

12 April 2016

As amended 12 April 2016

CONSTITUTION

- Of -

DANDENONG RANGES DISTRICT SWIMMING ASSOCIATION INCORPORATED

Incorporation Number A 0013518H

Hereinafter Referred as

METRO EAST



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ASSOCIATIONS INCORPORATION REFORM ACT 2012 (VIC)

CONSTITUTION

Of

DANDENONG RANGES DISTRICT SWIMMING ASSOCIATION (DRDSA) INCORPORATED

1. Name

Dandenong Ranges District Swimming Association Incorporated. Reg Number A0013518H hereinafter referred to as Metro East.

2. Objects of METRO EAST

METRO EAST is the body established for the administration of natatorial activities within the boundaries allocated by SV, and is established solely to:

- (a) affiliate and otherwise liaise with the Swimming Victoria Incorporated ("SV") and such other bodies as may be desirable to achieve these Objects;
- (b) conduct, encourage, promote, advance, control and administer natatorial activities in and throughout METRO EAST;
- (c) provide for the conduct, encouragement, promotion and administration of natatorial activities through and by various Clubs for the mutual and collective benefit of the Members;
- (d) act in good faith and loyalty to ensure the maintenance and enhancement of METRO EAST and swimming, its standards, quality and reputation for the collective and mutual benefit of the Members and swimming;
- (e) at all times operate with and promote mutual trust and confidence between METRO EAST and the Members in pursuit of these Objects;
- (f) at all times to act on behalf of, in the interests of, and in conjunction, with the Members;
- (g) promote the economic and sporting success, strength and stability of METRO EAST and each Member and to act interdependently with each Member in pursuit of these Objects;
- (h) ensure compliance with the rules and by-laws as amended from time to time of SV;
- (i) apply the property and capacity of METRO EAST towards the fulfilment and achievement of these Objects;
- (j) use and protect the Intellectual Property;
- (k) collect, distribute and publish information in connection with swimming;
- (l) promote and control district meetings, competitions and championships;
- (m) strive for governmental, commercial and public recognition of METRO EAST, the Members, and swimming;
- (n) promulgate and secure uniformity in such rules as may be necessary or appropriate for the management and control of swimming and related activities within the district boundaries;

- (o) promote swimming as a spectator sport;
- (p) through or in association with the Clubs or other entities or of itself, promote the health and safety of all Individual Members;
- (q) pursue through itself or others such commercial arrangements, including sponsorship and marketing opportunities as are appropriate, to further these Objects;
- (r) formulate or adopt and implement appropriate policies, including in relation to harassment, discrimination, equal opportunity, equity, drugs in sport, health, safety, junior and senior programs and such other matters as arise from time to time as issues to be addressed in swimming;
- (s) represent the interests of its Members and of swimming generally in any appropriate forum;
- (t) have regard to the public interest in its operation;
- (u) do all that is reasonably necessary to enable these Objects to be achieved and to enable the Members to receive the benefits which these Objects are intended to achieve;
- (v) adopt the Swimming Australia Limited Member Welfare and Child Welfare Policies (as amended from time to time), and to comply with its requirements,
- (w) encourage and promote performance-enhancing drug free competition; and
- (x) undertake and or do all things or activities which are necessary, incidental or conducive to advance these Objects.

3. Application of Income

- (a) The income and property of METRO EAST shall be applied solely towards the promotion of the Objects.
- (b) No portion of the income or property of METRO EAST shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any Member.
- (c) No remuneration or other benefit in money or money's worth shall be paid or given by METRO EAST to any Member who holds any office of METRO EAST.
- (d) Nothing contained in **Rules 3(b) or (c)** shall prevent payment in good faith to any Member:
 - (i) for any services actually rendered to METRO EAST whether as an employee or otherwise;
 - (ii) for goods supplied to METRO EAST in the ordinary and usual course of business;
 - (iii) of interest on money borrowed from any Member;
 - (iv) of rent for premises demised or let by any Member to METRO EAST;
 - (v) for any out-of-pocket expenses incurred by the Member on behalf of METRO EAST;

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

4. **Addition Alteration or Amendment**

No addition, alteration or amendment shall be made to this Constitution unless it has been approved by Special Resolution in accordance with the Act, and approved by SV.

5. **Liability of Members**

The liability of the Members of METRO EAST is limited in accordance with the Act.

6. **Clubs' Contributions**

Every Club undertakes to contribute to the assets of METRO EAST in the event of it being wound up while a Member, or within one year after ceasing to be a Member, for payment of the debts and liabilities of METRO EAST contracted before the time at which it ceases to be a Member, and the costs, charges and expenses of winding up and for an adjustment of the rights of contributors among themselves, such amount as may be required not exceeding one dollar (\$1).

