

## **CORPORATIONS LAW**

**A Public Company Limited by Guarantee and not having a Share Capital**

### **CONSTITUTION**

**of**

**MOSMAN ROWING CLUB LIMITED**

**ACN 000 413 187**

#### **NAME**

1. The name of the company is "Mosman Rowers Limited".

#### **DEFINITIONS**

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

"the Act" means the Corporations Act 2001 (Commonwealth). "the Board" means the members for the time being of the board of directors of the Club constituted in accordance with this Constitution. "By-laws" means by-laws made by the Board.

"the Club" means Mosman Rowers Limited (ACN 000 413 187). "the notice board" means a board or boards designated as such within the Club's premises on which notices for the information of members are posted.

"Constitution" means this constitution as amended from time to time. "financial member" means a member who has paid all money payable by him or her to the Club or in respect of whom there is no such money outstanding for more than 30 days from the due date for payment thereof.

"full member" means a person who is an ordinary member or a life member of the Club.

"member" means a member of the club of any class and includes a full member, an honorary member, a temporary member and a provisional member. "month" means calendar month.

"the Office" means the registered office for the time being of the Club.

"officer" includes the President and other members of the Board, but does not include the Auditor.

"ordinary member" means a member of the Club other than a life member, honorary member, temporary member or provisional member of the Club.

"Registered Clubs Act" means the Registered Clubs Act 1976.

"Rule" means each of the numbered provisions of this Constitution.

"secretary" includes acting secretary.

"special resolution" means a resolution:

- (i) of which notice has been given in accordance with the Act; and
- (ii) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution.

"writing" and "written" include printing, typing, lithography and other modes of representing or reproducing words in visible form in the English language.

3. Words indicating the singular number include the plural and vice versa, and words indicating the masculine gender include the feminine gender and vice versa.

## **INTERPRETATION**

4. A decision of the Board on the construction or interpretation of this Constitution, or on any By-laws of the Club made pursuant to this Constitution, or on any matter arising therefrom, shall be conclusive and binding on all members of the Club, except to the extent that such construction or interpretation is or has been varied or revised by the members of the Club in general meeting or by the Supreme Court of New South Wales.

## **REQUIREMENTS OF THE ACT AND THE REGISTERED CLUBS ACT**

5. The "replaceable rules" contained in the Act are hereby excluded and shall not apply to the Club except in so far as they are repeated or contained in this Constitution.
6. The Club is established for the objects set out in this Constitution.
7.
  - (a) The Club shall be a non-proprietary Club.
  - (b) Except as provided in Sections 10(6) and 10(6A) of the Registered Clubs Act, a member of the Club, whether or not the person is a member of the Board, or of any committee, of the Club, shall not be entitled, under the rules of the Club or otherwise, to derive, directly or indirectly, any profit, benefit or advantage from the Club that is not offered equally to every full member of the Club.
  - (c) Except as provided in Section 10(7) of the Registered Clubs Act, a person, other than the Club or its members, shall not be entitled, under the rules of

the Club or otherwise, to derive, directly or indirectly, any profit, benefit or advantage from the grant to the Club of, or the fact that the Club has applied for, a certificate of registration under Part 2 of the Registered Clubs Act, or from any added value that may accrue to the premises of the Club because of the grant to the Club of, or the fact that the Club has applied for, such a certificate.

- (d) The secretary, or an employee, or a member of the Board or of any committee, of the Club, shall not be entitled, under the rules of the Club or otherwise, to receive, directly or indirectly, any payment calculated by reference to the quantity of liquor purchased, supplied, sold or disposed of by the Club or the receipts of the Club for any liquor supplied or disposed of by the Club.
- 8.
- (a) An employee of the Club shall not vote at any meeting of the Club or of the Board or at any election of the Board, or hold office as a member of the Board.
  - (b) Any profits or other income of the Club shall be applied only to the promotion of the objects of the Club and shall not be paid to or distributed among the members of the Club.
- 9.
- (a) Liquor shall not be sold, supplied, or disposed of on the premises of the Club to any person, other than a member, except on the invitation and in the company of a member; provided that this paragraph does not apply in respect of the sale, supply or disposal of liquor to any person at a function in respect of which an authority is granted to the Club under Section 23 of the Registered Clubs Act.
  - (b) Liquor shall not be sold, supplied or disposed of on the premises of the Club to any person under the age of 18 years.
  - (c) A person under the age of 18 years shall not use or operate poker machines or any other forms of gaming devices on the premises of the Club.

