

# Constitution (DRAFT)

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Royal South Australian Yacht Squadron Limited

ACN XXXXXXXXXXXX

# Constitution

## Royal South Australian Yacht Squadron Limited

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# Preliminary

## 1. Defined terms

1.1 In this Constitution unless the contrary intention appears:

**Adult** means a person who is aged 18 years or over;

**Annual General Meeting** means an annual general meeting of Members held annually in accordance with the Corporations Act.

**Auditor** means the Company's auditor.

**Board** means the board of Directors.

**By-laws** means the By-laws made by the Board under clause 52

**Category** means one of the categories of Membership as prescribed in the Company's By-laws.

**Club House** means the Company's club house from time to time.

**Commodore** means the person from time to time elected as Commodore under clause 29.

**Company** means Royal South Australian Yacht Squadron Limited ACN XXXXXXXXXX

**Constitution** means the constitution of this Company, as amended from time to time.

**Corporations Act** means the *Corporations Act 2001* (Commonwealth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

**Cruising Committee** means the Standing Committee by that name.

**Director** means a director of the Company.

**Elected Directors** means those Directors who are not *Ex officio* Directors.

**Ex Officio Directors** means the Commodore, the Vice-Commodore and the Rear-Commodore.

**Financial Year** means the financial year of the Company.

**General Manager** means the person appointed as general manager under clause 50.1.

**General Meeting** means a meeting of Members convened by the Company, allowing visitors unless they are specifically excluded.

**Government Agency** means any government or any governmental or semi-governmental body, agency, department or authority.

**Junior Development Committee** means the Standing Committee by that name.

**Member** means a member of the Company

**Membership** means membership of the Company.

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**Notice Board** means a notice board erected in a conspicuous place on the Company's premises.

**Racing Committee** means the Standing Committee by that name.

**Rear Commodore** means the person from time to time elected as Rear Commodore under clause 29.

**Register** means the register of Members of the Company.

**Representative** means a person appointed as such under clause 12.

**Seal** means the Company's common seal (if any).

**Secretary** means any person appointed by the Board to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of those joint secretaries.

**Special General Meeting** means a General Meeting other than the Annual General Meeting.

**Social Committee** means the Standing Committee by that name.

**Squadron** means Royal South Australian Yacht Squadron Limited

**Standing Committee** means one of the committees constituted under clause 47.

**Treasurer** means the person from time to time elected as treasurer under clause 29.

**Vice Commodore** means the person from time to time elected as Vice Commodore under clause 29.

**Voting Member** means a member of the Company above the age of 18 years or as prescribed in clause 24.1 and the Company's By-Laws.

**Year Book** means a book published annually by the Board containing the information referred to in clause 48.5, the contact details of Members and their boat registration details and any other information that the Board thinks will be useful to Members.

**Year of Office** means, in respect of a Director's tenure of office, the period from the end of one Annual General Meeting to the end of the next.

- 1.2 In this Constitution, except where the context otherwise requires, an expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.

## 2. Interpretation

In this Constitution, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;

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- (c) a reference to a clause or paragraph is to a clause or paragraph of this Constitution;
- (d) a reference to a document or instrument includes the document or instrument as notated, altered, supplemented or replaced from time to time.

### 3. Replaceable rules

To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.

## Objects

### 4. Objects

- 4.1 The objects for which the Royal South Australian Yacht Squadron Ltd is established are:
  - (a) to facilitate, extend and foster the sport of yachting, cruising and all activities of, and incidental to them; and
  - (b) generally, to encourage the principles of seamanship and fellowship amongst its Members.
- 4.2 The Company may only exercise the powers in section 124(1) of the Corporations Act to:
  - (a) carry out the objects in this clause; and
  - (b) do all things incidental or convenient in relation to the exercise of power under clause 4.2(a).

## Income and property of Company

### 5. Income and property of Company

- 5.1 The income and property of the Company will only be applied towards the promotion of the objects of the Royal South Australian Yacht Squadron Ltd set out in clause 4.
- 5.2 No income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member:
  - (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
  - (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent by the Member to the Company.
- 5.3 The established "Future Account" and the funds held therein will be used only for the purposes of the acquisition, preservation or improvement of the assets of the Company.
- 5.4 The Future Account will be credited at the end of every financial year with interest being that proportion of the total interest derived by the Company during the year as is attributed to the funds of the Future Account.

- 5.5 The Directors will pay into the Future Account such additional monies as they consider appropriate from time to time.

## Membership

### 6. Categories of Membership

- 6.1 Membership of the Company is divided into categories as prescribed in the Company's By-Laws.

### 7. Qualification for and Admission to Membership

#### 7.1 Applications for Membership

- (a) An application or nomination for Membership or for a transfer between Membership categories must go to the Board for consideration, in the first instance.
- (b) Each application or nomination for Membership must state the category of Membership for which the application or nomination is made.
- (c) The Board will consider and determine those applications or nominations within the categories as prescribed in the By-Laws.
- (d) Discount or adjustment to fees of various categories of Membership may be applied, as determined by the Board.
- (e) The Board may not admit a person to Membership unless, in its opinion, the person is of good character and wishes to primarily participate in yachting.
- (f) The Board may, at its discretion, require the provision of references for a candidate for Membership before it makes a decision.

#### 7.2 Rights and Privileges of Membership

- (a) Only Voting Members have the right to vote at General Meetings.
- (b) Subject to clause (a), the Board may make By-laws prescribing the rights and privileges attaching to each category of Membership.
- (c) The rights and privileges of a Member are personal to the Member and are not transferable by the Member's own act or by operation of law.

### 8. Subscriptions

- 8.1 Unless this Constitution provides otherwise:
- (a) every Member must pay an annual subscription for each Financial Year of his or her Membership.
- 8.2 Life Members are not required to pay annual subscription.
- 8.3 The annual subscription may differ from one category of Membership to another.