7. **Distribution of Property on Winding Up**

If upon winding up or dissolution of METRO EAST there remains after satisfaction of all its debts and liabilities any assets or property, the same shall not be paid to or distributed amongst the Members but shall be paid to or distributed to SV or its successors to be held in trust pending the formation of another organisation having objects similar to the Objects and which prohibits the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on METRO EAST by **Rule 3**.

8. **Interpretation**

(1) In this Constitution unless the contrary intention appears:

Act means the *Associations Incorporation Reform Act 2012 (VIC)*.

ASCTA (V) means the Australian Swimming Coaches and Teachers Association (Victorian Branch)

By-Laws means any by-laws made by the Management Committee under **Rule 34**.

Club means an organisation affiliated to METRO EAST.

Competitions means and includes:

- (i) any championship (national or otherwise) organised or conducted by METRO EAST for or on behalf of SV;
- (ii) any championship, competition, series or meeting sponsored by or conducted by or on behalf of METRO EAST; or
- (iii) any international competition, series, meeting or championship at which METRO EAST is represented.

Competitor means and includes a swimmer, diver, water polo player or synchronised swimmer.

Constitution means the Constitution of METRO EAST.

Delegate means the persons elected or appointed from time to time by a Club to act for and on behalf of that Club and represent the Club at General Meetings and includes Alternate Delegates (where appointed).

FINA means Federation Internationale de Natation.

Financial Year means the year ending 30th June each year

General Meeting means the annual general meeting, or any special general meeting of METRO EAST.

Hearings Tribunal means a committee established under the **By-Laws** of SV to investigate and determine breaches of **Rule 16** and to make recommendations to the **Board of SV**.

Individual Member means a registered financial member of a Club.

Intellectual Property means all rights or goodwill subsisting in copyright, business names, names, trademarks (or signs), logos, designs, patents or service marks (whether registered or registrable) relating to METRO EAST or any Event, competition, championship, meeting or swimming activity of or conducted, promoted or administered by METRO EAST.

Life Member means an individual upon whom Life Membership of METRO EAST has been conferred under **Rule 10(3)**.

Management Committee means the Management Committee of METRO EAST constituted under this Constitution.

Members mean those Clubs and or Individuals affiliated for the time being with METRO EAST as set out in **Rule 10.1**

Metro East means Dandenong Ranges District Swimming Association Inc

Objects means the Objects of METRO EAST in **Rule 2**.

Officer means a member of the Management Committee and includes any person acting in that capacity from time to time.

Official means any person elected or appointed to any position within METRO EAST.

President means the president for the time being of METRO EAST.

Special Resolution means a resolution passed:

- (a) at a General Meeting of METRO EAST of which 21 days' notice, accompanied by notice of intention to propose a resolution as a special resolution, has been given to the Members in accordance with this Constitution; and
- (b) by at least three quarters of those Members who, being entitled to vote, vote in person at the meeting or by another form of visible or electronic communication approved by METRO EAST from time to time.

Swimmer means an Individual Member.

SAL means Swimming Australia Limited.

SV means Swimming Victoria Incorporated

- (2) Expressions referring to "writing" shall unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail.

- (3) In this Constitution
- (a) a reference to a function includes a reference to a power, authority and duty;
 - (b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty;
 - (c) words importing the singular include the plural and vice versa;
 - (d) words importing any gender include the other gender;
 - (e) references to persons include corporations and bodies politic;
 - (f) references to a person include the legal personal representatives, successors and permitted assigns of that person; and
 - (g) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any legislative authority having jurisdiction).
- (4) If any provision of this Constitution or any phrase contained in it is invalid or unenforceable in any jurisdiction, the phrase or provision is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable. If it cannot be read down it shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of the Constitution or affecting the validity or enforceability of that provision in any other jurisdiction.
- (5) METRO EAST is established solely for the Objects.
- (6) The model rules referred to in the Act are displaced by this Constitution.

9. **Acknowledgement of Swimming Victoria Incorporated**

- (1) METRO EAST acknowledges and agrees:
- (a) that it is bound by the Constitution of SV and that this Constitution operates to create uniformity in the way in which the Objects and the sport of swimming are to be conducted, encouraged, promoted and administered in Victoria;
 - (b) to act in good faith and loyalty to each other to ensure the maintenance and enhancement of swimming, its standards, quality and reputation for the collective and mutual benefit of the Members;
 - (c) not to do or permit to be done any act or thing which might adversely affect or derogate from the standards, quality and reputation of swimming and its maintenance and enhancement;
 - (d) to make full and proper disclosure to each other of all matters of importance to SV and swimming;
 - (e) to ensure that no Member acquires a material or financial advantage at the expense of SV or swimming;
 - (f) to operate with mutual trust and confidence in pursuit of the Objects;

- (g) to promote the economic and sporting success, strength and stability of each other and to act interdependently with each other in pursuit of the Objects; and
- (h) to act for and on behalf of the interests of swimming, METRO EAST and the Members.

