Association membership.
- (f) Only an Individual or Team Member of the Association or a School, University or members of other Team Sailing Associations affiliated with the Australian Team Sailing Association, will be entitled to enter and compete in a regatta or competition conducted by the Association, unless otherwise invited by the Association or committee.

## **10. DISCONTINUANCE OF MEMBERSHIP**

### **1.23 Notice of Resignation**

- (a) A Member having paid all arrears of fees payable to the Association may resign or withdraw from membership of the Association by giving one month's notice in writing to the Association of such resignation or withdrawal.
- (b) A Club Member may not resign, disaffiliate or otherwise seek to withdraw from the Association without approval by Special Resolution of the Club. A copy of the

relevant minutes of the Club meeting showing that the Special Resolution has been passed by the Club must be provided to the Association.

- (c) Upon the Association receiving notice of resignation of membership given under **clauses 1.23(a) and (b)**, an entry in the Register shall be made recording the date on which the Member who or which gave notice ceased to be a Member.

#### **1.24 Discontinuance for breach**

- (d) Membership of the Association may be discontinued by the Board upon breach of any clause of this Constitution or the Regulations, including but not limited to the failure to pay any monies owed to the Association, failure to comply with the Regulations or any resolutions or determinations made or passed by the Board or any duly authorised committee.
- (e) Membership shall not be discontinued by the Board under **clause 1.24(d)** without the Board first giving the accused Member the opportunity to explain the breach and/or remedy the breach.
- (f) Where a Member fails, in the Board's view to adequately explain the breach, that Member's membership shall be discontinued under **clause 1.24(d)** by the Association giving written notice of the discontinuance to the Member. The Register shall be amended to reflect any discontinuance of membership under this **clause 1.25** as soon as practicable.

#### **1.25 Discontinuance for failure to re-affiliate**

Membership of the Association may be discontinued by the Board if a Club Member has not re-affiliated with the Association within one month of re-affiliation falling due. The Register shall be amended to reflect any discontinuance of membership under this **clause 1.25** as soon as practicable.

#### **1.26 Member to Re-Apply**

A Member whose membership has been discontinued under **clauses 1.24 or 1.25**:

- (g) must seek renewal or re-apply for membership in accordance with this Constitution; and
- (h) may be re-admitted at the discretion of the Board.

#### **1.27 Forfeiture of Rights**

A Member who or which ceases to be a Member, for whatever reason, shall forfeit all rights in and claims upon the Association and its property and shall not use any property of the Association including Intellectual Property. Any Association documents, records or other property in the possession, custody or control of that Member shall be returned to the Association immediately.

Where a Member ceases to be a Member it shall also forfeit all representation rights on the Board and at General Meetings.

#### **1.28 Delegate Position Lapses**

The position of Delegate shall lapse immediately on cessation of membership.

## **1.29 Membership may be Reinstated**

Membership which has been discontinued under this **clause 10** may be reinstated at the discretion of the Board, with such conditions as it deems appropriate.

## **1.30 Refund of Membership Fees**

Membership fees or subscriptions paid by the discontinued Member may be refunded on a pro-rata basis to the Member upon discontinuance.

## **11. DISCIPLINE ®**

- (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 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 Association, and/or Team Sailing; or
  - (iii) brought the Association, any other Member or Team Sailing 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 Association set out in the Regulations.

- (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 Regulations but subject always to the Act.

## **12. SUBSCRIPTIONS AND FEES**

The annual membership subscription (if any) and any fees or other levies payable by Members to the Association, the time for and manner of payment, shall be as determined by the Board.

## **13. EXISTING DIRECTORS**

- (a) The members of the administrative or governing body (by whatever name called) of the Association in office immediately prior to approval of this Constitution under the Act shall continue in those positions until the next Annual General Meeting following such adoption of this Constitution. After this General Meeting the positions of Directors shall be filled, vacated and otherwise dealt with in accordance with this Constitution.
- (b) The person known and appointed to the position of Executive Director (or similar title) immediately prior to approval of this Constitution under the Act shall continue in that position following such approval, subject to any contractual arrangements.

