

## WATER POLO VICTORIA INCORPORATED.

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**1. Name**

The name of the association is Water Polo Victoria Incorporated (**WPV**).

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**2. Interpretation**

2.1 In this Constitution unless the contrary intention appears or is required by the Act:

**Act** means the *Associations Incorporation Reform Act 2012 (Vic)* and includes any regulations made under that Act;

**Appointed Director** means a director appointed in accordance with clause 21.5.1;

**Associate Member** means an associate member which is either an association, such as a regional association, or a club which is not an incorporated association;

**Board** means the Board of WPV constituted under this Constitution;

**By Laws** means such By Laws passed pursuant to the power contained in clause 21.1.3;

**Chair** means the person chairing a General Meeting or Board meeting;

**Club** means an organisation whose primary purpose is to conduct activities related to Water Polo and which is affiliated with WPV;

**Competition** means and includes:

- (a) any Water Polo match (national or otherwise) organised or conducted for or on behalf of WPV;
- (b) any competition or match sponsored by or conducted by or on behalf of WPV; or
- (c) any international competition, series, or match at which WPV is represented;

**Competitor** means and includes a water polo player who plays in a Competition;

**Constitution** means this Constitution of WPV;

**Council** means the council established pursuant to clause 24;

**Delegate** means the person, elected or appointed from time to time to act for and on behalf of a Member to represent it at General Meetings and meetings of the Council;

**Director** means a member of the Board and includes any person validly acting in that capacity from time to time;

**Disciplinary Procedure** means such rules and procedures for the discipline of a Member, Competitors and Individual Members as are in force from time to time;

**Disqualifying Position** means any one or more of the positions described in clause 21.3.2;

**District** means an organisation of Clubs within an area approved by WPV;

**Effective Time** means the close of the General Meeting held on ##8 October 2018 at which the terms of this Constitution were approved by the Members;

**Elected Director** means a director elected in accordance with clause 21.4;

**FINA** means Federation Internationale de Natation;

**Financial year** means the year ending 30 June;

**General Meeting** means a general meeting of the Members convened in accordance with Part 5 of the Act and includes an Annual General Meeting and a Special General Meeting;

**Individual Member** means a registered financial member of a Club or an Associate Member ~~or a Registered Entity~~;

**Insolvency Event** means:

- (a) being in liquidation or provisional liquidation or under administration;
- (b) having a controller (as defined in the Corporations Act 2001 (Cth)) or analogous person appointed to it or any of its property;
- (c) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) being unable to pay its debts or otherwise insolvent; and
- (e) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event;

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

**Life Member** means an individual upon whom Life Membership of WPV has been conferred in accordance with the By Laws and by the passing of a Special Resolution;

**Member** means a member for the time being of WPV under clause 6;

**Objects** means the Objects of WPV set out in clause 3;

**President** means the president for the time being of WPV elected in accordance with clause 21.7;

**Privacy Law** means any relevant commonwealth or state legislation or regulations relating to privacy of individuals;

**Register** means the register of Members required to be kept pursuant to clause 12;

**Registrar** means the Registrar of Incorporated Associations;

**Relevant Documents** means the records and other documents, however compiled, recorded or stored, that relate to the incorporation and management of WPV and includes the following:

- (a) its membership records;
- (b) its financial statements;
- (c) its financial records;
- (d) records and documents relating to transactions, dealings, business or property of WPV;
- (e) minutes of General Meetings, including financial statements submitted at a General Meeting; and
- (f) minutes of Board meetings;

**Safe Sport Framework** means the policy and rules adopted and published by WPA as amended from time to time and known as the Safe Sport Framework;

**Secretary** means the person appointed by the Board to act as Secretary for the purposes of the Act;

**Special General Meeting** means a General Meeting other than the Annual General Meeting;

**Special Resolution** means a resolution at a General Meeting that requires not less than three quarters of the Members entitled to vote at that meeting voting in favour of the resolution;

**Voting Member** means a member who under clause 10.1.1 is entitled to vote at a General Meeting;

**Water Polo** means the sport of water polo in all of its forms; and

**WPA** means Water Polo Australia Limited.

2.2 In addition:

2.2.1 Words implying any gender include the other gender; and

2.2.2 Words implying the singular shall include the plural and vice versa.

2.2.3 If any provision of this Constitution or any phrase contained in it is invalid or unenforceable in any jurisdiction, the phrase or provision is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If the rule or phrase cannot be so read down it will be severed to the extent of the invalidity or unenforceability. Such severance does not affect the remaining provisions of this Constitution or affect the validity or enforceability of any provision in any other jurisdiction.