10. **Members**

(1) **Members**

The Members of METRO EAST shall consist of:

- (a) the Clubs currently Affiliated with METRO EAST which subject to this Constitution, shall be represented by their Delegates who have the right to be present, debate and vote at General Meetings for and on behalf of the Clubs;
- (b) Individual Members who may attend General Meetings but otherwise have no right to debate or vote at General Meetings (unless also a Delegate or an Officer);
- (c) Life Members, who may attend, debate and vote at General Meetings, and
- (d) such new categories of Members, as may be created in accordance with **Rule 10(2)** of this Constitution.

(2) **Creation of New Categories of Membership**

The Management Committee has the right and power from time to time to create new categories of membership with such rights (other than voting rights), privileges and obligations as are determined applicable, even if the effect of creating a new category is to alter rights, privileges or obligations of an existing category of Members. No new category of membership may be granted voting rights without a Special Resolution.

(3) **Life Members**

- (a) METRO EAST may confer Life Membership on a person who has provided long and meritorious service to METRO EAST in recognition of their efforts in furthering the interests of METRO EAST.
- (b) Life Membership may only be conferred by Special Resolution at an Annual General Meeting.
- (c) Nominations for Life Membership must be submitted through the Clubs or Individual Members to METRO EAST and must be received by the Secretary on or prior to the March General Meeting each year.
- (d) Upon Life Membership being conferred on a person, that person's details shall be entered upon the register. A person shall become a Life Member from the time the Special Resolution conferring the Life Membership is passed not from the time of entry of their details on the register.

11. **Subscriptions and Fees**

- (1) Fees including annual membership fees, capitation fees and levies payable by Members (or any category of Member) to METRO EAST, the basis of, the time for and the manner of payment, shall be determined by the Management Committee. No fee shall be charged for admission to membership of the Association.

- (2) Monies payable to METRO EAST by the Members under **Rule 11(1)** shall be forwarded to METRO EAST for METRO EAST'S use by such dates as are prescribed by the Management Committee.
- (3) Any Member which has not paid all monies due and payable by that Member to METRO EAST shall (subject to the Management Committee's discretion) have all rights under this Constitution immediately suspended from the expiry of the time prescribed for payment of those monies. Such rights will be suspended until the monies are fully paid or otherwise in the Management Committee's discretion. The Member shall be dealt with in the Management Committee's discretion, which includes the right to suspend, disqualify, discipline or retain (but not impose a financial penalty) that Member as a Member, or impose such other conditions or requirements as the Management Committee considers appropriate.
- (4) Where the Management Committee exercises its discretion under **Rule 11(3)** and imposes a penalty on a Member which or who has not paid all monies due and payable by that Member to METRO EAST, the rules of natural justice are hereby expressly excluded and do not apply to the imposition of that penalty.
- (5) The funds of METRO EAST shall be derived from the annual membership fees, capitation fees, levies, donations, sponsorships and such other sources as the Management Committee determines.

12. **Register of Members**

(1) **Secretary to Keep Register**

The Secretary shall keep and maintain a register of Members in which shall be entered such information as is determined by the Management Committee from time to time.

(2) **Inspection of Register**

Having regard to privacy and confidentiality considerations, an extract of the register of Members, excluding the address of any Life Member, Officer or Delegate, shall be available for inspection (but not copying) by Clubs upon reasonable request.

13. **Effect of Membership**

Members acknowledge and agree that:

- (a) this Constitution constitutes a contract between each of them and METRO EAST and that they are bound by this Constitution and the By-Laws;
- (b) they shall comply with and observe this Constitution and the By-Laws and any determination, resolution or policy which may be made or passed by the Management Committee or any duly authorised committee;
- (c) by submitting to this Constitution and the By-Laws they are subject to the jurisdiction of METRO EAST;
- (d) this Constitution is made in pursuit of a common object, namely the mutual and collective benefit of METRO EAST, the Members and swimming;
- (e) this Constitution and the By-Laws are necessary and reasonable for promoting the Objects and particularly the advancement and protection of swimming; and
- (f) they are entitled to all benefits, advantages, privileges and services of METRO EAST membership.

14. **Discontinuance of Membership**

(1) **Member's Failure to Comply**

Notwithstanding **Rule 16**, where a Club fails to comply with its financial, reporting or other obligations under this Constitution, the Management Committee may determine that Club to be not of good standing. On determination that a Club is not of good standing, the Management Committee may give notice to the Club of:

- (a) The Management Committee's determination; and
- (b) The grounds for the Management Committee's determination;

And request that the Club show cause within 21 days from the date of that notice as to why some action should not be taken against the Club. The Club's failure to respond or act to the Management Committee's satisfaction (including assurances or compliance with its obligations) may result in the Management Committee suspending or terminating the Club's membership of METRO EAST, or otherwise imposing such conditions on its membership, as the Management Committee sees fit. A penalty of termination imposed on a Club by the Management Committee requires ratification by the SV Board, and the Management Committee may suspend a Club pending such ratification. A penalty (other than termination) will take effect upon notification by the Management Committee. Nothing in this Rule affects the operation of **Rules 11(3) and (4)**.