## **14. POWERS OF THE BOARD**

The Board who shall exercise the powers of the Association in accordance with the Act and this Constitution shall manage the business of the Association. In particular, the Board as the governing body for Team Sailing in New South Wales shall be responsible for acting on State and local issues in accordance with the Objects and shall operate for the benefit of the Members and the community throughout New South Wales and shall govern Team Sailing in New South Wales in accordance with this Constitution and in particular the Objects.

## **15. COMPOSITION OF THE BOARD**

### **1.31 Composition of the Board**

The Board shall comprise:

- (a) five (4) elected Directors; and
- (b) up to four (4) other Directors, made up of
  - (i) up to (1) Board appointed Director; and
  - (ii) Representative Directors representing the membership groups elected in accordance with the Regulations.

### **1.32 Appointed Directors**

The elected Directors may appoint up to one (1) appointed Director. The appointed Directors may have specific skills in commerce, finance, marketing, law or business generally or such other skill which complement the Board composition, or may be required by the Board from time to time.

### **1.33 Representative Directors**

- (c) A Team Membership category, with more than 5 members has the right to elect a Delegate representative of that category, who may act as a Director of the Association. Where a membership category has less than 5 members, that category is not entitled to a position on the Board.
- (d) Should the number of Team Membership categories entitled to appoint Delegates to the Board as Representative Directors exceed the number of potential vacancies on the Board, the priority will go to those Team Membership categories with the highest number of members.
- (e) Should the membership of the Team Member category the Delegate is representing has less than 5 members the appointment of the Representative Director will be dissolved at the next Annual General Meeting, or three (3) months after the reduction in membership, whichever is the earlier date.

### **1.34 Portfolios**

The Board may allocate portfolios and/or titles to Directors at its discretion.

### **1.35 Election and Appointment of Directors**

The Association will determine the process for electing and appointing Directors as set out in the Rules and Regulations of the Association.

- (f) The elected Directors shall be elected under clause 1 of Regulation 2.
- (g) The appointed Directors may be appointed under clause 2 of Regulation 2.
- (h) The Representative Directors may be appointed under clause 3 of Regulation 2.

### **1.36 Appointment of State Delegate to ATSA**

The Association will appoint on an annual basis a Director to act as the State Delegate to ATSA, and represent the Association in accordance with the ATSA constitution.

## **16. VACANCIES ON THE BOARD**

### **1.37 Casual Vacancies**

Any casual vacancy, occurring in the position of Director, may be filled by the remaining Directors by appropriately qualified persons. Any casual vacancy may only be filled for the remainder of the Director's term under this Constitution.

### **1.38 Grounds for Termination of Director**

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

- (a) dies;
- (b) becomes bankrupt or makes any arrangement or composition with her creditors generally;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in anyway under the law relating to mental health;
- (d) resigns her office in writing to the Association;
- (e) is absent without the consent of the Board from meetings of the Board held during a period of six (6) months;
- (f) holds any office of employment with the Association;
- (g) is directly or indirectly interested in any contract or proposed contract with the Association and fails to declare the nature of her interest;
- (h) in the opinion of the Board (but subject always to this Constitution):
  - (i) has acted in a manner unbecoming or prejudicial to the Objects and interests of the Association; or
  - (ii) has brought the Association into disrepute;
- (i) is removed by Special Resolution; or
- (j) would otherwise be prohibited from being a director of a corporation under the *Corporations Act 2001 (Cth)*.

### **1.39 Board May Act**

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

## **17. MEETINGS OF THE BOARD**

### **1.40 Board to Meet**

The Board shall meet as often as is deemed necessary in every calendar year for the dispatch of business (and shall be at least as often as is required under the Act) and subject to this Constitution may adjourn and otherwise regulate its meetings as it thinks fit. A Director may at any time convene a meeting of the Board within a reasonable time.

#### 1.41 Decisions of Board

Subject to this Constitution, questions arising at any meeting of the Board shall be decided by a majority of votes and a determination of a majority of Directors shall for all purposes be deemed a determination of the Board. All Directors shall have one (1) vote on any question. Where voting is equal, the chairperson may exercise a casting vote. If the chairperson does not exercise a casting vote, the motion will be lost.

