

AUSTSWIM LIMITED

ABN 72 515 751 227



CONSTITUTION

Date approved: 28th of April, 2023

AUSTSWIM

**ACN 097 784 122
ABN 72 515 751 227**

TABLE OF CONTENTS

AUSTSWIM LIMITED	1
ABN 72 515 751 227.....	1
1. NAME OF COMPANY.....	1
2. OBJECTS OF AUSTSWIM.....	1
3. INTERPRETATION.....	1
4. POWERS OF AUSTSWIM	3
5. APPLICATION OF INCOME	3
6. ADDITION ALTERATION OR AMENDMENT.....	4
7. LIABILITY OF MEMBERS	4
8. MEMBERS' CONTRIBUTIONS.....	4
9. DISTRIBUTION OF PROPERTY ON WINDING UP.....	4
10. ACCOUNTS.....	5
11. MEMBERSHIP	5
11.1 MEMBERS	5
11.2 FEES.....	6
11.3 MEMBERSHIP APPLICATION AND RENEWAL	6
11.4 EFFECT OF MEMBERSHIP.....	7
11.5 DISCONTINUANCE OF MEMBERSHIP.....	7
11.6 DISCIPLINE OF MEMBERS.....	8
12. BOARD.....	8
12.1 BOARD COMPOSITION.....	8
12.2 CHAIRPERSON	9
12.3 SECRETARY.....	9
12.4 ELECTED DIRECTORS.....	9
12.5 APPOINTED DIRECTORS.....	10
12.6 POWERS OF THE BOARD.....	11
12.7 VACANCIES OF DIRECTORS	11
13. MANAGEMENT	11
13.2 CHIEF EXECUTIVE OFFICER	12
14. MEETINGS OF THE BOARD.....	12
15. DIRECTORS' INTERESTS	13
16. GENERAL MEETINGS	13
16.2 NOTICE OF GENERAL MEETINGS.....	14
16.3 BUSINESS AT GENERAL MEETINGS.....	15
16.4 NOTICE OF MOTIONS	15
16.5 VOTING AT GENERAL MEETINGS.....	15
16.6 RESOLUTIONS NOT IN GENERAL MEETING	15
16.7 PROXY VOTING	16
16.8 SPECIAL GENERAL MEETINGS.....	16
16.9 ANNUAL GENERAL MEETINGS.....	16

17.	DELEGATIONS.....	16
18.	REGULATIONS	17
19.	RECORDS AND ACCOUNTS.....	17
20.	AUDITOR.....	17
21.	NOTICE	17
22.	INDEMNITY	18
23.	DISSOLUTION.....	18

Constitution

Date approved: 28th of April, 2023

AUSTSWIM LIMITED

ACN 097 784 122

ABN 72 515 751 227

1. NAME OF COMPANY

The name of the company is Austswim Limited (**AUSTSWIM**).

2. OBJECTS OF AUSTSWIM

AUSTSWIM is a charitable service-based institution. The charitable purposes for which AUSTSWIM is established are to:

- (a) develop, implement, maintain, review, and improve the industry standard of swimming and water safety teaching by establishing a national education, accreditation and licensing scheme for the regulation of:
 - (i) teachers of swimming and water safety; and
 - (ii) organisations and individuals that provide swimming and water safety education and training programs in Australia and elsewhere by agreement;
- (b) raise awareness of the importance of swimming and water safety competency and education and the provision of quality programs by suitably licensed teachers of swimming and water safety;
- (c) develop, promote, and provide water safety education and professional development programs; including those relevant to diverse population groups within Australian communities;
- (d) provide advocacy and advice to the industry and the broader community on matters relating to aquatic education and water safety;
- (e) support and encourage the humanitarian service, aims, and ideals of drowning prevention, water safety and education;
- (f) encourage and support equity of access to quality aquatic education and training for all Australian communities and demographics;
- (g) have regard for the public interest in its operations; and
- (h) undertake other actions or activities necessary, incidental, or conducive to advance these charitable purposes.

3. INTERPRETATION

- (a) In this Constitution unless the contrary intention appears:

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

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

Affiliate Member means such other persons who are admitted to membership by the Board under **clause 11.1(a)(ii)**.

Appointed Director means a Director appointed under **clause 12.5**.

Board means the body consisting of the Directors.

Board Meeting means a meeting of the Board as outlined in **clause 14**.

Chairperson means the person elected under **clause 12.2**.

Chief Executive Officer or **CEO** means the Chief Executive Officer of AUSTSWIM for the time being appointed under this Constitution.

Constitution means this constitution of AUSTSWIM as amended from time to time.

Delegate means the authorised representative appointed by each Entity Member under **clause 11.1(a)(i)** to represent that Member at General Meetings.

Elected Director means a Director appointed under **clause 12.4**.

Entity Member means those Members listed in **clause 11.1(a)(i)**.

General Meeting means any general meeting including the annual or a special general meeting of AUSTSWIM.