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### **3. Objects**

WPV is the peak body for the administration of Water Polo in Victoria and is established solely to:

- 3.1 be a member association of and otherwise liaise with WPA and with such other bodies as may be desirable to achieve these Objects;
- 3.2 conduct, encourage, promote, advance, control and administer Water Polo in Victoria for the mutual and collective benefit of the Members;
- 3.3 ensure the maintenance and enhancement of the standards, quality and reputation of WPV and Water Polo, for the collective and mutual benefit of the Members and Water Polo;
- 3.4 promote the economic and sporting success, strength and stability of WPV and each Member and to act interdependently with each Member in pursuit of these Objects;
- 3.5 ensure compliance with the rules and by laws of WPA and FINA as amended from time to time;
- 3.6 promote and control state Competitions;
- 3.7 strive for governmental, commercial and public recognition of WPV, the Clubs, and Water Polo;
- 3.8 promote the health and safety of all Individual Members;
- 3.9 pursue through itself or others such commercial arrangements, including sponsorship and marketing opportunities as are appropriate to further these Objects;
- 3.10 formulate or adopt and implement appropriate policies, including in relation to harassment, discrimination, equal opportunity, equity, drugs in sport, health, safety, junior and senior programs and such other matters as arise from time to time as issues to be addressed in Water Polo;
- 3.11 represent the interests of its Members and of Water Polo generally in any appropriate forum;
- 3.12 encourage and promote performance enhancing drug free competition; and
- 3.13 develop talent identification and pathways for players, coaches, referees and officials.

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### **4. Powers of WPV**

- 4.1 Subject to the Act, WPV has power to do all things incidental or conducive to achieve the Objects.
- 4.2 Without limiting clause 4.1, WPV may:
  - 4.2.1 acquire, hold and dispose of real or personal property;
  - 4.2.2 open and operate accounts with financial institutions;
  - 4.2.3 invest its money in any security in which trust monies may lawfully be invested;

- 4.2.4 raise and borrow money on any terms and in any manner as it thinks fit;
- 4.2.5 secure the repayment of money raised or borrowed, or the payment of a debt or liability;
- 4.2.6 appoint agents to transact business on its behalf; and
- 4.2.7 enter into any other contract it considers necessary or desirable.

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## **5. Application of Income**

- 5.1 The income and property of WPV must be applied solely for the purpose of and toward the promotion of the Objects.
- 5.2 WPV must not distribute any surplus, income or assets directly or indirectly to its Members.
- 5.3 Clause 5.1 does not prevent WPV from paying a Member:
  - 5.3.1 for any services actually rendered to WPV whether as an employee or otherwise;
  - 5.3.2 for goods supplied to WPV in the ordinary and usual course of business;
  - 5.3.3 for interest on money borrowed from any Member;
  - 5.3.4 for rent for premises demised or let by any Member to WPV; or
  - 5.3.5 for any out of pocket expenses incurred by the Member on behalf of WPV,

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.

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## **6. Members**

- 6.1 The members of WPV are:
  - 6.1.1 Clubs;
  - 6.1.2 Associate Members;
  - 6.1.3 Individual Members; and
  - 6.1.4 Life Members;
- 6.2 The Board may create a new class or classes of membership with such rights privileges and obligations as it sees fit notwithstanding that the creation of such class or classes may affect the rights privileges or obligations of existing Members.
- 6.3 Nothing in this Constitution affects or alters the rights, obligations or privileges of Members of WPV as at the Effective Time.



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## **7. Application for membership**

- 7.1 An application for membership shall be made in the form and in the manner prescribed by WPV from time to time.
- 7.2 The Board may impose additional qualifications or requirements for particular classes of membership as it considers appropriate from time to time. Such qualifications or requirements shall be set out in the By Laws.
- 7.3 The Board may determine to approve or to reject an application for membership, without having to give reasons.
- 7.4 An applicant for membership becomes a Member and, subject to clause 9.2, is entitled to exercise their rights of membership from the date, whichever is the later, on which:
- 7.4.1 the Board approves the Member's membership; or
  - 7.4.2 the Member pays the all relevant fees.
- 7.5 In order to retain the rights and privileges of membership all Members must renew their membership annually in accordance with the requirements determined by the Board from time to time.
- 7.6 WPV may accept or reject an application for renewal of membership or require the Member to provide further information or comply with such other requirements as the Board sees fit.

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## **8. Effect of membership**

Each Member agrees:

- 8.1 that this Constitution creates a contract between each of them and WPV and that they are bound by this Constitution and the By Laws;
- 8.2 that the Member will 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 Board;
- 8.3 that the Members will act in good faith and loyalty to each other to ensure the maintenance and enhancement of the standards, quality and reputation of Water Polo, and for the collective and mutual benefit of the Members and Water Polo;
- 8.4 that the Member will not do or permit to be done any act or thing which might adversely affect or derogate from the standards, quality and reputation of WPV or Water Polo;
- 8.5 that the Member will make full and proper disclosure to other Members of all matters of importance to WPV and Water Polo;
- 8.6 that the Member may not acquire a material or financial advantage at the expense of WPV, another Member or Water Polo;
- 8.7 to operate with mutual trust and confidence in pursuit of the Objects;

- 8.8 to promote the economic and sporting success, strength and stability of each other and to act interdependently with each other in pursuit of the Objects; and
- 8.9 to act for and on behalf of the interests of Water Polo, WPV and the Members.