#### 1.42 Resolutions not in Meeting

- (a) A resolution in writing, signed or assented to by telegram, cablegram, radiogram, facsimile, telex or other form of visible or other electronic communication by all the Directors for the time being present in Australia shall be as valid and effectual as if it had been passed at a meeting of Directors duly convened and held. Any such resolution may consist of several documents in like form each signed by one (1) or more of the Directors.
- (b) Without limiting the power of the Board to regulate its meetings as it thinks fit, a meeting of the Board may be held where one (1) or more of the Directors is not physically present at the meeting, provided that:
  - (i) all persons participating in the meeting are able to communicate with each other effectively simultaneously and instantaneously whether by means of telephone or other form of communication;
  - (ii) notice of the meeting is given to all the Directors entitled to notice in accordance with the usual procedures agreed upon or laid down from time to time by the Board or this Constitution and such notice specifies that Directors are not required to be present in person;
  - (iii) if a failure in communications prevents **clause 17.3(b)(i)** from being satisfied by that number of Directors which constitutes a quorum, and none of such Directors are present at the place where the meeting is deemed by virtue of the further provisions of this Rule to be held then the meeting shall be suspended until **clause 17.3(b)(i)** is satisfied again. If such condition is not satisfied within fifteen (15) minutes from the interruption the meeting shall be deemed to have terminated or adjourned; and
  - (iv) any meeting held where one (1) or more of the Directors is not physically present shall be deemed to be held at the place specified in the notice of meeting provided a Director is there present and if no Director is there present the meeting shall be deemed to be held at the place where the chairperson of the meeting is located.

#### 1.43 Quorum

At meetings of the Board the number of Directors whose presence is required to constitute a quorum is four (4).

#### 1.44 Notice of Board Meetings

Unless all Directors agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their apology or presence) not less than fourteen (14) days written notice of the meeting of the Board shall be given to each Director. The agenda shall be forwarded to each Director not less than three (3) days prior to such meeting.

#### **1.45 Chairperson**

The Board shall appoint a chairperson from amongst its number. The chairperson shall be the nominal head of the Association and will act as chair of any Board meeting or General Meeting at which he is present. If the chairperson is not present, or is unwilling or unable to preside at a board meeting the remaining Directors shall appoint another Director to preside as chair for that meeting only.

#### **1.46 Directors' Interests**

A Director is disqualified by holding any place of profit or position of employment in the Association or in any company or incorporated association in which the Association is a shareholder or otherwise interested or from contracting with the Association either as vendor, purchaser or otherwise except with express resolution of approval of the Board. Any such contract or any contract or arrangement entered into by or on behalf of the Association in which any Director is in any way interested will be void unless approved by the Board.

#### **1.47 Conflict of Interest**

A Director shall declare his interest in any:

- (c) contractual matter;
- (d) selection matter;
- (e) disciplinary matter; or
- (f) financial matter;

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

#### **1.48 Disclosure of Interests**

- (g) The nature of the interest of such Director must be declared by the Director at the meeting of the Board at which the relevant matter is first taken into consideration if the interest then exists or in any other case at the first meeting of the Board after the acquisition of the interest. If a Director becomes interested in a matter after it is made or entered into the declaration of the interest must be made at the first meeting of the Board held after the Director becomes so interested.
- (h) All disclosed interests must also be disclosed to each Annual General Meeting in accordance with the Act.

#### **1.49 General Disclosure**

A general notice that a Director is a member of any specified firm or company and is to be regarded as interested in all transactions with that firm or company is sufficient declaration under **clause 1.48** as regards such Director and the said transactions. After such general notice it is not necessary for such Director to give a special notice relating to any particular transaction with that firm or company.

### **1.50 Recording Disclosures**

Any declaration made, any disclosure or any general notice given by a Director in accordance with **clauses 17.8, 1.48** and/or **1.49** must be recorded in the minutes of the relevant meeting.

## **18. EXECUTIVE DIRECTOR**

### **1.51 Appointment of Executive Director**

An Executive Director may be appointed by the Board for such term and on such conditions as the Board thinks fit. Should an Executive Director not be appointed, the Secretary will assume the duties of the Executive Director.