Intellectual Property means all rights subsisting in copyright, trade names, trademarks, logos, designs, equipment, images (including photographs, videos, or films) or service marks (whether registered or registrable) relating to AUSTSWIM, or any event, product, publication, or activity developed, conducted, promoted, or administered by AUSTSWIM.

Member means a member for the time being of AUSTSWIM under **clause 11**.

Nominations Committee means the committee established by the Board under **clause 12.1(c)**.

Objects means the objects of AUSTSWIM set out in **clause 2**.

Regulations means any regulations made by the Board under **clause 18**.

Secretary means a company secretary of AUSTSWIM as defined in **clause 12.3**.

Special Resolution has the same meaning as in the Act.

Voting Members means the Entity Members.

- (b) 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.
- (c) In this Constitution:
- (i) a reference to a function includes a reference to a power, authority, and duty;
 - (ii) 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;
 - (iii) words importing the singular include the plural and vice versa;

- (iv) words importing any gender include any and all genders;
 - (v) references to persons include corporations and bodies politic;
 - (vi) references to a person include the legal personal representatives, successors and permitted assigns of that person; and
 - (vii) 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).
- (d) 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, and otherwise 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.
 - (e) Except where the contrary intention appears in this Constitution, an expression in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, has the same meaning as that provision of the Act.
 - (f) AUSTSWIM is established solely for the Objects.
 - (g) The replaceable rules referred to in the Act are expressly displaced by this Constitution.

4. **POWERS OF AUSTSWIM**

Solely for furthering the Objects, AUSTSWIM has the legal capacity and powers of a company limited by guarantee as set out under section 124 of the Act.

5. **APPLICATION OF INCOME**

- (a) The income and property of AUSTSWIM shall be applied solely towards the promotion of the Objects.
- (b) Except as prescribed in this Constitution no:
 - (i) portion of the income or property of AUSTSWIM shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise to any Member or Director; and
 - (ii) remuneration or other benefit in money or money's worth shall be paid or given by AUSTSWIM to any Member or any Director.
- (c) Nothing contained in **clauses 5(a) or 5(b)** shall prevent payment in good faith of or to any Member or Director for:
 - (i) any services actually rendered to or on behalf of AUSTSWIM whether as an employee or otherwise;
 - (ii) goods supplied to AUSTSWIM in the ordinary and usual course of business;
 - (iii) interest on money borrowed from them by AUSTSWIM;
 - (iv) rent for premises demised or let by them to AUSTSWIM; or
 - (v) any out-of-pocket expenses incurred by them on behalf of AUSTSWIM,
 provided that any such payment:

- (vi) shall not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction; and
- (vii) if to any Director is first approved by the Board.

6. ADDITION ALTERATION OR AMENDMENT

No addition, alteration or amendment shall be made to this Constitution unless the same has been approved by a Special Resolution.

7. LIABILITY OF MEMBERS

The liability of the Members of AUSTSWIM is limited.

8. MEMBERS' CONTRIBUTIONS

Every Entity Member undertakes to contribute to the assets of AUSTSWIM if it is wound up while a Member, or within one year after ceasing to be an Entity Member, for payment of the debts and liabilities of AUSTSWIM 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 (\$1.00).

9. DISTRIBUTION OF PROPERTY ON WINDING UP

- (a) This clause applies if AUSTSWIM is wound up under the Act and there are surplus assets.
- (b) The surplus assets of AUSTSWIM must not be distributed to any individuals but may be distributed among Entity Members provided such organisations at the time of distribution:
 - (i) are charitable;
 - (ii) have objects similar to the Objects; and
 - (iii) have rules which:
 - (A) require the application of the organisation's assets and income solely to promote the organisation's objects;
 - (B) prohibit the distribution of income and assets to the members of the organisation;
 - (C) prohibit paying fees to the organisation's directors; and
 - (D) require the organisation's directors to approve all other payments the organisation makes to its directors.
- (c) If, on the winding up or dissolution of AUSTSWIM, there are no Entity Members that satisfy the requirements of **clause 9(b)**, the surplus assets of AUSTSWIM must only be given or transferred to another body or bodies:
 - (i) having objects similar to those of AUSTSWIM; 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,

with such body or bodies 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.
- (d) In this clause, **surplus assets** means the assets of AUSTSWIM after payment of:
 - (i) the debts and liabilities remaining on its winding up; and

- (ii) the costs, charges, and expenses of the winding up.

10. ACCOUNTS

AUSTSWIM shall keep true accounts of the:

- (a) sums of money received and expended by AUSTSWIM and the manner in respect of which such receipt and expenditure takes place; and
- (b) property, assets, and liabilities of AUSTSWIM.

Once at least in every year the accounts of AUSTSWIM shall be audited by one or more properly qualified auditor or auditors who shall report to the Members in accordance with the Act and the ACNC Act.

