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# Constitution of Swimming SA Inc.

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# CONSTITUTION of SWIMMING SA

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## 1. DEFINITIONS AND INTERPRETATION

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### 1.1. Definitions

In this Constitution, unless the context otherwise requires:

**'Act'** means the Associations Incorporations Act 1985 as amended from time to time.

**'Affiliate'** means and includes those entities recognised under Clause 8.5

**'SSA'** means Swimming SA Inc.

**'SAL'** means Swimming Australia Limited;

**'Board'** means the Board of Directors of SSA for the time being of SSA;

**'By-Laws'** means any By-Laws made by the Directors under Clause 20;

**'Clubs'** means organisations affiliated to SSA. under clause 8.2

**'Competitions'** means and includes:

1. any championship (national or otherwise) organised or conducted by a Club or District Association for or on behalf of SSA;
2. any championship, competition, series or meeting sponsored by or conducted by or on behalf of SSA; or
3. any national competition, series, meeting or championship at which SSA is represented.

**'Competitor'** means and includes a swimmer registered with SSA or such other person or body as may be prescribed by SSA;

**'Constitution'** means the Constitution for the time being of SSA;

**'Delegate'** means the persons appointed by a Club to act for an on behalf of that Club and represent the Club at General Meetings and includes alternate Delegates (where appointed);

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

**'Financial year'** means the year ending 30<sup>th</sup> June each year;

**'General Meeting'** means the annual or any special General Meeting of SSA;

**'Honorary Member'** means a member of the community who is given a honorary membership by the Directors under clause 8.1

**'Individual Member'** means a registered financial member of a Club or an Affiliate;

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

**'Life Member'** means an individual upon whom Life Membership of SSA has been conferred under clause 8.1.4

**'Member'** means a member for the time being of SSA under Clause 8;

**'Membership Year'** means the Year ending 30<sup>th</sup> September each year;

**'District Association'** means and includes those entities recognised under Clause 10.3

**'Objects'** means the objects of SSA set out in Clause 3;

**'Official'** means any person elected or appointed to any position within SSA or the Clubs;

**'Chairperson'** means the Chairperson for the time being of SSA;

**'Special Resolution'** means a resolution passed:

1. at a General Meeting of SSA of which notice, is given in accordance with clause 13.4; and
2. the business of which notice is given in accordance with clause 13.5; and
3. and carried by at least three quarters of those Delegates entitled to vote at the meeting.

**'Unattached Member'** a member who is registered with SSA and not associated with a Club.

## 1.2 Interpretations

1.1.1. Expressions referring to "writing" shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail.

1.1.2. In this Constitution, unless the context otherwise requires:

- 1.1.2.1. a reference to a function includes a reference to a power, authority and duty;
- 1.1.2.2. a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty;
- 1.1.2.3. words importing the singular include the plural and vice versa;
- 1.1.2.4. words importing any gender include the other gender;
- 1.1.2.5. references to persons include corporations and bodies politic;
- 1.1.2.6. references to a person include the legal personal representatives, successors and permitted assigns of that person;
- 1.1.2.7. a reference to a statute, ordinance, code or other law includes regulations, By-Laws 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).
- 1.1.2.8. an expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division

- has in any clause of this Constitution that deals with a matter with by that Part or Division the same meaning as in that Part or Division;
- 1.1.2.9. all headings contained in this Constitution are for guidance and do not form part of the substance of the Constitution ;
  - 1.1.2.10. If any provision of this Constitution or any phrase contained in it is invalid or unenforceable in any jurisdiction, the phrase or provision is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable. If it cannot be read down it shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of the Constitution or affecting the validity or enforceability of that provision in any other jurisdiction; and

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## **2. PURPOSES**

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### 2.1. SSA

- 2.1.1. is an Incorporated Association
- 2.1.2. will operate predominantly for the promotion and development of swimming in South Australia in accordance with the Objects;
- 2.1.3. will promote swimming as a lifetime activity that provides health benefits to individuals and the South Australian community
- 2.1.4. will apply its profits (if any) or other income in promoting its Objects; and
- 2.1.5. is not carried on for the purpose of profit or gain to its individual members

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## **3. OBJECTS AND POWERS**

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### 3.1. The Objects of SSA are to:

- 3.1.1. affiliate and otherwise liaise with Swimming Australia Limited and such other bodies as may be desirable to achieve these Objects;
- 3.1.2. conduct, encourage, promote, advance, control and administer natatorial activities in and throughout South Australia;
- 3.1.3. provide for the conduct, encouragement, promotion, control and administration of natatorial activities through and by Members and Affiliates for the mutual and collective benefit of the Members;
- 3.1.4. act in good faith and loyalty to ensure the maintenance and enhancement of SSA and swimming, its standards, quality and reputation for the collective and mutual benefit of the Members and swimming;
- 3.1.5. at all times operate with and promote mutual trust and confidence between SSA and the Members in pursuit of these Objects;
- 3.1.6. at all times to act on behalf of, in the interests of, and in conjunction with, the Members;
- 3.1.7. promote the economic and sporting success, strength and stability of SSA and its Members and Affiliates and to act interdependently with each Member and Affiliates in pursuit of these Objects;
- 3.1.8. ensure compliance with SAL's rules and By-Laws as adopted by SSA;
- 3.1.9. assist in making Australia the leader in world swimming;
- 3.1.10. apply the property and capacity of SSA towards the fulfilment and achievement of these Objects;
- 3.1.11. use and protect the Intellectual Property;
- 3.1.12. collect, distribute and publish information in connection with swimming;
- 3.1.13. promote and administer State, District and Club meetings, competitions and championships;
- 3.1.14. strive for governmental, commercial and public recognition of SSA, the Members and swimming;