### **1.52 Executive Director to act as Secretary and Public Officer**

The Executive Director shall act as and carry out the duties of Secretary and Public Officer of the Association and shall administer and manage the Association in accordance with the Act and this Constitution.

### **1.53 Specific Duties**

The Executive Director shall:

- (a) as far as practicable attend all Board meetings and all General Meetings;
- (b) prepare the agenda for all Board and General Meetings;
- (c) record and prepare minutes of the proceedings of all Board meetings and General meetings, and shall use his best endeavours to distribute those minutes to Regions and Clubs promptly from the date of the meeting; and
- (d) regularly report on the activities of, and issues relating to, the Association.

### **1.54 Board Power to Manage**

Subject to the Act, this Constitution, the Regulations and any policy directive of the Board, the Executive Director has power to perform all such things as appear necessary or desirable for the proper management and administration of the Association. No resolution passed by the Association in General Meeting shall invalidate any prior act of the Executive Director or the Board which would have been valid if that resolution had not been passed.

### **1.55 Executive Director may employ**

The Executive Director may in consultation with the Board, as appropriate, employ such personnel as are deemed necessary or appropriate from time to time and such appointments shall be for such period and on such conditions as the Executive Director determines.

## **19. DELEGATIONS ®**

### **1.56 Board may Delegate Functions**

The Board may by instrument in writing create or establish or appoint special committees, individual officers and consultants to carry out such duties and functions, and with such powers, as the Board determines from time to time. In exercising its power under this clause the Board must take into account broad stakeholder involvement

### **1.57 Delegation by Instrument**

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

- (a) this power of delegation; and
- (b) a function imposed on the Board or the Executive Director by the Act or any other law, or this Constitution or by resolution of the Association in General Meeting.

### **1.58 Delegated Function Exercised in Accordance With Terms**

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

### **1.59 Procedure of Delegated Entity**

The procedures for any entity exercising delegated power shall, subject to this Constitution and with any necessary or incidental amendment, be the same as that applicable to meetings of the Board under **clause 17** above. The entity exercising delegated powers shall make decisions in accordance with the Objects, and shall promptly provide the Board with details of all material decisions and shall provide any other reports, minutes and information as the Board may require from time to time.

### **1.60 Delegation may be Conditional**

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

### **1.61 Revocation of Delegation**

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

## **20. SEAL**

- (a) The Association may have a Seal upon which its corporate name shall appear in legible characters.
- (b) The Seal shall not be used without the express authorisation of the Board, and every use of the Seal shall be recorded in the minute books of the Associations and on the Register of use of the Seal. The affixing of the Seal must be witnessed by two (2), Directors unless the Board determines otherwise.

## **21. ANNUAL GENERAL MEETING**

- (a) An Annual General Meeting of the Association 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.
- (b) All General Meetings other than the Annual General Meeting shall be Special General Meetings and shall be held in accordance with this Constitution.

## **22. SPECIAL GENERAL MEETINGS**

### **1.62 Special General Meetings May be Held**

The Board may, whenever it thinks fit, convene a Special General Meeting of the Association and, where, but for this clause more than fifteen (15) months would elapse between Annual General Meetings, shall convene a Special General Meeting before the expiration of that period.

### **1.63 Requisition of Special General Meetings**

- (a) The Executive Director shall on the requisition in writing of not less than two (2) voting Members convene a Special General Meeting.
- (b) The requisition for a Special General Meeting shall state the object(s) of the meeting, shall be signed by the Members making the requisition and be sent to the Association and may consist of several documents in a like form, each signed by one or more of the Members making the requisitions.
- (c) If the Executive Director does not cause a Special General Meeting to be held within one (1) month after the date on which the requisition is sent to the Association, the Members making the requisition, or any of them, may convene a Special General Meeting to be held not later than three (3) months after that date.
- (d) A Special General Meeting convened by Members under this Constitution shall be convened in the same manner, or as nearly as possible as that, in which meetings are convened by the Board.

