



## **Constitution of Australian Sailing Limited**

- Approved by the Members at a Special General Meeting – Saturday 18 October 2014
- Amended by the Members at Annual General Meeting – Saturday 29 October 2016 (amendments for change of name to Australian Sailing)
- Amended by the Members at Annual General Meeting – Saturday 20 October 2018

# Contents

1.	Structure of Australian Sailing	1
2.	Objects and Powers	1
3.	Income and Property	2
4.	Membership	3
5.	Honorary Members	6
6.	Special Members	7
7.	Associates	7
8.	Termination and Resignation of Membership	8
9.	Fees	9
10.	Voting Members and General Meetings	9
11.	Meetings of Members	10
12.	Proceedings at General Meeting	14
<b>13</b>	<b>Votes of Members</b>	<b>16</b>
14.	Directors	18
15.	Powers and Duties of Directors	22
16.	Proceedings of Directors	23
17.	Telecommunication Meetings of Australian Sailing	25
18.	Chief Executive Officer	26
19.	Company Secretary	27
20.	Committees	27
21.	Grievances and Discipline	29
22.	Policies and Rules	30
23.	Whole-of-Sport Policies	30
24.	Inspection of Records	31
25.	Accounts	31
26.	Service of Documents	31
27.	Indemnity	32
28.	Winding Up	33



**Corporations Act 2001**

**COMPANY LIMITED BY GUARANTEE**

**CONSTITUTION OF AUSTRALIAN SAILING LIMITED**

**1. Structure of Australian Sailing**

**1.1 Company limited by guarantee**

Australian Sailing Limited (***Australian Sailing***) is a public company limited by guarantee.

**1.2 Limitation of liability**

The liability of the Members of Australian Sailing is limited.

**1.3 Exclusion of replaceable rules**

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

**2. Objects and Powers**

**2.1 Objects**

The objects of Australian Sailing shall be:

- (a) to promote and administer the sport of sailing;
- (b) to serve as the national body for the advancement of sailing in Australia;
- (c) in conjunction with and in support of the Voting Members to promote and encourage the development and growth of sailing in Australia;
- (d) to take such steps to affiliate and to maintain affiliation with other International and National Associations and to represent the interests of Australian Sailing;
- (e) to recognise as national classes such classes of yachts that may, from time to time, comply with the requirements of Australian Sailing;
- (f) to provide administrative services for any association, alliance, club, committee, body or person interested in or associated with sailing in any of its forms;

- (g) advocate strongly on behalf of the sailing community whilst contributing to the organisations where Australian Sailing represents sailing and boating;
- (h) provide representation of sailing to government and its agencies;
- (i) adopt and exercise the powers delegated by World Sailing for the sport of sailing in Australia and act as the sole Australian affiliated member of World Sailing in accordance with the Statutes and Regulations;
- (j) adopt, formulate, issue, interpret and amend Policies and Rules for the control and conduct of sailing in Australia;
- (k) encourage the provision and development of appropriate facilities for participation in Sailing;
- (l) maintain and enhance standards, quality and reputation of sailing for the collective and mutual benefit and interests of Members, Associates and Participants;
- (m) promote, control, manage and conduct sailing events, competitions and championships; and
- (n) undertake other actions or activities necessary, incidental or conducive to advance these objects.

## 2.2 Powers

Australian Sailing shall have all the rights, powers and privileges of a natural person to do all such things as are incidental or conducive to the attainment of the objects of Australian Sailing set out in **clause 2.1**, together with the powers in subsection 124(1) of the Act, and will at all times exercise the powers in a manner which is in the best interests of sailing in Australia.

## 3. Income and Property

### 3.1 Limited application

The income and property of Australian Sailing will only be applied towards the promotion of the objects of Australian Sailing set out in **clause 2.1**.

### 3.2 Payments to Members

No income or property will be paid or transferred directly or indirectly to any Member 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 Australian Sailing; or
- (b) of interest at a rate not exceeding current bank overdraft rates of interest for monies lent; or
- (c) of reasonable rent or charges for premises, assets or facilities provided to Australian Sailing by them.

## 4. Membership

### 4.1 The Members

The Members of Australian Sailing shall consist of:

- (a) the Voting Members, being:
  - (i) as at the date of adoption of this Constitution, the following organisations:
    - (A) Yachting New SouthWales Incorporated;
    - (B) Yachting Western Australia Incorporated;
    - (C) Yachting Queensland Limited;
    - (D) Yachting South Australia Incorporated;
    - (E) Yachting Victoria Incorporated;
    - (F) Tasmanian Yachting Association Incorporated;
    - (G) Yachting Northern Territory Incorporated;
    - (H) Yachting Association of the ACT Incorporated;
    - (I) if at any time an MYA ceases to be incorporated, a Member Club Class for that State, comprising all Clubs recognised by Australian Sailing as Member Clubs under clause 4.5, who will be represented collectively at General Meetings by their Delegate; and
  - (ii) any other organisation admitted to membership of Australian Sailing as a Voting Member in accordance with this Constitution;
- (b) the Honorary Members, being:
  - (i) those persons who are Honorary Members as at the date of adoption of this Constitution;
  - and
  - (ii) any other person who is admitted to membership of Australian Sailing as a Honorary Member in accordance with this Constitution; and
- (c) Special Members, comprising individual Members, class association Members and Clubs (that are not in a Member Club Class), which are invited and admitted to membership in accordance with **clause 6**.

### 4.2 Operation of Constitution

The Members agree that they are bound by this Constitution and agree to abide by the Constitution, the Rules and the Whole-of-Sport Policies. The

rights and privileges of every Member shall be personal to each Member and will not be transferable by the Member's own act or by operation of law.

## 4.3 Admission of further Voting Members

- (a) Applications for admission to membership of Australian Sailing as a Voting Member must be:
  - (i) in writing;
  - (ii) in a form approved by the Board;
  - (iii) signed by the applicant; and
  - (iv) supported by such material as is required by the Board from time to time in its absolute discretion.
- (b) After receipt of an application for membership of Australian Sailing as a Voting Member, a General Meeting of Members will, in accordance with a timetable and process determined by the Board:
  - (i) determine whether it will admit or reject the applicant; or
  - (ii) decide to call on the applicant to supply any additional evidence of eligibility that it considers reasonably necessary.
- (c) An applicant will be admitted to membership of Australian Sailing as a Voting Member if the Voting Members pass a Special Resolution admitting the applicant.

## 4.4 Requirements of Member Clubs

An applicant to be a Voting Member of Australian Sailing which is a Club and is located in a State where there is no MYA, must:

- (a) be duly incorporated in a State;
- (b) agree to be bound by and to abide by this Constitution;
- (c) have objectives consistent with those of Australian Sailing;
- (d) have its constitution and rules approved by Australian Sailing;
- (e) advise Australian Sailing the name, address, date of birth and contact details of its members for inclusion in the Australian Sailing database;
- (f) subject to the discretion of the Board, have 10 or more members;
- (g) pay to Australian Sailing the annual membership fee payable by the Member Club in accordance with this Constitution together with any other applicable costs, levies, fees or charges;
- (h) make available to Australian Sailing on request:
  - (i) its most recent annual report to its members, its financial statements and any other information required for the purposes of calculation of membership fees;
  - (ii) any other information Australian Sailing reasonably requires, subject to the provisions of the Privacy Act 1988 (Cth) and all

other applicable laws, for the collation of sailing industry information for its dealings with government and other sailing community stakeholders.

## 4.5 Club Membership

Notwithstanding any contrary provision in this Constitution, from the date an MYA ceases to be incorporated in a State (or such other date as the Voting Members determine), a Club located in that State which has agreed in writing to become a Member of Australian Sailing and which meets the requirements in clause 4.4, is admitted as a Member Club in the Member Club Class for that State on that date.