11. MEMBERSHIP

11.1 MEMBERS

- (a) Subject always to this Constitution the Members of AUSTSWIM shall consist of:
 - (i) Entity Members. Entity Members have the right to receive notice of and attend, debate and vote through their Delegate, at General Meetings. Entity Membership is restricted to the following organisations:
 - (A) Royal Life Saving Society - Australia (ABN 71 008 594 616);
 - (B) Surf Life Saving Australia Limited (ABN 67 449 738 159);
 - (C) Swimming Australia Limited (ABN 14 109 333 628);
 - (D) The National Council of the Young Men's Christian Associations of Australia (ABN 45 004 076 297); and
 - (E) Water Safety New Zealand .
 - (ii) Affiliate Members, being entities recognised and admitted by the Board as Members by AUSTSWIM in this category, subject to **clause 11.3(a)**. Affiliate Members have no right to receive notice of, nor attend, debate and vote, at General Meetings;
 - (iii) Life Membership may be conferred upon any individual who has rendered outstanding service to AUSTSWIM provided that:
 - (A) no more than two Life Members may be elected in any one year;
 - (B) notice to elect a Life Member shall be given by not less than twenty-one (21) days prior to the Annual General Meeting;
 - (C) the Nominations Committee reviews Life Member candidates and confirms such candidates can be proposed to the Annual General Meeting;
 - (D) the election of an Life Member shall occur by an ordinary resolution at an Annual General Meeting. Life Members have the right to receive notice of, and attend and debate at, General Meetings but do not have the right to vote;
 - (E) all previous honorary Members shall be considered Life Members under this Constitution; and
 - (F) Life Membership may be revoked by resolution of the Board; and

- (iv) such new categories of Members as may be created under **clause 11.1(b)**.
- (b) The Board has power from time to time to create new categories of membership with such rights, privileges and obligations as are determined applicable even if the effect of creating a new category is to alter rights (other than voting rights), privileges or obligations of an existing category of membership. The rights, privileges, and obligations of any new category of membership will be set out in Regulations. For the avoidance of doubt and notwithstanding anything in this Constitution, under no circumstances shall any new category of membership be given the right to vote without Special Resolution to amend **clause 11.1(a)(i)**.
- (c) AUSTSWIM must establish and maintain a register of Members in accordance with the Act. Subject always to the Act, confidentiality, and privacy considerations AUSTSWIM may, but is not obliged to, give current Members access to the register of Members. Such access will only be given if the request for access is made in good faith and for a proper purpose.
- (d) Entity Members shall advise AUSTSWIM of their authorised and appointed Delegate at least 48 hours prior to the start of any General Meeting and otherwise in accordance with this Constitution.

11.2 FEES

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

11.3 MEMBERSHIP APPLICATION AND RENEWAL

- (a) Affiliate Membership shall be open to any national organisation whose purposes and/or objects are similar to the Objects.
- (b) All Members other than Entity Members and Life Members must apply for renewal of their membership with AUSTSWIM annually in accordance with the timing and procedures prescribed by the Board from time to time.
- (c) An application for membership or membership renewal, which excludes Entity and Life Members, must be:
 - (i) delivered to the Secretary in writing on the form prescribed by the Board from time to time (if any); and
 - (ii) accompanied by the appropriate fee, if any.
- (d) The Board may, acting reasonably and in good faith, accept or reject an Affiliate Member application whether the applicant has complied with the requirements in **clause 11.3(a)** and **11.3(c)** or not. Where an application is accepted by the Board, the applicant will become or continue to be an Affiliate Member. Affiliate Membership of AUSTSWIM by the applicant will commence upon acceptance of the application by the Board. Where the Board rejects an application, any fees forwarded with the application will be refunded. The Board is not obliged to accept any application nor is it obliged to give reasons if it rejects an application.
- (e) The addition or removal of an Entity Member can only be made by Special Resolution at a General Meeting amending **clause 11.1(a)(i)**.
- (f) All members which or who are currently members of AUSTSWIM shall be deemed to be or shall continue as Members in the appropriate membership category as determined by the Board from the time of adoption of this Constitution.

- (g) There is no right to natural justice nor any right to appeal any decision made under this **clause 11**.

11.4 EFFECT OF MEMBERSHIP

Members acknowledge and agree that:

- (a) this Constitution constitutes a contract between each of them and AUSTSWIM and that they are bound by the Constitution and any Regulations;
- (b) they shall comply with and observe this Constitution and the Regulations and any determination or resolution which may be made or passed by the Board or any duly authorised committee of the Board, however named;
- (c) by submitting to this Constitution and the Regulations they are subject to the jurisdiction of AUSTSWIM;
- (d) the Constitution and Regulations are necessary and reasonable for promoting the Objects;
- (e) neither membership of AUSTSWIM nor this Constitution gives rise to:
 - (i) any proprietary right of Members in, to or over AUSTSWIM or its property or assets;
 - (ii) any automatic right or expectation of a Member to renew their membership of AUSTSWIM; or
 - (iii) subject to the Act and AUSTSWIM acting in good faith, the right of Members to natural justice, unless expressly provided for in this Constitution; and
- (f) they are entitled to all benefits, advantages, privileges, and services of AUSTSWIM membership.

Members shall have the opportunity to inform the Secretary at every Annual General Meeting on how they wish to receive notice.