## **23. NOTICE OF GENERAL MEETING**

- (a) Notice of every General Meeting shall be given to every State and Life Member or other Member entitled to receive notice at the address appearing in the Register kept by the Association. The auditor, Executive Director and Directors shall also be entitled to notice of every General Meeting, which shall be sent to their last notified address. No other person shall be entitled as of right to receive notices of General Meetings.
- (b) A notice of a General Meeting shall specify the place and day and hour of meeting and shall state the business to be transacted at the meeting.
- (c) At least twenty-one (21) days' notice of a General Meeting shall be given to those Members entitled to receive notice, together with:
  - (i) the agenda for the meeting; and
  - (ii) any notice of motion received from Members entitled to vote;
- (d) Notice of every General Meeting shall be given in the manner authorised in **clause 38**.

## **24. BUSINESS**

- (a) The business to be transacted at the Annual General Meeting includes the consideration of accounts and the reports of the Board and auditors, the election of Directors under this Constitution and the appointment of the auditors.
- (b) All business that is transacted at a General Meeting and all business that is transacted at an Annual General Meeting, with the exception of those matters set down in **clause 24(a)** shall be special business.
- (c) No business other than that stated on the notice for a General Meeting shall be transacted at that meeting. .

## **25. NOTICES OF MOTION**

Members entitled to vote may submit notices of motion for inclusion as special business at a General Meeting. All notices of motion must be submitted in writing to the Executive Director not less than thirty-five (35) days (excluding receiving date and meeting date) prior to the General Meeting.

## **26. PROCEEDINGS AT GENERAL MEETINGS**

### **1.64 Quorum**

No business shall be transacted at any General Meeting unless a quorum is present at the time when the meeting proceeds to business. A quorum for General Meetings shall be 5 members.

### **1.65 Chairperson to preside**

The chairperson of the Board shall, subject to this Constitution, preside as chair at every General Meeting except:

- (a) in relation to any election for which the chairperson is a nominee; or
- (b) where a conflict of interest exists.

If the chairperson is not present, or is unwilling or unable to preside the Delegates present shall appoint another Director to preside as chairperson for that meeting only.

### **1.66 Adjournment of Meeting**

- (c) If within half an hour from the time appointed for the meeting, a quorum is not present the meeting shall be adjourned until the same day in the next week at the same time and place or to such other day and at such other time and place as the chairperson may determine and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the meeting will lapse.
- (d) The chairperson may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (e) When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (f) Except as provided in **clause 1.66(e)** it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

### **1.67 Voting Procedure**

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

- (g) the chairperson; or
- (h) a simple majority of Delegates on behalf of their Members.

### **1.69 Recording of Determinations**

1.70 Unless a poll is demanded under **clause 1.67**, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the Association shall be conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution.

### **1.71 Where Poll Demanded**

1.72 If a poll is duly demanded under **clause 1.67** it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairperson directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

## **27. VOTING AT GENERAL MEETINGS**

### **1.73 Members Entitled to Vote**

- (a) Members shall be entitled to vote at General Meetings in accordance with the following:
  - (i) An individual member has one vote only;
  - (ii) A Team Member is entitled to cast votes on the following basis:
    - A. A Team Member with sailing membership of up to 10 Active Team Sailors – 2 votes, or
    - B. A Team Member with sailing membership of more than 10 Active Team Sailors – 4 votes; and
  - (iii) An affiliate member has one vote only.
- (b) No other Member shall be entitled to vote but shall subject to this Constitution have, and be entitled to exercise, those rights set out in **clause 5.1**.
- (c) Members shall only be entitled to vote at General Meetings when all fees and dues are paid, and appropriate affiliation in accordance with **Clause 7** is in place.

### **1.74 Chairperson May Exercise Casting Vote**

Where voting at General Meetings is equal the chairperson may exercise a casting vote. If the chairperson does not exercise a casting vote the motion will be lost.

### **1.75 Postal Voting**

No motion shall be determined by a postal ballot unless determined by the Board. If the Board so determines, the postal ballot shall be conducted under the procedures set by the Board from time to time.

