

**CONSTITUTION OF BONDI ICEBERGS
SWIMMING CLUB LIMITED
ACN 681 960 832**

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Constitution

1. NAME OF COMPANY

- 1.1 The name of the Company is Bondi Icebergs Swimming Club Limited.

2. PRELIMINARY

- 2.1 The Company is a company limited by guarantee and shall be a non-proprietary company.
- 2.2 The Company is established for the purposes set out in this Constitution.
- 2.3 Pursuant to Section 135(2) of the Act all replaceable rules referred to in the Act are hereby displaced or modified as provided in this Constitution.
- 2.4 Every member is bound by and must comply with the Constitution and By-laws of the Club and any other applicable determination, resolution or policy which may be made or passed by the Board.
- 2.5 The Constitution and By-laws of the Club have effect as a contract between:
- (a) the Club and each member; and
 - (b) the Club and each director;
 - (c) each member and each other member,
- under which each person agrees to observe and perform the Constitution and By-laws so far as they apply to that person.
- 2.6 A copy of the Constitution of the Club shall be supplied to a member on request being made to the Secretary of the Club, and if demanded by the Secretary from that member, on payment of any fee that may be prescribed by the Act.

3. DEFINITIONS

- 3.1 In this Constitution unless there be something in the subject or context inconsistent therewith:

“Act” means the Corporations Act 2001 and any regulation made under the Corporations Act 2001. Any reference to a provision of the Corporations Act includes a reference to the same or similar provision in any legislation replacing, amending or modifying the Corporations Act however that provision appears.

“Board” means the members for the time being of the Board of Directors of the Club constituted in accordance with this Constitution.

“Board Appointed Director” means a person appointed to the Board pursuant to Rule 27.1(b), but does not include a person who is appointed to the Board to fill a casual vacancy in accordance with Rule 34.3 of this Constitution.

“Bondi Icebergs Club Limited”	means Bondi Icebergs Club Limited ACN 155 415 991.
“By-Laws”	shall mean the By-laws made in accordance with this Constitution.
“Club”	means Bondi Icebergs Swimming Club Limited ACN 681 960 832.
“Club Notice Board”	means a board designated as such and located within the Bondi Icebergs Club Limited premises on which notices for the information of members are posted.
“Constitution”	means this Constitution.
“Director Identification Number”	means the number that is referred to by the same words in section 1272C of the Act that a member of the club must have before that member can be elected or appointed to office as a director of the Club.
“Financial member”	means a member who has renewed their membership of the Club by the relevant due date, and/or who has paid all joining fees, subscriptions, levies and other payments to the Club by the relevant due dates (if any such payments are required).
“Month”	except where otherwise provided in this Constitution means calendar month.
“Non Financial member”	means a member who has not renewed their membership of the Club by the relevant due date, and/or has not paid all joining fees, subscriptions, levies and other payments to the Club by the relevant due dates.
“Office”	means the general administrative office of the Club.
“Rules”	means the rules comprising this Constitution.
“Secretary”	means the person fulfilling the role of company Secretary.
“Special Resolution”	has the meaning assigned thereto by the Act. To be passed, a Special Resolution must receive at least seventy five percent (75%) of the votes cast by members eligible to vote on the Special Resolution.
“Swimming Member”	means a Long Service Swimming Member, Honorary Life Swimming Member, Life Swimming Member and Rajah Swimming Platinum Member.
“Swimming Requirement”	has the meaning given in Rule 9 and is also known as historic rule 15b.

3.2 Words importing the singular number also include the plural and vice versa and the masculine gender the feminine gender and vice versa.

4. OBJECTS

4.1 The objects of the Club are to:

- (a) To foster, arrange, conduct, control and host swimming races and swimming competitions especially during winter and encourage swimming and other sport and recreation at the Bondi Icebergs Club Limited;
- (b) To co-operate, affiliate or join with other swimming organisations including the Bondi Ice Cubes Swimming Club (being an unincorporated association established in 1985 for the promotion of winter swimming amongst children under 18 years of age) and the Winter Swimming Association of Australia Incorporated and other sports organisations in Australia and other countries in fostering, conducting, controlling and hosting swimming races, swimming competitions and other sport and recreation, and to promote and foster swimming amongst members of the Club and the broader community as a means of physical fitness;
- (c) To control the terms and conditions upon which members and other persons swim in races or competitions or participate in other sport or recreation arranged, conducted, controlled or hosted by the Club or in which members of the Club represent the Club;
- (d) To promote and foster acts of social welfare and charity amongst members of the Club and for the Club to render financial or other assistance to any person or charitable organisation in need of care, food, clothes, shelter, education or friendship;
- (e) To continue the traditions of mateship, camaraderie, friendship and beneficence of the former Bondi Icebergs' Swimming Club which was founded in 1929;
- (f) Sell, convey, transfer, assign, mortgage, charge, give in exchange, dispose of, let, manage or otherwise deal with all or any of the property, real or personal, of the Club;
- (g) Do all such other lawful things as are incidental or conducive to the attainment of any or all of the above objects.
- (h) Generally, to do all things reasonably necessary for or incidental to the pursuit of the objects of the Club including the engagement of contractors, employees and professional advisors.

5. LIMITED LIABILITY

- 5.1 The liability of the members is limited.

6. MEMBERS' GUARANTEE

- 6.1 Each member undertakes to contribute an amount not exceeding one dollar (\$1.00) if the Club is wound up:

- (a) while he or she is a member of the Club; or
- (b) within one year of the date that he or she ceases to be a member.

- 6.2 The contribution referred to in Rule 6.1 shall be for the:

- (a) payment of the debts and liabilities of the Club contracted before the member ceased to be a member; and
- (b) costs, charges and expenses of winding up.

7. APPLICATION OF PROPERTY ON DISSOLUTION

- 7.1 If the Club is wound up or dissolved and after the satisfaction of all the Club's debts and liabilities, any property whatsoever remains, that property shall:
- (a) not be transferred, paid to or distributed among the members;
 - (b) be given or transferred to the Bondi Icebergs Club Limited.

8. PROPERTY AND INCOME OF THE CLUB

- 8.1 The income and property of the Club shall be applied solely towards the promotion of the objects of the Club as set forth in this Constitution. No portion of the income or property of the Club shall be paid or transferred directly or indirectly by way of dividend bonus or otherwise by way of profit to the members of the Club.
- 8.2 A director shall not hold or be appointed or elected to any office of the Club paid by salary or wages or any similar basis of remuneration.
- 8.3 Nothing in this Constitution shall prevent the payment:
- (a) in good faith of reasonable and proper remuneration to any employed officer or other employee of the Club; or
 - (b) in good faith of reasonable and proper remuneration to any member of the Club in return for services actually rendered;
 - (c) of interest at a rate not exceeding interest at the rate for the time being charged by bankers in Sydney for overdrawn accounts on money lent by a member to the Club;
 - (d) of reasonable and proper rent for premises demised or let by any member to the Club.

9. SWIMMING ACTIVITIES

Swimming Requirement – [Historic Rule 15b]

- (a) Active Swimming Members are required to swim in Club races on at least three (3) Sundays each month during the months of May, June, July, August and September (each being a "Swimming Month") in each year over a period of five (5) consecutive years or until they have recorded seventy-five (75) swims over a period longer than five (5) years (referred to in the Rules as "the swimming requirement" which may also be referred to as the "Historic Rule 15b").
- (b) If an Active Swimming Member fails to swim in Club races on at least three (3) Sundays in a Swimming Month, that Active Swimming Member must provide the Club's Race Recorder with a written explanation for their failure before the end of the relevant Swimming Month.

- (c) If an Active Swimming Member fails to provide a written explanation as required by Rule 9(b), the Swimming Committee may send the member a letter or email (which may be referred to as a "**15b letter**") requesting the member to contact the Race Recorder to explain why the member failed to meet the swimming requirement.
- (d) The Swimming Committee shall meet monthly to review all Active Swimming Members who fail to meet the Swimming Requirement and it may:
 - (i) accept the reason given by the member and allow such member to continue swimming; or
 - (ii) if a member fails to respond or their reason is unacceptable to the Swimming Committee, it may issue a warning letter or email to the member (which may be referred to as a "**15b warning letter**") that advises the member of the Swimming Requirement and requests future compliance with it; or
 - (iii) take such other action as it sees fit.
- (e) Any decision of the Swimming Committee shall be final and it is not required to assign any reason for its decision. However, the Board may overrule any decision of the Swimming Committee.
- (f) If a 15b letter or a 15b warning letter is issued to a member and the member does not comply with it, the Swimming Committee may:
 - (i) suspend the member from participating in all Club swimming events and request that the member transfers to Social Membership of the Club; or
 - (ii) suspend the member from participating in all Club swimming events and forward the name of the member to the Board requesting that the member's name be removed from the Club's Register of Members for a period of up to twelve (12) months; or
 - (iii) take such other action as it sees fit.
- (g) If an Active Swimming Member swims in more than one race on the same Sunday it is counted and recorded as one (1) swim only for the purpose of the Swimming Requirement.