(2) **Forfeiture of Rights**

A Member who or which ceases to be a Member, for whatever reason, shall forfeit all right in and claim upon METRO EAST and its property including Intellectual Property. Any METRO EAST documents, records or other property in the possession, custody or control of that Member shall be returned to METRO EAST immediately.

(3) **Representation Rights**

Where a Club ceases to be a Member it shall also forfeit all representation rights at General Meetings.

(4) **Annual General Meeting**

Notwithstanding **Rule 11(3)** a Member retains representation rights up to and including the Annual General Meeting following conclusion of the financial year.

(5) **Membership May be Reinstated**

Membership which has lapsed, been withdrawn or terminated under this Constitution may be reinstated by the Management Committee in its discretion, on application in accordance with this Constitution and otherwise on such conditions as the Management Committee sees fit.

15. **Grievances**

- (1) Where a Member has a grievance arising from their involvement in the activities of the Association, (whatever that may be), with another Member, or employee of the Association, and that Member considers that the grievance warrants investigation and action by the Association that Member shall follow the procedures specified in the By-Laws.
- (2) If the grievance is a matter which is dealt with in the Member Welfare or Child Welfare Policies of Swimming Australia Limited, it shall be dealt with in accordance with the Member Welfare or Child Welfare Policies

16. Discipline of Members

The Management Committee may refer the following matters for investigation or determination by a Hearings Tribunal in its sole discretion:

- (a) an allegation or grievance (not being vexatious, trifling or frivolous) by a complainant (who may be, but need not be, a Member) that a Member has:
 - (i) breached, failed, refused or neglected to comply with a provision of this Constitution, the By-Laws or any other resolution or determination of the Management Committee or duly authorised committee; or
 - (ii) acted in a manner unbecoming of a Member or prejudicial to the Objects and interests of METRO EAST and/or swimming; or
 - (iii) brought METRO EAST or swimming into disrepute; or
 - (iv) breached the Member Welfare or Child Welfare Policies of SAL or any other policy or rule of SAL; and SV; or
 - (v) committed an act of misconduct.

and any such Member will be subject to, and submits unreservedly to the jurisdiction, procedures, penalties and appeal mechanisms of SV set out in the SV By-Laws.

17. Delegates

(1) Appointment of Delegates

Each Club shall be entitled to appoint 1 Delegate. Each Club shall appoint its Delegate for such term as it deems appropriate. A Delegate must:

- (a) not also be an Officer;
- (b) be an Individual Member of the Club which appoints him; and
- (c) be appropriately empowered by the Club to make decisions and vote at General Meetings.

(2) Delegates as Representative

Delegates shall represent their Clubs at General Meetings and shall have full power to consider and vote on resolutions at General Meetings.

(3) Members to advise

Each Club shall advise the Secretary of its appointed Delegate prior to any General Meeting.

(4) Alternate Delegates

A Club may appoint an Alternate Delegate. An Alternate Delegate must comply with the requirements for Delegates set out in **Rule 17(1)** and has such rights and powers as does a Delegate. Where a Member appoints an Alternate Delegate it shall advise the Secretary as soon as practicable after the appointment.

18. General Meetings

(1) Powers of the General Meetings

METRO EAST in General Meetings shall act in accordance with the Objects and for the mutual and collective benefit of the Members, swimming and the general community throughout Australia. METRO EAST in General Meetings will act in the best interests of METRO EAST and in addition to its other powers and functions under the Act shall have power to:

- (a) requisition a General Meeting;
- (b) convene a General Meeting;
- (c) elect / dismiss Officers;
- (d) alter the Constitution in accordance with Clause (4);
- (f) accept or reject the Annual Report;
- (g) power to move consider and vote on Special Resolutions; and
- (i) be the final arbiter on matters referred to it by the Management Committee.

(2) Annual General Meeting to be held

- (a) An Annual General Meeting of METRO EAST shall be held in accordance with the Act and this Constitution on a date and at a venue to be determined by the Management Committee. Such meeting shall not be held later than 30th September in each year.
- (b) All General Meetings other than the Annual General Meeting shall be Special General Meetings and shall be held in accordance with this Constitution.