## **28. STRATEGIC FORUM OF ASSOCIATION**

### **1.76 Strategic Forums**

The Association shall hold a strategic forum at least once per year. The object of the strategic forum is to:

- (a) inform the Board of significant membership issues;
- (b) assist the Board to design or review the Association's strategic plan and direction;
- (c) discuss national issues;
- (d) provide feedback to the Board on the results of its governance decisions in practice at Member level.

### **1.77 Attendees at Strategic Forums**

The following persons may attend strategic forum of the Association:

- (e) up to three (3) representatives from each membership group and/or sub-group; and
- (f) the Directors; and
- (g) such other persons the Board considers should be invited.

## **29. GRIEVANCE PROCEDURE**

- (a) The grievance procedure set out in this rule applies to disputes under these rules between a Member and:
  - (i) another Member; or
  - (ii) the Association.
- (b) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within fourteen (14) days after the dispute comes to the attention of all parties.
- (c) If the parties are unable to resolve the dispute at the meeting or if a party fails to attend that meeting, then the parties must, within ten (10) days, refer the dispute to for resolution to an independent tribunal established by the Board in accordance with the procedures determined by the Board from time to time.
- (d) The Board may prescribe additional grievance procedures in Regulations consistent with this **Rule 29**.

## **30. RECORDS AND ACCOUNTS ®**

### **1.78 Records**

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

### **1.79 Records Kept in Accordance with Act**

Proper accounting and other records shall be kept in accordance with the Act. The books of account shall be kept in the care and control of the Executive Director.

### **1.80 Association to Retain Records**

The Association shall retain such records for seven (7) years after the completion of the transactions or operations to which they relate.

### **1.81 Board to Submit Accounts**

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

### **1.82 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) after such approval or adoption.

### **1.83 Accounts to be Sent to Members**

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

## **31. INCOME**

- (a) Income and property of the Association shall be derived from such sources as the Board determines from time to time.
- (b) The income and property of the Association shall be applied solely towards the promotion of the Objects.
- (c) Except as prescribed in this Constitution or the Act:
  - (i) no portion of the income or property of the Association shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any Member; and
  - (ii) no remuneration or other benefit in money or money's worth shall be paid or given by the Association to any Member who holds any office of the Association.
- (d) Nothing in clauses (b) or (c) shall prevent payment in good faith of or to any Member for:
  - (iii) any services actually rendered to the Association whether as an employee, Director or otherwise;
  - (iv) goods supplied to the Association in the ordinary and usual course of operation;
  - (v) interest on money borrowed from any Member;
  - (vi) rent for premises demised or let by any Member to the Association;

- (vii) any out-of-pocket expenses incurred by the Member on behalf of the Association;

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

## **32. WINDING UP**

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

## **33. DISTRIBUTION OF PROPERTY ON WINDING UP**

If upon winding up or dissolution of the Association there remains after satisfaction of all its debts and liabilities any assets or property, the same shall not be paid to or distributed amongst the Members but shall be given or transferred to another organisation or organisations having objects similar to the Objects and which prohibits the distribution of its or their income and property among its or their Members to an extent at least as great as is imposed on the Association by this Constitution. Such organisation(s) to be determined by the Members in General Meeting at or before the time of dissolution, and in default thereof by such judge of the Supreme Court of New South Wales or other Court as may have or acquire jurisdiction in the matter.

## **34. ALTERATION OF CONSTITUTION**

This Constitution shall not be altered except by Special Resolution.

## **35. REGULATIONS**

### **1.84 Board to Formulate Regulations**

The Board may formulate, issue, adopt, interpret and amend such Regulations for the proper advancement, management and administration of the Association, the advancement of the purposes of the Association and Team Sailing in New South Wales as it thinks necessary or desirable. Such Regulations must be consistent with the Constitution, and any policy directives of the Board.

### **1.85 Regulations Binding**

All Regulations are binding on the Association and all Members.

### **1.86 Regulations Deemed Applicable**

All clauses, rules, by-laws and regulations of the Association in force at the date of the approval of this Constitution insofar as such clauses, rules, by-laws and regulations are not inconsistent with, or have been replaced by this Constitution, shall be deemed to be Regulations and shall continue to apply.