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**9. Membership fees**

- 9.1 The Board shall determine all matters relating to fees payable by Members (or any category of Member) to WPV including but not limited to annual membership fees, application fees, entry fees, fines, and levies and any interest payable on any overdue amount owed by that Member to WPV.
- 9.2 Where:
- 9.2.1 a Member has not paid an amount due by that Member to WPV (**Debt**) by the due date for payment the Board may suspend that Member's rights on such terms as it sees fit; or
- 9.2.2 a Member fails, repeatedly, to pay a Debt that Member may be subject to discipline by WPV in accordance with any applicable By Laws, rules or regulations of WPV.

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**10. Rights of Members**

**10.1 Voting Rights**

- 10.1.1 Subject to clause 10.1.2 the following classes of members (**Voting Member**) may attend, debate and vote at a General Meeting:
- (a) Clubs via a Delegate or proxy holder who must be identified in writing to WPV no later than 7 days prior to the General Meeting;
  - (b) any Member who was entitled to attend, debate and vote at a General Meeting prior to the Effective Time; and
  - (c) such other class of Member upon whom the Board has conferred voting rights pursuant to clause 6.2.
- 10.1.2 A Voting Member may not attend, debate or vote at a General Meeting if:
- (a) less than 10 business days have passed since they became a Member of WPV;
  - (b) all monies due and payable by the Member to WPV have not been paid by the date of the General Meeting; or
  - (c) the Member's membership rights are, at the date of the General Meeting, suspended for any reason.
- 10.1.3 Life Members and Directors may attend and debate at a General Meeting but, subject to clause 10.1.4, may not vote.

- 10.1.4 A Life Member or Director who is also a Delegate or a proxy holder for a Voting Member may vote in that capacity only.

## 10.2 General Rights

A Voting Member has the right to:

- 10.2.1 receive notice of General Meetings and of proposed Special Resolutions in the manner and time prescribed by the Constitution;
- 10.2.2 to submit items of business for consideration at a General Meeting;
- 10.2.3 to have access to the minutes of General Meetings and the Relevant Documents; and
- 10.2.4 to inspect, but not copy, the Register or any part of it in accordance with the Act and subject to the Privacy Law.

## 10.3 Rights not transferable

The rights of a Member are personal to that Member and are not transferable.

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## 11. Cessation of membership

- 11.1 The membership of a Member ceases on resignation, expulsion, death or in the case of a Club on the occurrence of an Insolvency Event.
- 11.2 A Member may resign by notice in writing given to WPV provided that Member has, at the date of resignation, paid all monies owing by the Member to WPV.
- 11.3 In addition, a Member is taken to have resigned if:
- 11.3.1 the Member's annual subscription or renewal fee is more than 3 months in arrears; or
- 11.3.2 where no annual subscription or renewal fee is payable:
- (a) the Secretary has made a written request to the Member to confirm that the Member wishes to remain a Member; and
- (b) the Member has not, within 3 months after receiving that request, confirmed in writing that the Member wishes to remain a member,
- unless the Board in its sole discretion determines otherwise.
- 11.4 The Secretary must, as soon as practicable, enter the date the Member ceased to be a member in the Register.
- 11.5 Upon cessation of membership all rights and entitlements of that Member whatsoever shall cease and the Member must return to WPV immediately all documents, records or any other property of WPV in whatever form.

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**12. Register of Members**

- 12.1 The Secretary must keep and maintain a Register that includes, for each current Member:
- 12.1.1 the Member's name;
  - 12.1.2 the address for notice last given by the Member;
  - 12.1.3 the date of becoming a Member;
  - 12.1.4 which class of Member (if any) that Member is;
  - 12.1.5 any other information determined by the Board; and
  - 12.1.6 for each former Member, the date of ceasing to be a Member.
- 12.2 Subject to the Act and the Privacy Law a Member may, at a reasonable time and free of charge, inspect but not copy the Register.

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**13. General meetings****13.1 Annual General Meetings**

- 13.1.1 The Board must convene an Annual General Meeting of WPV to be held in accordance with the Act and with the Constitution.
- 13.1.2 The Board may determine the date, time and place of the Annual General Meeting.
- 13.1.3 The ordinary business of the Annual General Meeting is as follows:
- (a) apologies;
  - (b) to confirm the minutes of the previous Annual General Meeting and of any Special General Meeting held since then; and
  - (c) to receive and consider:
    - (i) the annual report of the Board on the activities of WPV during the preceding financial year; and
    - (ii) the financial statements of WPV for the preceding financial year submitted by the Board in accordance with Part 7 of the Act; and
  - (d) to be advised of the outcome of any election of Directors conducted in accordance with clause 21.4;
- 13.1.4 The Annual General Meeting may also conduct any other business of which notice has been given in accordance with the Constitution including but not limited to any Notice of Motion proposed by the Board or, subject to compliance with clause 13.3.2, by a Voting Member.

13.1.5 Save as provided in this clause 13 no business other than that stated on the Notice of Meeting shall be conducted at the Annual General Meeting.

### **13.2 Special General Meetings**

13.2.1 The Board may convene a Special General Meeting at any time provided notice of such meeting is given in accordance with the Constitution.