## 4.6 Duties

The Members agree:

- (a) to contribute constructively to the formulation of the Strategic Plan for future development of sailing nationally and to adopt and implement the Strategic Plan consistently and effectively;
- (b) to promote and develop sailing in the regions and to be responsible and accountable to the other Members for fulfilling those obligations under the Strategic Plan;
- (c) to cooperate with Australian Sailing in promoting the interests of sailing and fulfilling the Strategic Plan;
- (d) to adopt, implement, comply with and enforce all Rules and Whole-of-Sport Policies and any further duties accepted by the Members in any agreement or memorandum with Australian Sailing; and
- (e) to provide Australian Sailing with all information reasonably necessary for the management and affairs of Australian Sailing and sailing in Australia as a whole.

## 4.7 Appointment of Delegates

- (a) Each MYA, by letter to the Company Secretary signed by the secretary or other responsible officer of the MYA:
  - (i) shall appoint a natural person to act as its Delegate in all matters connected with Australian Sailing as permitted by this Constitution or the Act;
  - (ii) may replace its Delegate at any time; and
  - (iii) shall promptly fill any vacancy in the position of its Delegate.
- (b) Each Member Club Class by its Regional Advisory Committee:
  - (iv) will appoint a natural person to act as its Delegate to represent the Member Club Class collectively in all matters connected with Australian Sailing as permitted by this Constitution or the Act;
  - (v) may replace its Delegate at any time; and
  - (vi) shall promptly fill any vacancy in the position of its Delegate.

- (c) The Delegate appointed by a Member Club Class must be a member of the Regional Advisory Committee in that State.
- (d) A Delegate must:
  - (i) not be a Director or an employee of Australian Sailing;
  - (ii) be appropriately empowered by the MYA or Member Club Class they represent to make decisions at a General Meeting of Members;
  - (iii) where such Delegate is a Delegate of an MYA and subject to this Constitution, be appropriately empowered by his or her MYA to hold office as a corporate representative of the MYA until a successor is appointed; and
  - (iv) before participating in the affairs of Australian Sailing produce or cause to be produced to the CEO a letter signed by the secretary or other responsible officer of the MYA or Member Club Class they represent confirming that the Delegate has been duly appointed to represent the Voting Member.

## 4.8 Delegates' entitlements

A Delegate is entitled to:

- (a) where such Delegate is a Delegate of an MYA, exercise at a General Meeting of Members all the powers that the MYA which appointed him or her could exercise if it were a natural person;
- (b) where such Delegate is a Delegate of a Member Club Class, exercise at a General Meeting of Members all the powers that the Member Club Class which appointed him or her could exercise if it were a natural person;
- (c) stand for election (if nominated by an MYA or Member Club Class) or appointment as a Director of Australian Sailing, provided that upon election or appointment as a Director of Australian Sailing, the Delegate shall forthwith resign from his or her position as a Delegate of the MYA or Member Club Class; and
- (d) be counted towards a quorum on the basis that the MYA or Member Club Class is to be considered personally present at a meeting of General Meeting of Members by its Delegate.

## 4.9 Register of Members

Australian Sailing must keep a Register of all Members in accordance with the Act.

## 5. Honorary Members

### 5.1 Appointment of Honorary Members

- (a) A General Meeting of Members may admit Honorary Members at an Annual General Meeting upon a nomination submitted by the Board in the manner provided by this clause.

- (b) A person shall not become a Honorary Member unless and until they have agreed in writing to become a Honorary Member and to be bound by this Constitution.
- (c) Honorary membership for any period or for life may be granted by a two-thirds ( $\frac{2}{3}$ ) majority of votes cast by Members entitled to vote on the resolution at an Annual General Meeting.

## 5.2 Nominations

Nominations for Honorary Membership shall be submitted by the Board.

## 5.3 Qualifications

Honorary Membership shall be restricted to those persons who the Voting Members at a General Meeting wish to recognise on account of outstanding service to Australian Sailing or to the sport of sailing.

## 5.4 Rights in respect of General Meetings

Honorary Members are entitled to receive notice of, attend and speak at meetings of a General Meeting and any other meetings of the Members of Australian Sailing, but are not entitled to vote at a General Meeting or any meetings of the Members of Australian Sailing

## 6. Special Members

- 6.1 The Board may admit individuals, class associations and Clubs (which are not Member Clubs), to be a Special Member of Australian Sailing in accordance with this Constitution and the conditions approved by the Voting Members from time to time.
- 6.2 Unless otherwise provided in the conditions of membership, the Special Members are not entitled to receive notice of, attend or speak at meetings of Australian Sailing nor are they entitled to vote at any meeting of Australian Sailing.

## 7. Associates

- 7.1 The Board may, in its absolute discretion and from time to time, invite a person or organisation to be an Associate of Australian Sailing.
- 7.2 Associates shall not be Members of Australian Sailing but shall be associated with Australian Sailing for the purposes of communication, engagement in activities and consultation from time to time.
- 7.3 Associate status may be granted by the Board on such terms and conditions as the Board may see fit. Without limiting the foregoing, no person or organisation shall be granted Associate status unless and until they have provided a signed association agreement and undertaking to comply with such Rules and Policies as determined by the Board.
- 7.4 The Board may determine in its absolute discretion:
  - (a) criteria to be met by each Associate;
  - (b) the privileges and benefits of Associates, which shall not include the

right to receive notice of, attend or to vote at, General Meetings; and

- (c) the terms of each association agreement, including without limitation, the procedure for suspending or cancelling the association.

## 8. Termination and Resignation of Membership

### 8.1 Sanctions for discipline of Members

Without limiting matters that may be referred to in the Policies, any Member that is determined by the Board to have acted in a manner set out in **clause 21.2(b)** shall be liable for the sanctions set out in that Policy, including termination of membership (which shall only take place in accordance with the procedure set out in this **clause 8**).

### 8.2 Termination of membership

- (a) No recommendation can be made by the Board under this **clause 8** unless all avenues of appeal available to the relevant Member under the Policies have been exhausted.
- (b) Subject to compliance with **clause 8.2(a)** (and the Policies), the Board may recommend to a General Meeting to terminate the membership of a Member.
- (c) Upon recommendation from the Board under **clause 8.2(b)**, a General Meeting may, by Special Resolution, terminate the membership of a Member.
- (d) Where the membership of an MYA is terminated in accordance with this **clause 8.2**:
  - (i) the Board may recommend to the General Meeting that either:
    - (A) Australian Sailing invite another body, which meets the requirements in clause 4.4, to apply to be a Voting Member as the MYA for that State; or
    - (B) invite the Clubs in that State which meet the requirements in **clause 4.4** to apply to be Voting Members of Australian Sailing in a Member Club Class for that State; and
  - (ii) the General Meeting may, by Special Resolution, admit the recommended body as the MYA for that State or the Board may admit the Clubs in that State as Voting Members in a Member Club Class, subject to clauses 4.3 and 4.4.

### 8.3 Cessation of membership

A person ceases to be a Member:

- (a) on resignation;
- (b) being a natural person, on death;
- (c) on the termination of their membership according to this Constitution or the Policies;

- (d) being a body corporate, on the occurrence of an Insolvency Event in respect of the Member; or
- (e) if an MYA, the MYA ceases to be incorporated.

## **8.4 Resignation of membership**

A Member may resign as a member of Australian Sailing by giving 14 days written notice to the Board. Where an MYA seeks to resign as a member of Australian Sailing the written notice must be accompanied by a copy of the Special Resolution passed by the MYA's members resolving that the MYA resign as a Voting Member from Australian Sailing.

## **9. Fees**

### **9.1 Membership fees**

- (a) Members shall pay to Australian Sailing fees as follows:
  - (i) each Voting Member shall pay to Australian Sailing an annual membership fee;
  - (ii) the amount, manner and timing of payment of the annual fees by Members and Associates shall be determined by the Board from time to time;
- (b) The Board may at its discretion exclude a Voting Member from voting while any amount due and payable by such Voting Member under or pursuant to any agreement or this Constitution shall remain unpaid.
- (c) If a Club becomes a Voting Member under clause 4.3 or 4.5 and the Club has paid a membership fee to an MYA in respect of the membership year for that MYA, the Member Club is deemed to have paid the applicable annual membership fee to Australian Sailing for that year.