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- 8.4 The annual subscription payable in any Financial Year by the various categories of Membership other than Life Membership must be approved by a General Meeting held prior to the commencement of that Financial Year.
- 8.5 The annual subscription of a newly elected Member is payable within one calendar month of election. The annual subscription for new Members admitted to Membership part way through a Financial Year will be calculated on a pro rata basis for that year.
- 8.6 All subscriptions and fees for a Financial Year are payable by the Member:
  - (a) within 30 days after the date of the invoice that is issued for those subscriptions; or
  - (b) by the last day of the first month of the Company's Financial Year whichever is the later.
- 8.7 The Board may make an arrangement with a Member to extend the time for payment of an annual subscription. The arrangement may make provision for payment by instalments. For the purposes of clause 8.8 the terms of the arrangement will substitute for the obligation the Member would otherwise have had under either of clauses 8.5 or 8.6.
- 8.8 If a Member does not pay a subscription (or, in an appropriate case, an instalment of a subscription) within 30 days after it becomes due, the Board :
  - (a) must give the Member notice of that fact; and
  - (b) if the subscription remains unpaid 21 days from the date of that notice, may declare that Member's membership forfeited.
- 8.9 A former Member whose Membership is forfeited under clause 8.8, is entitled to reinstatement to Membership on payment in full, of all outstanding fees and subscriptions plus 25% of the outstanding annual subscriptions.
- 8.10 The Board at its discretion, may reduce fees for financially constrained members.

## 9. Ceasing to be a Member

- 9.1 A Member's Membership of the Company will cease:
  - (a) if the Member resigns by giving the Secretary written notice of resignation to that effect;
  - (b) if the Membership is terminated under clause 10
  - (c) if the Membership is forfeited under clause 8.8(b)
  - (d) where the Member is an individual, if the Member:
    - (i) dies; or
    - (ii) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
  - (e) where the Member is not an individual, if:
    - (i) a liquidator is appointed in connection with the winding up of the Member; or

- (ii) an order is made by a Court for the winding-up or deregistration of the Member.

9.2 A Member ceasing to be a Member:

- (a) is not be entitled to any refund (or part refund) of a subscription; and
- (b) remains liable for and must pay to the Company all subscriptions and moneys which were due at the date of ceasing to be a Member.

## 10. Discipline

10.1 A Member may not, by his or her acts or omissions:

- (i) break the rules of behaviour or conduct prescribed by By-laws for the use of the Company's facilities or for the conduct of yachting events or otherwise for the behaviour of Members; or
- (ii) behave in a way unbecoming of a Member of the Company or in a way that discredits the Company or its Membership; or
- (iii) disobey any direction given to the Member under clause 10.10(b).

10.2 For the purposes of clause 10.1(ii), behaviour that is unbecoming of a Member of the Company includes, but is not limited to:

- (a) behaviour that results in the Member's conviction of an offence punishable by imprisonment (**Serious Conviction**) (whether or not he or she is actually imprisoned); and
- (b) failure by a member to disclose to the Company a Serious Conviction incurred by the Member before he or she became a Member.

10.3 The Board, a Member or a group of Members may lay a complaint (**Complaint**) that a Member (**Respondent**) is in breach of clause 10.1

10.4 A Complaint must:

- (a) be in writing;
- (b) contain all material facts alleged to support the complaint;
- (c) provide short statements of any witnesses said to support the complaint; and
- (d) be signed by the Secretary (in the case of a Complaint laid by the Board) or each complainant (in the case of a Complaint laid by one or more Members).

10.5 On the laying of a Complaint, the Secretary must as soon as practicable, send to the Respondent

- (a) a copy of the Complaint; and
- (b) a copy of this clause 10.

10.6 The Board must allow the Respondent 21 days within which to respond in writing to the Complaint before the Board embarks on a hearing of the Complaint.

10.7 Whether or not a response is received within the 21 days specified in clause 10.6 , the Board may do one or more of the following:

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- (a) refer the Complaint to a mediator appointed by the Company and approved by the Respondent and any complainant Member or Members;
- (b) refer the Complaint to a Senior Member appointed by the Board for further investigation and report to the Board; or
- (c) direct that the Complaint proceed to a hearing and determination by the Board.

10.8 The Board may at any time dismiss the Complaint without a hearing if, on the face of the Complaint, it is of the opinion that it:

- (a) is minor and should be dealt with administratively;
- (b) is frivolous or vexatious;
- (c) is stale;
- (d) has insufficient connection with the Company and its affairs; or
- (e) is brought for an ulterior purpose (which may include some commercial advantage or a personality difference).

10.9 Once the requirements of clauses 10.5 and 10.6 have been met, the Board may proceed to determine the Complaint. It may do so on the papers or by conducting a hearing, whichever it thinks fit. In conducting a hearing, the Board may permit:

- (a) the calling of witnesses;
- (b) the examination and cross-examination of those witnesses;
- (c) interested parties to make such submissions;
- (d) the keeping of a record of the evidence and the submissions made;
- (e) the Respondent and, if applicable, the complaining Members to be represented; and
- (f) Members of the Company to be present at the hearing.

10.10 If the Board determines that there is sufficient cause for disciplinary action, it may:

- (a) impose no sanction; or
- (b) take one or more of the following actions:
  - (i) accept an apology from the Respondent and publish the apology to some or all of the Members, as it thinks appropriate;
  - (ii) direct the Respondent to enter into undertakings that the conduct complained of or similar conduct will not be repeated;
  - (iii) reprimand the Respondent;
  - (iv) make a direction, excluding the Respondent from a specific part or parts of the Company's premises or from participating in activities conducted by the Company (or both) for a period not exceeding 12 months; or
- (c) terminate the Respondent's Membership.