19. Notice of General Meetings**(1) Notice of General Meetings**

- (a) The District shall in each calendar year convene an Annual General meeting of its Member Clubs.
- (b) The Annual General Meeting shall be held on or before 30th September in each calendar year.
- (c) The Secretary of the District shall, at least 21 days before the date fixed for holding an Annual or Special General Meeting of the District cause to be sent to each Member Club and Life Members of the District at the address appearing in the Register of Members, a notice by pre-paid post stating the place, date and time of the meeting and the nature of business to be transacted at the meeting.
- (d) The ordinary business of the Annual General Meeting shall be:-
 - (i) to confirm the minutes of the last preceding Annual General Meeting and of any Special General Meeting held since that meeting;
 - (ii) to receive from the committee reports upon the transactions of the District during the last preceding financial year;
 - (iii) to elect officers of the District;
 - (iv) to approve the annual fees for the ensuring financial year and
 - (v) appoint / confirm an independent auditor

(2) **Entitlement to Attend General Meeting's**

Notwithstanding any other clause of this Constitution, no Club shall be represented at, or take part in a General Meeting, unless all monies then due and payable by that Club to METRO EAST are paid.

20. **Business of General Meetings**(1) **Business to be transacted**

(a) The business to be transacted by the Annual General Meeting includes the consideration of the accounts and the reports of the Management Committee, and the auditors, the election of Officers (as relevant), the appointment of auditors and (if required) the appointment of patrons.

(b) All business that is transacted at a General Meeting, with the exception of those matters set out in **Rule 20(1)(a)** shall be Special Business. "Special Business" is business of which a notice of motion has been submitted in accordance with **Rule 21** and includes amendments to the Constitution.

(2) **No other Business**

No Special Business other than that stated on the notice for a meeting shall be transacted at the General Meeting.

21. **Notices of Motion**(1) **Notices of Motion from Members to be submitted**

All notices of motion from Members for inclusion as Special Business at a General Meeting must be submitted in writing to the Secretary not less than 7 days (excluding receiving date and meeting date) prior to the General Meeting.

(2) **Notices of Motion from the Management Committee to be submitted**

All notices of motion from the Management Committee for inclusion as Special Business at a General Meeting must be submitted in writing to the Secretary not less than 7 days (excluding receiving date and meeting date) prior to the General Meeting.

22. **Special General Meetings**(1) **Special General Meetings may be held**

The Management Committee may, whenever it thinks fit, convene a Special General Meeting of METRO EAST and, where but for this Rule more than 15 months would elapse between Annual General Meetings, shall convene a Special General Meeting before the expiration of that period.

(2) **Requisition of Special General Meetings**

(a) The Management Committee shall on the requisition in writing of not less than 5 voting Members, representing at least 3 Clubs, convene a Special General Meeting.

(b) The requisition for a Special General Meeting shall state the object(s) of the meeting, shall be signed by the Delegate of the Member making the requisition and be sent to the Secretary of METRO EAST. The requisition may consist of several documents in a like form, each signed by 1 or more of the Members making the requisition.

- (c) If the Management Committee does not cause a Special General Meeting to be held within 1 month after the date on which the requisition is received by the Secretary of METRO EAST, the Members making the requisition, or any of them, may convene a Special General Meeting to be held not later than 3 months after that date.
- (d) A Special General Meeting convened by Members under this Constitution shall be convened in the same manner, or as nearly as possible as that, in which meetings are convened by the Management Committee.

23. **Proceedings at General Meetings**

(1) **Quorum**

No business shall be transacted at any General Meeting unless a quorum is present at the time when the meeting proceeds to business. A quorum for General Meetings shall be persons personally present, who between them are entitled to cast 8 or more votes. These may be Members represented by their notified Delegates (or Alternate Delegates), Officers or Life Members.

(2) **President to preside**

The President shall, subject to this Constitution, preside at every General Meeting of METRO EAST. If the President is not present, or is unwilling or unable to preside, the Vice President shall preside. If the Vice President is not present, or is unwilling or unable to preside, the Members who are present and entitled to vote shall elect one of the remaining Officers who shall, subject to this Constitution, preside as chairman for that meeting only. If there is no Officer present, willing or able to preside as chairman the Members who are present and entitled to vote shall elect one of the persons who is present and entitled to vote to preside as chairman for that meeting only.

(3) **Adjournment of Meeting**

- (a) If within half an hour from the time appointed for the General Meeting a quorum is not present the meeting shall be adjourned to such other day and at such other time and place as the chairman may determine. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the meeting will lapse.
- (b) The chairman may, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a General Meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (d) Except as provided in **Rule 23(3) (c)** it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

(4) **Poll**

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

- (a) by the chairman; or
- (b) by more than one half of the Delegates present.

(5) **Recording of Determinations**

Unless a poll is demanded under **Rule 23(4)**, a declaration by the chairman that a resolution has on a show of hands been carried, or carried unanimously, or by a particular majority or lost, and an entry to that effect in the book containing the minutes of the proceedings of Metro East shall be conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution.

(6) **Where Poll demanded**

If a poll is duly demanded under **Rule 23(4)** it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

(7) **Resolutions not in Meetings**

(a) Except:

- (i) in the case of an Annual General Meeting; or,
- (ii) where a Special Resolution is required under this Constitution or under the Act;

a resolution in writing signed or assented to by facsimile or other form of visible or other electronic communication by all the Members entitled to vote shall be as valid and effectual as if it had been passed at a meeting of Members entitled to vote duly convened and held. Any such resolution may consist of several documents in like form each signed by 1 or more of the Members entitled to vote.

