



SURFING **AUSTRALIA**

SURFING AUSTRALIA LIMITED

CONSTITUTION

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**CORPORATIONS ACT 2001 (Cth)
CONSTITUTION**

OF

SURFING AUSTRALIA LIMITED

PART I – OBJECTS, POWERS AND INTERPRETATION

1 NAME OF COMPANY

The name of the Company is Surfing Australia Limited (“Company”).

2 OBJECTS OF COMPANY

The Company is the peak body for the administration of the sport of surfing in Australia. The objects for which the Company is established and maintained are to:

- (a) provide for the conduct, encouragement, promotion and administration of surfriding throughout Australia;
- (b) ensure the maintenance and enhancement of the Company, its Members and surfriding, its standards, quality and reputation for the benefit of the Members and surfriding;
- (c) at all times promote mutual trust and confidence between the Company and the Members in pursuit of these Objects;
- (d) affiliate and otherwise liaise with the International Surfing Company, in the pursuit of these objects and the objects of surfriding;
- (e) recognise surfing values and the implications on surfing in recreational and natural resource planning and management;
- (f) at all times act on behalf of and in the interest of the Members and surfriding;
- (g) represent the interests of its Members and of surfriding generally in any appropriate forum in Australia and internationally;
- (h) actively support the preservation and conservation of the environment, and join with or affiliate with bodies or organisations concerned with the conservation and preservation of the environment;
- (i) Conduct national competitions and arrange for the conduct of national championships and the selection of national teams and squads and create rules and regulations for the conduct of these.
- (j) Develop young surfers to compete successfully at an international level and must maintain the high profile and success of Australian surfers internationally.

- (k) To establish and operate a hall of fame for the preservation, storage and exhibition of information and objects illustrating and relating to the sport of surfing.
- (l) Do all things which are necessary incidental or conducive to further the interests of Surfing Australia.

3 POWERS OF COMPANY

Solely for furthering the objects set out above the Company has, in addition to the rights, powers and privileges conferred on it under the Act, the legal capacity and powers of a company as set out under section 124 of the Corporations Act.

4 INTERPRETATION

4.1 Definitions

In this Constitution unless the contrary intention appears, these words shall have the following meanings:

“Act” means the Corporations Act 2001 (Cth).

“Affiliated Club” means a club (whether incorporated, unincorporated or otherwise) which is a member of a State Association.

“Affiliated Region” means a group (whether incorporated, unincorporated or otherwise) which is a member of a State Association and recognised by that State Association as representing the State Association in a particular geographic area.

“AGM or Annual General Meeting” means the Annual General Meeting of the Company required to be held by the Company in each calendar year under section 250N(2) of the Corporations Act.

“Board” means the body consisting of the Directors under **Clause 23**.

“By-Law” means any by-law, regulation or policy made by the Board under **Clause 31**.

“Chairperson” means the chairperson of the Company appointed by the Board in accordance with **Clause 23.2**.

“Chief Executive Officer” means the person who is appointed under this Constitution to carry out the duties set out in **Clause 29**.

“Conflict Position” Any position held in the Company, a State Association including as an office bearer, director or a paid appointee

“Delegate” means the persons elected or appointed from time to time by a State Association to act for and on behalf of that State Association and represent the State Association at General Meetings or otherwise.

“Director” means a member of the Board elected or appointed in accordance with this Constitution and includes the Elected Directors and the Independent Directors.

“Financial Year” means the year commencing 1 July and ending 30 June in any year.

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

“Independent Director” means a Director appointed under **Clause 25**.

“Individual Member” means a registered financial individual member of a State Association and the Company under **Clause 7.1**.

“Intellectual Property” means all rights or goodwill subsisting in copyright, business names, names, trade marks (or signs), logos, designs, patents or service marks (whether registered or registrable) relating to the Company or any event, competition or activity of or conducted, promoted or administered by the Company.

“Elected Director” means a Director elected under **Clause 24**.

“Life Member” means an individual upon whom life membership of the Company has been conferred under **Clause 7.3**.

“Member” means a member for the time being of the Company under **Part III** of this Constitution.

“Seal” means the common seal of the Company and includes any official seal of the Company.

“Special Resolution” means a resolution passed:

- (a) at a General Meeting of the Company of which 21 days notice, accompanied by notice of intention to propose resolution as a special resolution, has been given to the Member in accordance with this Constitution; and
- (b) by at least three quarters of votes of those State Associations who, being entitled to vote, vote in person at the meeting.

“State” means a State of Australia and includes the territories of Australia.

“State Acts” means the state associations incorporation legislation (by whatever name called) governing the Members, including the Act.

“State Association” means an entity recognised under **Clause 5.1** to administer the sport of surfing in its particular State or territory.

4.2 Interpretation

In this Constitution:

- (a) a reference to a function includes a reference to a power, authority and duty;
- (b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing any gender include the other genders;
- (e) references to persons include corporations and bodies politic;
- (f) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- (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); and
- (h) a reference to "writing" shall unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail.