- 3.1.15. promulgate and secure uniformity in such rules as may be necessary or appropriate for the management and control of swimming and related activities in South Australia;
  - 3.1.16. promote swimming as a spectator sport;
  - 3.1.17. through or in association with Members promote the health and safety of all Individual Members;
  - 3.1.18. pursue through itself or others such commercial arrangements, including sponsorship and marketing opportunities as are appropriate, to further these Objects;
  - 3.1.19. formulate or adopt and implement appropriate policies, including in relation to sexual harassment, 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 swimming;
  - 3.1.20. represent the interests of its Members and of swimming generally in any appropriate forum;
  - 3.1.21. have regard to the public interest in its operations;
  - 3.1.22. do all that is reasonably necessary to enable these Objects to be achieved and to enable the Members to receive the benefits which these Objects are intended to achieve;
  - 3.1.23. encourage and promote performance-enhancing drug free competition; and
  - 3.1.24. undertake and or do all things or activities which are necessary, incidental or conducive to advance these Objects.
- 3.2. For the purpose of carrying out its objects, SSA may, subject to this Act and its rules—
- 3.2.1. acquire, hold, deal with, and dispose of, any real or personal property; and
  - 3.2.2. administer any property on trust; and
  - 3.2.3. open and operate ADI (Authorised Deposit Taking Institution) accounts; and
  - 3.2.4. invest its moneys—
    - 3.2.4.1. in any security in which trust moneys may, by Act of Parliament, be invested; or
    - 3.2.4.2. in any other manner authorised by the rules of SSA; and
  - 3.2.5. borrow money upon such terms and conditions as SSA thinks fit; and
  - 3.2.6. give such security for the discharge of liabilities incurred by SSA as SSA thinks fit; and
  - 3.2.7. appoint agents to transact any business of SSA on its behalf; and
  - 3.2.8. enter into any other contract it considers necessary or desirable; and
  - 3.2.9. make such decisions as may be necessary to comply with local, state and federal law.

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## **4. DOCTRINE OF ULTRA VIRES**

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- 4.1. It is intended that this clause and the other provisions of this Constitution shall be construed to:
- 4.1.1. prevent the application of the doctrine of ultra vires to the powers of SSA to further its Objects; and
  - 4.1.2. ensure that SSA is able to give effect to its Objects set out in this Constitution without the necessity to specifically include a power.

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## **5. INCOME AND PROPERTY**

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- 5.1. The income and property of SSA shall be applied solely towards the promotion of the Objects.
- 5.2. No portion of the income or property of SSA shall be paid or transferred, directly or indirectly by way of bonus or otherwise to any Member.
- 5.3. No remuneration or other benefit in money or money's worth shall be paid or given by SSA to any Member who holds any office of SSA.



5.4. Nothing contained in this Constitution shall prevent payment in good faith to any Member:

- 5.4.1. for any services actually rendered to SSA whether as an employee or otherwise;
- 5.4.2. for goods supplied to SSA in the ordinary and usual course of business;
- 5.4.3. of interest on money borrowed from any Member;
- 5.4.4. of rent of premises demised or let by any Member to SSA; or
- 5.4.5. for any out-of-pocket expenses incurred by the Member on behalf of SSA;

5.5. provided that any such payment shall not exceed the amount ordinarily payable between ordinary commercial parties dealing at arms length in a similar transaction.

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## 6. ADDITION, ALTERATION OR AMENDMENT

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

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## 7. DISTRIBUTION OF PROPERTY ON WINDING UP

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7.1. If upon winding up or dissolution of SSA there remains after satisfaction of all its debts and liabilities any assets or property, the same shall not be paid to or distributed amongst the Members but shall be paid to or distributed to an organisation or organisations having objects similar to the Objects and which prohibits the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on SSA by clause 5. Such organisation to be determined by the Members at or before the time of dissolution, and in default thereof by such judgement of the Supreme Court may have or acquire jurisdiction in the matter.

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## 8. MEMBERS AND MEMBERSHIP

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8.1. **The Members of SSA shall consist of:**

- 8.1.1. **Clubs**, as defined by clause 8.2 shall be represented by their Delegate who has the right to be present, debate and vote at General Meetings for and on behalf of their Club subject to the Constitution ;
- 8.1.2. **Affiliates**, which are entitled to be represented at General Meetings, but have no right to debate or vote at General Meetings.
- 8.1.3. **Individual Members**, who may attend General Meetings but otherwise have no right to debate or vote at General Meetings (unless also a Delegate or a Director);
- 8.1.4. **Life Members**, who may attend and debate at General Meetings, but otherwise have no right to vote at General Meetings; and
- 8.1.5. **Honorary Members**, which may attend at General Meeting, but have no right to debate or vote at General Meetings.
- 8.1.6. **Unattached Member**, is a member who is registered with SSA directly, and who may attend at General Meeting, but have no right to debate or vote at General Meetings.
- 8.1.7. such new categories of Members, as may be created in accordance with clause 8.3 of this Constitution .

8.2. **Types of Clubs**

- 8.2.1. **Clubs with 15 or more members whom are currently registered with SSA.** Their Delegates have the right to be present, debate and vote at General Meetings for and on behalf of their Clubs.
- 8.2.2. **Clubs with less than 15 members whom are currently registered with SSA.** Their Delegates have the right to be present, but not to debate or vote at General Meetings.