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- 10.11 If the Board determines the Complaint in the absence of the Respondent, the Secretary must notify the Respondent of the determination in writing as soon as practicable after it is made.
- 10.12 The Board may communicate the particulars of the Complaint and its determination to some or all of the Members by whatever means and in whatever detail it thinks fit.
- 10.13 A Respondent who is dissatisfied with the determination of the Board may, within 14 days of:
- (i) the determination of the Board; or
  - (ii) if the determination is made on the papers, the service of the notice prescribed by clause 10.11,
- by notice in writing, require the Board to convene a Special General Meeting to consider whether the determination of the Board should be varied or set aside.
- 10.14 The Respondent or their Representative shall attend the Special General Meeting and be heard on whether or not the determination of the Board should be varied or set aside
- 10.15 The Special General Meeting may vary or set aside the determination of the Board but only by resolution decided on a secret ballot by a majority of two-thirds of the Voting Members present and, unless such a resolution is passed, the determination of the Board stands.
- 10.16 A resolution made under clause 10.14 takes effect immediately on the declaration of the results of the ballot and substitutes for the determination of the Board which will be taken never to have been made.
- 10.17 Where a Complaint pertains to the Liquor Licence then the requirements of the Liquor Licencing Act will override all of the above

## 11. Powers of attorney

- 11.1 If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's Membership in the Company, that Member must deliver the instrument appointing the Attorney to the Company for notation.
- 11.2 If the Company asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.
- 11.3 The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

## 12. Representatives and Proxys

- 12.1 Any corporation or organisation which is a Member may by written notice to the Secretary:
- (a) appoint a natural person to act as its Representative in all matters connected with the Company as permitted by the Corporations Act; and
  - (b) remove a Representative.

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- 12.2 A Representative is entitled to:
- (a) exercise at a general meeting all the powers which the corporation or organisation which appointed him or her could exercise if it were a natural person; and
  - (b) be counted towards a quorum on the basis that the Member corporation or organisation is to be considered personally present at a general meeting by its Representative.
- 12.3 A certificate executed in accordance with section 127 of the Corporations Act is rebuttable evidence of the appointment or of the removal of the appointment (as appropriate) of the Representative.
- 12.4 The appointment of a Representative may set out restrictions on the Representative's powers.
- 12.5 A proxy need not be a member of the Company.
- 12.6 A Member may appoint a proxy for all or particular meetings and the appointment must be in a form approved by the Board.
- 12.7 An appointment of a proxy is valid if it is signed by the member making the appointment and it contains the following information:
- (a) the Members name and address
  - (b) the Company's name
  - (c) the proxy's name or the name of office held by the proxy
  - (d) the meetings at which the appointment may be used
- 12.8 Unless otherwise specified in the appointment, the proxy may
- (a) speak at the meeting
  - (b) vote (but only to the extent allowed by the appointment)
  - (c) request or join in a request for a poll
- 12.8 An appointment of a proxy is effective only if the Company receives the appointment (and any authority under which the appointment was signed or a certified copy of the appointment) at least 48 hours before the meeting or resumed meeting. The Company receives an appointment or authority when it is received at any of the following:
- (a) the Company's registered office
  - (b) a facsimile number at the Company's registered office
  - (c) a place, fax number or electronic address specified for the purpose in the notice of meeting.
- 12.9 Unless the Company receives written notice of the matter before the start or resumption of the meeting, a vote by proxy is valid even if
- (a) the appointment of the proxy is revoked
  - (b) the Member revokes the authority under which the proxy was appointed by a third party

## General meetings

### 13. Rules and Procedures at Meetings

- 13.1 Motions and amendments may be proposed and seconded only by Voting Members
- 13.2 No discussion on a matter to be resolved by vote shall take place except on a motion or amendment, moved and seconded, and put in writing if so demanded by the Chairman.
- 13.3 Only one amendment shall be entertained at one time. If an amendment varying the motion be carried, it shall become the substantive motion, and the original motion then lapses. It will be competent, whether the amendment be carried or not, to receive other amendments, one at a time, to be decided in like manner until the subject is finally disposed of.
- 13.4 No Voting Member shall propose more than one amendment upon a motion, and no person shall speak more than once upon either motion or amendment, except the mover of the motion, who shall be entitled to make a final reply, unless prevented from doing so by passage of a motion “that the question be put”. Thereupon all discussion shall cease, and the question shall be put.

A Voting Member seconding a motion or amendment without remarks shall not be held to have spoken thereon.

- 13.5 An amendment to the effect “that the question be now put” shall be moved only by a Voting Member who has neither proposed nor seconded the motion or amendment and who has not spoken thereon.  

Such an amendment shall take precedence over all matters before the meeting, including any attempt to raise points of order. No discussion shall be allowed thereon, and the Chair shall forthwith present that amendment for immediate vote.

If that amendment be passed, the Chair shall forthwith present the matter before the meeting to immediate vote, and in this situation there is no right of the mover of the prior motion or amendment to final reply.
- 13.6 Non-voting Members and visitors introduced to a meeting by Members may speak only at the discretion of the Chair.
- 13.7 A Member, with the consent of the Chair, may offer an explanation of any particular expression used, but must be confined strictly to such.
- 13.8 Any subject that may once be settled by vote cannot be again entertained at the same meeting.
- 13.9 On all questions, and during all discussions, the person speaking shall address the meeting through the Chair, and shall be standing.
- 13.10 In all cases where a **point of order** is raised, the Member raising the same shall state the point of order clearly and distinctly, and if a Member be speaking at the time that the point of order is raised, that Member shall be seated until the point of order is decided. The Chair shall decide the matter promptly. Any discussion on a point of order shall take place only by way of formally and duly moved motion or amendment.

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13.11 The **interpretation** of these rules and of procedures to be followed at any meeting shall, in the first place, be left to the Chair. Any Member present may require the Chair to submit the question of interpretation to the Meeting, by way of formal motion duly proposed and seconded by Voting Members.

If the decision of a majority of two-thirds of the Voting Members present and voting be adverse to the opinion of the Chair, then the Chair must submit to such decision. There shall be no power in this situation to amend this constitution other than as provided therein.

13.12 In all cases not herein provided, a last resort shall be had to the ordinary rules of debate.

13.13 At all meetings the Chair shall have a casting vote only.

## 14. Annual General Meeting

- (a) The Board must call an Annual General Meeting within a reasonable time after the end of each Financial Year and, in any case, within the time prescribed by the Corporations Act.
- (b) The Annual General Meeting must conduct the business prescribed by the Corporations Act or this Constitution and, subject to the notice requirements of the Corporations Act, may conduct any other or special business that the Board thinks appropriate.
- (c) Not more than 4 months after the end of a Financial Year nor less than 14 days before the Annual General Meeting following the end of that Financial Year, the Board must send to all Voting Members copies of:
  - (i) The Company's audited financial statements for that Financial Year (with the Auditor's Report);
  - (ii) the Directors' report for that Financial Year; and
  - (iii) any other material required by law to be tabled or presented at the Annual General Meeting

## 15. Calling a Special General Meeting

15.1 The Board may call a Special General Meeting at any time.

15.2 The Board must call a Special General Meeting as required by the Corporations Act or on the request of:

- (a) the Commodore,
- (b) the Chair of the Board,
- (c) not less than twenty five Voting Members,
- (d) complaint Respondent dissatisfied with Board determination

15.3 A request for the Board to call a Special General Meeting must state clearly the business that the persons making the request wish to have conducted and provide the text of any resolution that is to be put to the Meeting.

