

# Constitution

Date: 25 June 2012

**EQUESTRIAN FEDERATION OF AUSTRALIA-SOUTH AUSTRALIAN  
BRANCH INC**  
trading as **EQUESTRIAN SOUTH AUSTRALIA**

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# Constitution

Date: 25 June 2012

**CONSTITUTION OF EQUESTRIAN FEDERATION OF AUSTRALIA-SOUTH AUSTRALIAN BRANCH INC trading as EQUESTRIAN SOUTH AUSTRALIA ABN 82 278 539 230**

## 1. N A M E

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The name of the incorporated association is Equestrian Federation of Australia – South Australian Branch Incorporated (trading as Equestrian South Australia).

## 2. P U R P O S E S O F A S S O C I A T I O N

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The Association is the peak body for the administration of equestrian sport in South Australia. The purposes for which the Association is established and maintained are to:

- (a) create a uniform entity through and by which Equestrian in South Australia can be encouraged, conducted, promoted and administered and to be the governing body of Equestrian in South Australia;
- (b) promote and encourage Equestrian within South Australia and the conduct of Equestrian as an affiliated member of Equestrian Australia;
- (c) adopt and accept the rules of FEI and abide by the interpretation of such rules as determined from time to time by the Association;
- (d) act for its Members in all matters pertaining to Equestrian;
- (e) control, manage and conduct Equestrian competitions at a state level;
- (f) select and manage Equestrian teams to represent South Australia in national competitions inside and outside South Australia;
- (g) encourage, conduct, promote, and administer Equestrian throughout South Australia, in a fair and reasonable manner, through and by the Members for the mutual and collective benefit of the Members and Equestrian;
- (h) act in good faith and loyalty to ensure the maintenance and enhancement of the Association and Equestrian, its standards, quality and reputation for the collective and mutual benefit of the Members and Equestrian;
- (i) operate with, and promote mutual trust and confidence between the Association and the Members in pursuit of these Purposes;
- (j) at all times to act on behalf of, and in the interests of, the Members and Equestrian;
- (k) promote the economic and sporting success, strength and stability of the Association and the Members and to act interdependently with each Member in pursuit of these Purposes;

- (l) affiliate and otherwise liaise with Equestrian Australia and such other bodies as may be desirable, in the pursuit of these Purposes;
- (m) encourage, conduct, promote, advance and govern Equestrian;
- (n) apply the property and capacity of the Association towards the fulfilment and achievement of these Purposes;
- (o) use and protect the Association's Intellectual Property;
- (p) strive for and maintain government, commercial and public recognition of the Association as the authority for Equestrian in South Australia;
- (q) promulgate and secure uniformity in such rules and standards as may be necessary for the management of Equestrian, Equestrian competitions and related activities, including but not limited to the rules of Equestrian and coaching standards;
- (r) pursue through itself or others, such commercial arrangements, including sponsorship and marketing opportunities, as are appropriate to further these Purposes;
- (s) further develop the Association and Equestrian into an organised institution and having regard to these Purposes and in conjunction with the Members, foster, regulate, organise, conduct and manage Equestrian events , competitions, events, displays and other activities;
- (t) promote the health and safety of athletes, officials and other individuals participating in Equestrian in any capacity;
- (u) act as final arbiter on all matters pertaining to the conduct of Equestrian in South Australia, including disciplinary matters;
- (v) establish and conduct education and training programs for athletes, coaches and officials in the implementation and interpretation of Equestrian rules and standards;
- (w) formulate and implement appropriate policies, including policies in relation to member protection, equal opportunity, equity, drugs in sport, health, safety, junior and senior programs, infectious diseases and such other matters as arise from time to time as issues to be addressed in Equestrian;
- (x) represent the interests of the Members and of Equestrian generally in any appropriate forum;
- (y) have regard to the public interest in its operation;
- (z) encourage and promote performance-enhancing drug free Equestrian competition;
- (aa) give, and where appropriate, seek recognition for athletes, officials and other individuals participating in Equestrian in any capacity to obtain awards or public recognition; and
- (bb) undertake and or do all things or activities which are necessary, incidental or conducive to the advancement of these Purposes.

### 3. P O W E R S O F A S S O C I A T I O N

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

### 4. I N T E R P R E T A T I O N A N D D E F I N I T I O N S

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#### 4.1 D e f i n i t i o n s

In this Constitution, unless the contrary intention appears:

**Act** means the *Associations Incorporations Act 1985* (SA).

**Affiliate Member** means an Equestrian club or any other body who is accepted for membership of the Association under **rule 5.2**.

**Annual General Meeting** means a meeting of Members convened in accordance with **rule 10**.

**Annual Subscriptions** means the annual fees payable by each category of Member as determined by the Board under **rule 6**.

**Appointed Director** means a Director appointed under **rule 15.1**.

**Association** means Equestrian South Australia Incorporated

**Board** means the body consisting of the Directors under **rule 15.2**.

**By-Laws** means any by-laws made by the Board under **rule 31**.

**Chair** means the chair of the Association appointed in accordance with **rule 15.2(c)** from time to time.

**Committee** means any committee of the Board created under **rule 19.2** from time to time and includes any Standing Committees.