## **OBJECTS**

10. The objects for which the Club is established include (but are not limited to):
- (a) to encourage and promote rowing, sailing, kayaking and other aquatic sports and community activities in the Mosman area;
  - (b) to operate a sporting and social club with such facilities, clubhouses and other amenities as may be determined by the Board from time to time; and
  - (c) to amalgamate with any other registered club;

and it is hereby declared that in the interpretation of this Rule the meaning and effect of any object shall not be restricted by any other object and that each object shall be construed and have effect as an independent power and that this Rule is to be construed so as to widen and not restrict the powers of the Club.

11. (a) The income and property of the Club, howsoever derived, shall be applied solely towards the promotion of the objects of the Club as set forth in this Constitution and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any member of the Club provided that (subject to the other provisions of this Constitution) nothing herein shall prevent the repayment of principal or the payment of interest to any member in respect of money advanced or lent by that member to the Club or the repayment of moneys otherwise owing by the Club to the member, or of remuneration of any officer or employee of the Club or to any member of the Club in return for goods provided or services rendered to the Club.
- (b) No member of the Board or of any committee shall be appointed to any salaried office of the Club or to any other office of the Club paid by fees while still a member of the Board or of that committee.
- (c) No remuneration shall be given by the Club to any member of the Board or of any committee; except that nothing herein shall be construed as preventing the payment of an honorarium in respect of special honorary services rendered at the request of the Board or the reimbursement of out-of-pocket expenses or the payment of interest on money lent or the payment of rent for the hire of goods or for the rental of premises demised to the Club.

## **WINDING UP**

12. The liability of the members of the Club is limited.
13. Each member of the Club undertakes to contribute to the assets of the Club in the event of the same being wound up during the time that he or she is a member, or within one year thereafter for payment of the debts and liabilities of the Club contracted before the time at which he or she ceases to be a member and of the costs, charges and expenses of winding up the Club, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding ten dollars (\$10.00).
14. If upon the winding up or dissolution of the Club there remains after the satisfaction of all its debts and liabilities any property whatsoever the same shall not be paid to or distributed among the members of the Club but shall, if the conditions set out in paragraphs (a) and (b) of clause 14A are satisfied, be given up or transferred in accordance with clause 14A or, if such conditions are not satisfied,
- 14A If, upon a winding up or dissolution of the club, a distribution or transfer of property is proposed to be made under clause 14 then, provided:
  - (a) the incorporated association to be known from 1 April 2007 as Mosman Rowing Club Incorporated is operating (under that or any other name) as a club promoting and encouraging the sport of rowing and
  - (b) the constitution of that club or the legislation under which it exists prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the Club under or by virtue of Rule 11 hereof;

All such property shall be given up or transferred to that incorporated association.

## **MEMBERSHIP**

15. The number of full members of the Club must not exceed the maximum permissible under the Registered Clubs Act.
16. A majority of full members of the Club must at all times have the right to vote at the election of the Board.
17. The members of the Club shall be the persons who at the date of the special resolution adopting this Constitution are entered in the register of members of the Club and such other persons as the Board shall admit to membership in accordance with this Constitution.
18. A person must not be admitted to membership of the Club except as an ordinary member, a life member, an honorary member, a temporary member or a provisional member.
19. The maximum number of members to be admitted to each class of membership shall be determined by the Board from time to time consistent with the requirements of the Registered Clubs Act and this Constitution.

## **ORDINARY MEMBERSHIP**

20. To be eligible for membership of the Club, a person must have attained the age of 18 years.
21. The Board may from time to time determine classes of ordinary membership.