8.3. **Creation of New Categories of Membership**

The Directors have the right and power from time to time to create new categories of membership with such rights (other than voting rights), privileges and obligations as are determined applicable, even if the effect of creating a new category is to alter rights, privileges or obligations of an existing category of Members. No new category of membership may be granted voting rights. The Directors shall advise Clubs of the new categories and the associated rights.

#### **8.4. Life Members**

- 8.4.1.SSA may, from among persons who have provided long and meritorious service with SSA, appoint Life Members in recognition of their efforts in furthering the interests of SSA;
- 8.4.2.SSA shall consider all nominations for Life Membership, in accordance with its By-Laws.
- 8.4.3.A Life Membership may only be conferred by Special Resolution at an Annual General Meeting;

#### **8.5. Recognition of Affiliates**

- 8.5.1.The following entities are recognised by SSA as Affiliates and each of them shall administer their particular discipline in accordance with their Objects:
  - 8.5.1.1. South Australian Water Polo Association Inc;
  - 8.5.1.2. Diving South Australia Inc;
  - 8.5.1.3. South Australian Synchronised Swimming Inc; and
  - 8.5.1.4. Masters Swimming SA
  - 8.5.1.5. Australian Coaches and Teachers Association SA

8.5.2.New Affiliates may be recognised in accordance with this Constitution. New Affiliates must be incorporated prior to seeking affiliation.

8.5.3.Where any of the affiliates change their name, the Directors are empowered to change their title in this Constitution to reflect those changes.

#### **8.6. Register of Members**

Each Club shall maintain, in a form and with such details as are acceptable to SSA, a register of all its Individual Members. Each Club shall provide a copy of the register at a time and in a form acceptable to SSA and shall provide prompt and regular updates of that register to SSA when required by the Directors.

#### **8.7. Subscriptions and Fees**

- 8.7.1. Fees including annual membership fees, capitation fees and levies payable by Members (or any category of Member) to SSA, the basis of, the time for and the manner of payment, shall be determined by the Directors.
- 8.7.2. Monies payable to SSA by the Members under clause 8.7.1 shall be forwarded to SSA for SSA's use, by such dates as are prescribed by the Directors.
- 8.7.3. Any Member which has not paid all monies due and payable by that Member to SSA shall (subject to the Directors discretion) have all rights under this Constitution immediately suspended from the expiry of the time prescribed for payment of those monies. Such rights will be suspended until the monies are fully paid or otherwise at the Directors discretion. If monies remain unpaid for a period of 30 days, in the discretion of the Directors, the member may be suspended or disciplined in accordance

with clause 11 or impose such other condition or requirements as the Directors consider appropriate.

#### **8.8. SSA Register of Members**

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

#### **8.9. Effect of Membership**

8.9.1. Members acknowledge and agree that:

- 8.9.1.1. this Constitution constitutes a contract between each of them and SSA and that they are bound by this Constitution;
- 8.9.1.2. they shall comply with and observe this Constitution and any determination, resolution or policy which may be made or passed by the Directors;
- 8.9.1.3. by submitting to this Constitution they are subject to the jurisdiction of SSA;
- 8.9.1.4. this Constitution is made in pursuit of a common object, namely the mutual and collective benefit of SSA, the Members and swimming;
- 8.9.1.5. this Constitution is necessary and reasonable for promoting the Objects and particularly the advancement and protection of swimming; and
- 8.9.1.6. they are entitled to all benefits, advantages, privileges and services of SSA membership.

8.9.2. Membership once accepted shall be valid for that membership year plus one month.

8.9.3. The Board of SSA may, in its absolute discretion, accept as a member any Club who has made an application on such membership application form as prescribed by SSA accompanied with any fee as prescribed by SSA.

#### **8.10. Discontinuance of Membership**

Where a Club fails to comply with the Objects or fails to comply with clause 8.7 or 9, the Directors may determine that the Club to be in breach of the Constitution. On determination that a Club is in breach of the Constitution, the Directors may give notice to the Club of:

- the Directors determination; and
- the grounds for the Directors determination;

and request that the Club show cause within 21 days from the date of that notice as to why some action should not be taken against the Club. The Club's failure to respond or act to the Directors satisfaction (including assurances or compliance with its obligations) may result in the Directors suspending or terminating the Club's membership of SSA, or otherwise imposing such conditions on its membership as the Directors sees fit. Where a penalty of termination is imposed on a Club by the Directors, the penalty must be ratified by SSA at the next General Meeting. Such penalty (other than termination) will take effect upon notification by the Directors. Nothing in this clause affects the operation of clause 8.7

#### **8.11. Forfeiture of Rights**

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

#### **8.12. Representation Rights**

Where a Club ceases to be a Member, it shall also forfeit all representation rights at General Meetings. A Club shall return any SSA documents, records or other property in its possession, custody or control to SSA immediately upon cessation of membership.

#### **8.13. Membership May be Reinstated**

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

#### **8.14. Clubs and Individual Members**

Where a Club ceases to be a Member in accordance with this Constitution or the Act, the Club and Individual Members of that Club may continue to be recognised by SSA to the extent (if any) and for such time (if any) as is determined at sole discretion of the Directors.

#### **8.15. Forms for application**

Forms and procedures for all applications for membership shall be proscribed by SSA in its bylaws.