### **9.2 Levies and other charges**

- (a) The Board shall also have power to make a levy against any class of Member or Associate for a special purpose or charge a Member or Associate for services or shared services or in accordance with any agreement or memorandum accepted by the Member or Associate.
- (b) Apart from making, charging and collecting fees, levies and charges described in this clause, the Board shall also have power to charge and collect from Members, Associates and Participants, fees on a scale as determined by the Board from time to time in return for services provided by Australian Sailing including without limitation registering, re-registering, measuring and certifying yachts, other boats and owners or lessees.

## **10. Voting Members and General Meetings**

- 10.1** There will be an Annual General Meeting in each year at which Voting Members shall be represented by their Delegates as representatives or proxies in accordance with this Constitution and the Act.

- 10.2** The Voting Members shall each appoint a Delegate in the manner prescribed by **clause 4.7**.
- 10.3** Without limiting the rights of Members under the Act, the Delegates shall on behalf of the MYA's or Member Club Class they represent have the following powers:
- (a) to elect 5 Directors in accordance with **clause 14**;
  - (b) by resolution, to remove any Director from office; and
  - (c) to receive and consider at the Annual General Meeting each year the financial report, the Directors' report and the auditor's report of Australian Sailing submitted by the Board.

## **11. Meetings of Members**

### **11.1 Annual General Meeting**

- (a) The Annual General Meeting of Australian Sailing shall be held each year in accordance with the Act.
- (b) The business of the Annual General Meeting shall include without limiting any of the rights of the Members under this Constitution or the Act:
  - (i) receipt and consideration of the financial report, the Directors' report and the auditor's report submitted by the Board;
  - (ii) election of 5 Directors in accordance with **clause 14**;
  - (iii) transaction of any other business of which notice in writing has been given to the CEO in accordance with this Constitution or as otherwise required by the Act; and
  - (iv) any other business of an AGM as required under the Act.

### **11.2 Power to convene General Meeting**

- (a) The Directors may convene a General Meeting when they think fit and must do so if required by the Act.
- (b) The MYAs and a Member Club Class may, through their Delegate, convene a General Meeting, which must comply with the requirements under the Act.

### **11.3 Notice of General Meeting**

- (a) Notice of a General Meeting of Members must be given:
  - (i) to all Members entitled to attend the General Meeting, the Delegates, the Directors, and the auditor of Australian Sailing; and
  - (ii) in accordance with **clause 26** and the Act.
- (b) At least 21 days' notice of the time and place of a General Meeting must be given, together with:

- (i) all information required to be included in accordance with the Act;
  - (ii) in the case of a proposed Special Resolution, the intention to propose the Special Resolution and the terms of the proposed Special Resolution;
  - (iii) where applicable, any notice of motion received from any Delegate on behalf of an MYA, Member Club Class, or Director in accordance with the Act; and
  - (iv) where applicable, a list of all nominations received for positions to be elected at the relevant General Meeting.
- (c) Any notices of motions proposed by any Voting Member must be given by the Delegate of that Voting Member in accordance with the Act including without limitation sections 249N and 249O of the Act.

#### **11.4 No other business**

No business other than that stated in the notice of meeting may be transacted at a General Meeting.

#### **11.5 Cancellation or postponement of General Meeting**

Where a General Meeting (including an AGM) is convened by the Directors they may, if they think fit, cancel the meeting or postpone the meeting to a date and time they determine. This clause does not apply to a General Meeting convened by:

- (a) Members according to the Act;
- (b) the Directors at the request of Voting Members; or
- (c) a court.

#### **11.6 Written notice of cancellation or postponement of General Meeting**

Notice of the cancellation or postponement of a General Meeting must state the reasons for doing so and be given to:

- (a) each Delegate entitled to attend the General Meeting; and
- (b) each other person entitled to notice of a General Meeting under the Act.

#### **11.7 Contents of notice postponing General Meeting**

A notice postponing a General Meeting must specify:

- (a) the new date and time for the meeting;
- (b) the place where the meeting is to be held, which may be either the same as or different to the place specified in the notice originally convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to hold the meeting in that manner.

## **11.8 Number of clear days for postponement of General Meeting**

The number of clear days from the giving of a notice postponing a General Meeting to the date specified in that notice for the postponed meeting must not be less than the number of clear days' notice of that General Meeting required to be given by **clause 12.8** or the Act.

## **11.9 Business at postponed General Meeting**

The only business that may be transacted at a postponed General Meeting is the business specified in the notice originally convening the meeting.

## **11.10 Proxy or attorney at postponed General Meeting**

Where:

- (a) by the terms of an instrument appointing a proxy or attorney that appointed person is authorised to attend and vote at a General Meeting on behalf of the appointing Member to be held on a specified date or at a General Meeting or General Meetings to be held on or before a specified date; and
- (b) the date for the meeting is postponed to a date later than the date specified in the instrument,

then that later date is substituted for the date specified in the instrument appointing that appointed person, unless the appointing Member notifies Australian Sailing in writing to the contrary at least 48 hours before the time at which the postponed meeting is to be held.

## **11.11 Non-receipt of notice**

The non-receipt of a notice convening, cancelling or postponing a General Meeting by, or the accidental omission to give a notice of that kind to, a person entitled to receive it, does not invalidate any resolution passed at the General Meeting or at a postponed meeting or the cancellation or postponement of the meeting.

## **11.12 Right to appoint proxy**

- (a) A Delegate entitled to attend a General Meeting of Australian Sailing is entitled to appoint a person as their proxy to attend the meeting in their place in accordance with the Act.
- (b) A proxy may be revoked by the appointing Delegate at any time by notice in writing to Australian Sailing.

## **11.13 Form of proxy**

The instrument appointing a proxy may be in form determined by the Directors from time to time provided it complies with the requirements under the Act.

## **11.14 Attorney of Delegate**

A Delegate may appoint an attorney to act on the Delegate's behalf at all or any meetings of Australian Sailing.

## **11.15 Lodgement of proxy or attorney documents**

- (a) A proxy or attorney may vote at a General Meeting or adjourned or postponed meeting (as the case may be) only if the instrument appointing the proxy or attorney, and the original or a certified copy of the power of attorney or other authority (if any) under which the instrument is signed, are received by Australian Sailing:
  - (i) at the office, the facsimile number at the office or at such other place, facsimile number or electronic address specified for that purpose in the notice of meeting; and
  - (ii) at least 48 hours before the scheduled commencement time for the meeting or adjourned or postponed meeting (as the case may be) at which the person named in the instrument proposes to vote. The scheduled commencement time is as specified in the notice of meeting.
- (b) An undated proxy is taken to be dated on the day that it is received by Australian Sailing.

## 11.16 Authority given by appointment

- (a) Unless the terms of the appointment specify to the contrary, an appointment by a Delegate confers authority on a proxy or attorney:
  - (i) to agree to a General Meeting being convened by shorter notice than is required by the Act or by this Constitution;
  - (ii) to speak to any proposed resolution; and
  - (iii) to demand or join in demanding a poll on any resolution.
- (b) Unless the terms of the appointment specify to the contrary, even if the instrument of appointment refers to specific resolutions and directs the proxy or attorney on how to vote on those resolutions, the appointment is taken to confer authority:
  - (i) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
  - (ii) to vote on any procedural motion; and
  - (iii) to act generally at the meeting.
- (c) Unless the terms of the appointment specify to the contrary, if the instrument of appointment refers to a specific meeting to be held at a specified time or venue and the meeting is postponed or adjourned or changed to another venue, then the appointment confers authority to attend and vote:
  - (i) at the postponed or adjourned meeting; or
  - (ii) at the new venue.
- (d) An appointment of a proxy may be a standing proxy — that is, the appointment under the proxy remains valid until it is revoked by the Delegate that made the appointment.
- (e) The instrument appointing a proxy may provide for the President to

act as proxy in the absence of any other appointment or if the person or persons nominated fails or fail to attend the meeting.

- (f) The instrument appointing a proxy may direct the manner in which the proxy is to vote in respect of a particular resolution.
- (g) If a proxy is appointed to vote on a particular resolution by more than one Delegate and the instruments appointing the proxy direct the proxy to vote on the resolution in different ways, then the proxy must not vote on a show of hands taken on the resolution.