**Constitution** means this constitution of the Association as amended from time to time.

**Delegate** means a representative of an Affiliate Member (or in their absence a nominee of that representative who must also be a member of the same Affiliate Member as the Delegate). The Delegate (or their nominee) is the only person who may represent the Affiliate Member at General Meetings.

**Director** means a member of the Board and includes an Elected Director and an Appointed Director.

**Elected Director** means a Director elected under **rule 16**.

**Equestrian** means equestrian and horse sport (including but not limited to the disciplines of dressage, eventing, showjumping, show horse, vaulting, carriage driving and interschool) as determined by FEI with such variations as may be recognised by Equestrian Australia and the Association from time to time.

**Equestrian Australia** means Equestrian Australia Limited, the governing body for Equestrian in Australia, or its successor.

**Executive Officer** means the executive officer of the Association appointed by the Board in accordance with **rule 19.1**.

**FEI** means Federation Equestre Internationale, the international governing body for Equestrian, or its successor.

**Financial Year** means the year ending on 30 June.

**General Meeting** means a General Meeting of the Association including the Annual General meeting and any meeting of Members convened in accordance with **rule 10**.

**Honorary Life Member** means a natural person who has rendered distinguished service to the Association or Equestrian and is accepted for membership of the Association under **rule 5.5**.

**Individual Member** means a natural person who is accepted for membership of the Association in this category under **rule 5.4**.

**Intellectual Property** means all rights subsisting in copyright, trade names, trade marks, logos, designs, equipment, images (including photographs, videos or films) or service marks (whether registered or not) relating to the Association or activity conducted, promoted or administered by the Association.

**Junior Member** means a natural person under the age of 18 years who is accepted for membership of the Association in this category under **rule 5.4**.

**Life Member** means anyone who is accepted for membership of the Association under **rule 5.6**. For the avoidance of doubt, this category of Member differs from an Honorary Life Member.

**Member** means either any person or organisation recognized as a Member by the Board under **rule 5** from time to time.

**Purposes** means the purposes of the Association set out in **rule 2**.

**Register** means the register of Members kept in accordance with **rule 7.1**.

**Special Resolution** has the same meaning as the Act.

#### 4 . 2 I n t e r p r e t a t i o n

In this Constitution:

- (a) a reference to a function includes a reference to a power, authority and duty;
- (b) a reference to a rule, regulation, schedule or annexure is to a rule, regulation, schedule or annexure of, or made under, this Constitution;
- (c) a reference to the exercise of a function includes where the function is a power, authority or duty, a reference to the exercise of the power or authority or the performance of the duty;
- (d) words importing the singular include the plural and vice versa;

- (e) words importing any gender include the other genders;
- (f) headings are for convenience only and shall not be used for interpretation;
- (g) words or expressions shall be interpreted in accordance with the provisions of the Act as they vary from time to time;
- (h) references to persons include natural persons, corporations and bodies politic;
- (i) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- (j) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any legislative authority having jurisdiction); and
- (k) expressions referring to writing shall unless the contrary intention appears, be construed as including references to printing, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail.

#### 4 . 3 E n f o r c e a b i l i t y

If any provision of this Constitution or any phrase contained in it is invalid or unenforceable in any jurisdiction, the phrase or provision shall be read down for the purpose of that jurisdiction, if possible, so it is valid and enforceable. If it can not be so read down the provision shall be severed to the extent of the invalidity or unenforceability. The remaining provisions of this Constitution and its validity or enforceability shall not be affected by the severance in any other jurisdiction.

### **5. M E M B E R S H I P O F A S S O C I A T I O N**

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#### 5 . 1 C a t e g o r i e s o f M e m b e r

The categories of membership will be:

- (a) Affiliate Members, which subject to this Constitution, shall be represented by their Delegate who shall have the right to be present, debate and vote at General Meetings;
  - (b) Honorary Life Members;
  - (c) Life Members;
  - (d) Individual Members; and
  - (e) Junior Members;
- all of whom shall have such rights as are set out in the By-Laws; and
- (f) Such additional or other categories of membership as determined by the Board.



## 5.2 Application for Membership – Affiliate Members

- (a) To be eligible for membership as an Affiliate Member, the applicant must be incorporated or in the process of incorporation (which process shall be complete within twelve months of applying for membership under this Constitution) and meet any other criteria set by the Board from time to time. Subject to this Constitution or any procedures set by the Board from time to time, an application for membership by an Affiliate Member must be:
  - (i) in writing (which may include, but is not limited to, an online application) in the form prescribed by the Board from time to time;
  - (ii) accompanied by the appropriate fee or fees, if any; and
  - (iii) lodged with the Executive Officer.
- (b) As soon as is practicable after the receipt of an application under **rule 5.2(a)**, the Executive Officer shall refer the application to the Board.
- (c) Upon an application being referred to the Board, the Board shall, as soon as practicable, determine whether to approve or decline the application.

## 5.3 Discretion to Accept or Decline Application

- (a) The Board may accept or decline an application whether the applicant has complied with the requirements in **rule 5.2(a)** or not. The Board will make a decision on an application within 28 days of receiving the application. In considering an application the Board must act reasonably and in good faith.
- (b) Where the Board accepts an application, the applicant will become an Affiliate Member.
- (c) Membership of the Association will commence upon acceptance of the application by the Board.
- (d) If the Board rejects an application, it will refund any fees forwarded with the application, and the application will be deemed declined. The Board is not obliged to provide reasons where it has declined a membership application.