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### **9. Compliance of Clubs.**

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Each Club shall:

- 9.1. be incorporated or an incorporated association;
- 9.2. provide SSA with copies of its audited accounts, annual report and other associated documents within two (2) months of its annual general meeting;
- 9.3. adopt the Objects and adopt rules which reflect and which are, to the extent permitted or required by the State Acts, generally in conformity with this Constitution ;
- 9.4. apply its property and capacity solely in pursuit of the Objects and swimming;
- 9.5. at all times act for the joint advantage of SSA the Members and swimming;
- 9.6. do all that is reasonably necessary to enable the Objects to be achieved;
- 9.7. act in good faith and loyalty to maintain and enhance SSA and swimming, its standards, quality and reputation for the collective and mutual benefit of the Members, the Clubs and swimming;
- 9.8. at all times operate with and promote mutual trust and confidence between SSA and the Clubs in pursuit of the Objects; and
- 9.9. at all times act on behalf of and in the interests of the Members, Clubs and swimming.

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### **10. Operation of Constitution**

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10.1. SSA and the Affiliates agree:

- 10.1.1. that they are bound by this Constitution and that this Constitution operates to create uniformity in the way in which the Objects and the sport of swimming are to be conducted, encouraged, promoted and administered in South Australia;
- 10.1.2. to act in good faith and loyalty to each other to ensure the maintenance and enhancement of swimming, its standards, quality and reputation for the collective and mutual benefit of the Members;

- 10.1.3. not to do or permit to be done any act or thing which might adversely affect or derogate from the standards, quality and reputation of swimming and its maintenance and enhancement;
- 10.1.4. to make full and proper disclosure to each other of all matters of importance to SSA and swimming;
- 10.1.5. to ensure that no Member acquires a material financial advantage at the expense of SSA or Clubs or District Association or swimming;
- 10.1.6. to operate with mutual trust and confidence in pursuit of the Objects;
- 10.1.7. to promote the economic and sporting success, strength and stability of each other and act interdependently with each other in pursuit of the Objects;
- 10.1.8. to act for and on behalf of the interests of swimming, SSA and the Members; and
- 10.1.9. should a Club or District Association or an Affiliate have administrative, operational or financial difficulties, the Directors may, in their absolute discretion, act to assist that District Association or Affiliate in whatever manner and on such conditions as it considers appropriate.

## 10.2. **Resignation**

- 10.2.1. A Club may resign from SSA upon giving written notice to SSA. The resignation shall come into effect upon receipt of the notice by SSA.
- 10.2.2. Obligations after resignation  
In the event that a Club resigns from SSA, the Club must fulfil all its obligations to SSA up to and including the date of resignation.

## 10.3. **New District Associations and Affiliates**

- 10.3.1. SSA may grant District Association or Affiliate status to new organisations subject to such organisations complying with such membership and/or affiliation procedures as may be prescribed by SSA from time to time.
- 10.3.2. Affiliate status may be granted by SSA for such term and upon such terms and conditions as SSA considers appropriate. New District Associations will be governed by this Constitution.

## 10.4. **Club Constitutions**

- 10.4.1. The constituent documents of each Club shall clearly reflect the Objects with such incidental variations as are necessary or appropriate.
- 10.4.2. Each Club shall take all steps necessary to ensure its constituent documents are in a form acceptable to SSA and shall ensure its documents are amended in conformity with future amendments to this Constitution. Changes to Club Constitution shall be submitted to SSA for approval prior to them being implemented.

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# 11. **DISCIPLINE OF MEMBERS**

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- 11.1. The Directors may refer a complaint by SSA a Club or an Individual Member for investigation or determination by a Tribunal:
  - 11.1.1. that a Club or individual member has breached this Constitution;
  - 11.1.2. that a Club or a Individual Member has breached SSA's rules or By-Laws;
  - 11.1.3. that a Club or a Individual Member has acted in a manner unbecoming of a Member or prejudicial to the Objects and interests of SSA and/or swimming; or
  - 11.1.4. that a Club or a Individual Member has brought SSA or swimming into disrepute.
- 11.2. Members will be subject to, and submit unreservedly to the jurisdiction, procedures, penalties and appeal mechanisms of the tribunal. The findings of the tribunal shall be binding on all parties.

- 11.3. SSA shall, by By-Law, prescribe the procedure by which a matter is brought to the tribunal and any penalties that may be applied by the tribunal.

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## **12. DELEGATES AND PROXIES**

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### **12.1. Appointment of Delegates**

Where a Club is permitted by this Constitution, it shall be entitled to appoint a Delegate to vote at a General Meeting.

Each Club shall notify SSA of the name of their Delegate within thirty days of their Annual General Meeting or if a General meeting is called by SSA pursuant to clause 23 then the Clubs shall notify SSA of the name of their delegate with in 14 days of the meeting.

Where a Club fails to notify SSA of the name of their delegate as provided for herein the Club shall be entitled to attend but have no voting rights at the meeting.

A Delegate must:

- a) not be a Director;
- b) be an Individual Member of the Club which appoints him; and
- c) be appropriately empowered by his Club to make decisions at General Meetings.

### **12.2. Delegates as Representative**

Delegates shall represent their Club at General Meetings and shall have full power to consider and vote on resolutions at General Meetings.

### **12.3. Alternate Delegates**

A Club may appoint an Alternate Delegate. An Alternate Delegate must comply with the requirements for Delegates set out in clause 12.1 and has such rights and powers as does a Delegate. Where a Club appoints an Alternate Delegate it shall advise SSA not less than ten working days prior to the meeting at which it is intended to vote. A Delegate present at a General Meeting may not represent more than one Alternate Delegate.

### **12.4 Proxies**

If unable to appoint a Delegate or Alternate Delegate a Club must appoint a proxy to attend any meeting and act on their behalf. Clubs must notify SwimmingSA of their intent to appoint a proxy not less than ten working days prior to the meeting at which they are intending to participate.