15.4 No business may be transacted at a Special General Meeting other than that specified in the notice convening the Meeting.

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15.5 A Member may not call and arrange to hold a general meeting except under section 249E or 249F of the Corporations Act.

## 16. Notice of general meeting

16.1 Subject to the provisions of the Corporations Act allowing General Meetings to be held with shorter notice and to clause 31.2, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any General Meeting.

- (a) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
- (b) must state the business to be transacted at the meeting.

16.2 The Board may, if it thinks fit, postpone or cancel any General Meeting other than an Annual General Meeting or a General Meeting called as the result of a request made under clause 15.2.

16.3 The Board must give notice of the postponement or cancellation of a General Meeting to all persons entitled under this Constitution or the By-laws to receive notice of the Meeting.

16.4 The accidental failure or omission to send a notice of a General Meeting to any Member or the non-receipt of a notice by any Member does not invalidate the proceedings at or any resolution passed at the General Meeting.

## Proceedings at general meetings

### 17. Member

For the purposes of the following clauses, a corporate Member who is represented by attorney or Representative at a General Meeting will be taken to be present in person.

### 18. Quorum

18.1 No business may be transacted at a General Meeting unless a quorum of Voting Members is present when the Meeting proceeds to business.

18.2 A quorum of Members for a General Meeting is 15 Voting Members.

18.3 If a quorum is not present within 30 minutes after the time appointed for a General Meeting:

- (a) if the General Meeting was called on the requisition of Members, it is automatically dissolved; or
- (b) in any other case:
  - (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Board; and
  - (ii) if at the adjourned General Meeting a quorum is not present within 30 minutes after the time appointed for the General Meeting, then:



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- (a) if the General Meeting is an Annual General Meeting, those Voting Members present will constitute a quorum; and
- (b) in any other case, the General Meeting is automatically dissolved.

## 19. Chair

- 19.1 The chair, or in the chair's absence the deputy chair, of the Board will be the chair at every General Meeting.
- 19.2 The Voting Members present may elect a chair of a General Meeting if:
- (a) there is no chair or deputy chair; or
  - (b) neither the chair nor deputy chair is present within 15 minutes after the time appointed for holding the General Meeting; or
  - (c) both the chair and deputy chair are unwilling to act as chair of the General Meeting. (Due to a conflict of interest or similar).
- 19.3 If there is a dispute at a General Meeting about a question of procedure, the chair may determine the question, subject to the rules of the meeting as per clause 13.

## 20. Adjournment

- 20.1 The chair of a General Meeting at which a quorum is present:
- (a) may adjourn the General Meeting at his or her instigation with the Meeting's consent; and
  - (b) must adjourn the General Meeting if the Meeting directs him or her to do so.
- 20.2 An adjourned General Meeting may take place at a different venue to the initial General Meeting.
- 20.3 The only business that can be transacted at an adjourned General Meeting is the unfinished business of the initial General Meeting.
- 20.4 Notice of an adjourned General Meeting must only be given in accordance with clause 16.1 if a General Meeting has been adjourned for more than 21 days.

## 21. Decision on questions

- 21.1 Subject to the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 21.2 A resolution put to the vote of a General Meeting is decided on a show of hands unless a poll is demanded in accordance with the Corporations Act.
- 21.3 Unless a poll is demanded:
- (a) a declaration by the chair that a resolution has been carried, carried by a specified majority, or lost; and
  - (b) an entry to that effect in the minutes of the General Meeting,
- are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 21.4 The demand for a poll may be withdrawn.

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21.5 A decision of a General Meeting may not be impeached or invalidated on the ground that a person voting at the General Meeting was not entitled to do so.

## 22. Taking a poll

22.1 A poll will be taken when and in the manner that the chair directs.

22.2 The result of the poll will be the resolution of the General Meeting at which the poll was demanded.

22.3 The chair may determine any dispute about the admission or rejection of a vote.

22.4 The chair's determination, if made in good faith, will be final and conclusive.

22.5 A poll demanded on the election of the chair or the adjournment of a General Meeting must be taken immediately.

22.6 After a poll has been demanded at a General Meeting, the General Meeting may continue for the transaction of business other than the question on which the poll was demanded.

## 23. Casting vote of Chair

The chair does not have a casting vote in addition to the chair's vote as a Member.

## Votes of Members

### 24. Entitlement to vote

24.1 The following classes of membership as prescribed in the By-Laws are entitled to vote:

- a) Senior Members – all categories thereunder
- b) Life Members
- c) Family Members – both adults
- d) Intermediate Members – over the age of 18

24.2 Subject to clause 24.1, only Voting Members may vote at a General Meeting, whether on a show of hands or on a poll.

24.3 A Voting Member is not entitled to vote at a General Meeting if the Member's annual subscription is in arrears at the date of the Meeting.

24.4 A Voting Member entitled to vote has one vote.

24.5 In a contested election a Member's vote is not invalid because he or she did not vote for as many candidates as there were vacancies.

### 25. Objections

25.1 An objection to the qualification of a voter may only be raised at the General Meeting at which the voter tendered his or her vote.

25.2 An objection must be referred to the chair of the general meeting, whose decision is final.

25.3 A vote which the chair does not disallow because of an objection is valid for all purposes.

## Appointment and removal of Directors

### 26. Number of Directors

There will be a board of Directors comprising the Commodore, the Vice Commodore, Rear Commodore, Treasurer and four others (**Elected Directors**). The Company in General Meeting may, by resolution, change the number of Elected Directors.