13.2.2 In addition, the Board must convene a Special General Meeting if a request to do so is made by at least 8 Voting Members.

13.2.3 A request for a Special General Meeting pursuant to clause 13.2.2 must:

- (a) be in writing;
- (b) state the business to be considered at the meeting and any resolutions to be proposed;
- (c) include the names and signatures of the members requesting the meeting; and
- (d) be given to the Secretary.

13.2.4 If the Board does not convene a Special General Meeting within one month after the date on which the request is made, the Members making the request (or any of them) may convene the Special General Meeting.

13.2.5 A Special General Meeting convened under clauses 13.2.2 or 13.2.4:

- (a) shall be convened in the same manner or as nearly as possible as that, in which a General Meeting is convened;
- (b) must be held within 3 months after the date on which the original request was made; and
- (c) may only consider the business stated in that request.

13.2.6 WPV must reimburse all reasonable expenses incurred by the Members convening a Special General Meeting under clause 13.2.4.

13.2.7 No business other than that stated in the notice of the meeting given in accordance with the Constitution may be conducted at a Special General Meeting.

### **13.3 Notice of Motion from Members**

13.3.1 At least 45 days prior to publishing a notice of General Meeting (other than a Special General Meeting convened under clauses 13.2.2 or 13.2.4), the Secretary must publish a notice on the WPV website advising Voting Members that they may submit a Notice of Motion for consideration at that meeting.

13.3.2 Any such Notice of Motion must:

- (a) be in writing;

- (b) be received by the Secretary not more than 7 days after the date of the advice given under clause 13.3.1; and
- (c) if a Special Resolution is to be proposed:
  - (i) state in full the proposed resolution; and
  - (ii) state the intention to propose the resolution as a Special Resolution.

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## **14. Notice of General Meetings**

- 14.1 The Secretary (or, in the case of a Special General Meeting convened under clause 13.2.4, the Members convening the meeting) must give to each Voting Member at least 21 days' notice of a General Meeting.
- 14.2 The notice must:
  - 14.2.1 specify the date, time and place of the meeting;
  - 14.2.2 indicate the general nature of each item of business to be considered at the meeting including any notices of motion from the Board or from Voting Members pursuant to clause 13.3.2; and
  - 14.2.3 if a Special Resolution is to be proposed:
    - (a) state in full the proposed resolution; and
    - (b) state the intention to propose the resolution as a Special Resolution.

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## **15. Proceedings at General Meetings**

### **15.1 Quorum**

No business may be transacted at a General Meeting unless a quorum is present. A quorum for a General Meeting is 8 Voting Members present in person or by proxy.

### **15.2 President to preside**

- 15.2.1 Subject to the Constitution the President shall preside as Chair of a General Meeting.
- 15.2.2 If the President is not present or is unable or unwilling to preside the Voting Members present shall elect one of the remaining Directors to preside.
- 15.2.3 If no such Director is present or none of them are able or willing to preside the Voting Members shall elect one of their number to preside.

### **15.3 Conduct of the meeting**

- 15.3.1 Subject to the Act and this Constitution the conduct of a General Meeting is to be determined by the Board.

- 15.3.2 If any question arises at a General Meeting in relation to the order of business, procedure or conduct of the meeting such question shall be referred to the Chair whose decision shall be final.

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## 16. Adjournment of a General Meeting

- 16.1 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.
- 16.2 The Chair may and shall if so directed by an ordinary resolution of 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.
- 16.3 No notice of the adjourned meeting is required unless it is adjourned for 30 days or more in which case notice shall be in the same manner as required by clause 13.3.

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## 17. Voting

- 17.1 At any General Meeting:
- 17.1.1 proxy voting is permitted save that a person may not hold more than 2 proxies;
  - 17.1.2 a Voting Member has one vote only;
  - 17.1.3 Directors shall not be entitled to vote in that capacity but may vote in their capacity as a properly authorised Delegate or proxy holder if applicable;
  - 17.1.4 a vote shall be conducted by a show of hands or such other method as determined by the Chairman unless a poll is demanded in accordance with clause 17.1.2; and
  - 17.1.5 where the vote is equal the Chair shall not have a casting vote and the motion shall be lost.
- 17.2 A poll may be only demanded prior to the declaration of the result on a show of hands or other method of voting determined by the Chair in accordance with clause 17.1 by either:
- 17.2.1 the Chair; or
  - 17.2.2 more than 50% of the Voting Members present in person or by proxy.

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## 18. Recording of Determinations

Unless a poll is demanded under clause 17.2, a declaration by the Chair that a resolution has been carried, carried unanimously or by a particular majority, or lost, shall be conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution and an entry to that effect shall be made in the minutes of the meeting.

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**19. Use of Technology at General Meetings**

A General Meeting may be held where 1 or more of the Members entitled to vote is not physically present at the meeting, provided that:

- 19.1 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;
- 19.2 notice of the meeting is given to all persons entitled to notice in accordance with the Constitution;
- 19.3 if a failure in communications prevents clause 19.1 from being satisfied then the meeting shall be suspended until clause 19.1 is satisfied again provide that if it cannot be satisfied within 15 minutes from the interruption the meeting shall be deemed to be adjourned in accordance with clause 16.1; and
- 19.4 no meeting shall be invalidated merely because no Voting Member is physically present at the place for the meeting specified in the notice of meeting.