A Proxy must be:

- o A member of SwimmingSA
- o Appropriately empowered by the Club appointing him to make decisions at General Meetings

A Proxy may be:

- o The Chair of the Meeting
- o A Director or Committee Member of SwimmingSA

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## **13. GENERAL MEETINGS**

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### **13.1. Eligibility**

Notwithstanding any other clause of this Constitution, no Member shall be represented at, or take part in a General Meeting, unless all affiliation requirements have been met and all monies then due and payable by that Member to SSA are paid.

**13.2. Annual General Meeting**

The Annual General Meeting of the Members of SSA will be held on a day determined by the Directors in accordance with the Act.

**13.3. Notice of Annual General Meeting**

13.3.1. A notice of General Meeting must be given to members (and in respect of individual members, notice is deemed to have been given where notice has been given to their Club) a minimum of fifty (50) days prior to the meeting specifying the place, date, time of meeting.

13.3.2. Notices of motion from Members, for inclusion at a General Meeting must be submitted in writing to SSA not less than thirty (30) days prior to the meeting date

13.3.3. SSA shall give at least twenty-one (21) days notice of the business that is to be transacted at the meeting.

13.3.4. All resolutions at a General Meeting (other than resolutions requiring a special resolution) shall be carried by a simple majority.

**13.4. Business of Annual General Meetings**

The business of the Annual General Meeting will be to:

- confirm the minutes of the previous meeting;
- receive any reports;
- adopt and approve the annual report and financial statements;
- deal with any business arising out of the minutes;
- consider motions to alter this Constitution ;
- election of members of the Board of Directors; and
- any other business as required by the Act or this Constitution or SSA By-Laws.

**13.5. Special General Meetings**

13.5.1. SSA will upon resolution passed at a meeting of the Directors, convene a General Meeting of the Members at any time provided notice of the meeting is given in accordance with clause 13.6

13.5.2. SSA on request in writing from at least twenty percent of its then registered voting Members shall convene a General Meeting. Notice of the meeting shall be given in accordance with clause 13.6.

**13.6. Notice of Special General Meeting**

13.6.1. A notice of Special General Meeting must be given to members (and in respect of individual members, notice is deemed to have been given where notice has been given to their Club) a minimum of twenty-one (21) days prior to the meeting specifying the place, date, time of meeting.

13.6.2. Notices of motion from Members, for inclusion at a Special General Meeting must be submitted in writing to SSA not less than fourteen (14) days prior to the meeting date

- 13.6.3. SSA shall give at least seven (7) days notice of the business that is to be transacted at the meeting.
- 13.6.4. All business to be transacted at a special General Meeting shall be restricted to the business the subject of the notice.
- 13.6.5. All resolutions at a General Meeting (other than resolutions requiring a special resolution) shall be carried by a simple majority.

### 13.7. **Quorum**

- 13.7.1. No business will be transacted at any General Meeting of the Members of SSA unless a quorum of Members is present at the time the meeting proceeds to business.
- 13.7.2. The quorum for a General Meeting of the Members of SSA is thirty percent of the Delegates entitled to vote at the general meeting.
- 13.7.3. Each Delegate must declare their attendance at their meeting either in person or through the provision of a proxy. The proxy must satisfy the requirements of a proxy pursuant to clause 12.4.
- 13.7.4. If a quorum is not present within thirty (30) minutes from the time appointed for the meeting, the meeting:
  - 13.7.4.1. if convened in accordance with clause 13.5 the General Meeting, will be dissolved; and
  - 13.7.4.2. will be adjourned for seven (7) days to the same place and at the same time. All Members as provided for in clause 13.5.1 will be notified of the adjournment in writing with at least forty eight (48) hours notice. In the event of a quorum not being present at the further meeting, the business will proceed in accordance with the original agenda.

### 13.8. **Chairperson**

The Chairperson of the Directors will preside as chairperson at every General Meeting of the Members of SSA. In the absence or incapacity of the Chairperson, the Members of SSA present at the General Meeting will elect a chairperson to preside at that general meeting.

### 13.9. **Voting**

- 13.9.1. At a General Meeting of the Members of SSA, each Member entitled to vote must vote by their Delegate or Proxy in person; or by Postal vote; or by electronic means, on the appropriate form/s prescribed by the Board for the purpose of each action requiring a vote.
- 13.9.2. At any General Meeting of the Members of SSA a resolution put to the vote of the meeting will be decided on a show of hands unless a poll is demanded by the chairperson or by at least four Members of SSA present and entitled to vote. All contested elections shall be settled by secret ballot.

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## **14. ESTABLISHMENT OF BOARD OF DIRECTORS**

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### **14.1. Powers of the Directors**



14.1.1. Subject to the Act and this Constitution, the business of SSA shall be governed, and the powers of SSA shall be exercised, by the Directors. The Directors shall act in accordance with the objects of SSA and shall operate for the collective and mutual benefit of SSA, the Members and swimming.

14.1.2. The responsibility for the management of the operational affairs of SSA will be vested in the Directors and the primary functions of the Directors are to manage SSA and its Members in accordance with the directions of SSA, the objects of SSA, the Act and this Constitution and By-Laws.

#### 14.2. **Composition of Board of Directors**

14.2.1. The Directors will consist of nine (9) members who shall be elected at the Annual General Meeting and be an Individual Member of SSA.

14.2.2. The Board at their discretion may appoint up to two (2) further Directors. A person so appointed will be a Director from the first Board meeting following the appointment.