## **LIFE MEMBERSHIP**

22.
  - (a) Any ordinary member who has rendered outstanding service to the Club may be elected to life membership of the Club by resolution carried by a simple majority of those present and voting at a general meeting, following the submission to such meeting of an appropriate recommendation from the Board.
  - (b) A life member is relieved from payment of any subscription or levies but shall have all the rights and privileges of the class of membership held immediately prior to election to life membership.
  - (c) Persons who are life members of the Club at the date of adoption of this Constitution will continue to be life members.

## **RIGHTS OF FULL MEMBERS**

23.
  - (a) Full members of the Club shall have the right:
    - (i) to attend all meetings of the Club;

- (ii) to vote on all resolutions put to such meetings;
  - (iii) to vote on the election of the Board;
  - (iv) to stand for election to the Board;
  - (v) to propose or second any candidate for election to the Board; and
  - (vi) to propose or second any person for election as a member of the Club.
  - (vii) To be eligible for admission to rowing membership, a person must be, or have been, or intend to be, a rower at the Club and must have attained the age of 18 years.
- (b) Associate members shall have the right:
- (i) to attend all meetings of the Club;
  - (ii) to vote on all resolutions put to such meetings except a resolution to amend this Constitution;
  - (iii) to vote on the election of the Board;
  - (iv) to stand for election to the Board;
  - (v) to nominate or second any candidate for election to the Board; and
  - (vi) to propose or second any person for election as a member of the Club.
- (c) The rights of members to use the facilities and amenities of the Club are as the Board may determine from time to time by by-law or otherwise.

24. Each full member who is entitled to vote shall have one vote.

### **EXCLUSION OF MEMBERS FROM PREMISES**

25. Without derogating from the general powers conferred on the Board by this Constitution, all members hereby acknowledge and accept that the Board has the power from time to time to organise and enforce the exclusion from the Club's premises of any member or other person (either with or without that member's or person's consent) in accordance with:
- (a) the Club's responsible service of alcohol policy (as adopted and amended by the Board from time to time);
  - (b) the Club's responsible service of gaming policy (as adopted and amended by the Board from time to time); or
  - (c) any such power conferred by law.
26. The following persons may be admitted as honorary members of the Club in accordance with procedures established by the Board from time to time:

- (a) the Patron or Patrons for the time being of the Club; and
  - (b) any prominent citizen or local dignitary visiting the Club.
27. (a) Honorary members may be relieved by the Board of any obligation or liability with respect to the payment of entrance fees and subscriptions.
- (b) Honorary members shall be entitled only to those facilities and amenities of the Club as determined by the Board from time to time, and shall not be entitled to vote at any general meeting, nominate for, or be elected to, the Board or any office of the Club or participate in the management, business and affairs of the Club in any way.
- (c) The Board shall have power to cancel the membership of any honorary member without notice and without being required to give reason.
- (d) When honorary membership is conferred on any person, the following particulars must be entered in the Club's register of honorary members:
- (i) the name in full, or the surname and initials, of the honorary member;
  - (ii) the residential address of the honorary member;
  - (iii) the date on which honorary membership is conferred; and
  - (iv) the date on which honorary membership is to cease.

### **TEMPORARY MEMBERS**

28. (a) A person shall not be admitted as a temporary member of the Club unless the person is admitted in accordance with the provisions of these Rules.
- (b) The following persons may in accordance with procedures established by the Board be made temporary members of the Club.
- (i) A person, whose permanent place of residence in New South Wales is at least 5 kilometres from the Club's premises or such greater distance as may be determined from time to time by the Board.
  - (ii) A full member (as defined in the Registered Clubs Act) of any other club and which has objects similar to those of the Club.
  - (iii) A full member (as defined in the Registered Clubs Act) of any registered club or any interstate club (as defined in the Registered Clubs Act) who, at the invitation of the Board or of a full member of the Club, attends on any day at the premises of the Club for the purpose of participating in an organised sport or competition to be conducted by the Club on that day, from the time on that day when the person so attends the premises of the Club until the end of that day.