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**20. Minutes of General Meetings**

- 20.1 The Secretary or a person nominated by the Secretary must keep minutes of resolutions and proceedings of each General Meeting together with a record of persons present at all meetings.
- 20.2 In addition, the minutes of each Annual General Meeting must include:
  - 20.2.1 the financial statements submitted to the Members in accordance with clause 13.1.3;
  - 20.2.2 a certificate signed by two Directors certifying that the financial statements give a true and fair view of the financial position and performance of WPV; and
  - 20.2.3 any audited accounts and auditor's report or report of a review accompanying the financial statements that are required under the Act.

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**21. WPV board****21.1 Role and powers**

- 21.1.1 The business of WPV must be managed by or under the direction of the Board.
- 21.1.2 Subject to the Constitution and the Act the Board may perform all such acts as it deems essential for the proper management of WPV.
- 21.1.3 Without limiting clause 21.2 the Board shall have the power to create or amend By Laws for the efficient operation of WPV. Such By Laws shall be published to the Members from time to time for their information and are binding on all Members.
- 21.1.4 All by laws in place at the date of approval of this Constitution shall be deemed to be By Laws under clause 21.1.3.



21.1.5 The Board must act in accordance with Part 6 of the Act and in pursuance of the Objects for the collective benefit of WPV, the Members and Water Polo.

## 21.2 Delegation

21.2.1 The Board may delegate to a Director, a subcommittee or WPV staff, any of its powers and functions other than:

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

21.2.2 The delegation must be in writing and may be subject to any conditions and limitations the Board considers appropriate.

21.2.3 The Board may amend, repeal or veto any decision made by any person or groups of people to whom a delegation has been given.

21.2.4 The Board may, in writing, revoke a delegation wholly or in part.

## 21.3 Composition and eligibility

21.3.1 The Board shall consist of no more than 11 Directors comprised as follows:

- (a) Up to 9 Elected Directors; and
- (b) Up to 2 Appointed Directors.

21.3.2 A person who:

- (a) is an employee of WPV;
- (b) has been CEO of WPV within the period of 3 years prior to election or appointment to the Board
- (c) holds any position, whether elected or appointed, as an office bearer, director or committee member of the committee of management or board of directors of a Member; or
- (d) is banned or disqualified from being a Director of a company under the Corporations Act 2001 (Cth),

may not stand for or hold office as a Director of WPV.

21.3.3 A Director who accepts or becomes the holder of a Disqualifying Position must notify the other Directors of that fact immediately and upon the giving of such notice or 7 days after the Director accepts or becomes a holder of a Disqualifying Position, whichever is the earlier, that Director's position becomes vacant.

21.3.4 There shall be established a Nominations and Remuneration Committee which shall be responsible for advising the Board

- (a) Matters relating to the composition and structure of the Board

- (b) Matters relating to senior executive selection and remuneration; and
- (c) Other matters as required

#### 21.4 Election of Directors

- 21.4.1 WPV must call for nominations from persons seeking to be elected to fill an upcoming vacancy on the Board no later than 12 weeks prior to the date of the next Annual General Meeting.
- 21.4.2 A nomination shall be in such form as the Board determines and submitted to the CEO of WPV by the time specified in the notice referred to in clause 21.4.1.
- 21.4.3 Where an election is required it shall be conducted by an electronic ballot of Voting Members under a 'first past the post' system. The Board shall have the ability to decide the process by which the electronic ballot shall be conducted. Unless otherwise determined by the Board such ballot shall:
  - (a) be conducted prior to the next Annual General Meeting; and
  - (b) open at least 5 weeks and close 2 weeks prior to the date of the next Annual General Meeting.

#### 21.5 Appointed Directors

- 21.5.1 The Board may appoint up to 2 persons who have such skills and experience as the Board considers are necessary to complement the composition of the Board (**Appointed Directors**).
- 21.5.2 Appointed Directors shall hold office for such period as the Board determines up to a maximum of 2 years.
- 21.5.3 An Appointed Director may be reappointed at the end of his or her term of office.

#### 21.6 Term of office of Directors

- 21.6.1 Subject to clause ~~21.14.222-14-2~~, a Director shall be elected for a period of 2 years and may not serve more than 3 consecutive terms whether as an Elected Director or Appointed Director or a combination of both. Any consecutive terms of office served by a Director prior to the Effective Time shall be counted when calculating the maximum term of office of a Director pursuant to clause 21.6.1.
- 21.6.2 For the purposes of this clause 21.6, where a Director does not serve the full period of a particular term of office that period shall be deemed as a full term for the purposes of clause 21.6.1.
- 21.6.3 Subject to clause 21.6.4 the term of office of an Elected Director commences from the end of the Annual General Meeting at which that Director's election is announced and ends at the end of the next Annual General Meeting.
- 21.6.4 If:
  - (a) a Director (**Vacating Director**) resigns or otherwise vacates office prior to the end of the Vacating Director's term; and

(b) the Board does not appoint a replacement pursuant to clause 21.8.3;

a person elected to fill that position at any Annual General Meeting prior to the end of the Vacating Director's term shall hold office until the end of the Vacating Director's term and such term shall be counted as a full term for the purposes of clause 21.6.1.