Swimming Events

- (h) The Swimming Club will be conducted on each Sunday from May until September.
- (i) The premiere swimming race of the Swimming Club is the 40 metre handicap race which will commence at 10.30am (subject to weather conditions) (**Premiere Race**).
- (j) The Swimming Committee will have power to organise and run all other swimming races and events of the Swimming Club around the Premiere Race.

10. MEMBERSHIP

- 10.1 No person under the age of eighteen (18) years shall be admitted as a member of the Club, other than as a Icecube Member in accordance with this Constitution.
- 10.2 Unless and until otherwise determined by the Board by By-Law, the membership of the Club shall be divided into the following categories:
- (a) Active Swimming Member;
 - (b) Long Service Swimming Member;
 - (c) Rajah Swimming Platinum Member;
 - (d) Swimming Life Member;
 - (e) Swimming Honorary Life Member; and
 - (f) Icecube Member.
- 10.3 Persons may also be admitted by the Board of the Club as an Honorary Swimming Member.
- 10.4 For the purposes of section 246B of the Act, the rights of a class of membership may be varied or cancelled by way of eligible members passing a special resolution in accordance with Rule 46 and without the need for a separate resolution to be passed by members of that class of membership.

ACTIVE SWIMMING MEMBERS

- 10.5 Active Swimming Members shall be persons who:
- (a) are an Active Swimming Member of Bondi Icebergs Club Limited at the date of adoption of this Constitution; or
 - (b) have attained the age of eighteen (18) years;
 - (c) satisfied the criteria set out in this Constitution, the By-Laws and any policies relating to Active Swimming membership; and
 - (d) have made application and are elected to Active Swimming Membership of the Club.
- 10.6 Subject to any restrictions contained in this Constitution, Active Swimming Members are entitled to:
- (a) such swimming privileges and advantages of the Club as may be determined by the Board from time to time;
 - (b) attend (but not vote) general meetings (including Annual General Meetings) of the Club; and
 - (c) propose, second, or nominate any person for membership of the Club..
- 10.7 Active Swimming Members are not entitled to:

- (a) vote at general meetings (including Annual General Meetings) of the Club;
- (b) nominate for and be elected to hold office on the Board;
- (c) vote in the election of the Board;
- (d) vote on any Special Resolution (including a Special Resolution to amend this Constitution);
- (e) propose, second or nominate any eligible member for any office of the Club; or
- (f) propose, second or nominate any eligible member for Swimming Life membership.

LONG SERVICE SWIMMING MEMBERS

10.8 Long Service Swimming members shall be persons who:

- (a) are a Long Service Swimming Member of Bondi Icebergs Club Limited at the date of adoption of this Constitution; or
- (b) have satisfied the Swimming Requirement; and
- (c) have continued to remain a financial Long Service Swimming Member since satisfying the Swimming Requirement.

10.9 Subject to any restrictions contained in this Constitution, Long Service Swimming members are entitled to:

- (a) such swimming privileges and advantages of the Club as may be determined by the Board from time to time; and
- (b) attend and vote at general meetings (including Annual General Meetings) of the Club;
- (c) nominate for and be elected to hold office on the Board;
- (d) vote in the election of the Board;
- (e) vote on any Special Resolution (including a Special Resolution to amend this Constitution);
- (f) propose, second, or nominate any person for membership of the Club;
- (g) propose, second, or nominate any eligible member for any office of the Club;
- (h) propose, second or nominate any eligible member for Swimming Life membership.

SWIMMING HONORARY LIFE MEMBERS

10.10 Swimming Honorary Life members shall be persons who:

- (a) are a Swimming Honorary Life Member of Bondi Icebergs Club Limited at the date of adoption of this Constitution; or

- (b) have completed forty (40) continuous years as a member of the Club (including time spent as a member of the Bondi Icebergs Club Limited) as either an Active Swimming Member, Long Service Swimming Member, or a former Country Swimming Member.

10.11 Subject to any restrictions contained in this Constitution, Swimming Honorary Life members are entitled to:

- (a) such swimming privileges and advantages of the Club as may be determined by the Board from time to time; and
- (b) attend and vote at general meetings (including Annual General Meetings) of the Club;
- (c) nominate for and be elected to hold office on the Board;
- (d) vote in the election of the Board;
- (e) vote on any Special Resolution (including a Special Resolution to amend this Constitution);
- (f) propose, second, or nominate any person for membership of the Club;
- (g) propose, second, or nominate any eligible member for any office of the Club;
- (h) propose, second or nominate any eligible member for Swimming Life membership.

10.12 A Swimming Honorary Life member is relieved from the payment of any annual subscription and pool entry.

RAJAH SWIMMING PLATINUM MEMBERS

10.13 Rajah Swimming Platinum Members are persons who are a Rajah Swimming Platinum Member of Bondi Icebergs Club Limited at the date of adoption of this Constitution.

10.14 Rajah Swimming Platinum membership is a closed category of membership.

10.15 Subject to any restrictions contained in this Constitution, Rajah Swimming Platinum Members are entitled to:

- (a) such swimming privileges and advantages of the Club as may be determined by the Board from time to time; and
- (b) attend and vote at general meetings (including Annual General Meetings) of the Club;
- (c) nominate for and be elected to hold office on the Board;
- (d) vote in the election of the Board;
- (e) vote on any Special Resolution (including a Special Resolution to amend this Constitution);
- (f) propose, second, or nominate any person for membership of the Club;

- (g) propose, second, or nominate any eligible member for any office of the Club;
- (h) propose, second or nominate any eligible member for Swimming Life membership.

10.16 A Rajah Swimming Platinum member is relieved from the payment of any annual subscription and pool entry until 2042.

ICECUBE MEMBERS

10.17 Icecube Members shall be persons who:

- (a) have not attained the age of eighteen (18) years; and
- (b) are elected to Icecube Membership of the Club.

10.18 A person shall not be admitted as an Icecube member of the Club unless the Board:

- (a) is satisfied that the person is joining the Club for the purposes of satisfying the Swimming Requirement; and
- (b) has received from that person's parent or guardian written consent to that person becoming an Icecube Member of the Club and (if applicable) taking part in the swimming activities organised by the Club.

10.19 Icecube Members are entitled to such swimming privileges and advantages of the Club as may be determined by the Board from time to time but shall not be entitled to:

- (a) attend and vote at general meetings (including Annual General Meetings) of the Club;
- (b) nominate for and be elected to hold office on the Board;
- (c) vote in the election of the Board;
- (d) vote on any Special Resolution (including a Special Resolution to amend this Constitution);
- (e) propose, second, or nominate any person for membership of the Club;
- (f) propose, second, or nominate any eligible member for any office of the Club;
- (g) propose, second or nominate any eligible member for Swimming Life membership.

10.20 Upon a Icecube Member attaining the age of eighteen (18) years, they shall cease to be an Icecube Member of the Club and will, subject to their consent, be transferred to Active Swimming Membership of the Club.

10.21 Any Icecube Member so admitted as an Active Swimming Member shall:

- (a) subject to 10.21(a), pay the full joining fee and proportionate part of the annual subscription applicable to Active Swimming Members for the then current year;
- (b) if the Icecube Member has completed at least three (3) consecutive swimming seasons as an Icecube Member immediately prior to attaining the age of

eighteen (18) years then:

- (i) the joining fee applicable to Active Swimming Members may be waived by the Board; and
- (ii) the Icecube Member can carry over their Icecube Member swim credits up to a maximum of ten (10) swim credits per swimming season (ie up to a total of thirty (30) swim credits) which will be recognised for the purpose of satisfying the Swimming Requirement [Historic Rule 15b] as a Active Swimming Member.

SWIMMING LIFE MEMBERS

10.22 A Swimming Life member shall be any member who in consideration of long and meritorious service to the Club (including Bondi Icebergs Club Limited) or for any other commendable reason:

- (a) was granted Swimming Life Membership of Bondi Icebergs Club Limited at the date of adoption of this Constitution; or
- (b) has been granted Swimming Life membership of the Club in accordance with this Constitution.

10.23 Swimming Life membership may only be conferred at an Annual General Meeting of the Club.

10.24 Candidates for Swimming Life membership shall be nominated in writing and proposed by one and seconded by another Long Service Swimming Member, Swimming Honorary Life Member or Swimming Life Member and submitted to the Board for approval not less than two (2) months prior to the next Annual General Meeting.

10.25 If a nomination for Swimming Life membership is approved by the Board, the nomination shall be referred to the next general meeting of the Club and not less than twenty-one (21) days written notice of the nomination shall be given to all members eligible to vote at that meeting.

10.26 If a nomination for Swimming Life membership is not approved by the Board, the nomination shall not be submitted to the next Annual General Meeting of the Club.