## 5.4 Application for Membership – Individual Members and Junior Members

- (a) To be eligible for membership as an Individual Member or Junior Member, the applicant must be a natural person and meet any other criteria set by the Board from time to time.
- (b) Subject to this Constitution or any procedures set by the Board from time to time, an application for membership as an Individual Member or Junior Member must be:
  - (i) in writing (which may include, but is not limited to, an online application) in the form prescribed by the Board from time to time;
  - (ii) accompanied by the appropriate fee or fees, if any; and

(iii) lodged with the Executive Officer.

If a person satisfies the criteria set by this **rule 5.4**, they shall be deemed an Individual Member or Junior Member, subject always to this Constitution and in particular **rules 5.4(c) and (d)** below.

- (c) The Executive Officer may, in their discretion, refer any application for membership as an Individual Member or Junior Member to the Board for review. The Board may, in its discretion, determine whether to approve or decline the application.
- (d) If the Board does not approve an application for membership, the Executive Officer shall, as soon as practicable, notify the applicant in writing that their application for membership is declined. The Board is not required to give reasons for its decision.

#### 5 . 5 H o n o r a r y L i f e M e m b e r s

Honorary Life Members shall be determined by the Board. The Board may grant a person honorary life membership in recognition of services rendered to the Association. Nominations for honorary life membership should be lodged with the Executive Officer.

#### 5 . 6 L i f e M e m b e r s

Life Members shall be determined by the Board from time to time on such terms and conditions as are set by the Board.

#### 5 . 7 D e l e g a t e s o f A f f i l i a t e M e m b e r s

- (a) Each Affiliate Member shall advise the Executive Officer prior to the Annual General Meeting who its Delegate will be for the succeeding year. If an Affiliate Member fails to provide notification to the Executive Officer, the president or secretary of the Affiliate Member shall be deemed to be the Delegate for that meeting.
- (b) If an Affiliate Member has failed to notify the Executive Officer of its Delegate prior to the Annual General Meeting, it may notify the Executive Officer prior to any General Meeting who its Delegate will be for that General Meeting.
- (c) The Executive Officer shall record any change in Delegate in the Register.
- (d) Each Delegate shall comply with the directions given by a resolution of the Affiliate Member appointing that Delegate, including in respect of voting and if required by the Board shall provide to the Board evidence of such compliance.

#### 5 . 8 E f f e c t o f M e m b e r s h i p

- (a) Members acknowledge and agree that:
  - (i) this Constitution constitutes a contract between each of them and the Association and that they are bound by this Constitution and the By-Laws;
  - (ii) they shall comply with and observe this Constitution and the By-Laws;

- (iii) by submitting to this Constitution and the By-Laws they are subject to the jurisdiction of the Association;
  - (iv) this Constitution and the By-Laws are necessary and reasonable for promoting the Purposes; and
  - (v) they are entitled to all benefits, advantages, privileges and services of their membership as determined by the Board.
- (b) Members may, by virtue of membership of the Association, and subject to this Constitution:
- (i) express in writing or otherwise their views and opinions in any meeting in respect of which they are entitled to participate in accordance with this Constitution;
  - (ii) make proposals or submissions to the Board;
  - (iii) engage and participate in any activity approved, sponsored or recognised by the Association; and
  - (iv) conduct any activity approved by the Association.
- (c) A right, privilege or obligation of a person by reason of their membership of the Association:
- (i) is not capable of being transferred or transmitted to another person; and
  - (ii) terminates upon the cessation of membership whether by death, resignation or otherwise.

#### 5 . 9 R e n e w a l o f m e m b e r s h i p

- (a) An Affiliate Member is not required to reapply for membership each Financial Year. Affiliate Members shall, subject to this Constitution, remain Members provided all monies due and payable to the Association have been paid. If Affiliate Members do not pay monies within thirty days of the due date, subject to the Board's discretion, all of that Affiliate Members' rights under this Constitution shall be immediately suspended until such time as all monies are fully paid.
- (b) All classes of Member other than Affiliate Members, Life Members and Honorary Life Members must reapply for membership each Financial Year through the procedure set out in this Constitution or by the Board from time to time.

#### 5 . 1 0 D e e m e d M e m b e r s

- (a) Subject to this Constitution, all members of the Association (including existing Life Members, Honorary Life Members and Affiliates) immediately prior to the time of approval of this Constitution under the Act, shall be deemed Members of the Association from the time of approval of this Constitution under the Act, and will be entitled to such benefits as are conferred on them by the Association, whether directly or indirectly.

## 6. SUBSCRIPTIONS AND FEES

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The Annual Subscriptions and any other fees payable by Members or categories of Members to the Association, the benefits which apply, the time for, and manner of payment, shall be determined by the Board from time to time.

## 7. REGISTERS

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### 7.1 Executive Officer to Keep Register of Members

The Executive Officer shall keep and maintain a Register of Members in which shall be entered the full name, address, category of membership, date of entry of the name of each Member and whether the Member has been granted voting rights.