(b) Without limiting the power to hold Special General Meetings in accordance with this Constitution, a Special General Meeting may be held where 1 or more of the Members entitled to vote is not physically present at the meeting, provided that:

- (i) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously whether by means of telephone or other form of communication;
- (ii) notice of the meeting is given to all persons entitled to notice in accordance with this Constitution;
- (iii) in the event that a failure in communications prevents **Rule 23(7) (b) (i)** from being satisfied by a quorum then the meeting shall be suspended until **Rule 23(7) (b) (i)** is satisfied again. If such is not satisfied within 15 minutes from the interruption the meeting shall be deemed to have terminated; and
- (iv) no meeting shall be invalidated merely because no Member entitled to vote is physically present at the place for the meeting specified in the notice of meeting.

24. **Entitlements at General Meetings**

- (1) Delegates shall represent their respective Club. Each Delegate shall have one vote. The Chairman shall not have a casting vote but is otherwise entitled to exercise his or her other voting entitlements. Where voting is equal the vote shall be lost. No other person shall be entitled to vote but shall, subject to this Constitution, have and be entitled to exercise those rights set out in **Rule 10(1)**.

- (2) Each Officer is entitled to notice of, and to attend, debate and vote at all General Meetings.

25. **Proxy Voting**

Proxy voting shall not be permitted.

26. **Powers of the Management Committee**

- (1) Subject to the Act and this Constitution, the business of METRO EAST shall be governed, and the powers of METRO EAST shall be exercised, by the Management Committee. The Management Committee shall act in accordance with the objects of METRO EAST and shall operate for the collective and mutual benefit of METRO EAST, the Members and swimming; and
- (2) The Management Committee shall have the power to suspend or stand down an Officer, if it has reasonable grounds to believe that the Officer has been involved in any action which may be misconduct or a breach of the Constitution, while it investigates such matter.

27. **Composition of the Management Committee**

(1) **Composition**

The Management Committee will, subject to this Constitution, comprise no more than 6 Officers elected under **clause 28**.

(2) **Qualifications of Officers**

Subject always to the law, the Management Committee will determine necessary requirements and qualifications for eligibility as Officers from time to time. The Management Committee shall advise the Members of any requirements, qualifications and modifications when determined.

(3) **Portfolios**

The Management Committee may comprise the following portfolios.

President
Vice President (2)
Secretary
Treasurer
Competitions Officer

28. **Election of Elected Officers**

(1) **Election of Elected Officers**

- (a) all Officers shall be subject to election each year, nominations must be submitted to the Secretary.
- (b) there shall not be more than two Officers elected who are affiliated with the one Club. In the event that there are more than two officers from the one Club elected, the President will at his or her sole and unfettered discretion declare the election of which such officer(s) void and of no effect so that there are no more than two such elected officers from the one club. The President will then recall for nominations of persons for that position(s) vacated by the exercise of the discretion from other clubs.

(2) **Form of Nomination**

- (a) shall be made in writing on the form set out in **Schedule A**;

- (b) be signed by a nominator and a seconder, who shall be Individual Members;
 - (c) be certified by the nominee expressing his willingness to accept the position for which he is nominated; and
 - (d) shall be delivered to the Secretary of the District no less than 7 days before the date fixed for the holding of the Annual General Meeting.
- (3) If insufficient nominations are received to fill all vacancies on the Management Committee, the Candidates nominated shall be deemed to be elected and further nominations shall be received at the Annual General Meeting.
 - (4) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated shall be deemed to be elected.
 - (5) If the number of nominations exceeds the number of vacancies to be filled, a ballot shall be held.
 - (6) A nomination of a candidate for election under this clause is not invalid if that candidate has been nominated for another office for election at the same election.

29. **Chairman**

The President shall chair any Management Committee meeting at which he is present. If the President is not present, or is unwilling or unable to preside the Vice President shall preside. If the Vice President is not present, or is unwilling or unable to preside the remaining Officers shall appoint one of their number to preside as chairman for that meeting only.

30. **Vacancies of Officers**

(1) **Grounds for Termination of Officer**

In addition to the circumstances (if any) in which the office of an Officer becomes vacant by virtue of the *Corporations Act*, the office of an Officer becomes vacant if the Officer:

- (a) dies;
- (b) becomes bankrupt or makes any arrangement or composition with his/her creditors generally;
- (c) 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;
- (d) resigns his office by providing notice in writing to METRO EAST;
- (e) is absent without the consent of the Management Committee from all Management Committee meetings held during a period of 3 months;
- (f) in the case of an Elected Officer, without the prior consent or later ratification of a General Meeting, holds any office of profit under METRO EAST;
- (g) is directly or indirectly interested in any contract or proposed contract with METRO EAST and fails to declare the nature of his interest;
- (h) is removed from office by Special Resolution; or

- (i) would otherwise be prohibited from being an Officer of a corporation under the Corporations Act;
- (j) resigns from membership of a swimming club in METRO EAST

(2) **Casual Vacancies**

The Management Committee may fill any casual vacancy occurring in the office of Officer from appropriately qualified persons and shall endeavour to do so within 3 months of the vacancy arising.