4.3 Severance

If any provision of this Constitution or any phrase contained in them 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 the clause or phrase can not be so read down it shall be severed to the extent of the invalidity or unenforceability. Such severance shall not affect the remaining provisions of this Constitution or affect the validity or enforceability of any provision in any other jurisdiction.

4.4 Expressions in Act

Except where the contrary intention appears, in this Constitution, an expression that deals with a matter dealt with by a particular provision of the Act, has the same meaning as that provision of the Act.

4.5 Corporations Act

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

4.6 Headings

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

4.7 Income and Property of Company

The income and property of the Company shall be applied solely towards the promotion of the objects set out herein and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the members of the Company provided however that nothing in this clause shall prevent the Company or its Directors making any grant to any Member or person which it deems appropriate in furtherance of these objects.

PART II – STATE ASSOCIATIONS

5 STATE ASSOCIATIONS

5.1 Recognition of State Associations

The entity which is recognised as the only official representative of and controlling authority for the sport of surfing in a State (in the Board's sole discretion) is or shall be recognised as a Member and shall administer the sport of surfing in that particular State in accordance with the objects of the Company. Each State Association shall be named according to the State in which it is located.

5.2 Compliance of State Associations

Each State Association shall:

- (a) be incorporated in its particular State;
- (b) elect or appoint 1 Delegate to represent it at General Meetings in accordance with this Constitution;
- (c) provide the Company with copies of its audited accounts, annual report and other associated documents within 30 days of the State Association's annual general meeting;
- (d) adopt in principle, the objects of the Company and adopt clauses which reflect and which are, to the extent permitted or required by the State Acts, generally in conformity with this Constitution; and
- (e) apply its property and capacity solely in pursuit of the objects of the Company, the State Association and the sport of surfing;
- (f) do all that is reasonably necessary to enable the objects of the Company to be achieved;
- (g) act in good faith and loyalty to ensure the maintenance and enhancement of the Company and the sport of surfing, its standards, quality and reputation for the collective and mutual benefit of the Members and the sport of surfing;

- (h) at all times operate with, and promote, mutual trust and confidence between the Company and the Members in pursuit of these objects; and
- (i) at all times act on behalf of and in the interests of the Members and the sport of surfing.

5.3 Operation of Constitution

The Company and the State Associations agree:

- (a) that they are bound by this Constitution and that this Constitution operates to create uniformity in the way in which the objects of the Company and the sport of surfing are to be conducted, encouraged, promoted and administered in Australia;
- (b) to act in good faith and loyalty to each other to ensure the maintenance and enhancement of the sport of surfing, its standards, quality and reputation for the collective and mutual benefit of the Members and the sport of surfing;
- (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 the sport of surfing, and its maintenance and enhancement;
- (d) to make full and proper disclosure to each other of all matters of importance to the Company and the sport of surfing;
- (e) not to acquire a private advantage at the expense of the Company or any other State Association or the sport of surfing;
- (f) to operate with mutual trust and confidence in pursuit of the objects of the Company;
- (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 of the Company;
- (h) to act for and on behalf of the interests of the sport of surfing, the Company and the Members; and
- (i) that should a State Association in the reasonable opinion of the Board of the Company have administrative, operational or financial difficulties, including but not limited to where a State Association:
 - (i) takes or has taken or has instituted against it any action or proceeding, whether voluntary or compulsory, having as its object the winding up of the State Association; or
 - (ii) enters into a composition or arrangement with its creditors, other than a voluntary winding up by members for the purpose of reconstruction or amalgamation; or
 - (iii) a mortgagee or other creditor takes possession of any of its assets;

the Company may, in its absolute discretion act to assist that State Association in whatever manner and on such conditions as the Company considers appropriate, including, but not limited to the appointment of an administrator.

6 STATE ASSOCIATION CONSTITUTIONS

6.1 Constitution

The constituent documents of each State Association shall clearly reflect the objects of the Company and shall be in a form acceptable to the Board, with such incidental variations as are necessary or appropriate, having regard to the State Act applicable to each State Association.

6.2 Amendments to State Association Constitutions

- (a) Each State Association shall take all steps necessary to ensure its constituent documents and rules are in a form acceptable to the Board and shall ensure its documents are amended in conformity with future amendments made to this Constitution, subject to any prohibition or inconsistency in any relevant State Act.
- (b) State Associations shall have 2 years from the approval of this Constitution under the Act in which to amend their constitution in accordance with this Constitution, and for such time as their constitutions do not conform shall not be unduly penalised for such non-compliance, to the extent that such non-compliance is not wilful or calculated to cause harm or prejudice to the Company.
- (c) Nothing in this section requires a State Association which is an incorporated association to convert to a company limited by guarantee.

6.3 Register of Members

Each State Association shall maintain, in a form and with such details as are acceptable to the Company, a register of all Affiliated Clubs and Individual Members in its State. Subject to privacy considerations, each State Association shall provide a copy of the register at a time and in a form acceptable to the Company, and shall provide prompt and regular updates of that register to the Company when requested by the Board.