11.5 DISCONTINUANCE OF MEMBERSHIP

- (a) Subject to this Constitution a Member having paid all arrears of fees payable by it or them to AUSTSWIM, may withdraw from membership by giving, to the Secretary, a notice in writing to that effect. Every such notice shall be deemed to take effect on the date expressed therein, but, if there is no date expressed, it shall take effect on the date on which it is received by the Secretary.
- (b) Members who are required to pay fees to maintain membership will cease to be a Member if payment of the fees is not given before one (1) month past the due date.
- (c) Notwithstanding anything in this Constitution or the Regulations, membership of AUSTSWIM may be discontinued by the Board upon breach of any clause of this Constitution, including, but not limited to the failure to abide by the Regulations or any resolutions or determinations made or passed by the Board or any duly authorised committee of the Board (however named).
- (d) Membership shall not be discontinued under **clause 11.5(c)** without the accused Member first having the opportunity to explain the breach and/or remedy the breach.
- (e) Where a Member fails to adequately explain or remedy the breach, that Member's membership shall be discontinued under **clause 11.5(c)** by AUSTSWIM giving written notice of the discontinuance to the Member. There is no further right to natural justice nor any right to appeal a decision to discontinue membership under this **clause 11.5**.

- (f) A Member who ceases to be a Member shall forfeit all right in and claim upon AUSTSWIM and its property, including Intellectual Property.
- (g) Membership fees or subscriptions paid by the discontinued Member for the relevant year may be refunded on a pro-rata basis to the Member upon discontinuance. The name of such Member shall be removed from the Register of Members.
- (h) A Member whose membership has been discontinued under this **clause 11.5**:
 - (i) must reapply for membership in accordance with this Constitution; but
 - (ii) may be readmitted at the discretion of the Board.
- (i) A Member ceases to be a Member, if it is a body corporate, on being dissolved or otherwise ceasing to exist.

11.6 DISCIPLINE OF MEMBERS

- (a) Where the Board is advised or considers that a Member has allegedly:
 - (i) breached, failed, refused, or neglected to comply with a provision of this Constitution, the Regulations or any resolution or determination of the Board or any duly authorised committee; or
 - (ii) acted in a manner unbecoming of a Member, or prejudicial to the Objects and/or interests of AUSTSWIM; or
 - (iii) brought AUSTSWIM, themselves, any other Member into disrepute,
 the Board may commence or cause to be commenced, investigatory or disciplinary proceedings against that Member, and that Member will be subject to, and submits unreservedly to, the jurisdiction, disciplinary procedures and penalties and the appeal mechanisms set out in the Regulations or to such other disciplinary procedures and penalties and appeal mechanisms as may be determined by the Board from time to time.

12. BOARD

12.1 BOARD COMPOSITION

- (a) The Board shall comprise at least four and no more than six Directors. Of these six Directors there shall be:
 - (i) three (3) Elected Directors elected under **clause 12.4**; and
 - (ii) up to three (3) Appointed Directors appointed under **clause 12.5**.
- (b) All Directors will serve on the Board for a term of two (2) years, which for Elected Directors will expire at the conclusion of the second Annual General Meeting following their election. After this time, they will need to be elected or appointed as appropriate under this Constitution. No Director, including the Chairperson, shall be allowed to serve for more than three (3) consecutive terms (so total six (6) consecutive years). Service for part of a term as a Director constitutes a full term for the purposes of this clause.
- (c) The Directors will establish a Nominations Committee to consider and determine appropriate candidates to be put forward for election or appointment as a Director under this Constitution. The composition and duties, functions and rules of the Nominations Committee will be defined in written terms of reference.
- (d) Directors must be responsible persons under the ACNC Act.
- (e) Gender and diversity will be given due consideration in the appointment of all Directors.

- (f) Subject always to this Constitution, no Director is entitled to be paid fees by AUSTSWIM.

12.2 CHAIRPERSON

At the Board Meeting following the Annual General Meeting or otherwise as required, the Board shall appoint a Chairperson from the Directors through a majority vote, as stipulated in **clause 14(c)**. The Chairperson will hold office for such term as determined by the Board, subject to them remaining a Director.

12.3 SECRETARY

The Board must appoint at least one Secretary. The Secretary shall:

- (a) perform any duty or function required under the Act and the ACNC Act (as applicable);
- (b) prepare the agendas for all Board Meetings and General Meetings;
- (c) record and prepare minutes of the proceedings of all meetings of the Board;
- (d) cause to be prepared and lodged any relevant statutory reports and or notifications;
- (e) ensure that the resolutions of the Board pertaining to the governance of AUSTSWIM are properly and efficiently carried out; and
- (f) be such person(s) as the Board deems fit to fulfil the above duties.

The Board may remove the Secretary if the aforementioned duties are not being performed adequately at any time by majority vote. A new Secretary shall be appointed by the Board in accordance with the Act.