10.27 If a nomination for Swimming Life membership is approved by a resolution passed by at least three quarter (75%) majority of the members present and voting by way of secret ballot at the Annual General Meeting by secret ballot, the person nominated shall thereby be a Swimming Life member of the Club. Every Swimming Life member shall be entitled to all the rights and privileges of a Long Service Swimming Member.

10.28 A Swimming Life member is relieved from the payment of any annual subscription and pool entry.

10.29 Not more than two (2) members shall be elected to Swimming Life Membership at an Annual General Meeting.

11. TRANSFER BETWEEN CLASSES OF MEMBERSHIP

11.1 The Board has the power on the application of any member to transfer that member to

another category of membership (other than Swimming Life membership) if that member has the qualifications for that other category of membership.

- 11.2 The Board shall have the power to transfer any member who ceases to hold the necessary qualifications for their existing category of membership (including without limitation, a Icecube member who has attained the age of eighteen (18) years) to another category of membership of the Club for which the member has the necessary qualifications.
- 11.3 Any application for transfer of membership pursuant to Rule 11.1 together with any additional subscription shall be deposited at the office and the Secretary shall cause the name of the applicant to be exhibited on the Club Notice Board for a continuous period of not less than seven (7) days before the transfer of the applicant to another class of membership of the Club.
- 11.4 Unless otherwise determined by the Board, a member will not be entitled to any refund of membership fees or any part thereof if they are transferred to another category of membership for any reason.
- 11.5 The Club shall not be required to notify a person if they have been transferred to another class of membership of the Club pursuant to Rule 11.1. If a member fails to be transferred, the Secretary shall cause any additional subscription paid by that member to be returned to such member.

12. HONORARY SWIMMING MEMBERS

- 12.1 The following persons may be made Honorary Swimming Members of the Club in accordance with procedures established by the Board from time to time:
 - (a) the patron or patrons for the time being of the Club; or
 - (b) any prominent citizen or local dignitary visiting the Club.
- 12.2 Honorary Swimming Members are entitled to such swimming privileges and advantages of the Club as the Board may determine from time to time.
- 12.3 Honorary Swimming Members are not entitled to:
 - (a) vote at any meeting of the Club; or
 - (b) nominate for or be elected to the Board or any office in the Club;
 - (c) vote in the election of the Board;
 - (d) vote on any Special Resolution (including a Special Resolution to amend this Constitution);
 - (e) propose, second, or nominate any person for membership of the Club;
 - (f) propose, second or nominate any eligible member for any office of the Club; or
 - (g) propose, second or nominate any eligible member for Swimming Life membership.

13. ELECTION OF MEMBERS

- 13.1 A person shall not be admitted as a Active Swimming Member or Icecube member of the Club unless that person:
- (a) has complied with all of the requirements of membership of the Club (including such requirements as may be prescribed by the Board from time to time); and
 - (b) is elected to membership by a resolution of the Board of the Club, or a duly appointed election committee of the Club.
- 13.2 The names of the members present and voting at that Board or election committee meeting shall be recorded by the Secretary of the Club.
- 13.3 The Board or election committee may reject any application for membership without giving any reason.
- 13.4 Every application for membership of the Club (which shall be a proposal for membership by the applicant) shall be in writing, either in hard form or created electronically and shall be in such form as the Board may prescribe and shall contain the following particulars:
- (a) the full name of the applicant; and
 - (b) the address of the applicant;
 - (c) email address of the applicant;
 - (d) the telephone number of the applicant;
 - (e) the date of birth of the applicant;
 - (f) a statement to the effect that the applicant agrees to be bound by and comply with the Constitution and By-laws of the Club and any other determination, resolution or policy which may be made or passed by the Board;
 - (g) the signature of the applicant and, in the case of an Icecube member, the signature of the parent or guardian of the applicant;
 - (h) such other particulars as may be prescribed by the Board from time to time.
- 13.5 Except in the case of an online electronic application for membership, every form of application for membership shall be presented by the applicant to an authorised officer of the Club together with:
- (a) the joining fee (if any) and the appropriate subscription (if any); and
 - (b) evidence of a current driver's licence or a current passport held by that applicant or such other form of identification as determined by the Board.
- 13.6 Persons wishing to join the Club shall be able to make an application for membership of the Club online by using electronic means in such manner as may be determined by the Board by By-Law from time to time.
- 13.7 The Club shall not be required to notify a person if they have been elected to

membership. If a person fails to be elected to membership the Secretary shall cause any joining fee and subscription paid by the person to be returned to that person.

14. JOINING FEES, SUBSCRIPTIONS AND LEVIES

- 14.1 The Board shall determine the joining fees, subscriptions, levies and other payments (if any) payable by members of the Club.
- 14.2 The Board may from time to time, determine that subscriptions are payable by monthly, quarterly or half yearly instalments, in advance, or for more than one (1) year in advance.
- 14.3 Any person elected during the financial year of the Club to any class of membership shall pay such proportion of the annual subscription as may be determined by the Board from time to time.
- 14.4 All joining fees, subscriptions, levies and other payments shall be due and payable on a date, or dates, determined by the Board and the Board shall notify members of the relevant due date or dates in such manner determined by the Board.

15. NON-FINANCIAL MEMBERS AND EMPLOYEES OF BONDI ICEBERGS CLUB LIMITED

15.1 Notwithstanding any Rule contained in this Constitution:

- (a) a Non-Financial member shall not be entitled to:
 - (i) attend at the premises or use any of the facilities of the Club for any purpose without the permission of the Board; or
 - (ii) participate in any of the recreational, social or sporting activities of the Club without the permission of the Board;
 - (iii) attend or vote at any meeting of the Club;
 - (iv) nominate or be elected or appointed to the Board or any committee of the Club;
 - (v) vote in the election of the Board or any committee of the Club;
 - (vi) propose, second or nominate any eligible member for any office of the Club;
 - (vii) propose, second or nominate any person for membership of the Club; or
 - (viii) propose, second or nominate any eligible member for Swimming Life membership.
- (b) In accordance with section 30(1)(h1) of the Registered Clubs Act 1976, a member of the Club who is an employee of Bondi Icebergs Club Limited shall not be entitled to vote in any election of the Board of the Club.

16. REGISTERS OF MEMBERS

16.1 The Club shall keep a register of members in accordance with the requirements of the Act, such register to include in respect of each of those members:

- (i) the name in full; and
- (ii) the address;
- (iii) if the member is required to pay a subscription fee, the date on which that member last paid the subscription fee for membership of the Club.

17. NOTIFICATION TO CLUB REGARDING CHANGE IN MEMBER'S DETAILS

17.1 Every member must advise the Secretary of any change to their contact details (including address, email address and telephone number) within seven (7) days of the change to their details.

18. DISCIPLINARY PROCEEDINGS

18.1 Subject to Rule 18.2, the Board shall have power to reprimand, suspend from some or all rights and privileges of membership for the same or varying periods of time, expel or accept the resignation of any member, if that member:

- (a) in the reasonable opinion of the Board, has wilfully refused or neglected to comply with any of the provisions of this Constitution or any By-Law; or
- (b) is, in the reasonable opinion of the Board;
 - (i) guilty of any conduct prejudicial to the interests of the Club; or
 - (ii) guilty of conduct which is unbecoming of a member.

18.2 The following procedure shall apply to disciplinary proceedings of the Club:

- (a) A member shall be notified of:
 - (i) any charge against the member pursuant to Rule 18.1; and
 - (ii) the particulars of the charge, including the alleged facts and circumstances which give rise to the charge against the member;
 - (iii) the date, time and place of the meeting of the Board at which the charge is to be heard.
- (b) The member charged shall be notified of the matters in paragraph (a) of this Rule 18.2 by notice in writing at least seven (7) days before the meeting of the Board at which the charge is to be heard.
- (c) The member charged shall be entitled to:
 - (i) attend the meeting for the purpose of answering the charge; and
 - (ii) submit to the meeting written representations for the purpose of

answering the charge;

(iii) call witnesses provided that:

- (1) if a proposed witness fails to attend the hearing or provide evidence at the hearing, the Board can still hear and determine the charge; and
- (2) the Club cannot and will not force any person (including a member) proposed by the member charged as a witness to attend and provide evidence at the hearing. The member charged must act in an appropriate manner at the meeting (and in particular and without limitation, the member must not act in an offensive or disruptive manner).

(d) If the chairperson determines (in their absolute discretion) that the member charged is not acting in an appropriate manner, the chairperson may issue the member charged with a warning regarding the member's conduct and advise the member that if the member fails to comply with the warning, the member may be asked to leave the meeting and the Board will continue to consider and deal with the charge in the absence of the member.

(e) If the member charged does not comply with the warning given in accordance with paragraph (d) of this Rule, the chairperson (in their absolute discretion) may exclude the member charged from the meeting and continue to consider and deal with the charge in his or her absence.