- (iv) An interstate or overseas visitor.
29. (a) Temporary members shall not be required to pay an entrance fee or subscription.
- (b) Temporary members shall be entitled only to those facilities and amenities of the Club as determined by the Board from time to time, and shall not be entitled to attend or vote at any general meeting, nominate for or be elected to the Board or any office of the Club or participate in the management, business and affairs of the Club in any way.
- (c) A director, the secretary, or in the secretary's absence the senior employee of the Club then on duty, may terminate the membership of any temporary member at any time without notice and without being required to give reason.
- (d) When a temporary member (other than a temporary member admitted pursuant to Rule 28(b)(ii) or (iii)) first enters the Club's premises on any day, the following particulars must be entered in the Club's register of temporary members:
- (i) the name in full, or the surname and initials, of the temporary member;
  - (ii) the residential address of the temporary member;
  - (iii) the date on which temporary membership is granted;
  - (iv) the signature of the temporary member.

### **ELECTION OF MEMBERS**

30. (a) A person must not be admitted as a member of the Club, other than as an honorary member, temporary member or provisional member, unless that person is elected to membership at a meeting of the Board or a duly appointed election committee of the Club, the names of whose members present and voting at that meeting being recorded by the secretary. The Board may reject any application for membership without assigning any reason for such rejection.
- (b) Every applicant for ordinary membership of the Club must be proposed by one and seconded by another ordinary member of the Club.
31. (a) In respect of every application for membership made pursuant to this Constitution there must be completed a nomination form which shall be in a form and containing such particulars as are from time to time prescribed by the Board, including the full name, address and occupation of the candidate and a statement that the candidate, if admitted, will be bound by the Constitution of the Club.



- (b) The nomination form must be signed by the proposer and seconder and the candidate
  - (c) The nomination form and the subscription appropriate for the class of membership applied for must be deposited at the Office and the secretary must cause the name, address and occupation of the candidate and of the candidate's proposer and seconder to be displayed on the notice board or in some other conspicuous place in the Clubhouse for a continuous period of not less than one week before the election of the candidate as a member of the Club, and an interval of at least 2 weeks must elapse between the deposit at the office of the nomination form of a candidate for election and the candidate's election.
  - (d) The secretary must forward each nomination form for election to membership to the Board or the election committee for consideration prior to the candidate's election.
32. (a) When a person has been elected to membership the secretary must cause notice of such election to be given personally or promptly forwarded or posted to such person. If a candidate's application for membership is unsuccessful the secretary shall notify the candidate and refund any subscription paid by the candidate.
- (b) A copy of this Constitution must be supplied to a member after his or her election or on request being made to the secretary and if demanded by the secretary on payment of any fee that may be prescribed by the Act.

### **TRANSFER OF MEMBERSHIP**

33. (a) The Board, at its discretion, may on the written application of a member who has the qualifications for and wishes to become a member of a different class, transfer that member from any class of ordinary membership to another class of ordinary membership upon payment of the difference between the entrance fee (if any) and subscription applicable to that other class of membership and the member's present class of membership.
- (b) Any member so transferred is not entitled to any refund or reduction of any entrance fee or subscription paid or payable by the member for the then membership year of the Club.

### **ABSENTEE LIST**

34. The Board may make special arrangements not inconsistent with the Registered Clubs Act as to the amount and payment of subscriptions of any member leaving or returning to the State of New South Wales or residing outside New South Wales. For the purpose of this Rule, the Australian Capital Territory shall be deemed to be within New South Wales. Such members shall be placed on an Absentee List.

## **PROVISIONAL MEMBERSHIP**

35. (a) Any person who has lodged with the secretary a nomination form duly completed in accordance with this Constitution seeking membership of the Club and pays to the Club the subscription appropriate to the class of membership referred to in the nomination form may be granted provisional membership of the Club while awaiting the decision of the Board in relation to that person's application for membership of the Club.
- (b) Should a person who is admitted as a provisional member not be elected to membership of the Club within 6 weeks from the date of lodging the nomination form with the secretary or should that person's application for membership be refused (whichever is the earlier), that person shall cease to be a provisional member of the Club and the entrance fee and subscription submitted with the nomination form shall be immediately returned to that person.
- (c) Provisional members shall be entitled only to those facilities and amenities of the Club as determined by the Board from time to time, and shall not be entitled to attend or vote at any general meeting, nominate for or be elected to the Board or any office of the Club or participate in the management, business and affairs of the Club in any way.
- (d) Nothing in this Constitution shall prevent an applicant for membership of the Club submitting with his or her application the appropriate membership subscription for the purpose of obtaining provisional membership pursuant to this Rule.