### 27. Qualification of Directors

Each Director must be a Voting Member.

### 28. Terms of Office of the Directors

28.1 Directors hold office for the following terms:

- (a) The Commodore, Vice Commodore, Rear Commodore elected for two years of office in alternate years, and may not stand for re-election for the same position
- (b) The Treasurer elected for two years of office in alternate years and may stand for re-election for the same position
- (c) Four directors elected for two years of office in alternate years from the Flag Officers and may stand for re-election, to a maximum of 10 years

### 29. Election of Directors

29.1 The vacancies shall be filled in the following order;

- (a) first, the Commodore;
- (b) then, the Vice Commodore;
- (c) then, the Rear Commodore;
- (d) then the Treasurer

29.2 In alternate years, four directors shall be elected.

### 30. Nomination of Directors

30.1 At least two calendar months before an Annual General Meeting, the Board must call for nominations for candidates for election to those positions that will become vacant at the Annual General Meeting.

30.2 A candidate must be nominated by two Voting Members and may be nominated for two or more offices.

30.3 Nominations must:

- (a) be in writing in a form prescribed by or otherwise acceptable to the Board;
- (b) be signed by the candidate and the nominating Voting Members;

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- (c) state for which office or offices the candidate is nominated;
- (d) be accompanied by a curriculum vitae of the candidate; and
- (e) be received by the Secretary not later than midday on the day that is 29 days prior to the date for which the Annual General Meeting is called.

30.4 A nomination for election to office can be withdrawn at any time prior to the election.

30.5 A Member can be nominated for two or more positions on the Board but cannot be elected to more than one of them.

30.6 If the number of candidates nominated for election to any category of Director exceeds the number of vacancies required to be filled in that category, a postal ballot will be conducted by the procedure prescribed in clause 53.

30.7 If the number of candidates nominated for election to a category of Director does not exceed the number of vacancies required to be filled in that category, at the Annual General Meeting, the chair will declare the nominated candidates elected.

30.8 If there are insufficient nominations made under clause 30.3 to fill a vacancy in any category of Directors, the chair of the Annual General Meeting must call for nominations from the floor to fill those remaining vacancies. A nomination from the floor can only be made by two Voting Members.

30.9 If the number of candidates nominated from the floor for election to any category of Director does not exceed the number of remaining vacancies in that category the chair will declare all such candidates elected.

30.10 If the number of candidates nominated from the floor for election to any category of Director exceeds the number of remaining vacancies a ballot will be taken at the Meeting to elect the required number of candidates.

30.11 Subject to this Constitution, the Board may make By-laws regulating all matters in connection with the election or conduct of the ballot.

30.12 A vacancy on the Board that is not filled by the procedures prescribed by this clause 29 may be filled as a casual vacancy.

## 31. Vacation of office

31.1 The office of a Director immediately becomes vacant if the Director:

- (a) is prohibited by the Corporations Act from holding office or continuing as a Director;
- (b) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Board incapable of performing his or her duties;
- (c) resigns by notice in writing to the Company;
- (d) is removed by a resolution of a General Meeting;
- (e) is absent from Board meetings for two consecutive meetings without either leave of absence from the Board or an explanation satisfactory to the Board;

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- (f) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act;
  - (g) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (h) holds any salaried office or profit under the Company, other than the office of General Manager;
  - (i) is convicted of any criminal offence punishable by imprisonment; or
  - (j) ceases to be a Voting Member.
- 31.2 At least two months' notice must be given to Members of a General Meeting at which a motion to remove a Director from office is to be put.
- 31.3 A General Meeting that removes a Director may elect another Voting Member in the Director's place. The election will be conducted by the procedures prescribed in clause 30.8 and the clauses that follow it.
- 31.4 A person elected under clause 31.3 will hold office for the remainder of the removed Director's term of office.
- 31.5 If the conduct or position of any Director is such that continuance in office appears to the majority of the Board to be prejudicial to the interests of the Company, a majority of the Board at a meeting of the Board specifically called for that purpose may suspend that Director.
- 31.6 Within 14 days of the suspension, the Board must call a General Meeting, at which a motion to remove the Director from office is to be put. Notice of the General Meeting must accord with clause 31.2

## 32. Casual Vacancies

- 32.1 Subject to clause 32.2 the Board may appoint a Voting Member to fill a casual vacancy.
- 32.2 If the office of Commodore becomes casually vacant, the Vice-Commodore will automatically fill the vacancy for the balance of the then current Year of Office.
- 32.3 A Director appointed under this clause 32 will hold office for the balance of the term of the vacant position.

## Powers of the Board

### 33. Powers of the Board

- 33.1 Subject to clause 33.2, the affairs of the Company are to be managed and controlled by the Board who may exercise all powers of the Company that this Constitution and the Corporations Act do not require to be exercised by the Company in General Meeting.
- 33.2 The Board may not exercise the powers of the Company to:
- (a) borrow money;

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- (b) charge any property or business of the Company;
- (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; or
- (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person

except:

- (e) with the prior consent of the Company in General Meeting; or

33.3 Proposals involving **major capital expenditure** by the Board is to be put to a meeting of Members, financial details of that proposal must show:

- (a) the total costs of the proposal,
- (b) the method of payment of those costs
- (c) the method of recovery of those costs, and

shall be circulated in writing to each Member whose name is current on the Members Register not less than twenty one days before the meeting.

## 34. Interpretation of Constitution

34.1 A decision of the Board on the construction or interpretation of this Constitution or any By-law is conclusive and binding on all Members.

## 35. Board Committees

35.1 The Board may delegate any of its powers (other than those which by law must be dealt with by the Board) to a committee or committees appointed by the Board.

35.2 A committee appointed under this clause 34 must be constituted of Members but does not necessarily have to contain any Directors indemnity.

35.3 The Board may at any time revoke any delegation of power to a committee.

35.4 A committee must exercise its powers in accordance with any directions of the Board and a power exercised in that way is taken to have been exercised by the Board.

35.5 A committee may be authorised by the Board to sub-delegate all or any of the powers for the time being vested in it.

35.6 Meetings of any committee of the Board will be governed by the provisions of this Constitution which deal with Board meetings so far as they are applicable and are not inconsistent with any directions of the Board. The provisions apply as if each member were a Director.