(f) If the member fails to attend such meeting:

- (i) the charge may be heard and dealt with and the Board may decide on the evidence before it; and
- (ii) the Board may impose any penalties,

the member's absence notwithstanding, but having regard to any representations which may have been made to it in writing by the member charged.

(g) After the Board has considered the evidence put before it, the Board may:

- (i) immediately come to a decision as to the member's guilt in relation to the charge; or
- (ii) advise the member that the Board requires additional time to consider the evidence put before it in order to determine whether or not the member is guilty of the charge.

(h) After the Board has come to a decision as to the member's guilt in relation to the charge it must:

- (i) in the case of a decision under Rule 18.2(g)(i) of this Rule, immediately inform the member of the Board's decision; or
- (ii) in the case of a decision under Rule 18.2(g)(ii), inform the member of the Board's decision in writing within seven (7) days of the date of the decision of the Board.

- (i) If the member charged has been found guilty, the member must be given a further opportunity to address the Board in relation to an appropriate penalty for the charge. The Board shall, in its absolute discretion, determine whether or not the member will address the issue of penalty:
 - (i) at the meeting or afterwards; and
 - (ii) by way of verbal or written submissions or a combination thereof.
- (j) After the Board has made a decision on the issue of penalty, the Board must advise the member of its decision.
- (k) No motion by the Board to reprimand, suspend or expel a member shall be deemed to be passed unless a majority of the directors present vote in favour of such motion.
- (l) The Board shall have the power to adjourn, for such period as it considers fit, a meeting pursuant to this Rule 18.
- (m) Any decision of the Board on such hearing shall be final and the Board shall not be required to give any reason for its decision.
- (n) The Board may authorise the Secretary and other persons to attend the meeting to assist the Board in considering and dealing with the charge but those persons shall not be entitled to vote at the meeting.

18.3 The outcome of disciplinary proceedings shall not be invalidated or voided if the procedure set out in Rule 18.2 is not strictly complied with provided that there was no substantive injustice for the member charged.

PROVISIONAL SUSPENSION PENDING DISCIPLINARY HEARING

18.4 If a notice of charge is issued to a member pursuant to Rule 18.2(a):

- (a) the Board by resolution; or
- (b) the Secretary (independently of the Board),

shall have power to suspend that member from some or all rights and privileges as a member of the Club until the charge is heard and determined. Such suspension shall be promptly notified in writing to the member concerned.

ADDITIONAL DISCIPLINARY POWERS OF CAPTAIN

18.5 If, in the opinion of the Captain (or his or her delegate), a Member has engaged in conduct that is unbecoming of a member or prejudicial to the interests of the Club, then the Captain (or his or her delegate) may suspend the Member from some or all rights and privileges as a member of the Club for a period of up to twelve (12) months.

18.6 In respect of any suspension pursuant to Rule 18.5, the requirements of Rules 18.1 to 18.4 shall not apply.

18.7 If the Captain (or his or her delegate) exercises the power pursuant to Rule 18.5, the Captain (or his or her delegate) must notify the Member (by notice in writing) that:

- (a) the member has been suspended as a Member of the Club;

- (b) the period of suspension;
- (c) the privileges of membership which have been suspended; and
- (d) if the member wishes to do so, the member may request by notice in writing sent to the Captain that the matter be dealt with by the Board pursuant to Rules 18.1 and 18.2.

18.8 If a member submits a request under Rule 18.7(d):

- (a) the member shall remain suspended until such time as the charge is heard and determined by the Board; and
- (b) the Club must commence disciplinary proceedings against the member in accordance with the requirements of Rule 18.1;

and the determination of the Board in respect of those disciplinary proceedings shall be in substitution for and to the exclusion of any suspension imposed by the Captain (or his or her delegate).

SUSPENSION OR EXPULSION FROM BONDI ICEBERGS CLUB LIMITED

18.9 Where a member of the Club has been suspended or expelled from membership of Bondi Icebergs Club Limited, that persons rights to membership of the Club, including their right to attend the premises of the Bondi Icebergs Club Limited to engage in swimming activities, will automatically cease upon expulsion or for the same period as the suspension and the principles of natural justice shall not apply.

19. DISCIPLINARY COMMITTEE

19.1 The Board may by resolution delegate all of the powers and functions given to the Board by Rule 18 to a Disciplinary Committee comprising not less than three (3) directors of the Club selected by the Board.

19.2 The Disciplinary Committee shall conduct its activities in accordance with the procedures referred to in Rule 18 save that:

- (a) a quorum of the Disciplinary Committee shall be three (3) directors of the Club; and
- (b) all references to the Board in Rule 18, except in Rule 18.2(m) shall be read as being references to the Disciplinary Committee.

19.3 The Board shall have power to review a decision of the Disciplinary Committee or order a fresh hearing of any matter determined by the Disciplinary Committee and shall have the power to impose any penalty permitted by Rule 18 on the member charged in substitution for that imposed by the Disciplinary Committee provided that:

- (a) the procedure set out in Rule 18 is followed; and
- (b) the member is notified that the Board is exercising the power under this Rule 19.3 within forty-two (42) days of the date on which the Disciplinary Committee meeting was held.

19.4 The Board shall have power by resolution to revoke any delegation to the Disciplinary

Committee pursuant to Rule 19.1 and may hear and determine any charge against a member which by reason of the nature of or the seriousness of the allegations giving rise to the charge, or the identity of or the position or office held by the member, the Board considers that it would not be appropriate for the charge to be heard by the Disciplinary Committee.

- 19.5 This Rule 19 applies to all members only and it does not limit or restrict the Bondi Icebergs Club Limited from exercising the powers contained in section 77 of the Liquor Act.

20. MEMBER UNDER SUSPENSION

- 20.1 Subject to the terms of their suspension, a member whose membership is suspended pursuant to Rules 18 or 19 shall during the period of such suspension not be entitled to:

- (a) attend at the premises or use any of the facilities of the Club for any purpose without the permission of the Board; or
- (b) participate in any of the recreational, social or sporting activities of the Club or any Sub club without the permission of the Board;
- (c) attend or vote at any meeting of the Club or any Sub club;
- (d) nominate or be elected or appointed to the Board or any committee of a Sub club;
- (e) vote in the election of the Board or any committee of a Sub club;
- (f) propose, second or nominate any eligible member for any office of the Club or any Sub club;
- (g) propose, second or nominate any person for membership to the Club or a Sub club; or
- (h) propose, second or nominate any eligible member for Swimming Life membership.

21. RESIGNATION AND CESSATION OF MEMBERSHIP

- 21.1 A member may at any time resign from his or her membership of the Club by either:
- (a) giving notice in writing to the Captain or the Secretary; or
 - (b) returning his or her membership card to an officer of the Club and clearly indicating to the officer that he or she resigns from membership.
- 21.2 A resignation pursuant to Rule 21.1 shall take effect from the date on which the notice is received by the Captain or Secretary or the date on which the membership card is received by the officer of the Club.
- 21.3 Any person who has not paid his or her joining fee, subscription, levy or other payment:

- (a) by the due date shall cease to be entitled to the privileges of membership of the Club; and
- (b) within one (1) months after the due date shall cease to be a member of the Club.

21.4 Any person who has ceased to be a member of the Club:

- (a) for failing to comply with the Swimming Requirement [historic Rule 15b], for failing to pay a joining fee, subscription, levy or other payment or as a result of disciplinary proceedings, will be required to satisfy the requirements of a new applicant for Active Swimming membership of the Club including attending an induction and such other matters as may be determined by the Board from time to time; and
- (b) for any reason will not be entitled to any refund of any joining fee, subscription, levy or other payment made to the Club.

22. **PATRON**

- 22.1 The Club may from time to time have one (1) Patron appointed by the Board of the Club.
- 22.2 If such Patron is not a member of the Club, they shall thereupon be deemed to be an Honorary Swimming Member of the Club and, subject to this Constitution, shall remain an Honorary Swimming Member while they remain Patron.
- 22.3 For the purpose of this Rule an Honorary Swimming Member shall have the same rights as Long Service Swimming member.
- 22.4 The Board may at any time and without reason withdraw conferral of Patron status from any person and appoint another person as Patron.