## **12. Proceedings at General Meeting**

### **12.1 Number for a quorum**

The number of Delegates who must be present and eligible to vote for a quorum to exist at a General Meeting is five.

### **12.2 Requirement for a quorum**

An item of business may not be transacted at a General Meeting unless a quorum is present at the commencement of, and remains throughout, the General Meeting.

### **12.3 Quorum and time**

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

- (a) if convened by, or on requisition of, Members, is dissolved; and
- (b) in any other case stands adjourned to such other day, time and place as the Chair determines.

### **12.4 Adjourned meeting**

If a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, those Delegates then present shall constitute a quorum.

### **12.5 President to preside over General Meetings**

- (a) The President is entitled to preside as Chair at General Meetings.
- (b) If a General Meeting is convened and there is no Chair, or the Chair is not present within 15 minutes after the time appointed for the meeting, or is unable or unwilling to act, the following may preside as Chair (in order of entitlement):
  - (i) the Vice-President;
  - (ii) a Director chosen by a majority of the Directors present;
  - (iii) the only Director present; or
  - (iv) a Delegate of an MYA or Member Club Class chosen by a majority of the Delegates present.

### **12.6 Conduct of General Meetings**

- (a) The Chair:
  - (i) has charge of the general conduct of the meeting and of the procedures to be adopted;
  - (ii) may require the adoption of any procedure which in his or her opinion is necessary or desirable for proper and orderly debate or discussion or the proper and orderly casting or recording of votes; and
  - (iii) may, having regard where necessary to the Act, terminate discussion or debate on any matter whenever he considers it necessary or desirable for the proper conduct of the meeting.
- (b) A decision by the Chair under this **clause 12.6** is final.

## **12.7 Adjournment of General Meeting**

- (a) The Chair may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting.
- (b) The adjournment may be either to a later time at the same meeting or to an adjourned meeting at any time and place agreed by vote of the Members present.
- (c) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

## **12.8 Notice of Adjourned meeting**

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

## **12.9 Questions decided by majority**

Subject to the requirements of the Act and except in the case of a Special Resolution, a resolution is carried if a simple majority of the votes cast on the resolution are in favour of it.

## **12.10 Equality of votes**

Where an equal number of votes are cast in favour of and against the resolution, the resolution is not carried.

## **12.11 Declaration of results**

- (a) At any General Meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is properly demanded and the demand is not withdrawn.
- (b) A declaration by the Chair 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 minutes of the meetings of Australian Sailing, is conclusive evidence of the fact.

- (c) Neither the Chair nor the minutes need state, and it is not necessary to prove, the number or proportion of the votes recorded for or against the resolution.

## 12.12 Poll

- (a) If a poll is properly demanded in accordance with the Act or by the Chair of the meeting, it must be taken in the manner and at the date and time directed by the Chair, and the result of the poll is the resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a Chair or on a question of adjournment must be taken immediately.
- (c) A demand for a poll may be withdrawn.
- (d) A demand for a poll does not prevent the General Meeting continuing for the transaction of any business other than the question on which the poll was demanded.

## 12.13 Objection to voting qualification

- (a) An objection to the right of a person to attend or vote at a General Meeting (including an adjourned meeting):
  - (i) may not be raised except at that meeting; and
  - (ii) must be referred to the Chair, whose decision is final.
- (b) A vote not disallowed under the objection is valid for all purposes.

## 12.14 Chair to determine any poll dispute

If there is a dispute about the admission or rejection of a vote, the Chair must decide it and the Chair's decision made is final.

# 13 Votes of Members

## 13.1 Votes of Members:

- (a) At any meeting of Members of Australian Sailing:
  - (i) on a show of hands, each MYA and Member Club Class has one vote;
  - (ii) on a poll, each MYA and Member Club Class shall have a vote or votes determined in accordance with the following table:

<b>Members of Clubs in the State represented by the Delegate, who have been registered on the Australian Sailing database by their Club or the Voting Member as at the date of the poll</b>	<b>Votes</b>
Less than 1,000	3
1,000 or more but less than 2,000	4

2,000 or more but less than 5,000	5
5,000 or more but less than 10,000	6
10,000 or more but less than 20,000	7
20,000 or more	8

- (b) No Member other than Voting Members shall be entitled to vote at General Meetings. The voting rights of Voting Members can only be exercised by the Delegates.
- (c) The Delegate of a Member Club Class in casting the total votes of the Member Club Class as determined by the above table:
  - (i) may not split the total number of votes of that Member Club Class: and
  - (ii) where a poll has been the subject of a postal/electronic ballot, must cast the total number of votes of that Member Club Class in a manner representing the simple majority of votes cast by the Member Clubs in that Member Club Class under the process set out in the applicable Regional Advisory Committee charter.

**13.2 Election of Directors**

- (a) Elections for Elected Directors shall be by exhaustive secret ballot in accordance with this **clause 13.2** at the relevant Annual General Meeting on papers prepared by the CEO.
- (b) If at the close of nominations for an election to fill one or more Elected Director positions the number of eligible nominees is equal to or less than the number of positions to be filled, then no election is to take place and those eligible nominees will be taken to be elected to fill one or more of the Elected Director positions.
- (c) Save where positions of Elected Directors are filled in accordance with **clause 13.2(b)** the exhaustive secret ballot will be conducted as a poll as follows:
  - (i) rounds of voting for each position of Elected Director to be filled will be held, the first of which will include all nominees for that position;
  - (ii) the eligible nominee who receives the highest number of votes in any round will be elected to the position of an Elected Director and the nominee with the fewest number of votes will be eliminated from the second and each subsequent round;
  - (iii) in the event that more than one nominee has an equal number of votes and that number of votes is the least number of votes, then:
    - (A) provided that there remains at least one other nominee for the subsequent round, all of those nominees with the least amount of votes will be eliminated from each of the subsequent rounds of voting;
    - (B) if eliminating all nominees with the least number of votes would result in there being no nominees remaining then, subject to the direction of the Chair (who may call for a re-vote at the last round of voting), the position up for election will be treated as a casual vacancy to be dealt

with in accordance with **clause 14.9**;

- (iv) rounds of voting will be continued with one or more nominees being eliminated from each round until only two nominees remain;
- (v) in the last round of two nominees, a resolution is passed in favour of the election of the nominee who receives the majority of votes; and
- (vi) in the event that the last round of voting has only one nominee remaining, then a resolution is still required to be passed in favour of election of that nominee in order for the nominee to be elected.

## **13.3 Resolutions not in General Meeting**

- (a) If the Delegates for all Members entitled to vote sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms is deemed to have been passed at a General Meeting of Australian Sailing held at the time on which the document was signed by the last Delegate of a Member entitled to vote.
- (b) For the purposes of **clause 13.3(a)**, two or more separate documents containing statements in identical terms, each of which is signed by a Delegate of one or more Members entitled to vote, are deemed together to constitute one document containing a statement in those terms signed by those Delegates on the respective days on which they signed the separate documents.
- (c) A facsimile transmission or other form of visible or other electronic communication purported to be signed by a Delegate for the purpose of this clause is deemed to be a document in writing signed by that Delegate.

## **14. Directors**

### **14.1 Number of Directors**

- (a) There must be not less than five Directors and not more than nine Directors.
- (b) Subject to **clause 14.1(a)**, not more than five Directors are to be elected by the Members (Elected Directors), and not more than four Directors are to be appointed under **clause 14.10**.

### **14.2 Transitional Board**

The commencement of and expiration of the term of appointment of the First Directors for the purposes of this **clause 14**, will be as specified for the First Directors in the Register of Directors.

### **14.3 Eligibility**

- (a) For the period from the date of this Constitution a person who:
  - (i) is an employee of Australian Sailing, a Club or a Voting

Member; or

- (ii) holds an Official Position with a Club or a Voting Member;
- (iii) is a Delegate for a Member Club Class; or
- (iv) was a Director of Australian Sailing and **clause 14.8** applies,

**(each a disqualifying position)** may not hold office as a Director.

- (b) A Director who accepts a disqualifying position must notify the other Directors of that fact immediately and is deemed to have vacated office as a Director.
- (c) A person elected or appointed as a Director at the time of holding a disqualifying position must resign from that disqualifying position within 30 days.
- (d) No person shall be eligible to stand for an Elected Director position if, during the proposed term of office, they would be in breach of **clause 14.8**.
- (e) No person shall be eligible to be elected or appointed as a Director if that person has not first been approved by the Nominations Committee.
- (f) The Board may determine position or role descriptions or necessary qualifications for Director positions.