14.2.3. Portfolios: The Board may determine from time to time that the interests of the Association are best served by the allocation of portfolios to Directors. The Board shall be entitled to vary the titles and portfolios of each of the Directors in accordance with the needs of the Association.

#### 14.3. **Qualifications of Directors**

14.3.1. Nominees for Elected Director positions on the Board must meet the qualifications as prescribed from time to time by the Board and set out in the By- Laws;

14.3.2. Nominees for Elected Director positions on the Board must be an individual member over the age of eighteen (18years) at the time of nomination and during their term in office;

14.3.3. Elected Directors should have a knowledge of swimming or related disciplines, its strategic direction, its stakeholders and a commitment to the development of the sport of swimming;

14.3.4. Nominees for Elected Director positions on the Board must declare any position they hold in a Member Club, Affiliate, District or Association with similar objects, including as an office bearer, director or a paid employee;

14.3.5. No person who has served as an Elected Director for a period of nine (9) consecutive years shall be eligible for election as an Elected Director until after the expiration of twelve (12) months following the date of conclusion of the most recent term as a Director.

#### 14.4. **Nomination of Board of Directors Members**

14.4.1. Nominations for Board of Directors Members will be called for not less than fifty (50) days prior to the date set for the Annual General Meeting.

14.4.2. Nominations must be received by SSA at least thirty (30) days prior to the date set for the Annual General Meeting and shall be:

14.4.2.1. in writing;

14.4.2.2. on the prescribed form;

- 14.4.2.3. signed by the nominee expressing his willingness to accept the position for which he is nominated;
- 14.4.2.4. signed by a witness, who shall be a member of SSA of the age of 18years; and
- 14.4.2.5. will be sent to the Members of SSA with the agenda for that meeting.

#### 14.5. **Elections of Elected Directors**

- 14.5.1. If the number of nominations received for the Board is equal to the number of vacancies to be filled or if there are insufficient nominations received to fill all vacancies on the Board, then those nominated shall only be duly elected.
- 14.5.2. If the number of nominations exceeds the number of vacancies to be filled, a secret ballot shall be taken in such usual and proper manner as provided by the Constitution and By Laws.
- 14.5.3. Elections for Directors shall be conducted using a 'first past the post' method.
- 14.5.4. If there are insufficient nominations received to fill all vacancies on the Board, any remaining vacant positions are to be taken as casual vacancies.

#### 14.6. **Term of Office of Directors**

- 14.6.1. The terms of office of Elected Directors shall rotate. A minimum of three (3) Elected directors shall retire each year. Any adjustments to the term of Elected Director(s) to ensure rotational terms in accordance with this Constitution, shall be determined by the Board and in the event of the Board failing to agree, by lot. Elections to, and vacancies on, subsequent Boards shall then proceed in accordance with the procedures in this Constitution.
- 14.6.2. Elected Directors will hold office for a term of three (3) years, which will commence from the conclusion of the Annual General Meeting of SSA at which the election occurred until the conclusion of the third Annual General Meeting of SSA following.
- 14.6.3. Directors will be eligible to stand for nomination and re-election at the conclusion of each term provided the Director has not served as an Elected Director for a period of nine (9) consecutive years.
- 14.6.4. Directors appointed in accordance with clause 14.2.2 shall hold office until the next Annual General Meeting.
- 14.6.5. The calculation of time served by a Director toward the three term limit under clause 14.6.3 is to commence from the completion of the 2016 Annual General Meeting. For the avoidance of doubt, any time period spent by any Director prior to the commencement of the 2016 Annual General Meeting as an Elected director shall not be relevant or applicable to the three term limit under clause 14.6.3.

#### 14.7. **Chairperson**

- 14.7.1. The Chairperson shall be a Director and shall be elected by the Directors at the first Directors meeting following the Annual General Meeting.
- 14.7.2. The Chairperson will be eligible for re-election as Chairperson provided he or she does not hold the office of Chairperson for more than six (6) consecutive years other than by

resolution at a General meeting.

14.7.3. The Chairperson may resign from his or her position as Chairperson by providing written notice to the Board,

14.7.4. The Chairperson may be removed from his or her position as Chairperson by a written resolution of the Board signed, in one or more counterparts, by at least a majority of the directors; and

14.7.5. Will be deemed to have vacated his or her position as Chairperson if he or she ceases to be a Director

#### 14.8. **Vacation, Disqualification and Removal of Directors**

14.8.1. In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act, the position of a Director will immediately become vacant if the Director:

14.8.1.1. is absent from three (3) consecutive monthly meetings of the Directors without approved leave of absence from the Directors;

14.8.1.2. in the absolute discretion of SSA, acts in a manner unbecoming or prejudicial to the objects of SSA or through his actions brings the Directors or SSA into disrepute;

14.8.1.3. becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the law relating to mental health;

14.8.1.4. resigns that office by twenty eight (28) days written notice to SSA;

14.8.1.5. becomes prohibited from being a Directors by reason of any order made under or pursuant to any law; or

14.8.1.6. is convicted of any criminal offence.

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### 15. **CASUAL VACANCY**

15.1. If any Board Member resigns or is removed from a Club, that person will immediately cease to be a Director upon resignation or removal and SSA will appoint another Director in their absence pursuant to clause 15.2

15.2. SSA will have the power to appoint a person to fill a casual vacancy on the Board and that person will hold office for the remainder of the term created by the vacancy. Any casual appointment shall be filled to the best of the Directors ability within three (3) months of the vacancy.