23. **BOARD OF DIRECTORS**

- 23.1 Subject to Rules 23.2 and 29.2, from the date of adoption of this Constitution until the first election of the Board in accordance with this Constitution, the Board shall consist of the nine (9) directors of the Bondi Icebergs Club Limited comprising:
 - (a) President,
 - (b) Vice President,
 - (c) Treasurer;
 - (d) Captain; and
 - (e) five (5) other Directors.
- 23.2 Those directors holding office under Rule 23.1 shall:
 - (a) form the same groups as they are in under the Triennial Rule at Rule 27 of the Bondi Icebergs Club Limited's Constitution; and

- (b) subject to Rule 23.6, remain in office only for same period they are to remain in office under Rule 27 of the Bondi Icebergs Club Limited's Constitution.
- 23.3 On and from the date of the first casual vacancy on the Board other than the office of Captain, and subject to Rules 23.4, the Board shall consist of eight (8) directors who shall comprise:
- (a) President;
 - (b) Vice President;
 - (c) Treasurer;
 - (d) Captain; and
 - (e) Four (4) other Directors.
- 23.4 On and from the date of the second casual vacancy on the Board other than the office of Captain, the Board shall consist of seven (7) directors who shall comprise:
- (a) President;
 - (b) Vice President;
 - (c) Treasurer;
 - (d) Captain; and
 - (e) Three (3) other Directors.
- 23.5 The President, Vice President, Treasurer and other Directors (excluding the Captain) shall thereafter be elected triennially in accordance with the following:

Definitions

1. In this Schedule -

 "general meeting" means a meeting of the members of the club at which members of the governing body are to be elected;

 "triennial rule" means this rule of the club that providing for the election of members of the governing body;

 "year" means the period between successive general meetings.
2. At each general meeting held while the triennial rule is in force (other than the first such meeting) the number of the members required to fill vacancies on the governing body shall be elected and shall, unless otherwise disqualified, hold office for 3 years.
3. A person whose term of office as a member of the governing body under the triennial rule expires is not for that reason ineligible for election for a further term.

- 23.6 The office of Captain shall be elected annually.
- 23.7 Subject to any restrictions contained in this Constitution, the following members shall be entitled to stand for and be elected or appointed to the Board:
- (a) Long Service Swimming Members;
 - (b) Swimming Life Members;
 - (c) Swimming Honorary Life Members; or
 - (d) Rajah Swimming Platinum Members.
- 23.8 A member who:
- (a) is an employee of the Club or of the Bondi Icebergs Club Limited;
 - (b) is currently under suspension pursuant to Rules 18 or 19 (including a provisional suspension under Rule 20.4);
 - (c) is not a Financial member;
 - (d) is disqualified from managing any company under the Act;
 - (e) is of unsound mind or whose person or estate is liable to be dealt with any way under the law relating to mental health;
 - (f) is prohibited from being a director by reason of any order or declaration made under any applicable legislation;
 - (g) has been found guilty of a disciplinary charge and suspended from membership of the Club for any period of time (but not including any provisional suspension pending a disciplinary hearing);
 - (h) does not have a Director Identification Number (unless exempted from doing so) on the proposed date of his or her election or appointment to the Board;
- shall not be eligible to stand for or be elected or appointed to the Board; and
- (i) is elected as Captain of the Club agrees that they will also hold office as a director and Captain of Bondi Icebergs Club Limited subject to the Constitution of Bondi Icebergs Club Limited.

24. ELECTION OF BOARD

- 24.1 The election of the Board shall be conducted in the following manner:
- (a) Nominations for election to the Board shall close at least forty two (42) days prior to the date fixed for the Annual General Meeting and must be delivered to the Secretary (or another employee authorised by the Secretary to accept nominations) on or before that date.
 - (b) The nomination form shall be:

- (i) in writing; and
 - (ii) in such form and contain such particulars as determined by the Board from time to time (including without limitation, may require certain information to be supported by a statutory declaration);
 - (iii) signed and seconded by two (2) Swimming Members and signed by the nominee who shall thereby signify his or her consent to the nomination.
- (c) Candidates are responsible for ensuring that they have correctly completed their nomination form and the Club is not required to notify candidates of an incorrectly completed nomination form.
- (d) The receipt of a nomination form by the Club does not constitute an acknowledgement by the Club that the nomination form has been completed correctly.
- (e) The failure to complete the nomination form correctly may result in a candidate being ineligible to nominate for election to the Board.
- (f) A nomination can be withdrawn:
 - (i) by the nominee at any time prior to the commencement of voting; and
 - (ii) by the Club at any time if the nominee has failed to correctly complete the nomination form and/or the nominee is ineligible to nominate for or be elected to the Board.
- (g) The Secretary shall post the name of the candidate and his or her proposers on the Club Notice Board.
- (h) If the full number of candidates for election on the Board is not nominated then those candidates who are nominated shall be declared elected and the unfilled positions shall be casual vacancies for the purposes of Rule 29.3.
- (i) If there be only the requisite number nominated for election those candidates shall be declared duly elected.
- (j) If there be more than the required number nominated, an election by ballot shall take place and the Board shall appoint a Returning Officer and at least two (2) scrutineers to take charge of the ballot. A candidate for any position shall not be appointed as the Returning Officer or as a scrutineer.
- (k) If an election is required pursuant to Rule 24.1(j), the following shall apply:
 - (i) A ballot paper shall be prepared with the order of the names of the nominees determined by lot conducted by the Returning Officer;
 - (ii) At least five (5) days before the commencement of voting, the Club must display a notice on the Club's website and on the Club noticeboard which confirms:
 - (1) the approved methods of voting – which may include voting by electronic means; and
 - (2) the procedures to be followed for voting;

- (3) the dates and times when members can vote;
 - (4) any other details which may be required for voting
- (iii) The ballot must be held prior to the Annual General Meeting and shall be open for not less than three (3) days at such fair and reasonable hours as determined by the Board and shall conclude not less than forty-eight (48) hours prior to the Annual General Meeting.
 - (iv) The ballot shall be determined on the “first past the post” voting system.
 - (v) Members shall record their vote in such manner as may be prescribed by the Board from time to time by by-law. Failure to comply with the requirements of such by-laws shall render the vote invalid.
 - (vi) The decision of the Returning Officer as to the formality or informality of any vote shall be final.
 - (vii) In the event of an equality of votes, the Returning Officer shall draw lots between the candidates and the candidate who is drawn first shall be declared elected to that position.
 - (viii) The Returning Officer shall report the result of the ballot to the Annual General Meeting.
 - (ix) If the Returning Officer is not present, a scrutineer shall perform the duties of the Returning Officer set out in this Rule 24.1.
 - (x) The Board may, at any time, engage the services of a professional electoral consultant or company to perform, or assist in performing, any or all of the duties of the Returning Officer or scrutineers set out in this Rule 24.1.
 - (xi) If at the close of the Annual General Meeting any vacancies remain on the Board, such vacancies shall be casual vacancies and may be filled in accordance with Rule 29.3.
- (l) If the election of the Board is to be conducted electronically, members will be able to vote either by using their own personal computer or other electronic device without having to attend the Club’s premises or by using a designated computer or other electronic device at the Club’s premises.
- 24.2 At the first Board meeting after each Annual General Meeting, the Board shall elect from amongst its number, the President, Vice President and Treasurer. If there is any vacancy occurring in the office of President, Vice President and Treasurer otherwise than as the result of an election at an Annual General Meeting the Board shall elect from amongst its number a director to fill the vacancy in a such office.
- 24.3 The Board shall have the power to make by-laws regulating all matters in connection with the election of the Board that are not inconsistent with Rule 24.
- 24.4 The election of the Board (including without limitation, the results of the election of the Board) shall not be invalidated or voided if the procedure in Rule 28.1 is not strictly complied with provided there is no substantive injustice for any candidates.

25. POWERS OF THE BOARD

- 25.1 The Board shall be responsible for the management of the business and affairs of the Club.

GENERAL POWERS

- 25.2 The Board may exercise its powers and do all such acts and things as the Club is by this Constitution or otherwise authorised to exercise and do and which are not hereby or by statute directed or required to be exercised or done by the Club in general meeting.

SPECIFIC POWERS

- 25.3 Without limiting the general powers conferred by Rule 25.2, the Board shall have power from time to time to:
- (a) delegate any of its powers to directors, members, employees, committees, sub clubs or any combination thereof;
 - (b) make, alter and repeal By-Laws pursuant to Rule 25.11.
 - (c) enforce or procure the enforcement of all By-Laws by suspension from enjoyment of the Club privileges or any of them or otherwise as the Board thinks fit.
 - (d) purchase or otherwise acquire for the Club any property rights or privileges which the Club is authorised to acquire at such price and generally on such terms and conditions as it shall think fit.
 - (e) secure the fulfilment of any contract or engagement entered into by the Club by mortgaging or charging all or any of the property of the Club as may be thought fit.
 - (f) institute, conduct, defend, compound or abandon any legal proceedings by or against the Club or its officers or otherwise concerning the affairs of the Club and also to compound or allow time for payment and satisfaction of any debts due to any claims or demands by or against the Club and to refer any claims or demands by or against the Club to arbitration and to observe and perform the award.
 - (g) determine who shall be entitled to sign or endorse on the Club's behalf contracts, receipts, acceptances, cheques, bills of exchange, promissory notes and other documents or instruments.
 - (h) issue requests and directions to members which may be reasonably required for the proper conduct and management of the Club.
 - (i) invest and deal with any of the moneys of the Club not immediately required for the purposes of the Club upon such securities and in such manner as the Board may think fit and from time to time to vary or realise such investments.
 - (j) borrow or secure the payment of any sum or sums of money for the purposes of the Club and raise or secure the payment of such sum or sums in such manner and upon such terms and conditions in all respects as it shall think fit

and to give security including by way of mortgage and/or charge upon or over all or any part of the Club's property both present and future.