#### **14.4 Nomination for election**

- (a) At least 45 days prior to the proposed date of the Annual General Meeting at which a resolution or resolutions will be proposed to fill a vacancy in an Elected Director position, the CEO will request from Members nominations (which comply with this **clause 14.4**) for elections to positions falling vacant, which must be received no less than 28 days prior to the AGM.
- (b) Any Member or the Board may nominate a person to fill a vacancy in an Elected Director position that is to be the subject of an election at the next AGM.
- (c) A nomination must:
  - (i) be in the form required by the Directors; and
  - (ii) signed by the nominator and nominee.

#### **14.5 Terms of office of Directors generally**

Subject to **clauses 14.8** and **14.9** an Elected Director will hold office for a term of two years. Subject to **clause 14.2**, for this purpose, 2 years shall be defined as commencing from the Annual General Meeting at which a Director is elected until the poll is declared at the second Annual General Meeting following that Director's election.

#### **14.6 Office held until end of meeting**

A retiring Elected Director holds office until the end of the meeting at which

that Elected Director retires but, subject to the requirement of this Constitution, including **clause 14.8**, is eligible for re-election.

## 14.7 Elected Director elected at an Annual General Meeting

- (a) At an Annual General Meeting:
  - (i) at which an Elected Director retires; or
  - (ii) at the commencement of which there is a vacancy in the office of an Elected Director,there will be a vote of the Voting Members conducted in accordance with **clause 13.2** to fill the vacancy by electing someone to that office.
- (b) Subject to **clauses 14.8** and **14.13**, an Elected Director elected under this **clause 14.7** takes office at the end of the meeting at which they are elected for the term specified in **clause 14.5**.

## 14.8 Maximum term of office for Directors

- (a) A Director may not serve more than four consecutive terms as a Director, including where one or more of the terms is as an Appointed Director.
- (b) For the purpose of **clause 14.8(a)**, service:
  - (i) by a person filling a casual vacancy in a Director position under **clause 14.9(b)** or **14.10(d)** for any period will not be treated as a term;
  - (ii) by a person in an Appointed Director position under **clause 14.10** for any period will be treated as a term; and
  - (iii) by a First Director prior to expiration in accordance with **clause 14.2**, will be treated as a term.
- (c) A Director who has served a maximum term in accordance with **clause 14.8(a)** shall not be eligible to be a Director for six years following the completion of their maximum term.
- (d) A Director shall not be eligible to serve more than four terms in any fifteen year period.

## 14.9 Casual vacancy in ranks of Elected Directors

- (a) The Directors may at any time appoint a person to fill a casual vacancy (as defined in **clause 14.14**) in the rank of the Elected Directors.
- (b) A person appointed under **clause 14.9(a)** holds office until the next Annual General Meeting at which time they can offer themselves for election.

## 14.10 Appointed Directors

- (a) In addition to the Elected Directors, the Directors may themselves appoint up to four persons to be Directors because of their special business acumen and/or technical skills. These persons will be known

as the "**Appointed Directors**". The first Appointed Directors are set out in the Register of Directors.

- (b) Subject to **clauses 14.8** and **14.13**, an Appointed Director holds office for a term determined by the Directors not to exceed two years and the appointment will be on such other terms as the Directors determine.
- (c) A person may only serve four terms as an Appointed Director but, subject to the other requirement of this Constitution, are otherwise eligible to be elected to an Elected Director position.
- (d) The Directors may at any time appoint a person to fill a casual vacancy (as defined in **clause 14.14**) in the rank of the Appointed Directors on whatever terms the Directors decide.

## 14.11 Remuneration of Directors

Subject to **clause 14.12**, a Director may not be paid for services as a Director but, with the approval of the Directors and subject to the Act, may be:

- (a) paid by Australian Sailing for services rendered to it other than as a Director; and
- (b) reimbursed by Australian Sailing for their reasonable travelling, accommodation and other expenses when:
  - (i) travelling to or from meetings of the Directors, a Committee or Australian Sailing; or
  - (ii) otherwise engaged in the affairs of Australian Sailing.

## 14.12 Honorarium

Australian Sailing may in General Meeting by ordinary resolution determine to pay a Director an ex-gratia payment.

## 14.13 Removal of Director

- (a) Subject to the provisions of the Act, Australian Sailing may in General Meeting by ordinary resolution remove any Director prior to the expiration of that Director's term of office.
- (b) Unless otherwise resolved at a General Meeting, a Director removed in accordance with **clause 14.13(a)** cannot be re-appointed as a Director within three years of their removal.

## 14.14 Vacation of office

The office of a Director becomes vacant when the Act says it does and also if the Director:

- (a) is removed in accordance with **clause 14.13**;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (c) resigns from office by notice in writing to Australian Sailing;
- (d) accepts appointment to, or becomes the holder of, a disqualifying

position as set out in **clause 14.3** and does not resign from that position within 30 days;

- (e) is not present at three consecutive Directors' meetings without leave of absence from the Directors; or
- (f) is directly or indirectly interested in any contract or proposed contract with Australian Sailing and fails to declare the nature of the interest as required by the Act.

## **14.15 Alternate Director**

A Director cannot appoint an alternate.

## **15. Powers and Duties of Directors**

### **15.1 Directors to manage Australian Sailing**

The Directors are to manage Australian Sailing's business and may exercise those of Australian Sailing's powers that are not required, by the Act or by this Constitution, to be exercised by Australian Sailing in General Meeting.

### **15.2 Specific powers of Directors**

Without limiting **clause 15.1**, the Directors may exercise all Australian Sailing's powers to borrow or raise money, to charge any property or business or give any other security for a debt, liability or obligation of Australian Sailing or of any other person.

### **15.3 Time, etc.**

Subject to the Act, where this Constitution requires that something be done by a particular time, or within a particular period, or that an event is to occur or a circumstance is to change on or by a particular date, the Directors may at their absolute discretion extend that time, period or date as they think fit.

### **15.4 Appointment of attorney**

The Directors may appoint any person to be Australian Sailing's attorney for the purposes, with the powers, authorities and discretions, for the period and subject to the conditions they think fit.

### **15.5 Provisions in power of attorney**

A power of attorney granted under **clause 15.4** may contain any provisions for the protection and convenience of persons dealing with the attorney that the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions of the attorney.

### **15.6 Delegation of powers**

- (a) Without limiting **clause 18.4** the Directors may, by resolution or by power of attorney or writing under seal, delegate any of their powers to the CEO or any employee of Australian Sailing or any other person as they think fit.
- (b) Any delegation by the Directors of their powers:

- (i) must specify the powers delegated, any restrictions on, and conditions attaching to, the exercise of those powers and the period during which that delegation is to be in force;
  - (ii) may be either general or limited in any way provided in the terms of the delegation;
  - (iii) need not be to a specified person but may be to any person holding, occupying or performing the duties of a specified office or position; and
  - (iv) may include the power to delegate.
- (c) If exercising a power depends on a person's opinion, belief or state of mind, then that power may be exercised by the delegate on the delegate's opinion, belief or state of mind about that matter.
- (d) Any power exercised by a delegate is as effective as if it had been exercised by the Directors.

## 15.7 Code of Conduct

The Directors must:

- (a) adopt a code of conduct for Directors; and
- (b) periodically review the code of conduct in light of the general principles of good corporate governance.

## 16. Proceedings of Directors

### 16.1 Directors meetings

- (a) Subject to **clause 16.1(b)**, the Directors may meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit.
- (b) The Directors must meet at least six times in each calendar year.

### 16.2 Questions decided by majority

A question arising at a Directors' meeting is to be decided by a majority of votes of the Directors present in person and entitled to vote. Each Director present has one vote on a matter arising for decision by Directors.