(3) **Remaining Officers May Act**

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

31. **Meetings of the Management Committee**

(1) **Management Committee to Meet**

The Management Committee shall meet as often as is deemed necessary in every Financial Year for the dispatch of business and may adjourn and, subject to this Constitution, otherwise regulate, its meetings as it thinks fit. Any Officer may at any time convene a meeting of the Management Committee within a reasonable time.

(2) **Decisions of Management Committee**

Subject to this Constitution, questions arising at any meeting of the Management Committee shall be decided by a majority of votes and a determination of a majority of Officers present and entitled to vote shall for all purposes be deemed a determination of the Management Committee. All Officers shall have 1 vote on any question. The Chairman shall also have a casting vote where voting is equal.

(3) **Quorum**

At meetings of the Management Committee the number of Officers whose presence is required to constitute a quorum is 3 Officers.

(4) **Notice of Management Committee meetings**

Unless all Officers agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their presence), not less than 5 days' written notice of the meeting of the Management Committee shall be given to each Officer.

(5) **Validity of Management Committee decisions**

A procedural defect in decisions taken by the Management Committee shall not result in such decision being invalidated.

32. Conflicts

Conflict of Interest

An Officer shall declare to the Management Committee his interest in any matter in which a conflict of interest arises or may arise and shall, unless otherwise determined by the Management Committee, absent himself from discussion of such matter and shall not be entitled to vote in respect of such matter. In the event of any uncertainty as to whether it is necessary for an Officer to absent himself from discussions and refrain from voting, the issue should be immediately determined by vote of the Management Committee, or if this is not possible, the matter shall be adjourned or deferred. The Secretary shall maintain a register of declared interests.

33. Delegations

(1) **Management Committee may Delegate Functions**

The Management Committee may by resolution create or establish or appoint from among the Officers or otherwise, committees, individual officers or consultants to carry out such duties and functions and with such powers, as the Management Committee determines.

(2) **Delegation by Instrument**

The Management Committee may delegate such functions as are specified in the resolution, other than:

- (a) this power of delegation; and
- (b) a function imposed on the Management Committee or the Secretary by the Act or any other law or this Constitution and which is stated to not be capable of delegation.

(3) **Delegated function exercised in accordance with terms**

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

(4) **Procedure of delegated entity**

The procedures for any delegated entity shall, with any necessary or incidental amendment, be the same as that applicable to meetings of the Management Committee under **Rule 31**. The quorum shall be determined by the committee, but shall be no less than one half of the total number of committee members.

(5) **Delegation may be conditional**

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

(6) **Revocation of delegation**

The Management Committee may by resolution, revoke wholly or in part any delegation made by it, and may amend, repeal or veto any decision made by such body or person under the delegated power.

34. **By-Laws**

(1) **Management Committee to formulate By-Laws**

The Management Committee may (by itself or by delegation to a committee) formulate, approve, issue, adopt, interpret and amend such By-Laws for the proper advancement, management and administration of METRO EAST and the advancement of the Objects as it thinks necessary or desirable. Such By-Laws must be consistent with this Constitution.

(2) **By-Laws binding**

All By-Laws made under this Rule shall be binding on METRO EAST and Members.

(3) **By-Laws deemed applicable**

All rules, regulations and by-laws of METRO EAST in force at the date of the approval of this Constitution under the Act insofar as such rules, regulations or by-laws are not inconsistent with, or have been replaced by this Constitution, shall be deemed to be By-Laws under this Rule.

(4) **Notices binding on members**

Amendments, alterations, interpretations or other changes to By-Laws shall be published by means of notices approved by the Management Committee. Notices are binding upon all Members.

35. **Records and Accounts**

(1) **Secretary to Keep Records**

The Secretary shall establish and maintain proper records and minutes concerning all transactions, business, meetings and dealings of SV and the Management Committee and shall produce these as appropriate at each Management Committee meeting or General Meeting.

(2) **Records Kept in Accordance with the Act**

Proper accounting and other records shall be kept in accordance with the Act, generally accepted accounting principles and/or any applicable code of conduct. The books of account shall be kept in the care and control of the Finance Officer

(3) **METRO EAST to retain records**

METRO EAST shall retain such records for not less than 7 years after the completion of the transactions or operations to which they relate.

(4) **Management Committee to submit accounts**

The Management Committee shall submit to the Annual General Meeting the audited accounts of METRO EAST in accordance with this Constitution and the Act.