PART III – MEMBERSHIP

7 MEMBERS

7.1 Category of Members

The Members of the Association shall consist of:

- (a) the State Associations, which subject to this Constitution, shall be represented by their Delegates who shall have the right to attend,

debate and vote at General Meetings for and on behalf of the State Associations;

- (b) Life Members, who subject to this Constitution, may attend and debate at General Meetings, but have no right to vote at General Meetings;
- (c) Affiliated Clubs and Affiliated Regions, who subject to this Constitution, may appoint a representative to attend General Meetings, but have no right to debate or vote at General Meetings;
- (d) Individual Members who subject to this Constitution, may attend General Meetings, but have no right to debate or vote at General Meetings;
- (e) such new categories of Members, created in accordance with **Clause 7.2** below.

and shall have such qualifications as the Board may determine from time to time.

7.2 Creation of New Categories

The Board has the right and power from time to time to create new categories of membership with such rights, privileges and obligations as are determined applicable (other than voting rights), 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.

7.3 Life Members

- (a) The Board may nominate a person who has rendered distinguished or special service to the sport of surfing at the national level, for life membership. The nomination must be on the prescribed form (if any) and must be submitted to the Chief Executive Officer at least 60 days before the date set down for the Annual General Meeting.
- (b) The nomination for Life Member shall be considered at the Annual General Meeting. A resolution of the Annual General Meeting to confer life membership must be passed by Special Resolution. The vote on such resolution will be taken by secret ballot.
- (c) Conditions, obligations and privileges of life membership shall be as prescribed in the By-Laws.

7.4 Liability of Members and To Members

- (a) No Member whose membership ceases has any claim against the Company or the Directors for damages or otherwise arising from cessation or termination of membership.
- (b) Members have no liability in the capacity of Member except as set out in clause 38.3.

8 AFFILIATED CLUBS, REGIONS AND INDIVIDUAL MEMBERS

8.1 Deeming Provisions

- (a) All persons who were individual members (howsoever described) of a State Association prior to the time of approval of this Constitution under the Act, shall be deemed Individual Members from the time of approval of this Constitution under the Act, and will be entitled to such benefits as are conferred on them by the Company, whether directly or indirectly.
- (b) All affiliated club and region members (howsoever described) of State Associations prior to the time of approval of this Constitution under the Act, shall be deemed Affiliated Clubs and Affiliated Regions from the time of approval of this Constitution under the Act, and will be entitled to such benefits as are conferred on them by the Company, whether directly or indirectly.
- (c) The State Associations shall, whenever requested by the Company and subject to privacy considerations, provide to the Company, such details of Individual Members, Affiliated Clubs and Affiliated Regions as are required by the Company under this Constitution.

8.2 Application for Membership

- (a) An application for membership by an Individual Member must be:
 - (i) in writing on the form prescribed from time to time by the Board, from the applicant and lodged with a State Association; and
 - (ii) accompanied by the appropriate fee.
- (b) An application for membership by an Affiliated Club or Affiliated Region must be:
 - (i) in writing on the form prescribed from time to time by the Board, from the applicant and lodged with a State Association; and
 - (ii) accompanied by the appropriate fee.

8.3 Discretion to Accept or Reject Application

- (a) The State Association may accept or reject an application and shall not be required or compelled to provide any reason for such acceptance or rejection.
- (b) Where the State Association accepts an application, the applicant shall become a Member. Membership of the Company shall be deemed to commence upon acceptance of the application by the relevant State Association. The Chief Executive Officer shall amend the register accordingly as soon as practicable.
- (c) Where a State Association rejects an application the State Association shall refund any fees forwarded with the application and the application shall be deemed rejected by it.

8.4 Membership Renewal

In order to remain Members, Individual Members, Affiliated Clubs and Affiliated Regions must:

- (a) renew their membership with their respective State Association annually;
- (b) otherwise remain registered financial members of their State Association in accordance with the procedures applicable from time to time; and
- (c) must pay the annual fees prescribed by the Company from time to time (if any) to the Association through their respective State Association.

9 SUBSCRIPTIONS AND FEES

- (a) The annual membership subscription (if any), fees and any levies payable by Members (or any category of members) to the Company, the basis of, the time for and manner of payment shall be as determined by the Board from time to time.
- (b) Any Member which or who has not paid all monies due and payable by that Member to the Company shall (subject to the Board'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 such time as the monies are fully paid or otherwise in the Board's discretion. In the meantime, the Member shall have no automatic right to resign from the Company, and shall be dealt with in the Board's discretion, which includes the right to expel, suspend, disqualify, fine, discipline or retain that Member as a Member, or impose such other conditions or requirements as the Board considers appropriate.

10 REGISTER OF MEMBERS

10.1 Chief Executive Officer to Keep Register

The Chief Executive Officer shall keep and maintain a register of Members in which shall be entered such information as is required under the Act from time to time.

10.2 Inspection of Register

A members right to inspect the register shall be in accordance with the obligations of the Company as contained in the Act.

11 EFFECT OF MEMBERSHIP

Members acknowledge and agree that:

- (a) this Constitution constitutes a contract between each of them and the Company and that they are bound by these Clauses 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 Board or any duly authorised committee;

- (c) by submitting to this Constitution and the By-Laws they are subject to the jurisdiction of the Company;
- (d) this Constitution is made in pursuit of a common object, namely the mutual and collective benefit of the Company, the Members and the sport of surfing;
- (e) this Constitution and By-Laws are necessary and reasonable for promoting the objects of the Company and particularly the advancement and protection of the sport of surfing; and
- (f) they are entitled to all benefits, advantages, privileges and services of Company membership.