### 16.3 Chair's casting vote

In case of an equality of votes on any motion at a meeting of the Board, the President may exercise a casting vote in addition to a deliberative vote if he or she is the chairperson of the meeting when the vote is taken. Any other Chair will not have a casting vote.

### 16.4 Quorum

Five Directors present in person constitutes a quorum.

### 16.5 Effect of vacancy

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

## 16.6 Convening meetings

- (a) A Director may, and the CEO on the request of a Director must, convene a Directors' meeting.
- (b) Notice of a meeting of Directors must be given individually to each Director (except a Director on leave of absence approved by the Directors). Notice of a meeting of Directors may be given in person, or by post or by telephone, facsimile or other electronic means.
- (c) A Director may waive notice of a meeting of Directors by giving notice to that effect to Australian Sailing in person or by post or by telephone, facsimile or other electronic means.
- (d) A person who attends a meeting of Directors waives any objection that person may have in relation to a failure to give notice of the meeting.
- (e) The non-receipt of a notice of a meeting of the Directors or the accidental omission to give notice of a meeting to a person entitled to receive notice does not invalidate anything done (including the passing of a resolution) at a meeting of Directors.

## 16.7 Election of President and Vice-President

- (a) The Directors shall elect one of their number to be the President by a majority vote.
- (b) The Director elected to be President under **clause 16.7(a)** will remain President for the duration of their term of office as Director and shall chair any meeting of Directors unless the resolution electing a person as the President specifies a fixed term for the appointment.
- (c) The Directors shall elect one of their number to be the Vice-President by a majority vote.
- (d) The Director elected to be Vice-President under **clause 16.7(c)** will remain Vice-President for the duration of their term of office as Director and shall chair any meeting of Directors unless the resolution electing a person as the Vice-President specifies a fixed term for the appointment.
- (e) Despite **clause 16.7(b)**, if:
  - (i) there is no person elected as President; or
  - (ii) the President is not present within 15 minutes after the time appointed for the holding of the meeting; or
  - (iii) the President is unwilling to act,

the Vice-President (if present) or another Director elected by the Directors present shall be to be chair of the meeting.

## 16.8 Circulating resolutions

- (a) The Directors may pass a resolution without a Directors' meeting being held if notice in writing of the resolution is given to all Directors and a majority of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of Directors) sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of the document may be used for signing by the Directors if the wording of the resolution and statement is identical in each copy. A facsimile transmission or other document produced by electronic means under the name of a Director with the Director's authority is taken to be a document signed by the Director for the purposes of **clause 16.8(a)** and is taken to be signed when received by Australian Sailing in legible form.
- (c) The resolution is passed when the last Director signs.

## 16.9 Validity of acts of Directors

Everything done at a Directors' meeting or a Committee meeting, or by a person acting as a Director, is valid even if it is discovered later that there was some defect in the appointment, election or qualification of any of them or that any of them was disqualified or had vacated office.

## 16.10 Directors' interests

- (a) A Director shall declare to the Directors any material personal interest or related party transaction, as defined by the Act, as soon as practicable after that Director becomes aware of their interest in the matter.
- (b) Where a Director declares a material personal interest or in the event of a related party transaction, that Director must absent himself or herself from discussion of such matter and shall not be entitled to vote in respect of such matter unless otherwise determined by the Directors.
- (c) In the event of any uncertainty in this regard, the issue shall immediately be determined by a vote of the Directors or, if this is not possible, the matter shall be adjourned or deferred to the next meeting.
- (d) The CEO shall maintain a register of declared interests.

## 16.11 Minutes

The Directors must cause minutes of meetings to be made and kept according to the Act.

## 17. Telecommunication Meetings of Australian Sailing

### 17.1 Telecommunication Meeting

- (a) A General Meeting or a Directors' Meeting may be held by means of a

Telecommunication Meeting, provided that:

- (i) the number of Members or Directors (as applicable) participating is not less than a quorum required for a General Meeting or Directors' Meeting (as applicable); and
  - (ii) the meeting is convened and held in accordance with the Act.
- (b) All provisions of this Constitution relating to a meeting apply to a Telecommunication Meeting in so far as they are not inconsistent with the provisions of this **clause 17**.

## **17.2 Conduct of Telecommunication Meeting**

The following provisions apply to a Telecommunication Meeting of Australian Sailing:

- (a) all persons participating in the meeting must be linked by telephone, audio-visual or other instantaneous means for the purpose of the meeting;
- (b) each of the persons taking part in the meeting must be able to hear and be heard by each of the other persons taking part at the commencement of the meeting and each person so taking part is deemed for the purposes of this Constitution to be present at the meeting;
- (c) at the commencement of the meeting each person must announce his or her presence to all other persons taking part in the meeting;
- (d) a person may not leave a Telecommunication Meeting by disconnecting his or her telephone, audio-visual or other communication equipment unless that person has previously notified the Chair;
- (e) a person may conclusively be presumed to have been present and to have formed part of a quorum at all times during a Telecommunication Meeting unless that person has previously notified the Chair of leaving the meeting; and
- (f) a minute of proceedings of a Telecommunication Meeting is sufficient evidence of the proceedings and of the observance of all necessary formalities if the minute is certified to be a correct minute by the Chair.

## **18. Chief Executive Officer**

### **18.1 Appointment of CEO**

The Directors shall appoint a CEO.

### **18.2 Powers, duties and authorities of CEO**

- (a) The CEO holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, delegated to the CEO by the Directors.
- (b) The exercise of those powers and authorities, and the performance of those duties, by the CEO are subject at all times to the control of the

Directors.

## **18.3 Suspension and removal of CEO**

Subject to the terms and conditions of the appointment, the Directors may suspend or remove the CEO from that office.

## **18.4 Delegation by Directors to CEO**

The Directors may delegate to the CEO the power (subject to such reservations on the power as are decided by the Directors) to conduct the day-to-day management and control of the business and affairs of Australian Sailing. The delegation will include the power and responsibility to:

- (a) develop business plans, budgets, strategies, policies, processes and codes of conduct for consideration by the Directors and to implement them to the extent approved by the Directors;
- (b) manage the financial and other reporting mechanisms of Australian Sailing;
- (c) approve and incur expenditure subject to specified expenditure limits;
- (d) sub-delegate his or her powers and responsibilities to employees or internal management committees of Australian Sailing; and
- (e) any other powers and responsibilities which the Directors consider appropriate to delegate to the CEO.

## **18.5 CEO to attend meetings**

The CEO is entitled, subject to a determination otherwise by the Directors, to attend all meetings of Australian Sailing, all meeting of the Directors and any Committees and may speak on any matter, but does not have a vote.

## **18.6 Eligibility to be Director**

The CEO is ineligible to be a Director of Australian Sailing until the expiration of three (3) years following termination of his or her employment.

# **19. Company Secretary**

## **19.1 Appointment of Company Secretary**

There must be at least one Company Secretary who is to be appointed by the Directors.

## **19.2 Suspension and removal of Company Secretary**

The Directors may suspend or remove a Company Secretary from that office.

## **19.3 Powers, duties and authorities of Company Secretary**

A Company Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, delegated to them by the Directors.

# **20. Committees**

## 20.1 Formation of Committees

- (a) The Board may create, define and dissolve Committees from time to time for the better administration of the sport and the attainment of outcomes listed in the Strategic Plan and each Committee shall have a charter determined or approved by the Board.
- (b) The chair of each Committee (or his/her nominee) may attend meetings, or parts of meetings, of the Members or Board at the invitation of the Board, where he or she may be invited to speak on the matters directly related to the charter of his or her Committee.
- (c) The Directors may delegate any of their powers to Committees consisting of those persons they think fit (including Directors, individuals and consultants), and may vary or revoke any delegation provided that all Committees are accountable to the Board and must comply with the directions of the Board.

## 20.2 Powers delegated to Committees

- (a) A Committee must exercise the powers delegated to it according to the terms of the delegation and any directions of the Directors.
- (b) Powers delegated to and exercised by a Committee are taken to have been exercised by the Directors.

## 20.3 Committee meetings

Unless otherwise determined by the Directors, committee meetings are governed by the provisions of this Constitution dealing with Directors' meetings, as far as they are capable of application.