#### 15.3. **Remaining Directors May Act**

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

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### 16. **DIRECTORS MEETINGS**

16.1. The Chairperson will be the chairperson of the Directors and the Directors may elect an alternate chairperson to preside at any meetings of the Directors at which the Chairperson is unable to attend.

16.2. The Directors will meet as often as required for the dispatch of business and adjourn and otherwise regulate meetings and proceedings thereof as they think fit.

- 16.3. The chairperson will, on the request of at least two (2) Directors, convene a meeting of the Directors within seven (7) days of the requisition.
- 16.4. At a meeting of the Directors the number of members whose presence is necessary to constitute a quorum will be five (5) of the Directors.
- 16.5. If a quorum is not present within thirty (30) minutes from the time appointed for the meeting, the meeting shall be adjourned for seven (7) days to the same place and at the same time. All parties shall be notified of the adjournment in writing with at least forty-eight (48) hours notice. In the event of a quorum not being present at the further meeting, the business shall be proceeded with in accordance with the original agenda.

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## **17. DECISIONS OF THE DIRECTORS**

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- 17.1. **Decisions of the Directors will be by simple majority.**
  - 17.1.1. All Directors will have one vote on any question and the chairperson will have a casting vote where voting is equal.
  - 17.1.2. The Directors will cause full and accurate minutes of all proceedings and resolutions to be recorded.
- 17.2. **Disclosure of Interest of Directors Members**
  - 17.2.1. A Director must not hold an office of profit in SSA without the prior approval of SSA obtained by resolution at a general meeting.
  - 17.2.2. A Director who has a direct or indirect interest and/or direct or indirect pecuniary interest in any subject matter to be resolved by the Directors must:
    - 17.2.2.1. as soon as that Director becomes aware of his interest disclose the nature and extent of his interest to the Directors;
    - 17.2.2.2. disclose the nature and extent of his interest at the next SSA meeting; and
    - 17.2.2.3. not vote on the matter; and
    - 17.2.2.4. not be present while the matter (or proposed resolution of that kind) is being considered at the meeting.
- 17.3. **Resolutions not in meeting**
  - 17.3.1. 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.
  - 17.3.2. Without limiting the power of the Directors to regulate their meetings as they think fit, a meeting of the Directors, may be held where 1 or more of the Directors is not physically present at the meeting, provided that:
    - 17.3.2.1. 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;
    - 17.3.2.2. 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 Directors;

- 17.3.2.3. in the event of a failure in communications preventing clause 17.3.2.1 from being satisfied by a quorum of Directors then the meeting shall be suspended until Clause 17.3.2.1 is satisfied again. If such is not satisfied within 15 minutes from the interruption, the meeting shall be deemed to have terminated; and
- 17.3.2.4. no meeting shall be invalidated merely because no Director is physically present at the place for the meeting specified in the notice of a meeting.

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## **18. APPOINTMENT OF STAFF**

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The Directors shall appoint staff to undertake its duties under this Constitution to achieve its objects and its purpose.

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## **19. DELEGATIONS**

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19.1. **Directors may Delegate Functions**

The Directors may by instrument in writing create or establish or appoint from among the Directors or members such committees, individual officers or consultants to carry out such duties and functions and with such powers, as the Directors determines.

19.2. **Delegation by Instrument**

The Directors may in the establishing instrument, Delegate such functions as are specified in the instrument, other than:

19.2.1. this power of delegation; and

19.2.2. a function imposed on the Directors or SSA by the Act or any other law or this Constitution.

19.3. **Delegated function exercised in accordance with terms**

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

19.4. **Procedure of Delegated entity**

The procedures for any Delegated entity shall, with any necessary or incidental amendment, be the same as that applicable to meetings of the Directors under clause 16. The quorum shall be determined by the committee, but shall be no less than one half of the total number of committee members.

19.5. **Delegation may be conditional**

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

19.6. **Revocation of delegation**

The Directors may by instrument in writing, revoke wholly or in part any delegation made under this clause, and may amend, repeal or veto any decision made by such body or person under this clause.

19.7. **Committees**

The Directors may appoint Committees which will operate in accordance with the By Laws. Persons shall be appointed to each of these committees by the Directors. The Directors will call for nominations from individual members for consideration for

appointment to the Committees. Such appointments will be advised as soon as possible after the Annual General Meeting.

19.8. **Operation of Committees**

The Committees will function as committees of the Board. For the avoidance of doubt the committees and their members are responsible to the Board and are subject to the direction of, and delegation prepared by, the Board.

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## 20. BY-LAWS

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20.1. **Directors to formulate By-Laws**

The Directors may formulate, approve, issue, adopt, interpret and amend such By-Laws for the proper advancement, management and administration of SSA, the advancement of the Objects as it thinks necessary or desirable. Such By-Laws must be consistent with this Constitution.

20.2. **By-Laws binding**

All By-Laws made under this clause shall be binding on SSA and Members.

20.3. **By-Laws deemed applicable**

All rules, regulations and By-Laws of SSA in force at the date of the approval of this Constitution under the Act insofar as such rules, regulations or By-Laws are not inconsistent with, or have been replaced by this Constitution, shall be deemed to be By-Laws under this Rule.

20.4. **Notices binding on members**

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

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## 21. RECORDS AND ACCOUNTS

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21.1. **SSA to Keep Records**

SSA shall establish and maintain proper records and minutes concerning all transactions, business, meetings and dealings of SSA and the Directors and shall produce these as appropriate at each Directors meeting or General Meeting.