## 36. Appointment of attorneys and agents

36.1 The Board may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person to be the attorney or agent of the Company:

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- (a) for the purposes;
  - (b) with the powers, authorities and discretions (not exceeding those exercisable by the Board under this Constitution);
  - (c) for the period;
- and otherwise subject to the conditions determined by the Board.

36.2 An appointment by the Board of an attorney or agent of the Company may be made in favour of:

- (a) a company;
- (b) the members, directors, nominees or managers of any company or firm; or
- (c) any fluctuating body of persons whether nominated directly or indirectly by the Board.

36.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Board thinks fit.

36.4 The Board may appoint attorneys or agents by email to act for and on behalf of the Company.

36.5 An attorney or agent appointed under this clause may be authorised by the Board to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

## 37. Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a Director or member of committee; or
- (b) a person appointed to one of those positions was disqualified,

all acts of the Board or the committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

## Proceedings of the Board

### 38. Board meetings

38.1 Subject to this Constitution and the Corporations Act, the Directors may meet together, adjourn and regulate their meetings as they think fit.

38.2 The Board must meet as frequently as is reasonably required for the efficient despatch of business and in any case, monthly.

38.3 A Director may at any time, and the Secretary must on the request of a Director, call a Board meeting.

38.4 A Board meeting must be called on at least 48 hours' written notice of a meeting to each Director.

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- 38.5 It is not necessary to give notice of a meeting of the Board to an Australian resident whom the Secretary, when giving notice to the other Directors, reasonably believes to be temporarily outside Australia.
- 38.6 Subject to the Corporations Act, a Board meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 38.7 The Directors need not all be physically present in the same place for a Board meeting to be held.
- 38.8 A quorum is four Directors.
- 38.9 Where a quorum cannot be established for the consideration of a particular matter at a meeting of the Board, the chair may call a General Meeting to deal with the matter.
- 38.10 Notice of a meeting of the Board may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

## 39. Chair

- 39.1 The Board may elect its own chair and may remove and replace him or her as it thinks fit. Until the Board determines otherwise, the Commodore will be the chair.
- 39.2 If the chair is not present within 10 minutes after the time appointed for the holding of a meeting of the Board or is unable or unwilling to act, the Directors present may elect another Director to chair the meeting.

## 40. Decision on questions

- 40.1 Subject to this Constitution, questions arising at a meeting of the Board are to be decided by a majority of votes of the Directors present and voting and, subject to clause 46, each Director has one vote.
- 40.2 The chair of a meeting of the Board has a casting vote in addition to his or her deliberative vote.

## 41. Incomplete Board

- 41.1 The Directors may act even if there are vacancies on the Board.
- 41.2 If the number of Directors is not sufficient to constitute a quorum at a Board meeting, the Directors present may act only to:
  - (a) appoint a Director; or
  - (b) call a general meeting.

## 42. Written resolutions

- 42.1 The Board may pass a resolution without holding a Board meeting if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 42.2 The Directors may sign different copies of the document if the wording of the resolution and statement is identical in each copy.



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42.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.

42.4 The resolution is passed when the last Director signs, and must be recorded in the Board's minute book.

## 43. Minutes and Registers

43.1 The Directors must cause minutes to be made of:

- (a) the names of the Directors present at all Board meetings and meetings of Directors' committees;
- (b) all proceedings and resolutions of general meetings, Board meetings and meetings of Directors' committees;
- (c) all resolutions passed by the Board in accordance with clause 41;
- (d) all appointments of officers;
- (e) all orders made by the Board and Directors' committees; and
- (f) all disclosures of interests made under clause 46.

43.2 Minutes must be signed by the chair of the meeting or by the chair of the next meeting of the relevant body.

43.3 The Company must keep all registers required by this Constitution and the Corporations Act. The register of Members must show the category of Membership of each Member.

## Personal Interests of Directors

### 44. Director to disclose interests

44.1 A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company must, as soon as practicable after the relevant facts have come to the Director's knowledge, declare the nature of the interest at a meeting of the Board or by written notice to the Secretary.

44.2 A Director who holds any office or possesses any property by which, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as Director must declare at a meeting of the Board or by written notice to the Secretary the fact and the nature, character and extent of the conflict.

### 45. Payments to Directors

No payment will be made to any Director of the Company other than payment:

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Board;
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Board and where the amount payable is

approved by the Board and is not more than an amount which commercially would be reasonable payment for the service;

- (c) of any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Board; and
- (d) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B.

## 46. Directors' interests

46.1 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.

46.2 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.

46.3 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.

46.4 Subject to clause 43, a Director or a body or entity in which a Director has a direct or indirect interest may:

- (a) enter into any agreement or arrangement with the Company;
- (b) hold any office or place of profit other than as auditor in the Company; and
- (c) act in a professional capacity other than as auditor for the Company,

and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.

46.5 A Director who has a material personal interest in a matter that is being considered at a Board meeting must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter,

unless permitted by the Corporations Act to do so, in which case the Director may:

- (c) be counted in determining whether or not a quorum is present at any meeting of the Board considering that contract or arrangement or proposed contract or arrangement;
- (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
- (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

46.6 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the

Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

## Standing Committees

### 47. Standing Committees

- 47.1 The responsibility for encouraging and organising activities and functions for Members, within the scope of the Company's objectives, will rest with Standing Committees unless the Board resolves otherwise,
- 47.2 Until the Company in General meeting resolves otherwise, the Standing Committees are:
- (a) the Racing Committee, comprising one Chair and seven ordinary members , who must be Voting Members;
  - (b) the Social Committee, comprising one Chair and four ordinary members , who must be Voting Members;
  - (c) the Cruising Committee, comprising one Chair and four ordinary members, who must be Voting Members;
  - (d) the Junior Development Committee, comprising one Chair and four ordinary members, all of whom must be adults and three of whom must be Voting Members; and
  - (e) the Board, comprising Voting Members.
- 47.3 Each Standing Committee (other than the Board) must be chaired by the committee's elected Chair, for a period of no longer than two consecutive years.
- 47.4 A member of a Standing Committee (other than a member of the Board) shall not be a member of the Board.
- 47.5 Meetings of any Standing Committees will be governed by the provisions of this Constitution which deal with Board meetings so far as they are applicable and are not inconsistent with any directions of the Board. The provisions apply as if each member were a Director.