12 DISCONTINUANCE OF MEMBERSHIP

12.1 Notice of Resignation

Subject to this Constitution any Member which has paid all monies due and payable to the Company and has no other liability (contingent or otherwise) to the Company may resign from the Company by giving 3 months' notice in writing to the Company of such intention to withdraw or resign and upon the expiration of that period of notice, the Member shall cease to be a Member. A Life Member may resign by notice in writing with immediate effect.

12.2 Expiration of Notice Period

Subject to **Clause 12.5** upon the expiration of any notice period applicable under **Clause 12.1** an entry, recording the date on which the Member who or which gave notice ceased to be a Member shall be recorded in the register.

12.3 Forfeiture of Rights

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

12.4 Membership may be Reinstated

Membership which has lapsed, been withdrawn or terminated under this Constitution may be reinstated at the discretion of the Board, on application in accordance with this Constitution and otherwise on such conditions as it sees fit.

12.5 Cessation of Membership

Where a State Association ceases to be a Member in accordance with this Constitution or the Act, the Individual Members, Affiliated Clubs and Affiliated Regions of that State Association may cease or remain Members to the extent (if any) and for such time (if any) as is determined in the sole discretion of the Board.

13 DISCIPLINE OF MEMBERS

13.1 Disciplinary Action

Where the Board is advised or considers that a Member has allegedly:

- (a) breached, failed, refused or neglected to comply with a provision of this Constitution, the By-Laws or any resolution or determination of the Board or any duly authorised committee; or
- (b) acted in a manner unbecoming of a Member or prejudicial to the objects and interests of the Company and/or the sport of surfing; or
- (c) brought the Company or the sport of surfing into disrepute;

the Board may commence or cause to be commenced disciplinary proceedings against that Member, and that Member will be subject to, and submits unreservedly to the jurisdiction, procedures, penalties and appeal mechanisms (if any) of the Company set out in the By-Laws.

Such grounds do not constitute a Grievance. **Clause**

The Board may appoint a judiciary committee to deal with any disciplinary matter referred to it. Such a judiciary committee shall operate under the principles and in accordance with the procedures set down by the Board from time to time.

PART IV - GENERAL MEETINGS

14 DELEGATES

14.1 Appointment of Delegates

Each State Association shall appoint 1 Delegate for such term as is deemed appropriate by the State Association. A Delegate must:

- (a) be appropriately empowered by the appointing State Association to consider, make decisions and vote at General Meetings;
- (b) not be a Director.

14.2 State Association to Advise

Each State Association shall, at least 48 hours prior to any General Meeting, advise the Chief Executive Officer of its appointed Delegate.

15 GENERAL MEETINGS

- (a) An Annual General Meeting of the Company shall be held in accordance with the provisions of the Act and this Constitution and on a date and at a venue to be determined by the Board.
- (b) All General Meetings other than the Annual General Meeting shall be Special General Meetings and shall be held in accordance with this Constitution.

16 NOTICE OF GENERAL MEETING

16.1 Notice of General Meetings

- (a) Notice of every General Meeting shall be given to State Associations at the address appearing in the register kept by the Company. No other person shall be entitled as of right to receive notices of General Meetings.
- (b) Notice to Individual Members, Affiliated Clubs and Affiliated Regions (where appropriate or required) shall be deemed given by notice being given in accordance with this Constitution to the State Association of that Individual Member, Affiliated Club or Affiliated Region.
- (c) Notice of General Meeting shall be given at least thirty (30) days prior to the General Meeting and shall specify the place and day and hour of the General Meeting. The notice shall also include the agenda for the General Meeting stating the business to be transacted at the meeting.

16.2 Entitlement to Attend General Meeting

Notwithstanding any other Clause of this Constitution, no Member shall be represented at, or take part in a General Meeting, unless all monies (including, but not limited to those set in accordance with **Clause 9**) then due and payable to the Company are paid, unless otherwise determined by the Board in its discretion.

17 BUSINESS

17.1 Business of General Meetings

- (a) The business to be transacted at the Annual General Meeting includes the consideration of accounts, reports of the Board (including in relation to the activities of the Company during the last preceding Financial Year) and the election of Directors and Life Members.
- (b) eNo business other than that stated on the notice shall be transacted at that meeting.

18 SPECIAL GENERAL MEETINGS

18.1 Special General Meetings May be Held

The Board may, whenever it thinks fit, convene a Special General Meeting of the Company.

18.2 Requisition of Special General Meetings

- (a) The Board shall on the requisition in writing of the majority of the combined number of State Associations 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 State Associations making the requisition and be sent to the Company. The requisition may consist of several documents in a like form, each signed by 1 or more of the State Associations making the requisition.

- (c) If the Board does not cause a Special General Meeting to be held within 3 months after the date on which the requisition is sent to the Company, the State Associations 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 State Associations under this Constitution shall be convened in the same manner, or as nearly as possible as that, in which meetings are convened by the Board.