### 7.2 Inspection of Register

Having regard to confidentiality and privacy considerations, an extract of the Register, excluding the contact details of a Member who is an individual, shall be available for inspection (but not copying) by Members, upon reasonable request.

### 7.3 Register to be kept by Affiliate Members

Affiliate Members shall maintain, in a form acceptable to the Association and with such details as are required by the Board, a register of all members of the Affiliate Member (including, but not limited to, those who are Individual Members and/or Junior Members of the Association). Such register shall be available for inspection (including copying) by the Executive Officer (or their nominee), upon reasonable request.

## 8. RESIGNATION OF MEMBERS

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### 8.1 Notice of Resignation

Any Member who has paid all monies due and payable to the Association may resign from the Association by giving thirty days' notice in writing to the Association of such intention to resign. Upon the expiration of that period of notice, the Member shall cease to be a member.

### 8.2 Expiration of Notice Period

Upon the expiration of a notice given under **rule 8.1**, an entry, recording the date on which the Member who gave notice ceased to be a Member, shall be recorded in the Register.

### 8.3 Forfeiture of Rights

A Member who ceases to be a Member, for whatever reason, shall forfeit all right in and claim upon the Association and its property including, but not limited to, the Intellectual Property and any monies (including Membership fees previously paid).

## 9. EXPULSION, SUSPENSION OR FINING OF MEMBERS

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### 9.1 Board Resolution

- (a) Subject to this Constitution, the Board may by resolution:
  - (i) expel a Member from the Association; or
  - (ii) suspend a Member from membership of the Association for a specified period; or
  - (iii) fine a Member;
  - (iv) impose such other penalty, action or educative process as it sees fit;
- (b) if the Board considers that the Member has:
  - (i) breached, failed, refused or neglected to comply with a provision of this Constitution or the By-Laws;
  - (ii) acted in a manner unbecoming of a Member or prejudicial to the Purposes and interests of the Association, or another Member; or
  - (iii) brought itself, the Association, Equestrian or another Member into disrepute.

Such grounds do not constitute a grievance, and **rule 20** does not apply.

### 9.2 Notice of Alleged Breach

Where the Board considers that a Member may have satisfied one or more of the grounds in **rule 9.1(b)**, the Executive Officer shall, as soon as practicable, serve on the Member a notice in writing:

- (a) setting out the alleged breach of the Member and the grounds on which it is based;
- (b) stating that the Member may address the Board at a meeting to be held not earlier than fourteen and not later than twenty eight days after service of the notice;
- (c) stating the date, place and time of that meeting;
- (d) informing the Member that he, she or it may do one or more of the following:
  - (i) attend that meeting;
  - (ii) give the Association, before the date of that meeting a written statement regarding the alleged breach.

### 9.3 Determination of Board

At a meeting of the Board held in accordance with **rule 9.2**, the Board shall acting reasonably and in good faith:

- (a) give the Member every opportunity to be heard;

- (b) give due consideration to any written statement submitted by the Member;  
and
- (c) by resolution determine whether the alleged breach occurred.

#### 9 . 4 N o A p p e a l

There shall be no appeal from a decision of the Board under this **rule 9**.

#### 9 . 5 D e l e g a t i o n b y t h e B o a r d

Notwithstanding anything in this **rule 9**, the Board may delegate its rights and obligations under this rule to a Committee.

### 10. A N N U A L G E N E R A L M E E T I N G S

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#### 1 0 . 1 A n n u a l G e n e r a l M e e t i n g t o b e H e l d

The Association shall convene and hold an Annual General Meeting of its Members in accordance with the Act and on a date and at a venue to be determined by the Board.

#### 1 0 . 2 B u s i n e s s

The Annual General Meeting will transact any business required by the Act, determined by the Board and Executive Officer, and any other business of which notice is given in accordance with this Constitution.

#### 1 0 . 3 A d d i t i o n a l M e e t i n g s

The Annual General Meeting shall be in addition to any other General Meetings that may be held in the same year.

### 11. G E N E R A L M E E T I N G S

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#### 1 1 . 1 G e n e r a l M e e t i n g s M a y b e H e l d

The Board may, whenever it thinks fit convene a General Meeting and, where, but for this rule more than fifteen months would elapse between Annual General Meetings, shall convene a General Meeting before the expiration of that period.

#### 1 1 . 2 R e q u e s t f o r G e n e r a l M e e t i n g s

- (a) The Board shall convene a General Meeting upon a request in writing from not less than 100 Members who would be eligible to vote at such General Meeting. The Board may also request a General Meeting.
- (b) The request for a General Meeting shall state the object(s) of the meeting and shall be signed by the Members making the request and be sent to the Executive Officer and may consist of several documents in a like form, each signed by one or more of the Members making the requisition.
- (c) If the Board does not cause a General Meeting to be held within thirty days after the date on which the request is sent to the Association, the Members making the request, or any of them, may convene a General Meeting to be held not later than sixty days after that date.

- (d) A General Meeting convened by Members under this Constitution shall be convened in the same manner, or as nearly as possible as that, in which meetings are convened by the Board. All reasonable expenses incurred in convening the meeting shall be refunded by the Association to the persons incurring the expenses.