21.2. **Records Kept in Accordance with the Act**

Proper accounting and other records shall be kept in accordance with the Act, generally accepted accounting principles and/or any applicable code of conduct. The books of account shall be kept in the care and control of SSA.

21.3. **SSA to retain records**

SSA shall retain such records for not less than 7 years after the completion of the transactions or operations to which they relate.

21.4. **Directors to submit accounts**

The Directors shall submit to the Annual General Meeting the accounts of SSA in accordance with this Constitution and the Act.

21.5. **Accounts Conclusive**

The accounts when approved or adopted by an Annual General Meeting shall be conclusive except as regards any error discovered in them within 3 months after such approval or adoption.

21.6. **Accounts to be sent to Members**

SSA shall cause to be sent to all persons entitled to receive notice of Annual General Meetings of SSA in accordance with this Constitution , a copy of the accounts, the Directors report, the auditor's report and every other document required under the Act/s (if any).

21.7. **Inspection of accounts**

Subject to any reasonable restrictions as to time and manner of inspecting the same that may be imposed in accordance with this Constitution , the accounts shall be open to inspection (but not copying) by the Delegates.

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## **22. AUDITOR**

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

22.2. The accounts of SSA including the profit and loss accounts and balance sheet shall be examined by the auditor or auditors at least once in every year.

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## **23. GENERAL**

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23.1. **Manner of Notices**

23.1.1. 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.

23.1.2. 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 days after posting.

23.1.3. 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.

23.1.4. Where a notice is sent by electronic mail, service of the notice shall be deemed to be effected upon sending the electronic mail message unless a failure to send notice is received.

23.2. **Notice Of General Meeting**

Notice of every General Meeting shall be given in the manner authorised and to the persons entitled to receive notice under this Constitution.

23.3. **Common Seal**

Any document, that would have required the use of the Common Seal, shall be authorised by the Directors and shall be countersigned by two Directors.

23.4. **Patrons And Vice Patrons**

SSA at its Annual General Meeting may appoint on the recommendation of the Directors a Chief Patron and such number of Patrons and Vice-patrons as it considers necessary.

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## **24. INDEMNITY**

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### **24.1. Directors to be Indemnified**

Every Director, auditor, manager, employee or agent of SSA shall be indemnified out of the property or assets of SSA against any liability incurred by him in his capacity as Director, auditor, manager, employee or agent in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or in connection with any application in relation to any such proceedings in which relief is, under the Act, granted to him by the Court.

### **24.2. SSA to Indemnify Directors**

- 24.2.1. SSA shall indemnify its Directors and employees against all damages and costs (including legal costs) for which any such Director or employee may be or become liable to any third party in consequence of any act or omission except wilful misconduct:
- 24.2.2. in the case of a Director, performed or made whilst acting on behalf of and with the authority, express or implied of SSA; and
- 24.2.3. in the case of an employee, performed or made in the course of, and within the scope of his employment by SSA.

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## **25. DISSOLUTION**

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- 25.1. SSA may be wound up in accordance with the provisions of the Act.
- 25.2. The provisions of Clause 7 of this Constitution relating to the winding up and dissolution of SSA shall take effect and be observed as if the same were repeated in this clause.

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## **26. COLOURS**

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The colours of SSA shall be in accordance with the By-Laws

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## **27. LOGO**

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The logo of SSA shall be such as is prescribed by By-Laws from time to time.

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## **28. LAWS AND SWIMMING RULES GOVERNING SWIMMING IN SOUTH AUSTRALIA**

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The technical laws of FINA as set out in the handbook of FINA with regard to swimming, shall (where practicable) be binding on all competitions held in South Australia. Any alterations or amendments to the FINA technical laws shall be immediately notified to all Clubs and Affiliates by SSA and shall become operative 2 months after the date of approval by FINA.

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## **29. ELIGIBILITY**

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To be eligible to compete in any Competition any Competitor must be an Individual Member or a Member of a national federation affiliated to FINA.



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## **30. JURISDICTION OVER SWIMMERS**

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- 30.1. The eligibility definition in clause 29 shall be binding on all Competitors and Individual Members.
- 30.2. Sentences of suspension or disqualification or expulsion by SSA or Affiliate shall be binding on all Members and such suspension or disqualification shall be notified to SAL immediately.
- 30.3. All matters affecting the status or reinstatement of any Swimmer shall be forwarded to SSA by the relevant Club or Affiliate of which the Swimmer is an Individual Member and SSA will alone or with reference to the SSA Directors give a decision.
- 30.4. In all cases where “permits” to hold meets are granted, each Club and Affiliate agrees to ensure that the Rules governing the sport are strictly enforced and each Club and Affiliate shall insist that all swimming races and competitions shall be stated in entry forms, programs and all official notices as going to be held and shall actually be held under the Rules of SSA.

*N.B. In connection with this Rule, the words “conducted under the Rules of SSA” shall appear in every entry form and program and each Club and Affiliate is responsible to see this direction is implemented.*

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## **31. MASTERS PROGRAMS**

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- 31.1. SSA or a Club may recognise Masters swimming, diving, water polo or synchronised swimming organisations who administer and control a program of competition for adults 25 years of age and older who are interested in the physical fitness and social benefits to be derived from pursuing such a program.
- 31.2. Members of any such organisation so recognised shall be entitled to compete in any competition.
- 31.3. The following shall apply for each of the four Masters disciplines:
  - 31.3.1. Clubs may establish a special category membership in each of the four disciplines, with a minimum age limit of 25 years and for a fee to be determined by that Club; and
  - 31.3.2. Masters competitions shall be closed to any persons 24 years of age or younger.