12.4 ELECTED DIRECTORS

- (a) The Entity Members may elect three Elected Directors to the Board each year. Of the three Elected Director positions:
 - (i) one (1) position shall be elected every odd numbered year; and
 - (ii) two (2) positions shall be elected every even numbered year.
- (b) Nominations of candidates for each election to the Board shall be:
 - (i) called for by the Secretary not less than 28 days before the date fixed for the holding of the Annual General Meeting;
 - (ii) made in writing on the appropriate form prescribed by the Board from time to time and signed by an authorised representative of an Entity Member;
 - (iii) delivered to the Secretary not less than 21 days before the date fixed for the holding of the Annual General Meeting; and
 - (iv) considered by the Nominations Committee in accordance with that committee's terms of reference. The Nominations Committee will determine appropriate candidates to be put forward for election as an Elected Director under this Constitution.

- (c) If:
- (i) the number of nominations received for Elected Director positions is equal to the number of vacancies to be filled or if there are insufficient nominations received to fill all Elected Director vacancies, then each of those nominated shall be declared elected only where an ordinary resolution is separately passed in favour of each nominee, failing which that position or positions become casual vacancies.
 - (ii) there are insufficient nominations received to fill all Elected Director vacancies, the positions will be deemed casual vacancies under **clause 12.7**; and
 - (iii) the number of nominations exceeds the number of Elected Director vacancies to be filled, voting papers shall be prepared containing the names of the candidates in order drawn by ballot, for each Elected Director vacancy. The voting shall be conducted in such manner and by such method as may be determined by the Board from time to time.
- (d) The terms of the directors in office at the date of the adoption of this Constitution shall continue as provided for in this clause. Those Directors may be re-elected or re-appointed for a further term, as the case may be, subject always to this Constitution. Of those directors:
- (i) one will retire at the Annual General Meeting in 2023, with such position being an Elected Director position;
 - (ii) two will retire at the Annual General Meeting in 2024, with such positions being Elected Director positions; and
 - (iii) one will be an Appointed Director, with their term expiring on 30 June 2024.
- (e) The directors in office at the date of the adoption of this Constitution:
- (i) will continue in office until their terms expire in accordance with **clause 12.4(d)**, notwithstanding the operation of **clause 12.1(b)**; and
 - (ii) to retire in accordance with each of **clauses 12.4(d)(i), 12.4(d)(ii) and 12.4(d)(iii)** will be determined by those directors, failing which they will be determined by lot.
- (f) Service by an individual as a director immediately prior to the adoption of this Constitution counts as one term for the purposes of **clause 12.1(b)**, irrespective of the length of that consecutive service.

12.5 APPOINTED DIRECTORS

- (a) The Board of Directors may appoint up to three Appointed Directors.
- (b) The Appointed Directors may have specific skills in commerce, finance, marketing, law, or business generally or such other skills which complement the Board composition and AUJTSWIM strategic direction. Appointed Directors should bring such skill sets to the Board that provide genuine, external independence and objectivity to, and for, the Board.
- (c) Nominations of candidates for each appointment to the Board shall be considered by the Nominations Committee in accordance with that committee's terms of reference. The Nominations Committee will determine appropriate candidates to be put forward for appointment as an Appointed Director under this Constitution.

- (d) Appointed Directors will have all the same rights and powers as Elected Directors.
- (e) At the date of adoption of this Constitution, two Appointed Director positions are vacant and may be filled by the Board in accordance with this clause.

12.6 POWERS OF THE BOARD

Subject to the Act, the ACNC Act and the provisions of this Constitution the business of AUSTSWIM shall be managed, and the powers of AUSTSWIM shall be exercised, by the Board.

12.7 VACANCIES OF DIRECTORS

- (a) In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act, the office of a Director becomes vacant if the Director:
 - (i) becomes bankrupt or makes any arrangement or composition with their creditors generally;
 - (ii) 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;
 - (iii) resigns their office in writing to AUSTSWIM;
 - (iv) is absent without the consent of the Directors from Board Meetings held during a period of six months;
 - (v) is or becomes an employee of AUSTSWIM;
 - (vi) is directly or indirectly interested in any contract or proposed contract with AUSTSWIM and fails to declare the nature of their interest;
 - (vii) in the opinion of the Entity Members:
 - (A) has acted in a manner unbecoming or prejudicial to the Objects and/or interests of AUSTSWIM; or
 - (B) has brought themself or AUSTSWIM into disrepute;
 - (viii) is otherwise prohibited from being a Director of a company under the Act or the ACNC Act; or
 - (ix) is removed from office in accordance with the Act or this Constitution.
- (b) Any vacancy occurring in membership of the Board may be filled by the Board from suitably qualified candidates and following consideration by the Nominations Committee. Such person(s) shall hold office for the remainder of the term of the Director they are replacing. The Board may fill a vacancy in an Appointed Director position by appointing a new Appointed Director for a full term.
- (c) If a vacancy or vacancies occurs in the office of a Director or Directors, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a Board Meeting, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum.