## **12. N O T I C E O F M E E T I N G S**

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### **1 2 . 1 N o t i c e t o b e g i v e n f o r G e n e r a l M e e t i n g s**

The Executive Officer shall, at least 21 days before the date fixed for holding a General Meeting, send to each eligible voting Member, at their contact appearing in the Register, and each Director a notice in writing via mail or electronic form stating the place, date and time and the nature of the proposed business to be transacted at the meeting. No other Member is entitled to receive notice as of right, but the Association may also advertise the General Meeting on its website or otherwise as deemed appropriate.

### **1 2 . 2 B u s i n e s s o f M e e t i n g**

- (a) No business other than that set out in the notice convening the meeting shall be transacted at the General Meeting.
- (b) A Member desiring to bring any business before a meeting shall give at least fourteen days' notice in writing of that business to the Association which shall include that business in a notice calling the next General Meeting after the receipt of the notice.
- (c) A motion of which due notice has been given, if unsuccessful, cannot be resubmitted, nor may any other motion having a similar effect be moved at a subsequent General Meeting for a period of twelve months. The Chairperson shall determine whether a motion is a motion having a similar effect.

## **13. P R O C E E D I N G S A T M E E T I N G S**

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### **1 3 . 1 Q u o r u m**

- (a) No item of business shall be transacted at a General Meeting unless a quorum of Members entitled under this Constitution to vote is present during the time when the meeting is considering that item.
- (b) Fifteen Members entitled to vote at the meeting personally present constitute a quorum for the transaction of the business at a General Meeting.
- (c) If within half an hour after the appointed time for the commencement of a General Meeting, a quorum is not present, the meeting:
  - (i) if convened upon the requisition of Members, shall be dissolved; and
  - (ii) in any other case, shall stand adjourned to the same day in the next week at the same time and (unless Members are notified of an alternate venue) at the same place and if at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the Members present shall be a quorum.

### 1 3 . 2 C h a i r t o c h a i r

The Chair shall chair each General Meeting of the Association. If the Chair is absent from a General Meeting or is unwilling to act, the Directors present shall elect one of their number to preside as chairperson at the meeting.

### 1 3 . 3 C h a i r p e r s o n M a y A d j o u r n M e e t i n g

- (a) The chairperson of a General Meeting at which a quorum is present may, with the consent of the meeting, adjourn the meeting from time to time and place to place, but no business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (b) Where a meeting is adjourned for fourteen days or more, a like notice of the adjourned meeting shall be given as in the case of the General Meeting. Except as provided in this rule, it is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.

## 14. V O T I N G A T G E N E R A L M E E T I N G S

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### 1 4 . 1 V o t i n g R i g h t s

Subject to any other provision of this Constitution, at all General Meetings:

- (a) each Affiliate Member is entitled to one vote on any question, which vote shall be exercised through their nominated Delegate; and
- (b) Individual Members, Life Members and Honorary Life Members are entitled to one vote on any question.

### 1 4 . 2 V o t i n g P r o c e d u r e

- (a) Votes at a General Meeting shall be given in person by those present and entitled to vote.
- (b) Proxy voting is not permitted at General Meetings.
- (c) Subject to **rule 14.4**, all questions arising at a General Meeting shall be determined on a show of hands.
- (d) In the case of an equality of votes on a question, the motion shall fail. The chairperson of the meeting (whether the Chair or other person) is not entitled to exercise a second or casting vote.
- (e) A Delegate is not entitled to vote at any General Meeting unless all monies due and payable to the Association have, to the satisfaction of the Executive Officer, been paid by the Affiliate Member the Delegate represents.

### 1 4 . 3 R e c o r d i n g o f D e t e r m i n a t i o n s

When a declaration is made by the chairperson that a resolution has, on a show of hands, been carried, carried unanimously, carried by a particular majority or lost, then an entry to that effect in the minute book of the Association is evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.



#### 1 4 . 4 P o l l a t G e n e r a l M e e t i n g s

- (a) If at a meeting a poll on any question issued properly before the meeting, is demanded by ten (10) Delegates, it shall be taken at the meeting in such manner as the chairperson may direct and the resolution of the poll shall be deemed to be a resolution of the meeting on that question.
- (b) A poll that is demanded on a question of an adjournment shall be taken immediately and a poll that is demanded on any other question shall be taken at such time before the close of the meeting as the chairperson may direct.

#### 1 4 . 5 P o s t a l / E l e c t r o n i c V o t i n g

- (a) Postal voting will only be used if the Board determines it is appropriate or necessary.
- (b) The Board may determine how to conduct any postal vote which may include, but not be limited to, through ordinary post or any form of technology (for example, a website) it deems appropriate.

### 15. B O A R D

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#### 1 5 . 1 P o w e r s o f B o a r d

- (a) The affairs of the Association shall be managed by the Board.
- (b) Subject to this Constitution and the Act, the Board:
  - (i) shall control and manage the business and affairs of the Association;
  - (ii) may exercise all such powers and functions as may be exercised by the Association other than those powers and functions that are required by this Constitution to be exercised by the Members in a General Meeting; and
  - (iii) has power to perform all such acts and things as appear to the Board to be essential for the proper management of the business and affairs of the Association.