## **ENTRANCE FEES, SUBSCRIPTIONS AND CALLS**

36. (a) The entrance fees (if any), subscriptions, calls and other amounts payable by members of the Club shall be such amount as the Board may from time to time prescribe, provided that the amount payable by ordinary members shall be not less than \$2 per annum or such other minimum amount prescribed from time to time by the Registered Clubs Act.
- (b) Members' subscriptions shall be paid Annually or, if the Board so directs and approves in respect of a class or classes of membership, by quarterly or half-yearly instalments and in advance or for more than one year in advance as may be provided by the Board from time to time. The time and manner of payment thereof and all other matters pertaining thereto not especially provided for by this Constitution shall be as prescribed by the Board from time to time.
- (c) The entrance fee (if any) is payable at the time of lodgment of a candidate's application for membership.
37. If the entrance fee or subscription or any part thereof, or any other money or part thereof, owed by any member to the Club is not paid within a period of 30 days from the date upon which it falls due for payment, the secretary must give to the member

in default 14 days written notice within which time such entrance fee or subscription or other money must be paid, and if the same is not paid within the time limited by such notice the defaulting member shall from that date be debarred from all privileges of membership and shall cease to be a member of the Club, and the secretary must make a notation to this effect against that person's name in the register of members. The person shall also be disqualified from all the Club's competitions in which he or she is participating. The provisions of Rule 42 (Disciplinary Proceedings) will not apply to any procedure taken pursuant to this Rule.

### **PATRONS**

38. (a) The members in general meeting may appoint a Patron or Patrons from time to time upon a recommendation being made by the Board to the meeting and such Patron or Patrons shall thereby be deemed to be honorary members of the Club and subject to this Constitution shall remain honorary members while they remain a Patron.
- (b) Any Patron so appointed may by the same procedure as in paragraph (a) of this Rule be removed as a Patron of the Club.

### **ADDRESSES OF MEMBERS**

39. A member must advise the secretary of any change in his or her address.

### **REGISTERS**

40. The Club must keep the following registers:
- (a) A register of persons who are full members of the Club. This register shall set forth the name in full, the occupation and address of each full member and, if the member is an ordinary member, the date on which that member last paid the fee for membership of the Club.
- (b) A register of persons who are honorary members. This register shall set out the name in full or the surname and initials and the address of each such honorary member.
- (c) A register of persons who are temporary members. This register shall set forth the name in full, or the surname and the initials, the address of each temporary member and the date on which the temporary member first enters the premises each day.
- (d) A register of persons of or above the age of 18 years who enter the premises of the Club as guests of members. This register shall set out the name and address of the guest countersigned by the member who must also provide his or her membership number.
41. If a member refuses or neglects to comply with any of the provisions of this Constitution or the By-laws thereof or be in the opinion of the Board, guilty of any conduct prejudicial to the interests of the Club or be in the opinion of the Board,

guilty of conduct which is unbecoming of a member or which shall render the member unfit for membership, the Board shall have power to reprimand, fine, suspend from all privileges of membership for such period as it considers fit, expel or accept the resignation of such member and to remove the person's name from the register of members, provided that:

- (a) Such member shall be notified of any charge against the member pursuant to this Rule by notice in writing to the member at least 7 clear days before the meeting of the Board at which such charge is to be heard. The notice shall set out the facts, matters and circumstances giving rise to the charge.
  - (b) The member charged shall be entitled to attend the hearing for the purpose of answering the charge or may answer the charge in writing, and is entitled to call witnesses in his or her defence.
  - (c) No resolution by the Board to reprimand, fine, suspend or expel a member shall be deemed to be passed unless a majority of the members of the Board present vote in favour of such resolution.
  - (d) If the member fails to attend such meeting the charge may be heard and dealt with and the Board may decide on the evidence before it, the member's absence notwithstanding, and having regard to any representations made to it in writing by the member charged.
  - (e) After the Board has considered all the evidence put against the member it shall come to a decision as to the member's guilt in relation to the charge. The Board shall inform the member of its decision prior to considering any penalty.
  - (f) The member charged shall be given a further opportunity at the hearing to address the Board in relation to the penalty (if any) appropriate to the charge of which the member has been found guilty.
  - (g) Any decision of the Board at such hearing or any adjournment thereof shall be final and the Board shall not be required to assign any reason for its decision.
  - (h) In the event that a notice of charge is issued to a member pursuant to paragraph (a) of this Rule, the Board shall have power to immediately suspend the member from all privileges of the Club until the charge is heard and determined. Notice of an immediate suspension imposed by the Board on a member shall be notified in writing to that member.
42. (a) Any member who is guilty of introducing a person who is under the age of 18 years into a poker machine area or a bar area shall be expelled from membership of the Club and shall not be permitted to enter the Club as a guest of a member or as a temporary or honorary member.

- (b) Any member who has knowingly made any statement in a nomination form for membership of the Club, whether in respect of that member or in respect of any other person, that is false in a material particular shall be expelled from membership of the Club and shall not be permitted to enter the Club as a guest of a member or as a temporary member or honorary member.
43. (a) The secretary, or in the secretary's absence the senior employee of the Club then on duty ("the senior employee"), shall have the power to suspend any member's membership and remove that member from the premises of the Club:
- (i) who in the opinion of the secretary or the senior employee is then intoxicated, violent, quarrelsome or indecent; or
  - (ii) whose presence on the premises of the Club in the opinion of the secretary or the senior employee may render the Club or the secretary liable to a penalty under the Registered Clubs Act.
- (b) The secretary or the senior employee of the Club who has exercised the power referred to in paragraph (a) of this Rule shall make a written report to the Board within 7 days of the date of the removal and suspension of the member. The report will set out the facts, matters and circumstances giving rise to the removal and suspension.
- (c) Any suspension of a member pursuant to paragraph (a) of this Rule shall operate until the next meeting of the Board only.

#### RESIGNATION AND CESSATION OF MEMBERSHIP

44. (a) A member may at any time by giving notice in writing to the secretary resign from membership of the Club and such resignation shall take effect from the date on which it is received by the secretary.
- (b) Every person ceasing to be a member of the Club (whether by resignation, expulsion, being removed from the register of members, neglecting to pay the entrance fee or subscription or otherwise) upon and by reason of such cessation of membership forfeits all rights as a member of the Club, provided that such person remains liable for any subscription and all arrears thereof due and unpaid at the date of cessation of that person's membership and any other money due by that person at the date of cessation of that person's membership or for which that person is or may become liable under this Constitution.

#### GUESTS

45. (a) No member shall introduce guests more frequently or in a greater number than may for the time being be provided by By-law nor shall a member introduce any person as a guest who has been expelled from the Club for

misconduct or non-payment of any entrance fee and/or subscription or who is currently under suspension.

- (b) Members shall be responsible for the conduct of any guests they may introduce to the Club.
- (c) The Board shall have power to make By-laws from time to time, not inconsistent with this Constitution or the Registered Clubs Act, regulating the terms and conditions on which guests may be admitted to the Club.
- (d) A guest must at all times remain in the reasonable company of the member who countersigned the entry in the register of guests in respect of that guest.
- (e) A guest must not remain on the Club's premises any longer than the member who countersigned the entry in the register of guests in respect of that guest.
- (f) The secretary, or in the secretary's absence the senior employee of the Club then on duty, may refuse a guest admission to the Club's premises (or any part thereof) at any time without notice and without being required to give reason.
- (g) On any day on which a person of or above the age of 18 years enters the Club's premises as the guest of a member, the following particulars must be entered in the Club's register of guests:
  - (i) the name in full, or the surname and initials of the given names, of the guest;
  - (ii) the residential address of the guest;
  - (iii) the date of that day;
  - (iv) the signature of that member,

provided that if any entry in the register of guests is made on any day in respect of the guest of a member, it is not necessary for an entry to be made in that register in respect of that guest if he or she subsequently enters the Club's premises on that day as the guest of that member.