- (k) sell, lease, exchange or otherwise dispose of any furniture, fittings, equipment, plant, goods or other rights (property or otherwise).
- (l) sell, lease, exchange or otherwise dispose of any land belonging to the Club.
- (m) appoint, discharge and arrange the duties and powers of the Secretary, to determine the remuneration and terms of employment of the Secretary, and to specify and define the duties of the Secretary.
- (n) engage, appoint, control, remove, discharge, suspend, determine and dismiss managers, employees, officers, representatives and agents in respect to permanent, temporary or special services and to determine the duties, pay, salary or other remuneration. The Board may delegate these powers (or any of them) to the Secretary or other officer or committee of the Club.
- (o) impose levies on all members.
- (p) set the joining fees, subscriptions and other payments payable by all members.
- (q) fix the maximum number of persons who may be admitted to each class of membership of the Club in accordance with this Constitution.
- (r) affiliate with any sporting club or sporting association whether incorporated or unincorporated and in accordance with this Constitution nominate members to represent the Club on such sporting club, or sporting association;.

COMMITTEES

25.4 Without limiting the general powers conferred by Rule 25.2, the Board shall have power to delegate any of its powers to committees consisting of any:

- (a) director; or
- (b) member;
- (c) employee;
- (d) person who is not a member but who has a particular skill or expertise which they will apply to a committee;

or any combination thereof. The Board shall also have the power to revoke any such delegation.

25.5 Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulation or restriction that the Board may impose.

25.6 The President shall be a member of all such committees and may nominate a person or persons to represent him or her on one or more of those committees.

25.7 The meetings and proceedings of any committee consisting of two or more persons shall be governed by the provisions herein contained for regulating the meetings and proceedings of the Board so far as the same are applicable thereto and are not superseded by this Rule 25 or by any by-law made by the Board pursuant to this Rule

25.

- 25.8 The quorum for a meeting of any committee shall be a majority of the committee members.
- 25.9 Any committee shall make minutes of its meetings and will forthwith submit those minutes to the Board and the Board will retain those minutes as if they were minutes of the Board.
- 25.10 The Board shall have the power to dissolve committees or remove committee members from office.

BY-LAWS

- 25.11 The Board may make such By-laws not inconsistent with this Constitution as are necessary or desirable for the proper conduct and management of the Club and may amend or repeal any such By-laws.
- 25.12 Without limiting the generality of Rule 25.11 the Board may regulate:
- (a) such matters as the Board is specifically by this Constitution empowered to regulate by By-law; and
 - (b) the operations of the Club;
 - (c) the control and use of the Club's premises;
 - (d) the control and management of competitions;
 - (e) the swimming privileges of each category of membership;
 - (f) the conduct of members in relation to employees of the Club and in relation to employees of the Bondi Icebergs Club Limited;
 - (g) generally, all such matters as are commonly the subject matter of a constitution or by-laws or made under a constitution or which by this Constitution are not reserved for decision by the Club in general meeting.
- 25.13 Any By-law made under Rule 25.11 or any other Rule shall come into force and be fully operative upon the posting of an appropriate notice containing such By-law on the Club Notice Board.
- 25.14 The Board shall cause a copy of all By-laws to be made available to any member on request and without charge to that member.

26. PROCEEDINGS OF THE BOARD

- 26.1 The Board may meet together, in person and/ or by electronic means, for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A record of all members of the Board present at each Board meeting and of all resolutions and proceedings of the Board at such meeting shall be entered in a minute book provided for that purpose.
- 26.2 The President shall be entitled to take the chair at every meeting of the Board. If the President is not present or is unwilling or unable to act then the Vice President shall

take the chair of the meeting. If the Vice President is not present or are unwilling or unable to act then the directors present shall elect one of their number to take the chair for that meeting.

- 26.3 The quorum for a meeting of the Board shall be a majority of the members of the Board provided that if the number of directors is equal to or less than seven (7), a quorum shall be four (4) members of the Board.
- 26.4 The President may at any time and the Secretary upon the request of not less than two (2) directors shall convene a meeting of the Board.
- 26.5 Subject to this Constitution questions arising at any meeting of the Board shall be decided by a majority of votes and a determination by a majority of the Board shall for all purposes be deemed a determination of the Board. In case of an equality of votes the chairperson of the meeting shall have a second or casting vote.
- 26.6 All acts done by any meeting of the Board or of a committee or by any person acting as a member of the Board shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such member of the Board or person acting as aforesaid, or that the members of the Board or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a member of the Board.
- 26.7 A meeting of the Board may be called or held using any technology provided that the technology used for the meeting gives the directors, as a whole, a reasonable opportunity to participate in the meeting, including a reasonable opportunity to exercise the right to speak at the meeting and to vote at the meeting in real time.
- 26.8 A resolution in writing signed by all the directors shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more directors. The resolution shall be passed when the last director signs the document containing the resolution.
- 26.9 In addition to Rule 26.8, a resolution may be passed by the Board if the proposed resolution is emailed to all directors and all directors agree to the proposed resolution by sending a reply email to that effect. The resolution shall be passed when the last director sends their email agreeing to the resolution.

27. MATERIAL PERSONAL INTERESTS OF DIRECTORS

- 27.1 Any director who has a material personal interest in a matter that relates to the affairs of the Club must, as soon as practicable after the relevant facts have come to the director's knowledge:
 - (a) declare the nature of the interest at a meeting of the Board; and
 - (b) comply with Rule 27.2.
- 27.2 Notwithstanding anything contained in the Act, a director who has a material personal interest in a matter that is being considered at a meeting of the Board, or of the Directors of the Club:
 - (a) must not vote on the matter; and

- (b) must not be present while the matter is being considered at the meeting.

28. REMOVAL FROM OFFICE OF DIRECTORS

28.1 The members in general meeting may by ordinary resolution:

- (a) remove from office any director, directors or the whole of the Board before the expiration of his or her or their period of office; and
- (b) appoint another person or persons in his or her or their stead provided any person so appointed is eligible to be a director in accordance with this Constitution.

28.2 Any person appointed pursuant to paragraph 28.1(b) shall hold office for the remainder of the term of office of the person he or she replaces.

28.3 Notice of the intention to move a resolution to remove a member of the Board from office must be given to the Club at least two (2) months before the meeting at which the resolution is to be considered and voted on. The provisions of Section 203D of the Act shall be followed in relation to that meeting.

29. VACANCIES ON BOARD

29.1 The office of a member of the Board shall automatically be vacated if the person holding that office:

- (a) dies;
- (b) is disqualified for any reason referred to in Section 206B of the Act.
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health.
- (d) is absent from meetings of the Board for a period of ninety (90) days (calculated from the last meeting of the Board attended) without the prior written consent of the Board unless the Board determines that their office is not be vacant as a result of that absence.
- (e) by notice in writing resigns from office as a director.
- (f) becomes prohibited from being a member of the Board by reason of any order or declaration made under the Act or any other legislation.
- (g) ceases to be a member of the Club.
- (h) becomes an employee of the Club or the Bondi Icebergs Club Limited.
- (i) was not eligible to stand for or be elected or appointed to the Board;
- (j) ceases to hold the necessary qualifications to be elected or appointed to the Board;
- (k) is convicted of an indictable offence (unless no conviction is recorded);

- (l) is not a Financial member of the Club;
- (m) has been found guilty of a disciplinary charge and suspended from membership of the Club or the Bondi Icebergs Club Limited for any period of time (excluding any provisional suspension under Rule 18.4 of the Club or Rule 20.4 or its equivalent);
- (n) does not have or ceases to have a Director Identification Number (unless exempted from doing so);
- (o) is removed from office as a director in accordance with the Act and this Constitution.

29.2 The continuing directors on the Board may act notwithstanding any vacancy on the Board, but if and so long as their number is reduced below the number fixed by this Constitution as the necessary quorum of the Board, the continuing director or directors may act for the purpose of increasing the number of directors on the Board to that number or of summoning a general meeting of the Club, but for no other purpose.

FILLING CASUAL VACANCIES

29.3 The Board may appoint any eligible person to the Board to fill a casual vacancy. The person so appointed shall hold office only until the conclusion of the following Annual General Meeting.