### **1.87 Bulletins Binding on Members**

Amendments, alterations, interpretations or other changes to Regulations shall be advised to Members by means of Bulletins approved by the Board and prepared and issued by the Executive Director. State Members shall take reasonable steps to distribute information in the Bulletins to Individual Members. The matters in the Bulletins are binding on all Members.

## **36. STATUS AND COMPLIANCE OF ASSOCIATION**

### **1.88 Recognition of Association**

The Association is the controlling authority for Team Sailing in New South Wales and subject to compliance with this Constitution shall continue to be so recognised and shall administer Team Sailing in New South Wales in accordance with the Objects.

### **1.89 Compliance of Association**

The Members acknowledge and agree the Association shall:

- (a) be or remain incorporated in New South Wales;
- (b) apply its property and capacity solely in pursuit of the Objects and Team Sailing;
- (c) do all that is reasonably necessary to enable the Objects to be achieved;
- (d) act in good faith and loyalty to ensure the maintenance and enhancement of Team Sailing, its standards, quality and reputation for the benefit of the Members and Team Sailing; and
- (e) at all times act in the interests of the Members and Team Sailing;

### **1.90 Operation of Constitution**

The Association and the Members acknowledge and agree:

- (f) that they are bound by this Constitution and that this Constitution operates to create uniformity in the way in which the Objects and Team Sailing are to be conducted, promoted, encouraged, advanced and administered throughout Australia and;
- (g) to ensure the maintenance and enhancement of Team Sailing, its standards, quality and reputation for the benefit of the Members and Team Sailing;
- (h) not to do or permit to be done any act or thing which might adversely affect or derogate from the standards, quality and reputation of Team Sailing and its maintenance and enhancement;
- (i) to promote the economic and community service success, strength and stability of each other and to act interdependently with each other in pursuit of their respective objects;
- (j) to act in the interests of Team Sailing and the Members;
- (k) that should a Member have administrative, operational or financial difficulties the Association may act to assist the Member in whatever manner the Association considers appropriate.

## **37. ASSOCIATION'S CONSTITUTION**

### **1.91 Constitution of the Association**

This Constitution will clearly reflect the objects of the Association and will where appropriate conform to the ATSA constitution, subject always to the Act.

### **1.92 Operation of ATSA constitution**

- (a) The Association will take all reasonable steps to ensure this Constitution conforms to the ATSA constitution subject always to the Act.
- (b) The Association shall provide to ATSA a copy of this Constitution and all amendments to this document. The Association acknowledges and agrees that the ATSA has power to veto any provision in its Constitution which, in ATSA's opinion, is contrary to the objects of ATSA.

### **1.93 Register**

The Association shall maintain, in a form acceptable to ATSA but otherwise in accordance with the Act, a Register of all Members.

## **38. NOTICE**

- (a) Notices may be given by the Association to any person entitled under this Constitution to receive any notice by sending the notice by pre-paid post or facsimile transmission or where available, by electronic mail, to the Member's registered address or facsimile number or electronic mail address, or in the case of a Delegate, to the last notified address, facsimile number or electronic mail address.
- (b) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting the notice. Service of the notice is deemed to have been effected three (3) days after posting.
- (c) Where a notice is sent by facsimile transmission, service of the notice shall be deemed to be effected upon receipt of a confirmation report confirming the facsimile was sent to/or received at the facsimile number to which it was sent.
- (d) Where a notice is sent by electronic mail, service of the notice shall be deemed to be effected the next business day after it was sent.

## **39. PATRONS AND VICE PATRONS**

The Association at its Annual General Meeting may appoint annually on the recommendation of the Board a chief Patron and such number of Patrons as it considers necessary, subject to approval of that person or persons.

## **40. INDEMNITY**

- (a) Every Director and employee of the Association shall be indemnified out of the property and assets of the Association against any liability incurred by them in their capacity as Director 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 Association shall indemnify its Directors and employees against all damages and losses (including legal costs) for which any such Director or employee may be or

become liable to any third party in consequence of any act or omission except wilful misconduct:

- (i) in the case of a Director, performed or made whilst acting on behalf of and with the authority, express or implied of the Association; and
- (ii) in the case of an employee, performed or made in the course of, and within the scope of their employment by the Association.