19 PROCEEDINGS AT GENERAL MEETINGS

19.1 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 of the Company shall be the majority of the combined number of State Associations .

19.2 Chairperson to Preside

The Chairperson shall, subject to this Constitution, preside as chair at every General Meeting of the Company. If the Chairperson is not present, or is unwilling or unable to preside, the Directors shall choose one of their number present who shall, subject to this Constitution, preside as chair for that meeting only.

19.3 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 chair 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 chair 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.
- (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 **Clause 19.3(c)** it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

19.4 Voting Procedure

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 chair; or

(b) by the majority of the Delegates.

19.5 Recording of Determinations

Unless a poll is demanded under **Clause 19.4**, a declaration by the chair that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution.

19.6 Where Poll Demanded

If a poll is duly demanded under **Clause 19.4** it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chair directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

19.7 Resolutions at General Meetings

Except where a Special Resolution is required, all questions at General Meetings shall be determined by the majority of votes (as set out in **Clause 20**). Except as otherwise provided in this Constitution, in the case of an equality of votes on a question at a General Meeting, the chair is entitled to a casting vote.

19.8 Minutes

The Chief Executive Officer shall keep minutes of the resolutions and proceedings of each General Meeting in books provided for that purpose, together with a record of the names of persons present at all meetings.

20 VOTING AT GENERAL MEETINGS

20.1 Each State Association in attendance shall, subject to this Constitution, be entitled to 1 vote at General Meetings. No other Member shall be entitled to vote, but shall subject to this Constitution have, and be entitled to exercise, those rights set out in **Clause 7.1**.

21 PROXY VOTING

21.1 Proxy Voting

Proxy voting shall be permitted at General Meetings.

PART V - THE BOARD

22 POWERS OF THE BOARD

22.1 Subject to the Act and this Constitution the business of the Company shall be managed, and the powers of the Company shall be exercised, by the Board. In particular, the Board as the controlling authority of the Company shall be responsible for acting on all national issues in accordance with the objects of the Company and shall operate for the collective and mutual benefit of the Company and the sports of surfing throughout Australia and shall:

- (a) govern the sport of surfing in Australia in accordance with the objects of the Company;
- (b) determine major strategic directions of the Company;
- (c) review the Company's performance in achieving its pre-determined aims, objectives and policies;
- (d) manage the financial performance of the Company; and
- (e) manage international responsibilities.

23 COMPOSITION OF THE BOARD

23.1 Board Composition

The Board shall comprise:

- (a) Five (5) Elected Directors elected by the State Associations in accordance with **Clause 24**;
- (b) Two (2) to Four (4) Independent Directors which may be appointed by the Board in accordance with **Clause 25**.

23.2 Chairperson

The Board shall appoint the Chairperson from amongst its numbers as soon as practical after each Annual General Meeting. The appointee will hold the position of Chairperson until the conclusion of the next Annual General Meeting following their appointment. A Director may be reappointed as Chairperson.

- 23.3** A person who has held the position of Chief Executive Officer of the Company shall not be eligible to be elected or appointed as a Director of the Company within 3 years of them ceasing to be the Chief Executive Officer.

24 ELECTION OF ELECTED DIRECTORS

24.1 Qualifications for Elected Directors

- (a) Nominees for Elected Director positions on the Board must meet the qualifications as prescribed from time to time by the Board.
- (b) Nominees for Elected Director positions on the Board must declare any "Conflict Position" that they hold. If the nominee is elected they must resign from any such position immediately.

24.2 Elections of Elected Directors

- (a) The Chief Executive Officer shall call for nominations sixty (60) days before the date of the Annual General Meeting. All State Associations shall be notified of the call for nominations.
- (b) Nominations for Elected Directors must be:
 - (i) in writing;

- (ii) on the prescribed form (if any) provided for that purpose;
 - (iii) signed by a Delegate of a State Association; and
 - (iv) certified by the nominee (who must be a Member) expressing his or her willingness to accept the position for which he or she is nominated.
- (c) Nominations must be received by the Chief Executive Officer at least fourteen (14) days prior to the Annual General Meeting.
 - (d) If the number of nominations received for the Board is equal to the number of vacancies to be filled or if there are insufficient nominations received to fill all vacancies on the Board, then those nominated shall only be elected if they are elected by the Members by secret ballot in such usual and proper manner as the chair directs. If the nominees are not elected or if there are vacancies to be filled, further nominations shall be called for at the Annual General Meeting from the floor.
 - (e) If the number of nominations exceeds the number of vacancies to be filled, a secret ballot shall be taken in such usual and proper manner as the chair directs.
 - (f) The voting shall be conducted by exhaustive ballot, the procedure for which will be detailed in By-Laws.