30. GENERAL MEETINGS

CALLING AND HOLDING GENERAL MEETINGS

- 30.1 A general meeting of the members of the Club must be held for a proper purpose.
- 30.2 A general meeting called the Annual General Meeting shall be held once at least in every calendar year at such time and place as may be determined by the Board but:
 - (a) within five (5) months of the close of the financial year; and
 - (b) at least one (1) month prior to the date of the Annual General Meeting of the Bondi Icebergs Club Limited.
- 30.3 All meetings other than Annual General Meetings shall be called general meetings.
- 30.4 The Board may whenever it considers fit call and arrange to hold a general meeting of the Club.
- 30.5 Subject to this Rules 30.5 to 30.12 inclusive, the Board must call and arrange to hold a general meeting of the Club on the request of members with at least 5% of the votes that may be cast at the general meeting.
- 30.6 For the purposes of Rules 30.5 to 30.12 inclusive the term "the request" shall mean the request referred to in Rule 30.5.
- 30.7 The request must:
 - (a) be in writing; and

- (b) state any resolution to be proposed at the meeting;
 - (c) be signed by the members making the request;
 - (d) be given to the Secretary.
- 30.8 Separate copies of a document setting out the request may be used for signing by the members if the wording of the request is identical in each copy.
- 30.9 The Board must call the meeting within twenty one (21) days after the request is given to the Secretary. The meeting is to be held not later than two (2) months after the request is given to the Secretary.
- 30.10 Members with more than 50% of the votes of all the members who make the request may call and arrange to hold a general meeting if the Board do not do so within twenty one (21) days after the request is given to the Secretary.
- 30.11 The meeting referred to in Rule 30.10 must be called in the same way, so far as is possible, in which general meetings of the Club may be called. The meeting must be held not later than three (3) months after the request is given to the Club.
- 30.12 To call the meeting the members requesting the meeting may ask the Secretary for a copy of the register of members and the Secretary must give the members the copy of the register of members without charge.
- 30.13 The Board may cancel or postpone any general meeting prior to the date on which it is to be held, except where such cancellation or postponement would be contrary to the Act. The Board may give such notice of the cancellation or postponement as it thinks fit but any failure to give notice of the cancellation or postponement does not invalidate the cancellation or postponement or any resolution passed at a postponed meeting. This Rule will not operate in relation to a meeting called pursuant to a request or requisition of members.
- 30.14 The Board may withdraw any resolution which has been proposed by the Board and which is to be considered at a general meeting, except where the withdrawal of such a resolution would be contrary to the Act.
- 30.15 The Club may hold a general meeting (including Annual General Meeting) at two (2) or more venues using any technology that gives the members as a whole a reasonable opportunity to participate at the meeting.
- 30.16 If permitted by the Act, the Club may hold virtual only general meetings or Annual General Meetings. The provisions of the Act shall apply to such meetings and to the extent of any inconsistencies between the Act and the Constitution, the provisions of the Act shall prevail.

NOTICE OF GENERAL MEETINGS

- 30.17 At least twenty one (21) days notice in writing of any general meeting of the members of the Club (including an Annual General Meeting) must be given to all members who are entitled to attend and vote at that meeting and to the auditor.
- 30.18 A notice of a general meeting of the members of the Club (including an Annual General Meeting) must:
- (a) set out the place, date and time of the meeting; and

- (b) state the general nature of the meeting's business;
- (c) if a special resolution is to be proposed at the meeting - set out an intention to propose the special resolution and state the resolution.

30.19 Neither:

- (a) the accidental omission to give notice of a meeting; nor
- (b) the non-receipt by any person of notice of a meeting;

shall invalidate any proceedings at such meeting unless pursuant to Section 1322 of the Act such proceedings are declared to be void.

ANNUAL GENERAL MEETINGS

30.20 The business of the Annual General Meeting shall be as follows:

- (a) to receive and consider the minutes of the previous Annual General Meeting and the minutes of any other general meeting requiring confirmation; and
- (b) to receive and consider the reports referred to in Rule 33.4;
- (c) to declare the results of the election of the Board and/or conduct any further election as may be required by this Constitution;
- (d) to appoint an auditor or auditors in the event that there be a vacancy in the office of Auditor;
- (e) to consider and if thought fit pass ordinary resolutions and special resolutions (if any);
- (f) to deal with any other business the general nature of which has been notified to the members in writing not less than twenty-one (21) days prior to the meeting.

30.21 The chairperson of the Annual General Meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the Club.

30.22 If the Club's auditor or a representative of the Club's auditor is at the meeting, the chairperson of the Annual General Meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or the auditor's representative questions relevant to the conduct of the audit and the preparation and conduct of the auditor's report.

AUDITOR'S RIGHT TO BE HEARD AT GENERAL MEETINGS

30.23 The Club's auditor shall be given notice of all general meetings at the same time as such notice is given to the members and is entitled to attend any general meeting of the Club.

30.24 The auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.

30.25 The auditor is entitled to be heard even if:

- (a) the auditor retires at the meeting; or
- (b) the meeting passes a resolution to remove the auditor from office.

30.26 The auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any general meeting.

CHAIR AT GENERAL MEETINGS

30.27 The President shall be entitled to take the chair at every general meeting.

30.28 If the President is not present or is unwilling or unable to act then the Vice President shall preside as chairperson of the meeting.

30.29 If the Vice President is not present or are unwilling or unable to act then the members of the Club present shall elect a member of the Board to preside as chairperson of the meeting.

30.30 If a member of the Board is not present or is unwilling or unable to act then the members of the Club present shall elect a member to preside as chairperson of the meeting.

30.31 The chairperson:

- (a) is responsible for the conduct of the general meeting; and
- (b) shall determine the procedures to be adopted and followed at the meeting;
- (c) may refuse a member admission to a general meeting or require a member to leave a general meeting if in his or her opinion, the member is not complying with reasonable directions and/or is acting in an offensive and disruptive manner at the meeting.

ATTENDANCE AND VOTING AT GENERAL MEETINGS

30.32 The Board may authorise persons other than members to attend and speak at a general meeting but those persons shall not be entitled to vote at general meetings.

30.33 A person shall not:

- (a) attend or vote at any meeting of the Club or of the Board or of any committee thereof; or
- (b) vote at any election including an election of a member or of the Board,
as the proxy of another person.

30.34 Every member eligible to vote shall be entitled to vote on a show of hands and on the taking of a poll and shall have one vote.

30.35 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting shall have a second or casting vote.

30.36 No member of the Club who is an employee of the Club or the Bondi Icebergs Club Limited shall be eligible to vote at any meeting of the Club.

- 30.37 Subject to this Constitution, every question and ordinary resolution submitted to a meeting shall be decided by a simple majority of votes from those members present and voting at the meeting.
- 30.38 Voting shall be on a show of hands unless a poll is demanded.
- 30.39 Five (5) members or the chairperson may demand a poll.
- 30.40 A demand for a poll may be withdrawn.
- 30.41 If a poll is demanded it shall be taken in such manner and either at once or after the interval or adjournment or otherwise as the chairperson directs.
- 30.42 The result of the poll shall be the resolution of the meeting at which the poll was demanded.
- 30.43 A poll demanded on the election of the chairperson or on a question of adjournment shall be taken immediately.
- 30.44 At any general meeting (unless a poll is demanded) a declaration by the chairperson that:
- (a) a resolution has been carried or carried by a particular majority or lost or not carried by a particular majority; and
 - (b) an entry to that effect in the book containing the minutes of the proceedings of the Club,
- shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against such resolution.
- 30.45 The Club may record the proceedings of general meetings (including Annual General Meetings) using audio and visual technology but members are not entitled to do so.

QUORUM FOR GENERAL MEETINGS

- 30.46 No business shall be transacted at any general meeting of members unless a quorum of members is present.
- 30.47 At any general meeting of the Club (including an Annual General Meeting) convened by the Board, twenty (20) members present in person and eligible to vote shall be a quorum.
- 30.48 At any general meeting of the Club convened on the requisition of members pursuant to Rule 30.5, fifty (50) members present in person shall be a quorum.
- 30.49 If a quorum is not present within fifteen (15) minutes after the time appointed for the commencement of the meeting, the meeting shall:
- (a) be dissolved if it was convened at the request of members pursuant to Rule 30.5; or
 - (b) stand adjourned to the same day in the next week at the same time and place.
- 30.50 If at any meeting adjourned pursuant to Rule 30.49(b) a quorum is not present, the members present shall be a quorum and may transact any business for which the

meeting was called.

ADJOURNMENT OF GENERAL MEETINGS

- 30.51 The chairperson of a meeting may with the consent of the meeting (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place.
- 30.52 No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 30.53 A resolution passed at an adjourned meeting is passed on the day it was passed and shall not be deemed to have been passed on any earlier day.
- 30.54 It shall not be necessary to give any notice of an adjourned meeting or of the business to be transacted at an adjourned meeting except when a meeting is adjourned for thirty (30) days or more, when notice of the adjourned meeting shall be given as in the case of an original meeting.