13. MANAGEMENT

- (a) The Board must appoint a Chief Executive Officer (CEO) who shall undertake such duties as may be determined from time to time by the Board and shall, subject to the decisions of the Board, supervise the work of persons who are volunteers, employed or otherwise engaged by AUSTSWIM and is responsible for the day-to-day management of the organisation. The CEO shall ensure that the resolutions of the Board pertaining to the

operations of AUSTSWIM are properly and efficiently carried out. The CEO shall report to the Board at each Board Meeting.

- (b) All cheques, promissory notes, bills of exchange and other negotiable instruments, and all receipts for money paid to AUSTSWIM, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the Board determines from time to time.

13.2 CHIEF EXECUTIVE OFFICER

- (a) The CEO shall be appointed by the Board for such term and on such conditions as it thinks fit.
- (b) The CEO, as far as practicable, shall attend all Board Meetings and General Meetings.
- (c) The CEO may employ such personnel as are deemed necessary from time to time and such appointments shall be for such period and on such conditions as the CEO determines.

14. MEETINGS OF THE BOARD

- (a) The Board shall meet as often as is deemed necessary for the dispatch of business and may adjourn and, subject to this Constitution, otherwise regulate, its meetings as it thinks fit. Any Director may on reasonable notice convene a meeting of the Board.
- (b) The Chairperson will chair all Board Meetings and General Meetings. If the Chairperson is unwilling or unable to chair a meeting, the Board will appoint another Director to chair that meeting.
- (c) Subject to this Constitution, questions arising at any meeting of the Board shall be decided by a majority of votes and a determination of a majority of Directors shall for all purposes be deemed a determination of the Board. All Directors shall have one vote on any question. The chair of a Board Meeting does not have a casting vote. Where voting is equal the motion is lost. An abstention does not constitute a vote.
- (d) Subject to all Directors receiving notice of the proposed resolution, a resolution in writing, signed or assented to by any form of visible electronic communication by the majority of the Directors shall be as valid and effectual as if it had been passed at a meeting of Directors duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more of the Directors and is passed when the last Director required to achieve a majority signs or assents.
- (e) Without limiting the power of the Board to regulate its meetings as it thinks fit, a meeting of the Board may be called or held using any technology consented to by all the Directors provided that:
 - (i) all persons participating in the meeting are able to communicate with each other effectively, simultaneously, and instantaneously;
 - (ii) notice of the meeting is given to all the Directors entitled to notice in accordance with the usual procedures agreed upon or laid down from time to time by the Board and such notice specifies that Directors are not required to be present in person;
 - (iii) if a failure in communications prevents condition (i) from being satisfied by that number of Directors which constitutes a quorum, and none of those Directors are present at the place where the meeting is deemed, by virtue of the further provisions of this clause, to be held, then the meeting shall be suspended until condition (i) is satisfied again. If such condition is not satisfied within fifteen

minutes from the interruption, the meeting shall be deemed to have terminated;
and

- (iv) any meeting held where one or more of the Directors is not physically present shall be deemed to be held at the place specified in the notice of meeting provided a Director is there present and if no Director is there present the meeting shall be deemed to be held at the place where the chairperson of the meeting is located.
- (f) At meetings of the Board the number of Directors whose presence is required to constitute a quorum is a majority of the minimum number of Directors, being three (3).
- (g) Unless all Directors agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their presence), not less than seven days written notice of the meeting of the Board shall be given to each Director. The agenda shall be forwarded to each Director not less than three days prior to such meeting.
- (h) The non-receipt of a notice of a Board Meeting 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 that Board Meeting.

15. **DIRECTORS' INTERESTS**

- (a) A Director is ineligible to hold office and is also disqualified from office by:
 - (i) holding or assuming any place of profit or position of employment in AUSTSWIM or in any company or incorporated association in which AUSTSWIM is a shareholder or otherwise interested; or
 - (ii) contracting with AUSTSWIM either as vendor, purchaser or otherwise except with express resolution of approval of the Board. Any such contract or any contract or arrangement entered into by or on behalf of AUSTSWIM, in which any Director is in any way interested, will be voided for such reason.
- (b) A Director who has a material personal interest in a matter that relates to the affairs of AUSTSWIM must declare that interest to the Board.
- (c) A Director who has an interest in a matter, may give the Board standing notice of the nature and extent of the interest in the matter. The notice may be given at any time and whether or not the matter relates to the affairs of AUSTSWIM at the time the notice is given.
- (d) The Secretary shall record in the minutes any declaration made or any general notice given by a Director under **clauses 15(a)** and **(c)** and the action decided upon by the Board in relation to that declaration.
- (e) A Director, notwithstanding the interest, may be counted in the quorum present at any meeting, but cannot remain in the meeting whilst the matter in which the Director is interested is being debated and cannot vote in respect of any matter in which the Director is interested. If the Director remains and votes on such matter, the vote shall not be counted.

16. **GENERAL MEETINGS**

- (a) AUSTSWIM may hold a General Meeting by telephone, video or any other technology (or any combination of these technologies) so that all Members participating in the meeting can hear each other and have a reasonable opportunity to participate. Participation in a meeting held by virtual means shall constitute presence of the Member at the meeting in person. All provisions of this Constitution relating to a General

Meeting apply to such a meeting in so far as they are not inconsistent with the provisions in this clause.