24.3 Term of Appointment

- (a) Elected Directors shall be elected in accordance with this Constitution for a term of 2 years, which shall commence from the conclusion of the Annual General Meeting at which the election occurred until the conclusion of the second Annual General Meeting following.
- (b) 3 Elected Directors shall be elected in each year of odd number and 2 Elected Directors shall be elected in each year of even number.
- (c) Should any adjustment to the term of Elected Directors elected under this Constitution be necessary to ensure rotational terms in accordance with this Constitution, this shall be determined by the Board. Elections to subsequent Boards shall then proceed in accordance with the procedures in this Constitution with approximately half the Board retiring each year.

25 APPOINTMENT OF INDEPENDENT DIRECTORS

25.1 Appointment of Independent Directors

The Elected Directors may appoint 2 to 4 Independent Directors.

25.2 Qualifications for Independent Directors

The Independent Directors may have specific skills in commerce, finance, marketing, law or business generally or such other skills which compliment the Board composition, but need not have experience in or exposure to the sport

of surfing. They do not need to be Members of the Company but they cannot hold a "Conflict Position".

25.3 Term of Appointment

Independent Directors shall hold office for such term as is determined by the Directors appointing them but in any event for a maximum of two years.

26 VACANCIES OF BOARD MEMBERS

26.1 Grounds for Termination of Director

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

- (a) dies;
- (b) becomes bankrupt or makes any arrangement or composition with his creditors generally;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in anyway under the law relating to mental health;
- (d) resigns his office in writing to the Company;
- (e) is absent without the consent of the Board from 2 consecutive meetings of the Board;
- (f) holds any office of employment of the Company;
- (g) without the prior consent or later ratification of the Members in General Meeting holds any office of profit under the Company;
- (h) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of his interest;
- (i) is removed from office by Special Resolution under **Clause 26.2**; or
- (j) would otherwise be prohibited from being a director of a corporation under the Corporations Act or is disqualified from office under the Act.
- (k) holds a Conflict Position

26.2 Removal of a Director

- (a) The Company in a General Meeting may by ordinary Resolution remove any Director, before the expiration of their term of office. If a Director is removed in accordance with this Clause the office of the Director becomes vacant and shall be filled in accordance with the procedure set out in **Clause 26.3**.
- (b) The Company will take all appropriate action as set out in the Act with respect to removal of a Director.

26.3 Casual Vacancies

- (a) A vacancy in the position of an Elected Director shall be filled by the Directors until the next Annual General Meeting of the Company. If the term of the Director has not expired, the Members shall fill the vacancy for the remainder of the Directors term.
- (b) Any Independent Director casual vacancy may be filled by the remaining Directors from among appropriately qualified persons, for the remainder of the Director's term.
- (c) A vacancy in the position of the Chairperson shall be filled by the Directors until the conclusion of the next Annual General Meeting of the Company.

26.4 No Director, either an Elected Director or Appointed Director, shall serve for more than 10 consecutive years as a Director of the Company. A Director who has served for 10 consecutive years must have a period of at least 2 years not as a Director of the Company before they are eligible to be reappointed or re-elected.

26.5 Remaining Directors May Act

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

27 MEETINGS OF THE BOARD

27.1 Board to Meet

The Board shall meet as often as is deemed necessary in every calendar year for the dispatch of business and may adjourn and, subject to this Constitution otherwise regulate, its meetings as it thinks fit. The Chief Executive Officer shall, on the requisition of 2 Directors, convene a meeting of the Board within a reasonable time. The Board shall meet at least 5 times per year.

27.2 Decisions of Board

Subject to this Constitution, questions arising at any meeting of the Board shall be decided by a majority of votes and all questions so decided shall for all purposes be deemed a determination of the Board. All Directors shall have 1 vote on any question. The chair shall also have a casting vote where voting is equal.

27.3 Resolutions not in Meeting

- (a) A resolution in writing, signed or assented to by telegram, cablegram, radiogram, facsimile, telex, electronic mail or other form of visible or other electronic communication by all 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 1 or more of the Directors.

- (b) Without limiting the power of the Board to regulate their meetings as they think fit, a meeting of the Board may be held where 1 or more of the Directors is not physically present at the meeting, provided that:
- (i) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously, whether by means of telephone or other form of communication;
 - (ii) notice of the meeting is given to all the Directors entitled to notice in accordance with the usual procedures agreed upon or laid down from time to time by the Board and such notice specifies that Directors are not required to be present in person;
 - (iii) in the event that a failure in communications prevents condition (i) from being satisfied by that number of Directors which constitutes a quorum, and none of such Directors are present at the place where the meeting is deemed by virtue of the further provisions of this Clause to be held, then the meeting shall be suspended until condition (i) is satisfied again. If such condition is not satisfied within 15 minutes from the interruption the meeting shall be deemed to have terminated;
 - (iv) any meeting held where 1 or more of the Directors is not physically present shall be deemed to be held at the place specified in the notice of meeting provided a Director is there present and if no Director is there present the meeting shall be deemed to be held at the place where the chair is located.

27.4 Quorum

At meetings of the Board the number of Directors whose presence (or participation under **Clause 27.3**) is required to constitute a quorum is the majority of the Directors but shall be a minimum of 3 Directors.

27.5 Notice of Board Meetings

Unless all Directors agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their presence) not less than 7 days' oral or written notice of the meeting of the Board shall be given to each Director by the Chief Executive Officer. The agenda shall be forwarded to each Director not less than 3 days prior to such meeting.