## 21.7 President

The Board shall by resolution appoint one of the Directors to fulfil the office of President. That Director may be reappointed as President by a resolution of the Board.

## 21.8 Casual Vacancy and Cessation of Office

21.8.1 In clauses 21.8.2 and 21.8.3 **Casual Vacancy** means a vacancy that is caused if the Director:

~~(a)~~ ceases to be a Member;

~~(b)~~(a) becomes insolvent under administration within the meaning of the Corporations Law;

~~(c)~~(b) becomes ineligible by virtue of clause 21.3.3; or

~~(d)~~(c) resigns from office by notice in writing given to the Secretary or the President.

21.8.2 If there is a Casual Vacancy in any position on the Board, that position may be filled by the Board from appropriately qualified persons as soon as practicable and such person shall hold office until the end of the term of office of the Director who causes the Casual Vacancy.

21.8.3 If there is a Casual Vacancy or vacancies in the office of Director, the remaining Directors may act provided the number of Directors remaining is sufficient to constitute a quorum at a meeting of the Board. If there is not a sufficient number of remaining Directors, they may only act for the purpose of increasing the number of Directors to constitute such a quorum.

21.8.4 A Director may be disciplined in accordance with WPV's Disciplinary Procedure.

21.8.5 Regardless of whether or not a Director is a Member all Directors are subject to the By Laws and all other documents governing Members in force from time to time.

21.8.6 A person ceases to be a Director if that person:

(a) fails to attend 3 consecutive Board meetings (other than special or urgent Board meetings) without leave of absence under clause 21.8.7;

(b) is removed from office by a Special Resolution pursuant to clause 21.8.8(a); or

(c) otherwise ceases to be a Director by operation of section 78 of the Act.

21.8.7 The Board may grant a Director leave of absence from Board meetings for a period not exceeding 6 months.

21.8.8 A General Meeting may by Special Resolution:

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- (a) remove a Director from office; and
- (b) elect an eligible person to fill the vacant position in accordance with this rule.

21.8.9 A Director who is the subject of a proposed Special Resolution under clause 21.8.8(a) may, at the Director's election:

- (a) make representations in writing to the President of WPV (not exceeding a reasonable length) and may request that the representations be provided to the Voting Members either before or at the commencement of the meeting; or

- (b) make oral submissions to the meeting

at which the Special Resolution is to be proposed

## **21.9 General Duties of Directors**

21.9.1 As soon as practicable after being elected or appointed to the Board, each Director must become familiar with the Constitution and the Act.

21.9.2 The Board is collectively responsible for ensuring that WPV complies with the Act and that individual Directors comply with the Constitution.

21.9.3 Directors must exercise their powers and discharge their duties with reasonable care and diligence.

21.9.4 Directors must exercise their powers and discharge their duties:

- (a) in good faith in the best interests of WPV; and
- (b) for a proper purpose.

21.9.5 Directors and former Directors must not make improper use of:

- (a) their position; or
- (b) information acquired by virtue of holding their position,

so as to gain an advantage for themselves or any other person or to cause detriment to WPV.

21.9.6 In addition to any duties imposed by the Constitution, a Director must perform any other duties imposed from time to time by a resolution at a General Meeting or by the Act.

## **21.10 Proceedings of the Board:**

21.10.1 The Board shall meet as often as is deemed necessary in every Financial Year for the dispatch of business and may adjourn and, subject to this Constitution, otherwise regulate its meetings as it thinks fit.

21.10.2 Any Director may at any time convene a meeting of the Board provided no less than 7 days' notice is given unless all Directors agree to hold a meeting at shorter notice

- 21.10.3 The quorum for a Board meeting shall be more than one half of the Directors whether present in person or participating. If a quorum is not present within 30 minutes of the starting time for the meeting, the meeting shall be deferred for a week at the same place and time.
- 21.10.4 At Board meetings:
- (a) the President shall preside; or
  - (b) in the absence of the President, the Board, shall appoint a Chairman from among its number;
  - (c) minutes shall be taken by a member of WPV staff approved by the Board from time to time.
- 21.10.5 On any motion each Director shall have one vote. If there is a tie the President shall not have a second or casting vote.
- 21.10.6 The Board may act on any matter, subject to the presence of a quorum, notwithstanding the absence of any Director or a vacancy on the Board.
- 21.10.7 A procedural defect in decisions taken by the Board shall not result in such decision being invalid.