- (b) 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 any General Meeting shall be four Entity Members present in person or electronically.
- (c) If, within half an hour from the time appointed for the meeting, a quorum is not present, the meeting shall be adjourned until the same day in the next week at the same time and place or to such other day and at such other time and place as the chairperson may determine and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the meeting will lapse. For an Annual General Meeting, the quorum for the adjourned meeting shall be those Members present.
- (d) The Chairperson shall, subject to this Constitution, preside as chairperson at every General Meeting. If the Chairperson is unwilling or unable to chair a General Meeting, the Board will appoint another Director or other person to chair that General Meeting.
- (e) The chairperson may, with the consent of any General Meeting at which a quorum is present and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (f) When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (g) Except as provided in **clause 16(f)** it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.
- (h) 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 by any Voting Member. Voting may occur by electronic means as determined by the Board from time to time.
- (i) Unless a poll is so demanded, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of AUSTSWIM shall be conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution.
- (j) If a poll is duly demanded, it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairperson directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded.
- (k) No decision of AUSTSWIM, the Board or any Board-authorized committee or other entity shall be invalid merely because of a failure to give proper notice under this Constitution or the Regulations or other irregularity in procedure required by this Constitution or the Regulations, unless a person suffers substantial prejudice as a result of that failure to give proper notice or irregularity in procedure.
- (l) AUSTSWIM, the Board or other Board-authorized committee or entity may confirm an earlier decision which may have been otherwise invalid because of a failure to give proper notice or other irregularity in procedure and the decision shall be deemed to be valid from the time it was originally made.

16.2 NOTICE OF GENERAL MEETINGS

- (a) At least twenty-one (21) days' notice of a General Meeting must be given.

- (b) Notice of a General Meeting shall be given to the Entity Members, Directors and AUSTSWIM's auditor, together with:
 - (i) any notice of motion received from any Entity Member or any Director; and
 - (ii) the agenda for the meeting.
- (c) A notice of a General Meeting shall:
 - (i) specify the place and day and hour of meeting;
 - (ii) state if the meeting is to be held as a virtual meeting and if so the method of technology; and
 - (iii) state the business to be transacted at the meeting.
- (d) Notice of every General Meeting shall be given to the Directors at the address appearing in the Register kept by AUSTSWIM. Notice of every General Meeting may also be posted on AUSTSWIM's website.
- (e) No other person is automatically entitled as of right to receive notices of General Meetings.
- (f) Any General Meeting for which notice has been given can be postponed or cancelled by the Secretary, only under direction of the Board,.

16.3 BUSINESS AT GENERAL MEETINGS

- (a) All business that is transacted at a General Meeting, and also all that is transacted at an Annual General Meeting, with the exception of the consideration of the accounts, balance sheets, the reports of the Board and auditors and the appointment of the auditors (if any) in the place of those retiring under this Constitution or otherwise, shall be special business.
- (b) No business other than that stated on the notice shall be transacted at that General Meeting.

16.4 NOTICE OF MOTIONS

- (a) Any Entity Member can propose a notice of motion for inclusion as special business at a General Meeting.
- (b) All notices of motion for inclusion as special business at a General Meeting must be submitted in writing to the CEO not less than twenty-eight (28) days (excluding receiving date and meeting date) prior to the General Meeting.

16.5 VOTING AT GENERAL MEETINGS

- (a) Each Entity Member has one vote at General Meetings. Entity Members shall exercise their vote through their duly appointed and authorised Delegate. The Entity Member will notify AUSTSWIM of its appointed Delegate at least 48 hours prior to any General Meeting.
- (b) No other Member is entitled to vote.
- (c) Where voting at General Meetings is equal, the motion shall be lost.

16.6 RESOLUTIONS NOT IN GENERAL MEETING

- (a) If all Voting Members 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 AUSTSWIM held at the time on which the document was signed by the last Voting Member.

- (b) For the purposes of **clause 16.6(a)**, two or more separate documents containing statements in identical terms, each of which is signed by one or more Voting Members, are deemed together to constitute one document containing a statement in those terms signed by those Voting Members on the respective days on which they signed the separate documents.
- (c) An email or other form of visible or other electronic communication under the name of a Voting Member is deemed to be a document in writing signed by that Voting Member for the purpose of this clause.

16.7 PROXY VOTING

- (a) Proxy voting shall be permitted at all General Meetings provided an approved and executed proxy form (as may be prescribed by the Board from time to time) is lodged with the Secretary no later than 48 hours prior to the commencement of the meeting. No Member entitled to vote shall exercise more than one proxy vote at any one time.
- (b) The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. A Voting Member shall be entitled to instruct its proxy to vote in favour of or against any proposed resolutions. Unless otherwise instructed the proxy may vote as the proxy thinks fit.

16.8 SPECIAL GENERAL MEETINGS

Special General Meetings may be convened by resolution of the Board or otherwise in accordance with the Act.