#### 1 5 . 2 C o m p o s i t i o n o f B o a r d

- (a) The Board shall consist of nine elected Directors who must all be Individual Members and who shall be elected in accordance with **rule 16**.
- (c) The position of Chair shall be appointed by the Board from amongst its number. A Director may be re-appointed as Chair.
- (d) The Board in consultation with the Executive Officer may allocate portfolios and/or titles to the Directors.

#### 1 5 . 3 T e r m o f D i r e c t o r s

- (a) Each Elected Director, shall hold office subject to this Constitution for a term of three years, but is eligible for re-election.

- (b) No Director may serve for more than three consecutive terms of three years. However, that Director shall be eligible to return to the Board after an absence of not less than 12 months.
- (c) From the 2012 Annual general Meeting three Elected Directors shall retire each year in succession until the nine Elected Directors have retired after which the Elected Directors who first retired (or their replacements) shall retire and so on. The Board will determine among themselves the initial sequence of retirements. If the Board can not agree this sequence it will be determined by lot. Subsequent election and retirement of Elected Directors will be determined in accordance with this Constitution.

#### 15.4 Casual Vacancy

In the event of a casual vacancy in the office of any Elected Director, the Board may appoint an appropriate Individual Member to the vacant office, and the person so appointed may continue in office up to the end of the term of the Elected Director they are replacing.

### 16. ELECTION OF ELECTED DIRECTORS

- (a) The Executive Officer shall call for nominations at an appropriate time determined by the Board. All Members shall be notified of the call for nominations as determined by the Board.
- (b) Nominations of candidates for election as an Elected Director, shall be:
  - (i) made in writing on the form provided by the Association from time to time (if any), signed by two Individual Members and accompanied by the written consent of the nominee. The nominee must be an Individual Member; and
  - (ii) delivered to the Executive Officer by the date specified on the call for nominations.
- (c) If:
  - (i) the number of nominations received for the Board is equal to the number of vacancies to be filled; or
  - (ii) there are insufficient nominations from candidates received to fill the respective vacancies on the Board;

then those nominated shall be declared elected at the Annual General Meeting by the returning officer. Any vacancies shall be treated as casual vacancies under **rule 15.4**.
- (d) If the number of nominations exceeds the number of vacancies to be filled, a ballot shall be conducted to determine the Elected Directors. Such ballot will be conducted in the manner determined by the Board, or as set out in the By-Laws, from time to time.
- (e) The Executive Officer (or their nominee) shall act as returning officer for the secret ballot. No person, other than the returning officer, shall be entitled to see any voting paper and the returning officer shall not disclose to any person the way in which any person has voted. A scrutineer may be appointed prior to voting by the nominee.

## 17. V A C A N C Y O N T H E B O A R D

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### 1 7 . 1 G r o u n d s f o r T e r m i n a t i o n o f D i r e c t o r

For the purposes of this Constitution, the office of a Director becomes vacant if the Director:

- (a) in the case of an Elected Director, ceases to be an Individual Member;
- (b) is convicted of an indictable offence;
- (c) becomes an insolvent under administration within the meaning of the Corporations Act;
- (d) resigns their office by notice in writing given to the Association;
- (e) is subject to any sanction by the Board under **rule 9** and the remainder of the Board consider the circumstances justify removal of that Director;
- (f) is directly or indirectly interested in any contract or proposed contract with the Association and, in the opinion of the Board, has deliberately, recklessly or negligently failed to declare the nature of his interest;
- (g) dies or 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;
- (h) would be prohibited from being a director of a company under the *Corporations Act 2001* (Cth);
- (i) is removed under **rule 17.2**; or
- (j) fails to attend 3 consecutive meetings of the Board without having previously obtained leave of absence or provided reasonable excuse for such absence.

### 1 7 . 2 R e m o v a l o f D i r e c t o r

- (a) The Association in General Meeting may by resolution remove an Elected Director, before the expiration of their term of office and appoint another Member in their place to hold office until the expiration of the term of the first mentioned Elected Director.
- (b) Where the Elected Director to whom a proposed resolution referred to in **rule 17.2(a)** makes representations in writing to the Executive Officer or the Chair and requests that such representations be notified to the Members, the Executive Officer or the Chair may send a copy of the representations to each Member or, if they are not so sent, the Elected Director may require that they be read out at the meeting, and the representations shall be so read.

## 18. Q U O R U M A N D P R O C E D U R E A T B O A R D M E E T I N G S

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### 1 8 . 1 C o n v e n i n g a B o a r d M e e t i n g

- (a) The Board shall meet as required, but shall meet on at least six occasions in each year.

- (b) Unless all Directors agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced in writing or by their presence) not less than 2 days written notice of the meeting of the Board shall be given to each Director.
- (c) Written notice via hard copy or electronic form of each Board meeting, specifying the general nature of the business to be transacted, shall be served on each Director by:
  - (i) delivering it to that Director personally;
  - (ii) sending it in writing, by facsimile or other means of electronic communication (subject to receiving appropriate confirmation that the notice has been effectively dispatched);

in accordance with the Director's last notified contact details.

## 1 8 . 2 Q u o r u m

- (a) Five Directors shall constitute a quorum for the transaction of the business of a meeting of the Board.
- (b) No business shall be transacted unless a quorum is present and if within half an hour of the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to the same place and at the same hour of the same day in the following week.
- (c) The Board may act notwithstanding any casual vacancy. However, if there are casual vacancies in the office of a Director such that the number of remaining Directors is not sufficient to constitute a quorum at a meeting of the Board, those Directors may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum.