#### **21.11 Use of technology**

- 21.11.1 A Director not physically present at a Board meeting may be permitted to participate in the meeting by the use of technology that allows that Director and the Directors present at the meeting to clearly and simultaneously communicate with each other.
- 21.11.2 If there is a failure in communications which prevents clause 21.11.1 from being satisfied and thereby a quorum does not exist, then the meeting shall be suspended until clause 21.11.1 is satisfied again and a quorum exists. If such is not satisfied within 15 minutes from the interruption the meeting shall be adjourned.
- 21.11.3 For the purposes of this clause 21.11, a Director participating in a Board meeting as permitted under clause 21.11.1 is taken to be present at the meeting and, if the Director votes at the meeting, is taken to have voted in person.

#### **21.12 Resolutions not in meeting**

A resolution in writing, signed or assented to by facsimile 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 and the resolution is passed when the last director signs.

#### **21.13 Indemnity of Directors**

- 21.13.1 To the extent permitted by law WPV shall indemnify its Directors, employees, agents and committee members out of the assets of WPV for any liability (including legal costs) incurred by any such person:
- (a) in or arising out of the conduct of:

- (i) the business of WPV, or
  - (ii) the discharge of the duties of the Director, employee or agent, as the case may be; and
- (b) to a person other than WPV or a related body corporate of WPV (whether civil or criminal) unless the liability arises out of the conduct by or on the part of the Director, employee or agent which:
- (i) is outside the scope of the duties of that person;
  - (ii) involves a lack of good faith;
  - (iii) involves a breach of a Director's obligations under the Act; or
  - (iv) is a liability for a pecuniary penalty or compensation order under the Act.

21.13.2 The Board may enter into or be an insured party under a contract of insurance in respect of any liability covered by the indemnity referred to in clause 21.13.1.

#### **21.14 Transitional Provisions**

- 21.14.1 Subject to clause [21.14.222-44.2](#), all Directors elected under the provisions of this Constitution which applied immediately prior to the Effective Time (**Transition Directors**) will be deemed to have been elected under the provisions of this Constitution as they apply after the Effective Time.
- 21.14.2 One half of the Transition Directors (rounded up if necessary) will be deemed to be elected for a term of 2 years and the remainder will be deemed to be elected for a period of 1 year.
- 21.14.3 Following their election, the Transition Directors will agree as to which of them will have a 2 year term and which of them will have a 1 year term. If the Transition Directors cannot agree amongst themselves within 7 days of the Effective Time, the Company Secretary shall determine the issue by drawing lots.

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## **22. Management**

### **22.1 Chief Executive Officer**

- 22.1.1 The Chief Executive Officer (**CEO**) shall be appointed by the Board for such term and on such conditions as it thinks fit.
- 22.1.2 The Chief Executive Officer shall:
- (a) as far as practicable attend all Board meetings and General Meetings;
  - (b) work with the President to prepare the notice of and agenda for all Board meetings and all General Meetings;
  - (c) ensure that minutes of the proceedings of all General Meetings are recorded and prepared;

- (d) regularly report to the Board on the activities of, and issues relating to, WPV; and
- (e) be responsible for keeping the Relevant Documents for a minimum of 7 years after the completion of the relevant transactions or circumstances to which those documents relate.

22.1.3 The Chief Executive Officer may employ such persons as are deemed necessary from time to time subject to the limits of any delegation provided by the Board.

## **22.2 Board 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 WPV. No resolution passed by a General Meeting shall invalidate any prior act of the Chief Executive Officer or the Board which would have been valid if that resolution had not been passed.

## **22.3 Finance**

- 22.3.1 The funds of WPV shall be derived from the annual membership fees, capitation fees, levies, donations, sponsorships and such other sources as the Board determines.
- 22.3.2 All cheques and other negotiable instruments shall be signed or otherwise executed by 2 persons who are authorised signatories to the WPV bank account.
- 22.3.3 WPV may execute any other document without using a common seal.
- 22.3.4 A properly qualified auditor or auditors shall be appointed by the Board and the remuneration of such auditor or auditors shall be fixed by the Board. The auditor's duties shall be regulated in accordance with the Act, and generally accepted principles, or any applicable code of conduct.
- 22.3.5 The accounts of WPV including the profit and loss accounts and balance sheet shall be examined by the auditor or auditors at least once in every year.
- 22.3.6 For each financial year, the Board must ensure that the requirements under the Act relating to the financial statements of WPV are met.
- 22.3.7 Without limiting clause 22.1.1, those requirements include:
  - (a) the preparation of the financial statements;
  - (b) the review or auditing of the financial statements;
  - (c) the certification of the financial statements by the Board;
  - (d) the submission of the financial statements to the Annual General Meeting of WPV; and
  - (e) the lodgement with the Registrar of the financial statements and accompanying reports, certificates, statements and fee.
- 22.3.8 WPV must retain the financial records for 7 years after the transactions covered by the records are completed.

## 22.4 Secretary

- 22.4.1 The Secretary must perform any duty or function required under the Act to be performed by the Secretary.
- 22.4.2 The Secretary must:
- (a) maintain the Register in accordance with clause 12;
  - (b) keep custody of the common seal (if any) of WPV and all Relevant Documents;
  - (c) subject to the Act, the Privacy Law and the Constitution, provide Members with access to the Register and the Relevant Documents;
  - (d) perform any other duty or function imposed on the Secretary by the Constitution or the Act; and
  - (e) give to the Registrar notice of his or her appointment within 14 days after the appointment.
- 22.4.3 A request for inspection may be refused by the Secretary where:
- (a) such documents relate to confidential, personal, employment, commercial or legal matters;
  - (b) to do so may be prejudicial to the interests of WPV; or
  - (c) WPV is legally entitled or obliged to do so.