16.9 ANNUAL GENERAL MEETINGS

Subject to the ACNC Act, an Annual General Meeting of AUSTSWIM may be held in accordance with the Act and on a date and at a venue determined by the Directors. All General Meetings other than the Annual General Meeting shall be special General Meetings and shall be held in accordance with this Constitution.

17. DELEGATIONS

- (a) The Board may by instrument in writing or resolution create or establish or appoint, committees or individual officers and consultants to carry out such duties and functions and with such powers as the Board determines.
- (b) The Board may in the establishing instrument or resolution delegate such functions as are specified in the instrument, other than:
 - (i) this power of delegation; and
 - (ii) a function imposed on the Board by the Act, or any other law, or this Constitution.
- (c) Any delegation made under this clause is at all times subject to the authority of the Board.
- (d) A function, the exercise of which has been delegated under this clause may, whilst the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.
- (e) A delegation under this clause may be made subject to such conditions or limitations as to the exercise of any function or at the time or circumstances as may be specified in the delegation.

- (f) Notwithstanding anything in this Constitution or any instrument of delegation, no decision of a committee, officer or advisor appointed or elected under this clause is binding on, or deemed to be a decision of, the Board.
- (g) The Board may, by instrument in writing or resolution, revoke wholly or in part, any delegation made under this clause.

18. REGULATIONS

- (a) The Board may formulate, issue, adopt, interpret and amend such Regulations for the proper advancement, encouragement, management, and administration of AUSTSWIM and the advancement of the Objects as it thinks necessary or desirable. Such Regulations must be consistent with the Constitution and any policy directives of the Board.
- (b) All Regulations made under this clause shall be binding on AUSTSWIM and Members.
- (c) All clauses, rules, by-laws, policies, and regulations of AUSTSWIM in force at the date of the adoption of this Constitution insofar as such clauses, rules, by-laws, policies, and regulations are not inconsistent with, or have been replaced by, the Constitution, shall be deemed to be Regulations under this clause.
- (d) Amendments, alterations, interpretations, or other changes to Regulations shall be advised to Members of AUSTSWIM by means of bulletins approved by the Board and prepared and issued by the CEO. Bulletins are binding upon all Members.

19. RECORDS AND ACCOUNTS

- (a) The Secretary shall establish and maintain proper records and minutes concerning all transactions, business, meetings, and dealings of AUSTSWIM and the Board and shall produce these as appropriate at each Board Meeting or General Meeting.
- (b) Proper accounting and other records shall be kept in accordance with the ACNC Act. The books of account shall be kept in the care and control of the CEO.
- (c) AUSTSWIM shall retain such records for seven years after the completion of the transactions or operations to which they relate.
- (d) If an Annual General Meeting is held the Board will submit to the Members at that meeting the statements of account of AUSTSWIM in accordance with this Constitution and any relevant law.
- (e) The statements of account when submitted to an Annual General Meeting shall be conclusive, except as regards any error discovered in them within three months after such approval or adoption.
- (f) The Secretary shall cause to be sent to all persons entitled to receive notice of General Meetings of AUSTSWIM in accordance with this Constitution, for each Annual General Meeting, a copy of the statements of account, the Board's report, the auditor's report and every other document required by law to be attached to the statements of account.

20. AUDITOR

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

21. NOTICE

- (a) Any notice required to be given under this Constitution may be given by the Secretary to any Member by:

- (i) sending the notice by pre-paid post or any form of visible electronic communication, to the Member's registered address or electronic mail address; and/or
 - (ii) posting the notice on AUSTSWIM's website.
- (b) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting the notice. Service of the notice is deemed to have been effected three business days after posting.
 - (c) Where a notice is sent by electronic communication, service of the notice shall be deemed to be effected unless a return message is received advising that the electronic message was not received at the electronic address to which it was sent.
 - (d) When a notice is sent by posting on AUSTSWIM's website, service of the notice shall be deemed to be effected when the notice goes live on the website.

22. INDEMNITY

- (a) Subject to the Act, every Director, officer, Secretary, CEO or employee of AUSTSWIM shall be indemnified out of the property and assets of AUSTSWIM against any liability incurred by them in their capacity as Director, officer, Secretary, CEO or employee in defending any proceedings, whether civil or criminal, in which judgement is given in their favour or in which they are acquitted or in connection with any application in relation to any such proceedings in which relief is under the Act granted to them by the Court.
- (b) Subject to the Act, AUSTSWIM shall indemnify its Directors, officers, Secretaries, CEO and employees against all damages and costs (including legal costs) for which any such Director, officer Secretary, CEO or employee may be or become liable to any third party in consequence of any act or omission except wilful misconduct in the case of:
 - (i) a Director, officer, CEO or Secretary, performed or made whilst acting on behalf of and with the authority, express or implied of AUSTSWIM; and
 - (ii) an employee, performed or made in the course of, and within the scope of their employment by AUSTSWIM.

23. DISSOLUTION

AUSTSWIM can only be dissolved by Special Resolution.