## 1 8 . 3 P r o c e d u r e s a t B o a r d m e e t i n g s

- (a) At meetings of the Board:
  - (i) the Chair shall chair the meeting;
  - (ii) if the Chair is absent or unwilling to act, the Board shall appoint one of its members to chair the meeting.
- (b) Questions arising at a meeting of the Board shall be determined on a show of hands or, if demanded by a Director, by a poll taken in such manner as the person presiding at the meeting may determine.
- (c) Each Director present at a meeting of the Board (including the person presiding at the meeting) is entitled to one vote. In the event of an equality of votes on any question, the motion shall fail; neither the Chair nor other person presiding may exercise a second or casting vote.
- (d) A resolution in writing signed or assented to by facsimile or other form of electronic communication by all 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 of the Directors.

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

#### 1 8 . 4 D i r e c t o r s ' I n t e r e s t s

A Director is disqualified from holding any place of profit or position of employment in the Association, or in any company or incorporated association in which the Association is a shareholder or otherwise interested, or from contracting with the Association either as vendor, purchaser or otherwise except with express resolution of approval of the Board. Any contract or arrangement in which any Director is in any way interested which is entered into by or on behalf of the Association without the approval of the Board, will be voided for such reason.

#### 1 8 . 5 D i s c l o s u r e o f I n t e r e s t s

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

#### 1 8 . 6 G e n e r a l D i s c l o s u r e

A general notice that a Director is a member of any specified firm or company and is to be regarded as interested in all transactions with that firm or company is sufficient declaration under **rule 18.5** as regards such Director and the said transactions. After such general notice it is not necessary for such Director to give a special notice relating to any particular transaction with that firm or company.

## 18.7 Recording Disclosures

It is the duty of the Executive Officer to record in the minutes any declaration made or any general notice as aforesaid given by a Director in accordance with **rules 18.5** and **18.6**.

## 18.8 Conflicts

A Director, notwithstanding the interest, may be counted in the quorum present at any meeting but cannot vote in respect of any contract or arrangement in which the Director is interested. If the Director votes the vote shall not be counted.

# 19. DELEGATED POWERS AND DUTIES

## 19.1 Executive Officer

- (a) The Executive Officer shall act as public officer of the Association and shall be appointed by the Board, for such term and upon such conditions as the Board thinks fit.
- (b) The Executive Officer shall be responsible to the Board for the management of the affairs of the Association, and for this purpose may exercise all powers of the Association which are not, under the Act or this Constitution, required to be exercised by the Board or by the Members.
- (c) The Executive Officer shall have the right to be present and to debate at all Board and General Meetings of the Association but does not have the right to vote.

## 19.2 Committees

- (a) The Board may establish and delegate any of its functions, powers or duties (except this power to delegate) to such committee or committees as it thinks fit and may recall or revoke any such delegation or appointment and may amend or repeal any decision made by such committee.
- (b) The Board shall determine in writing the duties and powers afforded to any committee and the committee shall, in the exercise of such delegated powers, conform to any directions or By-Laws that may be prescribed by the Board.
- (c) The Chair or the Executive Officer shall be ex-officio members of any Committee so appointed. The Chair will have a vote on any such Committee.
- (d) The proceedings for any Committee shall, with any necessary or incidental amendment, be the same as that applicable to meetings of the Board in **rule 18**.
- (e) Within fourteen days of any meeting of any Committee, the Committee shall send a copy of the minutes and any supporting documents to the Executive Officer.
- (f) The Board has the power to dissolve any committee that it considers is not working effectively for the purpose(s) for which it was created or is not able to function as a committee.

## 20. G R I E V A N C E P R O C E D U R E

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- (a) The grievance procedure set out in this rule applies to disputes under this Constitution between:
  - (i) a Member and another Member; or
  - (ii) a Member and the Association.
- (b) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within fourteen days after the dispute comes to the attention of all of the parties.
- (c) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within 10 days, hold a meeting in the presence of a mediator.
- (d) The mediator must be:
  - (i) a person chosen by agreement between the parties; or
  - (ii) in the absence of agreement:
    - (A) in the case of a dispute between a Member and another Member, a person appointed by the Executive Officer or the Board; or
    - (B) in the case of a dispute between a Member and the Association, a person appointed by the President of the Law Society of South Australia.
- (e) A Member can be a mediator.
- (f) The mediator cannot be a Member who is a party to the dispute.
- (g) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (h) The mediator, in conducting the mediation, must:
  - (i) give the parties to the mediation process every opportunity to be heard; and
  - (ii) allow due consideration by all parties of any written statement submitted by any party; and
  - (iii) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- (i) The mediator must not determine the dispute.
- (j) If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

## **21. S O U R C E S O F F U N D S**

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The funds of the Association shall be derived from Annual Subscriptions, donations and such other sources as the Board determines.