## 20.4 Audit and Risk Committee

- (a) An Audit and Risk Committee of the Board shall be formed to oversee the overall financial management and reporting of Australian Sailing including the establishment of appropriate prudential systems for the efficient and effective operation of financial management.
- (b) The bank accounts and accounting records referred to in **clause 20.4(a)** shall be available for inspection by Delegates at any time.
- (c) The Audit and Risk Committee shall constitute at least three (3) people which may be a combination of Directors and an external appointment, provided that:
  - (i) the chair of the Committee must have significant finance expertise;
  - (ii) at least one member of the Committee must be a Director who has significant finance expertise (other than the President); and
  - (iii) any external appointee must be independent and have significant finance expertise.

## 20.5 Nominations Committee

- (a) A Nominations Committee shall be formed to assess all nominees for

Board vacancies and may at the request of the Board identify candidates to fill Board vacancies (including casual vacancies).

- (b) The Nominations Committee shall constitute at least three (3) people which may be a combination of Directors and external appointment, provided that:
  - (i) two members of the Committee must be the President and Vice-President; and
  - (ii) any external appointees must be independent and have significant business and governance expertise.
  - (iii) The Nominations Committee should only comprise persons who are not executives or staff members of Australian Sailing; however, the Chief Executive Officer shall be invited to provide clarification where necessary.

## 20.6 Regional Advisory Committees

- (a) The Board will establish, support and regulate one Regional Advisory Committee for each State where there is no MYA incorporated, to facilitate the pursuit of the Objects.
- (b) The composition, operation, duties and functions of Regional Advisory Committees will be in accordance with this Constitution and will otherwise be prescribed in the Regional Advisory Committee charter.
- (c) Only one Regional Advisory Committee may be established in a State and only where there is no MYA.

## 21. Grievances and Discipline

### 21.1 Jurisdiction

- (a) Upon becoming a Member of Australian Sailing, Members will be subject to, and submit unreservedly to, the jurisdiction, procedures, penalties and appeal mechanisms of Australian Sailing whether under the Rules, Policies or under this Constitution.
- (b) Such other individuals and entities (including without limitation Participants, Clubs and Associates) may by agreement submit to, the jurisdiction, procedures, penalties and appeal mechanisms of Australian Sailing whether under the Rules, Policies or under this Constitution.

### 21.2 Policies

- (a) The Directors may make a Policy or Policies:
  - (i) for the hearing and determination of:
    - (A) grievances by any Member who feels aggrieved by a decision or action of Australian Sailing (or another Member); and
    - (B) disputes between Members, Clubs and Participants relating to the conduct and administration of sailing;

- (ii) for the discipline of Members, Clubs or Participants;
  - (iii) for the formation and administration of an Appeals Tribunal which must be independent of any party before it on the matter which is the subject of the appeal in question; and
  - (iv) for the termination of Members (except in respect of Voting Member).
- (b) The Directors in their sole discretion may refer an allegation (which in the opinion of the Directors is not vexatious, trifling or frivolous) by an complainant (including a Director or a Member) that a Member, Club or Participant has:
- (i) breached, failed, refused or neglected to comply with a provision of this Constitution, the Policies, the Rules or any other resolution or determination of the Directors or any duly authorised committee; or
  - (ii) acted in a manner unbecoming of a Member or prejudicial to the object and interests of Australian Sailing or the sport of sailing or both; or
  - (iii) prejudiced Australian Sailing or the sport of sailing or brought Australian Sailing or the sport or themselves into disrepute;
- for investigation or determination either under the procedures set down in the Policies or Rules or by such other procedure and/or persons as the Directors consider appropriate.
- (c) During investigatory or disciplinary proceedings under this **clause 21**, a respondent may not participate in any sanctioned sailing Event, pending the determination of such proceedings (including any available appeal) unless the Directors decide continued participation is appropriate having regard to the matter at hand.
- (d) The Directors may include in any Policy or Rule a final right of appeal to an independent body outside the control of the sport of sailing.

## 22. Policies and Rules

### 22.1 Making and amending Policies and Rules

In addition to Policies made under **clause 21.2**, the Directors may from time to time make Policies and Rules and Regulations which in their opinion are necessary or desirable for the conduct, control, administration and management of the sport of sailing or the affairs of Australian Sailing and may amend, repeal and replace those Policies, Rules and Regulations.

## 23. Whole-of-Sport Policies

- (a) Without limiting **clause 22** the Board shall have the power to make, alter and rescind Whole-of-Sport Policies as are necessary in the view of the Board to further or give effect to any one or more of the objects throughout Australia, provided that Board shall notify the Voting Members before making, altering or rescinding Whole-of- Sport Policies and shall allow a reasonable period for the Voting Members to

comment, unless in the view of the Board this is impracticable or unnecessary in the circumstances.

- (b) The decision of the chair of the meeting for the time being as to the interpretation of this Constitution and Whole-of-Sport Policies and as to any matter not provided for therein shall be final unless a motion of dissent be proposed at the same meeting and carried by a majority of Delegates or Directors present (as relevant). Such motion of dissent shall not be discussed.

## **24. Inspection of Records**

### **24.1 Right of Members to inspect records**

A Member does not have the right to inspect any document of Australian Sailing (including registers kept by Australian Sailing) except as required by law.

## **25. Accounts**

### **25.1 Accounting records**

The Directors will cause proper accounting and other records to be kept and will distribute copies of financial statements as required by the Act.

### **25.2 Auditor**

A properly qualified auditor or auditors shall be appointed by the Directors and the remuneration of such auditor or auditors fixed and duties regulated in accordance with the Act.

## **26. Service of Documents**

### **26.1 Documents includes notice**

In this **clause 26**, document includes a notice.

### **26.2 Methods of service on a Member**

Australian Sailing may give a document to a Member:

- (a) personally;
- (b) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or
- (c) by sending it to a facsimile number or electronic address nominated by the Member.

### **26.3 Methods of service on Australian Sailing**

A Member may give a document to Australian Sailing:

- (a) by delivering it to the registered office;
- (b) by sending it by post to the registered office; or

- (c) by sending it to a facsimile number of electronic address nominated by Australian Sailing.

## 26.4 Post

A document sent by post if sent to an address:

- (a) in Australia, may be sent by ordinary post; and
- (b) outside Australia, or sent from an address outside Australia, must be sent by email,

and in either case is taken to have been received on the second business day after the date of its posting.

## 26.5 Facsimile or electronic transmission

If a document is sent by facsimile or electronic transmission, delivery of the document is taken to:

- (a) be effected by properly addressing and transmitting the facsimile or electronic transmission; and
- (b) have been delivered on the business day following its transmission.

## 27. Indemnity

### 27.1 Indemnity of officers

- (a) This **clause 27** applies to every person who is or has been:
  - (i) a Director, CEO or Company Secretary of Australian Sailing; and
  - (ii) to any other officers, employees, former officers or former employees of Australian Sailing or of its related bodies corporate as the Directors in each case determine.

Each person referred to in this paragraph (a) is referred to as an **"Indemnified Officer"** for the purposes of the rest of **clause 27**.

- (b) Australian Sailing will indemnify each Indemnified Officer out of the property of Australian Sailing against:
  - (i) every liability (except a liability for legal costs) that the Indemnified Officer incurs as an Officer of Australian Sailing or of a related body corporate of Australian Sailing; and
  - (ii) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the Indemnified Officer becomes involved as an officer of Australian Sailing or of a related body corporate of Australian Sailing,

unless:

- (iii) Australian Sailing is forbidden by statute to indemnify the

person against the liability or legal costs; or

- (iv) an indemnity by Australian Sailing of the person against the liability or legal costs would, if given, be made void by statute.

## 27.2 Insurance

Australian Sailing may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring an Indemnified Officer against liability that the Indemnified Officer incurs as an officer of Australian Sailing or of a related body corporate of Australian Sailing including a liability for legal costs, unless:

- (a) Australian Sailing is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if Australian Sailing paid the premium, be made void by statute.