### 48. Functions of the Standing Committees

- 48.1 Unless otherwise directed by the Board, the Standing Committees have the following areas of responsibility:
- (a) the Racing Committee, in consultation with the sailing coordinator is responsible for promoting, organising and conducting yacht racing between Members and with members of other yacht clubs including providing and crewing official boats, appointment of race officials, official measurers, handicappers, safety officers and protest committees and any other matters directly related to the organisation and conduct of racing;
  - (b) the Social Committee is responsible for:
    - (i) promoting and organising social functions and events especially those aimed at encouraging fellowship amongst Members; and

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- (ii) working collaboratively with the Hospitality and Events Manager and providing feedback to in relation to the committee's functions and events
  - (c) the Cruising Committee must encourage and represent the interest of Members in cruising;
  - (d) the Junior Development Committee must encourage and represent the interests of Junior Members and other young people, in yacht racing and related social activities. For this purpose it may appoint a Junior Committee of up to five Junior Members, including a chair who shall be known as the Junior Captain, for such periods as the Junior Development Committee may determine but not extending beyond the end of the next Annual General Meeting.
- 48.2 A Standing Committee may delegate specific tasks and activities to a Member or a sub-group appointed by the Standing Committee.
- 48.3 Directors are entitled to attend and speak at meetings of Standing Committees but have no power to vote at such meetings.
- 48.4 A Standing Committee must comply with directions of the Board.
- 48.5 Each Standing Committee must prepare an annual budget for approval by the Board and an annual programme for inclusion in the Year Book.

## 49. Election of Standing Committees

- 49.1 All of the members of the Standing Committees (other than the Board and the Racing Committee) will be elected at the Annual General Meeting in each year for a term of one Year of Office.
- 49.2 No member may be elected to more than one Standing Committee.
- 49.3 The procedure for electing members of the Standing Committees (other than the Racing Committee and the Board) is the procedure prescribed by clause 30.8 and the clauses following it for the election of Directors.
- 49.4 The elections for members of the Standing Committees must be held after any elections that are required for Directors.
- 49.5 The order in which the members of the Standing Committees are to be elected at an Annual General Meeting is:
- (a) first, the Social Committee;
  - (b) then, the Cruising Committee; and
  - (c) then, the Junior Development Committee.
- 49.6 The Racing Committee must be elected by the Voting Members present at a meeting of those Members who are either skippers or crew members of vessels that participate in the Company's events (**Annual Racing Skippers and Crews Meeting**) Each member of the Racing Committee will be elected for a term starting at the end of the Annual Racing Skippers and Crews Meeting at which he or she is elected and ending at the end of the Annual Racing Skippers and Crews Meeting in the following year. A retiring member of the Racing Committee is eligible for re-election. The Board must convene the Annual Racing Skippers and

Crews Meeting and may prescribe rules to determine who is qualified to attend and otherwise for the conduct of the Meeting and the elections to be held at it.

- 49.7 The Board may appoint voting Members to fill casual vacancies amongst Standing Committees.

## Officers other than Directors

### 50. General Manager

50.1 The Directors shall employ a person into the office of General Manager of the Company for any period (but not for life) and on any terms as they think fit.

50.2 The Directors may, subject to the terms of a General Manager's employment contract, suspend, remove or dismiss him or her from that office and appoint another General Manager in that place.

50.3 The General Manager must:

- (a) undertake the management of the Company as directed by the Board and according to the policies set by the Board;
- (b) undertake tasks assigned to him or her by the Board;
- (c) keep or cause to be kept accurate minutes of the meetings and decisions of the Company, the Directors and the Committees of the Company; and
- (d) if required by the Board, act as Secretary of the Company.

### 51. Secretary

51.1 If required by the Corporations Act, there must be at least one secretary of the Company appointed by the Board for a term and at remuneration and on conditions determined by them.

51.2 The Secretary is entitled to attend and be heard on any matter at all Board and general meetings.

51.3 The Board may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

## By-laws

### 52. By-laws

52.1 Subject to clause 52.2 the Board may make By-laws governing the following matters:

- (a) the conduct of General Meetings;
- (b) elections required to be held under this Constitution;
- (c) the functions, powers and processes of the Standing Committees;
- (d) the rights attaching to the various categories of Membership;
- (e) the use of the Company's premises and other facilities and amenities;

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- (f) the conduct of Members in the exercise of their rights as Members or the performance of their obligations as Members;
  - (g) the conduct of yachting events; and
  - (h) any other matter on which the Board is authorised to make By-laws by this Constitution or by the Members in General meeting.
- 52.2 The Board may not make a By-law that is inconsistent with this Constitution. If the Board makes a By-law that is partly, but not entirely, inconsistent with this Constitution, the part that is inconsistent may be severed from the By-law and the remaining part continues in force.
- 52.3 The Board may repeal or amend a By-law.
- 52.4 A By-law made under this clause 52 binds the Members as if it were a part of this Constitution.
- 52.5 As soon as practicable after it makes a new By-law, the Board must publish it on the Company's web site and place a notice that briefly describes the By-law on the Notice Board.
- 52.6 At any time within 30 days after the publication of a new By-law on the Company's web site and the placing of the notice relating to it as required by clause 52.5, not less than 20 Voting members may requisition a Special General Meeting to consider whether to disallow the By-law.
- 52.7 The only motion that may be put to that Special General Meeting is that the entire By-law is disallowed. The Special General Meeting can reconsider the disallowed By-law subject to approved minor alteration.
- 52.8 If the Special General Meeting resolves to disallow the By-law, it will be taken to have been repealed immediately that the resolution is passed.
- 52.9 After it makes a new By-Law, the Board must publish it via the Company Circular, on the Company web site and by placing it on the Notice Board.