## **22. A U D I T O R**

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- (a) A properly qualified auditor or auditors shall be appointed by the Association in a General Meeting. The auditor's duties shall be regulated in accordance with the Act, or if no relevant provisions exist under the Act, in accordance with the *Corporations Act* and generally accepted principles, and/or any applicable code of conduct. The auditor may be removed by the Association in a General Meeting.
- (b) The accounts of the Association shall be examined and the correctness of the profit and loss accounts and balance sheets ascertained by an auditor or auditors at the conclusion of each Financial Year.

## **23. A P P L I C A T I O N O F I N C O M E**

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- (a) The income and property of the Association shall be applied solely towards the promotion of the Purposes.
- (b) No portion of the income or property of the Association shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any Member, but this shall not preclude payment to a Member in good faith for expenses incurred or services rendered.

## **24. S I G N I N G O F N E G O T I A B L E I N S T R U M E N T S**

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All cheques and other negotiable instruments shall be signed by two authorised signatories or in such other manner approved by the Board from time to time.

## **25. C O M M O N S E A L**

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- (a) The Association may have a common seal which shall be kept in the custody of the Executive Officer with the register of when the seal is used.
- (b) The common seal shall not be affixed to any instrument except by the authority of the Board and the affixing of the common seal shall be attested by the signatures of 2 Directors, or 1 Director and the Executive Officer, or in such other manner approved by the Board from time to time.
- (c) A Director may not sign a document to which the seal of the Association is fixed where the Director is interested in the contract or arrangement to which the document relates.

## **26. A L T E R A T I O N O F C O N S T I T U T I O N**

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This Constitution shall not be altered except by Special Resolution in accordance with the Act. In addition to the requirements of the Act the Special Resolution must be passed at a General Meeting by a majority of not less than three-quarters of the eligible voting members at the meeting.



## 27. D I S S O L U T I O N

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- (a) In the event of the Association being wound up, the liability of the Members shall be limited to any outstanding monies due and payable to the Association, including the amount of the Annual Subscription payable in respect of the current Financial Year. No other amount shall be payable by the Member.
- (b) If upon winding up or dissolution of the Association, there remains, after satisfaction of all its debts and liabilities, any property, the same shall not be paid to or distributed amongst the Members, but shall be given or transferred to some other organisation having purposes similar to the Purposes and which prohibits the distribution of its or their income and property among its or their members and which is also not carried on for the profit or gain to its members. Such body or bodies to be determined by the Members at or before the time of dissolution, and in default thereof by such judge of the Supreme Court of South Australia as may have or acquire jurisdiction in the matter.

## 28. I N D E M N I T Y

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- (a) Every Director or officer of the Association shall be indemnified out of the property and assets of the Association against any liability incurred by him/her in his/her capacity as Director or officer in defending any proceedings, whether civil or criminal, in which judgment is given in his or her favour or in which he or she is acquitted or in connection with any application in relation to any such proceedings in which relief is granted to him or her by the Court.
- (b) The Association shall indemnify its Directors and officers against all damages and costs (including legal costs) for which any such Directors or officer may be or become liable to any third party in consequence of any act or omission except wilful misconduct:
  - (i) in the case of a Director, performed or made whilst acting on behalf of and with the authority, express or implied of the Association; and
  - (ii) in the case of an officer, performed or made in the course of, and within the scope of his or her employment by the Association.

## 29. S E R V I C E O F N O T I C E S

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- (a) Notices may be given to Members by sending the notice by post or facsimile transmission or where available, by electronic mail, to the Member's address or facsimile number or electronic mail address shown in the Register.
- (b) Where a notice is sent by post, service of the notice shall be deemed to be effected at the time the letter would have been delivered in the ordinary course of post.
- (c) Where a notice is sent by facsimile transmission, service of the notice shall be deemed to be effected upon receipt of a confirmation report confirming the facsimile was sent to the correct facsimile number.
- (d) Where a notice is sent by electronic mail, service of the notice shall be deemed to be effected by properly addressing and unless the sender receives a report advising that the electronic mail message was not received at the electronic mail address to which it was sent.

**30. C U S T O D Y O F B O O K S A N D O T H E R  
D O C U M E N T S**

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- (a) Except as otherwise provided in this Constitution, the Executive Officer shall keep in his or her custody or control all books, documents and securities of the Association.
- (b) The Executive Officer shall keep minutes of the resolutions and proceedings of each General Meeting and Board meeting in books provided for that purpose, together with a record of the names of persons present at all meetings.
- (c) Subject to the Act, no Member is entitled to inspect the accounts, books, securities and other relevant documents of the Association, unless authorised in writing by the Board.

**31. B Y - L A W S**

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- (a) The Board may make By-Laws and interpret, alter, amend or rescind the same as occasions may require, and enforce penalties for their breach. After consultation with the disciplines committees, changes to By Laws can only be passed with 75% of the Board members present at the meeting to vote in favour of the change. Such By-Laws shall have the same force and effect as this Constitution, but shall not be in any way oppose or be in conflict with this Constitution. Such By-Laws shall be available for inspection in the Association premises.
- (b) Amendments, alterations, interpretation or other changes to By-Laws shall be advised to Members by means of notice approved by the Board. Notices shall be binding upon all Members.
- (c) All rules, by-laws, policies and regulations of the Association in force at the date of the approval of this Constitution (in so far as such rules, by-laws, policies and regulations are not inconsistent with, or have been replaced by this Constitution) shall be deemed to be By-Laws and shall continue to apply.