## 27.3 Deed

Australian Sailing may enter into a deed with any Indemnified Officer or a deed poll to give effect to the rights conferred by **clause 27.1** on the terms the Directors think fit (as long as they are consistent with **clause 27**).

## 28. Winding Up

### 28.1 Contributions of Voting Members on winding up

- (a) Each Voting Member must contribute to Australian Sailing's property if Australian Sailing is wound up while they are a Voting Member or within one year after their membership ceases.
- (b) The contribution is for:
  - (i) Payment of Australian Sailing's debts and liabilities contracted before their membership ceased;
  - (ii) the costs of winding up; and
  - (iii) adjustment of the rights of the contributories among themselves,
  - (iv) and the amount is not to exceed \$1.00.
- (c) No other Member must contribute to Australian Sailing's property if Australian Sailing is wound up.

### 28.2 Excess property on winding up

- (a) If on the winding up or dissolution of Australian Sailing, and after satisfaction of all its debts and liabilities, any property remains, that property must be given or transferred to another body or bodies:
  - (i) having objects similar to those of Australian Sailing; and
  - (ii) whose constitution prohibits (or each of whose constitutions prohibit) the distribution of its or their income and property among its or their members to an extent at least as great as is

imposed under this Constitution.

- (b) That body is, or those bodies are, to be determined by the Voting Members at or before the time of dissolution or, failing that determination, by a judge who has or acquires jurisdiction in the matter.

## 29. Definitions and Interpretations

### 29.1 Definitions

In this Constitution unless the context requires otherwise:

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

**AGM or Annual General Meeting** means the annual General Meeting of Australian Sailing required to be held by Australian Sailing in each calendar year under section 250N(2) of the Act.

**Appointed Director** means a Director appointed under **clause 14.10**.

**Associate** means a person or organisation associated with Australian Sailing pursuant to **clause 7**.

**Audit and Risk Committee** means the committee formed under **clause 20.4**.

**Australian Sailing** means Australian Sailing Limited.

**Board** means the Board of Australian Sailing as provided in this Constitution.

**Chief Executive Officer** or CEO means a person appointed as chief executive officer of Australian Sailing by the Directors.

**Club** means a sailing club affiliated with an MYA or with Australian Sailing.

**Committee** means a committee established by the Directors under **clause 20**.

**Company Secretary** means a person appointed as a company secretary of Australian Sailing by the Directors under **clause 19.1**.

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

**Delegate** means the person appointed under **clause 4.7**.

**Director** means a director of Australian Sailing and includes Elected Directors and Appointed Directors.

**Directors** means, as the case requires, all or some of the Directors acting together in accordance with their powers and authority under this Constitution.

**Elected Director** means a Director elected under **clause 13.2**.

**First Directors** means the persons listed as First Directors in the Register of

Directors.

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

**Honorary Member** means a person admitted to Australian Sailing as an honorary member under **clause 5**.

**Insolvency Event** means in respect of a Member when:

- (a) the Member stops or suspends payment of all or a class of its debts;
- (b) the Member is insolvent within the meaning of Section 95A of the Corporations Act;
- (c) the Member is presumed by a court to be insolvent by reason of Section 459C(2) of the Corporations Act;
- (d) the Member has an administrator appointed over all or any of its assets or undertaking;
- (e) the Member has a controller within the meaning of Section 9 of the Corporations Act or similar officer appointed to all or any of its assets or undertaking;
- (f) the Member has an order made or a resolution passed for its winding up or dissolution or it enters into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them;
- (g) any security over or a distress, execution or other similar processes levies or served against the whole or a substantial part of the Member's assets or undertakings; or
- (h) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.

**Member** means a member of Australian Sailing and includes Voting Members (**clause 4**), Honorary Members (**clause 5**) and Special Members (**clause 6**).

**Member Club** means a Club that is a Voting Member of, or becomes a Voting Member of, Australian Sailing, under clause 4.

**Member Club Class** means a class of Voting Members comprising Member Clubs from the State the Member Club Class represents.

**MYA** means an incorporated legal entity recognised by Australian Sailing as the representative body for sailing in the State in which it is established.

**Nominations Committee** means a committee formed under **clause 20.5**.

**Objects** means the objects of Australian Sailing in **clause 2.1**.

**Official Position** means, in connection with any body corporate or organisation, a person who:

- (a) holds a position, whether elected or appointed, as president, vice president, secretary, treasurer, director or equivalent of that body

corporate or organisation; or

- (b) has, directly or indirectly, a material ownership or financial interest in that body corporate or organisation.

**Participant** means members of a Club that has been registered on the Australian Sailing database by a Club or a Voting Member in the state of the club member, participants in training and other Australian Sailing courses, volunteers, officials and individuals regularly participating in sailing.

**President** means the president of Australian Sailing appointed by the Directors under **clause 16.7**.

**Policy** means a policy made under **clauses 21.2** and **22** and includes Whole-of-Sport Policies made under **clause 23**.

**Regional Advisory Committee** means the committee established and recognised by Australian Sailing under **clause 20.6**,

**Register** means the register of members maintained by Australian Sailing in accordance with sections 168 and 169 of the Act.

**Register of Directors** means the register of the Directors maintained by Australian Sailing.

**Rules or Regulations** shall include rules, regulations, by-laws, codes and policies for or in relation to the conduct, control, administration and management of the sport of sailing or the affairs of Australian Sailing or the conduct of racing and sailing activities as determined or adopted from time to time by the Board.

**Sailing** includes without limitation yachting, recreational and motor boating, kite boarding and sail boarding.

**Sailing Event** means any event conducted under the auspices of Australian Sailing including sailing competitions, any other race, trial, test, event or function carried out or conducted under the auspices of Australian Sailing for National and International Competitions.

**Special Members** means those individuals, class associations and Clubs (other than Clubs which are Voting Members) admitted to membership of Australian Sailing under **clause 6**, which persons and bodies shall be respectively referred to as "Individual Members", "Class Association Members" and "Club Special Members".

**Special Resolution** means a resolution of which notice as required by the Act has been given and that has been passed by at least seventy-five percent (75%) of the votes cast by Delegates entitled to vote on the resolution.

**State** means the States of Australia, which shall be deemed to include each of the Northern Territory and the Australian Capital Territory.

**Statutes and Regulations** mean the statutes and regulations of the World Sailing in force from time to time.

**Strategic Plan** means the course of action for future conduct of sailing nationally.

**Telecommunications Meeting** means a meeting held by telephone, video,

any other technology (or any combination of these technologies), which permits each Director at a meeting of Directors or each Voting Member at a meeting of Members to communicate with any other participant.

**Vice-President** means the vice-president of Australian Sailing appointed by the Directors under **clause 16.7**.

**Voting Member** means the Members described in **clause 4.1(a)**.

**Whole-of-Sport Policy** means a policy which has been mandated for use by sports funded by the Australian Federal Government and also other policies which are deemed by the Board to be appropriate for adoption by the whole of the sport for reasons of good governance. Examples of the nature of Whole-of-Sport Policies are anti-doping, supplement usage, member protection, bullying and harassment, discrimination, code of conduct, match fixing and privacy.

## 29.2 Interpretation

In this Constitution unless the context requires otherwise:

- (a) a reference to Australian Sailing is a reference to Australian Sailing Limited a company limited by guarantee;
- (b) a reference to a Member present at a General Meeting means the Member present in person or by proxy or representative;
- (c) a reference to a document or instrument includes any amendments made to it from time to time and, unless the contrary intention appears, includes a replacement;
- (d) words importing any gender include all other genders;
- (e) the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (f) a reference to an organisation includes a reference to its successors;
- (g) the singular includes the plural and vice versa;
- (h) a reference to a law includes regulations and instruments made under it;
- (i) a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by a State or the Commonwealth or otherwise;
- (j) the words include, includes, including and for example are not to be interpreted as words of limitation;
- (k) where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Directors; and
- (l) writing and written includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any

representation of words in a physical document or in an electronic communication or form or otherwise.

## **29.3 Corporations Act**

- (a) In this Constitution, unless the context requires otherwise, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act.
- (b) The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to Australian Sailing.

## **29.4 Headings**

Headings are inserted for convenience and do not affect the interpretation of this Constitution.