27.6 Validity of Board Decisions

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

27.7 Chair of Board Meeting

The Chairperson shall preside at every meeting of the Board. If the Chairperson is not present, or is unwilling or unable to preside, the Directors shall choose one of their number to preside as chair for that meeting only.

28.1 Directors' Interests

A Director is disqualified by holding any place of profit or position of employment Director in the Company, any State Association or in any Company or incorporated association in which the Company is a shareholder or otherwise interested or from contracting with the Company either as vendor, purchaser or otherwise except with express resolution of approval of the Board.

28.2 Conflict of Interest

A Director shall declare his interest in any:

- (a) contractual matter;
- (b) selection matter;
- (c) disciplinary matter; or
- (d) other financial matter;

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

28.3 Disclosure of Interests

The nature of the interest of such Director must be declared by the Director at the meeting of the Board at which the contract or other matter is first taken into consideration if the interest then exists or in any other case at the first meeting of the Board after the acquisition of the interest. If a Director becomes interested in a contract or other matter after it is made or entered into the declaration of the interest must be made at the first meeting of the Board held after the Director becomes so interested.

28.4 General Disclosure

A general notice that a Director is a member of any specified firm or company and is to be regarded as interested in all transactions with that firm or company is sufficient declaration under **Clause 28.3** as regards such Director and the said transactions. After such general notice it is not necessary for such Director to give a special notice relating to any particular transaction with that firm or company.

28.5 Recording Disclosures

It is the duty of the Chief Executive Officer to record in the minutes any declaration made or any general notice given by a Director in accordance with **Clause 28.3 and 28.4**.

29 CHIEF EXECUTIVE OFFICER

29.1 Appointment of Chief Executive Officer

The Chief Executive Officer shall be appointed by the Board for such term and on such conditions as it thinks fit. The Chief Executive Officer, shall be entitled to notice of, attend and participate in debate at, all meetings of the Board, but shall have no entitlement to vote.

29.2 Chief Executive Officer to Act as Secretary

The Chief Executive Officer shall act as and carry out the duties of secretary and public officer (unless prohibited by law) and shall administer and manage the Company in accordance with this Constitution.

29.3 Specific Duties

The Chief Executive Officer shall:

- (a) as far as practicable attend all Board meetings and General Meetings;
- (b) prepare the agenda for all Board meetings and all General Meetings;
- (c) record and prepare minutes of the proceedings of all meetings of the Board and the Company; and
- (d) regularly report on the activities of, and issues relating to, the Company.

29.4 Broad Power to Manage

Subject to the Act, this Constitution, the By-Laws and any directive of the Board, the Chief Executive Officer has power to perform all such things as appear necessary or desirable for the proper management and administration of the Company.

29.5 Chief Executive Officer may Employ

The Chief Executive Officer, in consultation with the Board, may employ such office personnel as are deemed necessary from time to time and such appointments shall be for such period and on such conditions as the Chief Executive Officer and the Board determine.

PART VI – MISCELLANEOUS

30 DELEGATIONS

30.1 Board may Delegate Functions to Committees

The Board may by instrument in writing create or establish or appoint from among its own members, the Members, or otherwise, committees to carry out such duties and functions, and with such powers, as the Board determines.

The Board shall establish two standing committees:

- (a) The Audit and Risk Committee;
- (b) The Nomination and Remuneration Committee.

30.2 Delegation by Instrument

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

- (a) this power of delegation; and
- (b) a function imposed on the Board by the Act or any other law, or this Constitution.

30.3 Delegated Function Exercised in Accordance With Terms

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

30.4 Procedure of Delegated Entity

- (a) The procedures for any committee established shall, with any necessary or incidental amendment, be the same as that applicable to meetings of the Board under **clause 27**. The quorum shall be determined by the committee, but shall be no less than the majority of the total number of committee members.
- (b) A Director or the Chief Executive Officer shall be ex-officio members of any committee so appointed.
- (c) Within 7 days of any meeting of any committee, the committee shall send a copy of the minutes and any supporting documents to the Chief Executive Officer.

30.5 Delegation may be Conditional

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

30.6 Revocation of Delegation

The Board may by instrument in writing, revoke wholly or in part any delegation made under this Clause, and may amend, repeal or veto any decision made by such committee under this Clause where such decision is contrary to this Constitution, the By-Laws, the Act, the objects of the Company or the committee's delegation.

31 BY-LAWS

31.1 Board to Formulate By-Laws

The Board may (by itself or by delegation to a committee) formulate, approve, issue, adopt, interpret and amend such by-laws, regulations and policies ("By-Laws") for the proper advancement, management and administration of the Company, the advancement of the objects of the Company and the sport of surfing as it thinks necessary or desirable. Such By-Laws must be consistent with this Constitution.

31.2 By-Laws Binding

All By-Laws made under this Clause shall be binding on the Company and Members.

31.3 By-Laws Deemed Applicable

All by-laws, regulations and policies of the Company in force at the date of the approval of this Constitution under the Act in so far as such by-laws, regulations and policies are not inconsistent with, or have been replaced by this Constitution, shall be deemed to be By-Laws under this Clause.