(5) **Inspection of accounts**

Subject to any reasonable restrictions as to time and manner of inspecting the same that may be imposed in accordance with this Constitution, the accounts shall be open to inspection by the Delegates.

(6) Negotiable Instruments

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments and all receipts for money paid to METRO EAST, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any 2 authorised Officers or in such other manner and by such persons the Officers determine.

36. Auditor

- (1) A properly qualified auditor or auditors shall be appointed by the Management Committee and the remuneration of such auditor or auditors shall be fixed by the Management Committee. The auditor's duties shall be regulated in accordance with the Act, and in accordance with generally accepted principles, or any applicable code of conduct.
- (2) The accounts of METRO EAST including the profit and loss accounts and balance sheet shall be examined by the auditor or auditors at least once in every year

37. Notices**(1) Manner of Notice**

- (a) Notices may be given to any Member by sending the notice by pre-paid post or facsimile transmission or where available, by electronic mail, to the Member's registered address or facsimile number or electronic mail address.
- (b) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting the notice. Service of the notice is deemed to have been effected 2 business days after posting.
- (c) Where a notice is sent by facsimile transmission, service of the notice shall be deemed to be effected upon receipt of a confirmation report confirming the facsimile was sent to/or received at the facsimile number to which it was sent.
- (d) Where a notice is sent by electronic mail, service of the notice shall be deemed to be effected upon receipt of a confirmation report confirming the electronic mail message was received at the electronic mail address to which it was sent.

(2) Notice of General Meeting

Notice of every General Meeting shall be given in the manner authorised and to the persons entitled to receive notice under this Constitution.

38. Patrons and Vice Patrons

METRO EAST at its Annual General Meeting may appoint on the recommendation of the Management Committee a Chief Patron and such number of Patrons and Vice-patrons as it considers necessary.

39. Indemnity**(1) Officers to be Indemnified**

Every Officer, auditor, manager, employee or agent of METRO EAST shall be indemnified out of the property or assets of METRO EAST against any liability incurred by him in his capacity as Officer, auditor, manager, employee or agent in defending any proceedings, whether civil or criminal, in which judgement is given in his favour.

(2) **METRO EAST to Indemnify Officers**

METRO EAST shall indemnify its Officers and employees against all damages and costs (including legal costs) for which any such Officer or employee may be or become liable to any third party in consequence of any act or omission except wilful misconduct:

- (a) in the case of an Officer, performed or made whilst acting on behalf of and with the authority, express or implied of METRO EAST; and
- (b) in the case of an employee, performed or made in the course of, and within the scope of his employment by METRO EAST.

40. **Dissolution**

- (1) Subject to **Rule 40(2)**, METRO EAST may be wound up in accordance with the provisions of the Act.
- (2) The provisions of **Rules 6 and 7** of this Constitution relating to the winding up and dissolution of METRO EAST shall take effect and be observed as if the same were repeated in this Rule.

41. **Authority to Trade**

METRO EAST is authorised to trade in accordance with the Act.

42. **Colours**

The colours of METRO EAST shall be Royal Blue and Gold

43. **Badges and Logo**

The badge of METRO EAST shall be as prescribed by the By-Laws from time to time.

The logo of METRO EAST shall be as prescribed by the By-Laws from time to time.

44. **Laws and Rules Governing METRO EAST**

- (1) Where no provision is made in the Constitution or any rules or By-Laws made under the Constitution, METRO EAST may apply to SV for a ruling and such ruling shall be enforceable by METRO EAST as if it was a term of this Constitution.
- (2) The technical laws of FINA as set out in the handbook of SAL with regard to swimming shall (where practicable) be binding on all competitions held in Victoria. Any alterations or amendments to the FINA technical laws shall be immediately notified to all Members by SV and shall become operative 2 months after the date of approval by FINA.

45. **Jurisdiction over Swimmers**

- (1) A sentence of suspension, disqualification or expulsion or other penalty by SV shall be binding on all Members
- (2) A Swimmer who has broken the Eligibility Law (as defined by FINA), knowingly, may not be requalified, provided that:
 - (a) A Swimmer who has been suspended, disqualified or expelled shall not compete until the term of suspension has been served, the disqualification lifted or the expulsion reversed.

N.B. In connection with this Rule, the words “conducted under the Rules of SAL” shall appear in every entry form and program and each Member is responsible to see this direction is implemented.

46. **Custody and Use of the Common Seal**

- (a) Metro East has elected not to use a common seal.
- (b) Any document that would have required the use of the common seal shall be authorised by the management committee, and shall be countersigned by two officers.

Schedule A

Rule 28.2 (A)

Nomination form

I hereby nominate for the position of

- President
- Vice President
- Secretary
- Treasurer
- Competitions Officer

Of Metro East

Proposed by Club

Signed by.....

Seconded byClub

Signed by.....

I accept the above nomination.

Signed by Club

Dated/ /