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## 23. Discipline and Grievances

- 23.1.1 This section does not apply to a matter that is covered by the Safe Sport Framework.
- 23.1.2 The Board shall make a By Law that deals with discipline of Members and grievances raised by Members (**Grievance and Discipline By Law**) provided that such By Law must ensure that the principles of natural justice are preserved in dealing with such grievances and discipline.
- 23.1.3 Subject to clause 23.1.4 where a Member has a grievance arising from their involvement in the activities of WPV, whatever that may be, with;
- (a) another Member;
  - (b) a Director or employee of WPV;
  - (c) the Board; or
  - (d) WPV,
- such grievance shall be dealt with in accordance with the Grievance and Discipline By Law.



- 23.1.4 If the grievance is a matter which is dealt with in the Safe Sport Framework it shall be dealt with in accordance with that document.
- 23.1.5 WPV may take disciplinary action against a Member or other person bound by this Constitution or the By Laws where WPV has a reasonable belief that the person has:
- (a) breached, refused, failed or neglected to comply with any one or more of:
    - (i) the Constitution;
    - (ii) the By Laws;
    - (iii) any other rule, regulation or policy of WPV; or
    - (iv) a resolution or determination of the Board;
  - (b) engaged in conduct which is or is reasonably likely to be prejudicial to WPV;
  - (c) acted in a manner which is unbecoming of a Member or is or is reasonably likely to be prejudicial to the Objects or the interests of WPV; or
  - (d) by the Member's conduct or omission brought or is reasonably likely to bring WPV, WPA, FINA or Water Polo into disrepute.
- 23.1.6 Any such disciplinary action will be taken in accordance with the Grievance and Discipline By Law and each Member submits unreservedly to the jurisdiction, procedures, penalties and appeal mechanisms (if any) of WPV set out in that By Law which shall be final and binding.

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## **24. The council**

- 24.1.1 There shall be established a Council which shall consist of:
- (a) the members of the Board;
  - (b) the Life Members; and
  - (c) 1 Delegate from each Club.
- 24.1.2 The Board may invite other persons to attend meetings of Council as it sees fit.
- 24.1.3 Council shall meet at least twice in each Financial Year and shall:
- (a) receive reports from Board members for dissemination to their Clubs; and
  - (b) advise the Board on matters affecting their Clubs and Water Polo in general.
- 24.1.4 The Board shall not be bound by decisions of Council.

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## **25. General provisions**

### **25.1 Addition, alteration or amendment**

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

### **25.2 Winding up**

25.2.1 Subject to this clause WPV may be wound up or dissolved in accordance with the Act.

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

25.2.3 If WPV is wound up or dissolved each Member who is a Member at the time of or within 12 months of the winding up or dissolution undertakes to contribute to the assets of WPV for the payment of debts and liabilities of WPV contracted before the time at which the Member ceases to be a Member and the costs charges and expenses of winding up or dissolution and for an adjustment of the rights of contributors among themselves such amount as may be required not exceed one dollar (\$1).

25.2.4 Any surplus assets or property of WPV remaining after the conclusion of the winding up or dissolution of WPV shall:

- (a) not be paid to or distributed amongst Members; and
- (b) must be paid or distributed to WPA or such other organisation which has objects similar to the Objects and which prohibits the distribution of its income and property amongst its Members at least to the same extent as is imposed on WPV by Clause 5 of the Constitution.

### **25.3 Notices**

25.3.1 Notices may be given to any Member by sending the notice by pre-paid post or facsimile transmission or where available, by electronic mail, to the Member's registered address or facsimile number or electronic mail address.

25.3.2 Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting the notice. Service of the notice is deemed to have been effected 2 business days after posting.

25.3.3 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.

25.3.4 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.

### **25.4 Patrons and Vice Patrons**

On the recommendation of the Board WPV may, at its Annual General Meeting, appoint a Chief Patron and such other Patrons and Vice Patrons as it considers necessary.

## 25.5 Jurisdiction and enforceability

25.5.1 Each Member submits to the non-exclusive jurisdiction of the courts of Victoria and any courts which may hear appeals therefrom.

25.5.2 Any provision of, or the application of any provision of, these clauses which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.

25.5.3 Any provision of, or the application of any provision of, these clauses which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

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## 25.6 Relationship with WPA

WPV must:

25.6.1 advise WPA as soon as practicable after any serious administrative, operational or financial difficulties WPV is having;

25.6.2 assist WPA in investigating those issues; and

25.6.3 cooperate with WPV in addressing those issues in whatever manner, including by allowing WPA to appoint an administrator to conduct and manage WPV's business and affairs, or to allow WPA itself to conduct all or part of the business or affairs of WPV and on such conditions as WPA considers appropriate.

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