31.4 Notices Binding on Members

Amendments, alterations, interpretations or other changes to By-Laws shall be advised to State Associations by means of notices approved by the Board and prepared and issued by the Chief Executive Officer. State Associations shall be obliged to draw such notices to the attention of their respective Members. Notices are binding upon all Members.

32 RECORDS AND ACCOUNTS**32.1 Chief Executive Officer to Keep Records**

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

32.2 Records Kept in Accordance with Act

- (a) 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 Chief Executive Officer;
- (b) All accounts, books, securities and any other relevant documents of the Company shall be made available for inspection free of charge by any Member upon reasonable notice.

32.3 Company to Retain Records

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

32.4 Board to Submit Accounts

The Board shall submit to the Annual General Meeting the accounts of the Company in accordance with the Act.

32.5 Negotiable Instruments

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may

be, by two Directors or in such other manner approved by the Board from time to time.

33 AUDITOR

A properly qualified auditor or auditors shall be appointed and the remuneration of such auditor or auditors fixed by the Board. The auditor's duties shall be regulated in accordance with the Act, or if no relevant provisions exist under the Act, in accordance with generally accepted accounting principles and/or any applicable codes of conduct.

34 NOTICE

34.1 Manner of Notice

- (a) Notices may be given by the Chief Executive Officer to any Member by sending the notice by post or facsimile transmission or where available, by electronic mail, to the Member's registered address, facsimile number or electronic mail address.
- (b) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing and posting the notice. Service of the notice is deemed to have been effected 2 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.

35 SEAL

35.1 Safe Custody of Seal

The Chief Executive Officer shall provide for safe custody of the Seal.

35.2 Affixing Seal

The Seal shall only be used by authority of the Board and every document to which the seal is affixed shall be signed by 2 Directors or a Director and the Chief Executive Officer.

35.3 Director's Interest

A Director may not sign a document to which the seal of the Company is fixed where the Director is interested in the contract or arrangement to which the document relates.

36 ALTERATION OF CONSTITUTION

- (a) This Constitution shall not be altered except by Special Resolution.

37 INDEMNITY

37.1 Directors to be Indemnified

Every Director, auditor, manager, employee or agent of the Company shall be indemnified to the extent provided under the directors and officers insurance policy of the Company (if any) against any liability incurred by him/her in his/her capacity as Director, auditor, manager, employee or agent in defending any proceedings, whether civil or criminal, in which judgement is given in his/her favour or in which he/she is acquitted or in connection with any application in relation to any such proceedings in which relief is, under the Act, granted to him/her by the Court.

37.2 Company to Indemnify

The Company shall indemnify its Directors and employees to the extent provided under the directors and officers insurance policy of the Company (if any) against all damages and costs (including legal costs) for which any such Director or employee may be or become liable to any third party in consequence of any act or omission except wilful misconduct:

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

38 WINDING UP

38.1 Winding Up of the Company

Subject to this **Clause 38**, the Company may be wound up in accordance with the provisions of the Act.

38.2 Liability of Members

The liability of the Members of the Company is limited.

38.3 Members' Contributions

Every Member of the Company undertakes to contribute to the assets of the Company in the event of it being wound up while a Member, or within 1 year after ceasing to be a Member for payment of the debts and liabilities of the Company contracted before the time at which he or she 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 \$1.00.

38.4 Distribution of Property on Winding Up

If upon winding up or dissolution of the Company 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 of the Company but shall be given or transferred to some body or bodies having objects similar to the objects of the Company and which prohibits the distribution of its or their income

and property among its or their Members to an extent at least as great as is imposed on the Company by this Constitution and which is also not carried on for profit and which is similarly exempt (or entitled to be exempt) from income tax. Such body or bodies to be determined by the Members of the Company at or before the time of dissolution, and in default thereof by such judge of the relevant Supreme Court or such other court as may have or acquire jurisdiction in the matter.

39 AUTHORITY TO TRADE

The Company is authorised to trade in accordance with the Act.

40 SOURCE OF FUNDS

The funds of the Company may be derived from annual membership subscriptions, fees and levies payable by Members, donations, grants, sponsorships and such other sources as the Board determines.

41 APPLICATION OF INCOME

41.1 Income and Property Applied to Objects

The income and property of the Company shall be applied solely towards the promotion of the objects of the Company as set out in this Constitution.

41.2 No Income to Members

Except as prescribed in this Constitution:

- (a) no portion of the income or property of the Company shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any Member; and
- (b) no remuneration or other benefit in money or money's worth shall be paid or given by the Company to any Member who holds any office of the Company.

41.3 Payments in Good Faith

Nothing contained in **Clause 41.2** shall prevent payment in good faith of or to any Member for:

- (a) any services actually rendered to the Company whether as an employee or otherwise;
- (b) goods supplied to the Company in the ordinary and usual course of operation;
- (c) interest on money borrowed from any Member;
- (d) rent for premises demised or let by any Member to the Company;
- (e) any out-of-pocket expenses incurred by the Member on behalf of the Company; or
- (f) any other reason;

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.