31. MEMBERS' RESOLUTIONS AND STATEMENTS

MEMBERS' RESOLUTIONS

- 31.1 Subject to Rules 31.2 to 31.9 inclusive, the following may give the Secretary notice of a resolution that they propose to move at a general meeting:
- (a) members with at least 5% of the votes that may be cast on the resolution; or
 - (b) at least one hundred (100) members who are entitled to vote at a general meeting.
- 31.2 The notice must:
- (a) be in writing; and
 - (b) set out the wording of the proposed resolution;
 - (c) be signed by the members proposing to move the resolution.
- 31.3 Separate copies of a document setting out the notice may be used for signing by members if the wording of the notice is identical in each copy.
- 31.4 The percentage of votes that members have is to be worked out as at the midnight before the members give the notice to the Secretary.
- 31.5 If the Secretary has been given notice of a resolution under Rule 31.1, the resolution is to be considered at the next general meeting that occurs more than two (2) months after the notice is given.
- 31.6 The Club must give all its members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.
- 31.7 The Club is responsible for the cost of giving members notice of the resolution if the Club receives the notice in time to send it out to members with the notice of meeting.

- 31.8 The members requesting the resolution are jointly and individually liable for the expenses reasonably incurred by the Club in giving members notice of the resolution if the Club does not receive the members' notice in time to send it out with the notice of meeting. At a general meeting, the members present and entitled to vote may resolve that the Club meet the expenses itself.
- 31.9 The Club need not give notice of the resolution:
- (a) if it is more than 1,000 words long or defamatory; or
 - (b) if the members making the request are to bear the expenses of sending the notice out - unless the members give the Club a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

MEMBERS' STATEMENTS

- 31.10 Subject to Rules 31.11 to 31.18 inclusive, members may request the Club to give to all its members a statement provided by the members making the request about:
- (a) a resolution that is proposed to be moved at a general meeting; or
 - (b) any other matter that may be properly considered at a general meeting.
- 31.11 The request must be made by either:
- (a) members with at least 5% of the votes that may be cast on the resolution; or
 - (b) at least one hundred (100) members who are entitled to vote at the meeting.
- 31.12 The request must be:
- (a) in writing; and
 - (b) signed by the members making the request;
 - (c) given to the Secretary.
- 31.13 Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.
- 31.14 The percentage of votes that members have is to be worked out as at the midnight before the request is given to the Secretary.
- 31.15 After receiving the request, the Club must distribute to all its members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a general meeting.
- 31.16 The Club is responsible for the cost of making the distribution if the Secretary receives the statement in time to send it out to members with the notice of meeting.
- 31.17 The members making the request are jointly and individually liable for the expenses reasonably incurred by the Club in making the distribution if the Club does not receive the statement in time to send it out with the notice of meeting. At a general meeting, the Club may resolve to meet the expenses itself.
- 31.18 The Club need not comply with the request:

- (a) if the statement is more than 1,000 words long or defamatory; or
- (b) if the members making the request are responsible for the expenses of the distribution - unless the members give the Club a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

32. MINUTES

32.1 The Club must keep minute books in which it records:

- (a) proceedings and resolutions of general meetings of the Club; and
- (b) proceedings and resolutions of meetings of the directors of the Club (including meetings of a committee of directors);
- (c) resolutions passed by directors without a meeting.

32.2 The Club must ensure that:

- (a) minutes of a meeting are signed within one (1) month of the meeting by the chairperson of the meeting or the chairperson of the next meeting; and
- (b) minutes of the passing of a resolution without a meeting are signed by a director within one (1) month of the date on which the resolution is passed.

32.3 A minute that is so recorded and signed is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

33. ACCOUNTS AND REPORTING TO MEMBERS

33.1 The Board shall cause proper accounts and records to be kept with respect to the financial affairs of the Club.

33.2 The books of account shall be kept at the Registered Office of the Club or at such other place as the Board thinks fit. The Club shall at all reasonable times make its accounting records available in writing for the inspection of members of the Board and any other persons authorised or permitted by or under the Act to inspect such records.

33.3 The Board shall, not less than twenty one (21) days before each Annual General Meeting and in any event within four (4) months of the end of the financial year of the Club, report to members in accordance with Division 4 of Part 2M.3 of the Act.

33.4 In accordance with Section 317 of the Act, the Board shall lay before the Annual General Meeting in respect of the financial year ending on the last day of July immediately prior to the Annual General Meeting:

- (a) the financial report of the Club; and
- (b) the directors' report;
- (c) the auditors' report on the financial report.

34. FINANCIAL YEAR

- 34.1 The financial year of the Club and any sub club or other entity created under this Constitution shall commence on the first day of July in each year and end on the last day of June in the following year or such other period as having regard to the Act, the Board may determine.

35. **AUDITORS**

- 35.1 Auditors shall be appointed and their duties regulated in accordance with the Act and their remuneration shall be fixed by the Board.

36. **SWIMMING COMMITTEE**

- 36.1 There will be a Swimming Committee constituted by the Captain, President, Race Recording Secretary, Referee and Handicapper.

- 36.2 The Race Recording Secretary, Referee and Handicapper shall:

- (a) be elected by the Swimming Members in such manner as determined by the Board from time to time; and
- (b) shall hold office until they retire or are stood down by the Board.

- 36.3 The Swimming Committee is to:

- (a) review compliance by Active Swimming Members with the Swimming Requirement [Historic Rule 15b]; and
- (b) make decisions and rule upon matters relating to the operation of swimming races and swimming meetings held by the Club or at which a team of the Club participates (being matters that are not within the purview of the Captain, Vice Captain or swimming race officials).

- 36.4 The Board may overrule a decision or ruling of the Swimming Committee.

- 36.5 The volunteers who assist with the orderly conduct of the Club throughout the swimming season will be called for in September each year and approved by the Swimming Committee. A list of the volunteers approved will then be proposed for acceptance at the Annual General Meeting of the Club each year.

37. **CAPTAIN**

- 37.1 The Club shall have one (1) Captain who shall be elected annually at an election of the Long Service Swimming Members, Swimming Life Members, Swimming Honorary Life Members and Rajah Swimming Platinum Members.

- 37.2 The Captain shall be:

- (a) a director of the Club; and
- (b) chair of the Swimming Committee.

- 37.3 In the case of a vacancy in the position of Captain, the Swimming Committee shall have the right to present a nomination for consideration by the Board.

38. EXECUTION OF DOCUMENTS

- 38.1 The Club may have a seal.
- 38.2 If the Club has a seal, the Board must provide for the safe custody of the seal.
- 38.3 the Club may execute a document (including a deed) with the seal by fixing the seal to the document and having the fixing of the Seal witnessed by:
- (a) two members of the Board; or
 - (b) one member of the Board and the Secretary.
- 38.4 The Club may execute a document (including a deed) without using a seal if that document is signed by:
- (a) two members of the Board; or
 - (b) one member of the Board and the Secretary.

39. NOTICES

- 39.1 A notice may be given by the Club to any member either:
- (a) personally; or
 - (b) by sending it by post to the address of the member recorded for that member in the Register of Members kept pursuant to this Constitution;
 - (c) by displaying the notice on the Club notice board and/or the Club's website;
 - (d) by sending it by any electronic means; or
 - (e) by notifying the member, either personally, by post, or electronically, that the notice is available and how the member can access the notice.
- 39.2 Where a notice is sent by post to a member in accordance with Rule 39.1 the notice shall be deemed to have been received by the members:
- (a) in the case of a notice convening a meeting, on the day following that on which the notice was posted; and
 - (b) in any other case, at the time at which the notice would have been delivered in the ordinary course of post.
- 39.3 Where a notice is provided personally in accordance with Rule 39.1(a), the notice is taken to have been given on the day on which it was provided to the member.
- 39.4 Where a notice is sent by electronic means, the notice is taken to have been received on the day following that on which it was sent.
- 39.5 Where a notice is given by displaying a notice on the Club Notice Board or by displaying a notice on the Club's website, the notice is taken to have been given on the day on which it was displayed.

39.6 Where a member is notified of a notice in accordance with Rule 39.1(e), the notice is taken to have been received on the day following that on which the notification was sent.

39.7 If a member has not made a specific election on how to receive notices, they shall be deemed to have elected to receive notices by the Club publishing a copy of the notice on the noticeboard.

40. INDEMNITY TO OFFICERS

40.1 Every officer (as defined in Section 9 of the Act) and former officer of the Club shall be indemnified to the full extent permitted by the Act out of the property of the Club against any liability incurred by him in his capacity as officer in defending any proceedings whether civil or criminal.

40.2 The Club may pay a premium for a contract insuring a person who is an officer or a former officer of the Club against a liability incurred by that person as an officer of the Club provided that the liability is not one in respect of which a premium can not be paid under the Act or a liability which contravenes Section 199A or Section 199B of the Act.

41. INTERPRETATION

41.1 A decision of the Board on the construction or interpretation of the Constitution or any Rule, or any By-Law of the Club made pursuant to this Constitution or on any matter arising therefrom, shall be conclusive and binding on all members of the Club.

42. AMENDMENTS TO CONSTITUTION

42.1 This Constitution can only be amended by way of Special Resolution passed at a general meeting of the members of the Club.

42.2 Only Swimming Members shall be eligible to vote on any Special Resolution to amend this Constitution.