## Ballots

### 53. Ballot Procedure

- 53.1 If the number of eligible candidates nominated for election to any office exceeds the number required to fill the vacancy, ballot will be conducted by the following procedure:
- (a) the Secretary must send, by post or electronic means, voting papers to all Voting Members at least 21 days before the Annual General Meeting;
  - (b) completed voting papers must be deposited in a locked ballot box immediately on receipt;
  - (c) at the commencement of the Annual General Meeting, or any Special General Meeting at which an electoral ballot is to be conducted, scrutineers will be appointed by resolution of the Meeting;
  - (d) immediately following the appointment of scrutineers, the Secretary will unlock the ballot box and facilitate the tallying of votes;

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- (e) in the event of a tie, the scrutineers must supervise the drawing of lots between the candidates and the candidate who is drawn first will be declared elected to that position; and
- (f) the scrutineers must then report the result of the election to the chair of the General Meeting at which the results are to be declared.

## Seals

### 54. Common Seal

If the Company has a Seal:

- (a) the Board must provide for the safe custody of the Seal;
- (b) the Seal must not be used without the authority of the Board or a Directors' committee authorised to use the Seal;
- (c) every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Board to countersign the document.

### 55. Duplicate Seal

If the Company has a Seal, the Company may have one or more duplicate seals of the Seal each of which:

- (a) must be a facsimile of the Seal with 'Duplicate Seal' on its face; and
- (b) must not be used except with the authority of the Board.

### 56. Execution of documents without Seal

The Company may execute a document (including a deed) without using the Seal if that document is signed by two members of the Board or one member of the Board and the Secretary.

## Inspection of records

### 57. Inspection of records

57.1 Except as otherwise required by the Corporations Act, the Board may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.

57.2 Except as otherwise required by the Corporations Act, a Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Board.

## Alteration of Constitution

### 58. Alteration of Constitution

This Constitution may be amended under section 136 of the Corporations Act.

## Notices

### 59. Service of notices

59.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:

- (a) by serving it on the person; or
- (b) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.

59.2 A notice sent by post is taken to be served:

- (a) by properly addressing, prepaying and posting a letter containing the notice; and
- (b) three days after the day on which it was posted.

59.3 A notice sent by facsimile transmission or electronic notification is taken to be served:

- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
- (b) on the day after its despatch.

59.4 If a Member does not have an address recorded in the Register a notice will be taken to be served on that Member, 24 hours after it was posted on the Notice Board.

59.5 A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia to be taken to be the Member's for the purposes of this clause 59.

59.6 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.

59.7 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.

59.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

59.9 A certificate in writing signed by a director or the Secretary that the requirements of this rule have been complied with is conclusive

### 60. Persons entitled to notice

60.1 Notice of every General Meeting must be given to:

- (a) every Voting Member;



- (b) every Director and Alternate Director; and
- (c) any Auditor.

60.2 No other person is entitled to receive notice of a General Meeting.

## Audit and accounts

### 61. Audit and accounts

61.1 The Board must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Corporations Act.

61.2 The Board must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act.

## Winding up

### 62. Winding up

62.1 If the Company is wound up, provided that at the time of such distribution the Company is an income tax exempt organisation within the meaning of the Income Tax Assessment Act 1936 as amended:

- (a) each Member; and
- (b) each person who has ceased to be a Member in the preceding year, undertakes to contribute to the property of the Company for the:
  - (c) payment of debts and liabilities of the Company (in relation to clause 62.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
  - (d) adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding one dollar (\$1.00).

## Indemnity

### 63. Indemnity

63.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act the Company indemnifies every person who is or has been an officer of the Company against:

- (a) any liability (other than for legal costs) incurred by that person as an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment); or
- (b) reasonable legal costs incurred in defending an action for a liability incurred by that person as an officer of the Company (including legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).

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63.2 The amount of any indemnity payable under clauses 63.1(a) or 63.1(b) will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.

63.3 For the purposes of this clause, **officer** means:

- (a) a Director; or
- (b) a Secretary.

## Transitional Provisions

### 64. Definitions

In these Transitional Provisions:

- (a) **Management Committee** means the Management Committee of RSAYS Inc in office at the date on which this Constitution is adopted;
- (b) **RSAYS Ltd** means the Squadron; and
- (c) **RSAYS Inc** means Royal South Australian Yacht Squadron Incorporated.

### 65. Membership

65.1 Each person who is a member of both RSAYS Ltd and RSAYS Inc on the day on which this Constitution is adopted by Royal South Australian Yacht Squadron Ltd, will automatically be admitted to Membership in the Category that, in the reasonable opinion of the Board, is equivalent to the category of membership that he or she then holds in RSAYS Inc.

65.2 Each person who is a member of RSAYS Ltd but not RSAYS Inc on the day on which this Constitution is adopted by Royal South Australian Yacht Squadron Ltd, will automatically be admitted to Membership in the Category that, in the reasonable opinion of the Board, is the Category most appropriate for that Member.

65.3 Each person who is a member of RSAYS Inc but not RSAYS Ltd on the day on which this Constitution is adopted by Royal South Australian Yacht Squadron Ltd, is entitled, on application, to be admitted to Membership in the Category that, in the reasonable opinion of the Board, is equivalent to the category of membership that he or she then holds in RSAYS Inc.

### 66. The Board

66.1 If this Constitution is adopted at an Annual General meeting of Royal South Australian Yacht Squadron Ltd,

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- (a) all of the Directors then in office will be taken to have resigned at the commencement of the Meeting and an election must be held for the new Board at that Meeting; and
- (b) for the purposes of the application of clause 1 at subsequent Annual General Meetings, a Director's service on the Management Committee will be taken to have been service on the Board.

66.2 If this Constitution is adopted at a Special General Meeting;

- (a) all of the Directors then in office will be taken to have resigned at the commencement of the Meeting and those persons then comprising the Management Committee of RSAYS Inc will be appointed as Directors on and by virtue of the adoption of this Constitution; and
- (b) for the purposes of the application of clause 1 at subsequent Annual General Meetings, service on the Management Committee by those Directors appointed under clause 66.2(a) will be taken to have been service on the Board.

## 67. Inconsistency

If there is an inconsistency between a provision of the Transitional Provisions contained in clauses 65 or 66 and any other provision of this Constitution, the Transitional Provision prevails to the extent of the inconsistency.