## **THE BOARD**

- 46. The business and affairs of the Club and the custody and control of its funds shall be managed by the Board.
- 47. (a) The Board shall be elected Annually and the results of the election shall be declared at the Annual General Meeting of the Club.
- (b) The number of positions on the Board as at 1 April 2007 shall be 7. Thereafter, the number of positions on the Board shall be not less than 5 nor more than 9 as determined from time to time by the Board.

- (c) From 1 April 2007 until the next Annual General Meeting, subject to any other provisions herein relating to the appointment, removal or disqualification of directors, the directors and office bearers of the club will be the persons elected to such positions by majority vote of members at a general meeting convened on 25 March 2007.
- (d) All directors shall hold office from the conclusion of the Annual General Meeting at which they are elected until the conclusion of the next Annual General Meeting. All retiring directors shall be eligible for re-election.
- (e) The members of the Board holding office at the conclusion of the Annual General Meeting at which the special resolution adopting this Constitution is passed shall, subject to this Constitution, hold office until the conclusion of the next Annual General Meeting after that at which they were elected when they shall retire but shall be eligible for re-election.
- (f) A member who, pursuant to this Constitution, is not financial or is currently under suspension is not entitled to nominate for or be elected to the Board or to be appointed to any other office of the Club. Any director of the Club who becomes not financial or is suspended from membership may, for so long as he or she remains not financial or during the period of such suspension, continue as a member of the Board but perform only those duties as a director which are referred to in the Act. Any member who is an officer of the Club (not being a director) and who is not financial or who is under suspension shall be suspended from his or her office for so long as he or she remains not financial or during the period of such suspension.

## **ELECTION OF THE BOARD**

48. The election of members of the Board must take place in the following manner:
- (a) Nominations for election to offices of the Board must be made in writing signed by 2 financial members of the Club and signed by the nominee (who shall signify his or her consent to the nomination). Nomination forms must be received by the secretary not less than 14 days before the date of the Annual General Meeting. The proposer, seconder and nominee must be life members or financial members at the time the nomination form is signed. The secretary must immediately cause notification of such nominations to be posted on the notice board.
  - (b)
    - (i) If the number of candidates nominated does not exceed the number required to be elected, the candidate or candidates nominated shall be declared elected at the Annual General Meeting.
    - (ii) If no or insufficient nominations be received for the number required to be elected, the candidate or candidates, if any, nominated must be declared elected at the Annual General Meeting and nominations may, with the consent of the nominee, be made orally at the meeting for the vacancies then remaining. If more than one candidate is

nominated for such vacancies an election by ballot for such vacancies remaining must be held at the Annual General Meeting.

- (iii) If the number of candidates exceeds the number of positions a ballot shall be conducted in accordance with the procedures prescribed by By-law.
49. (a) No member shall issue or distribute within the premises or the surrounding precincts of the Club any 'how to vote ticket' or any written material advocating for or against the election of any candidate or candidates for the Board.
- (b) Any breach of this Rule shall be conduct prejudicial to the interests of the Club for the purposes of Rule 41.
- (c) Nothing in this Rule shall prevent a candidate duly nominated for election to the Board in accordance with this Constitution from distributing by post to members written material which is approved by the Board advocating that the candidate be elected to the Board and a photograph of the candidate, provided that such approval of the Board is not unreasonably withheld. Any expense in relation to such distribution of material shall not be borne by the Club.
50. The Board may from time to time make such By-laws not inconsistent with this Constitution as it thinks necessary for the conduct of any election and all matters in connection therewith.

## **POWERS OF THE BOARD**

51. The Board is responsible for the management of the business and affairs of the Club.
52. The board may exercise its powers and do all such acts and things as the Club is by this Constitution or otherwise authorised to exercise and do and which are not hereby or by Statute directed or required to be exercised or done by the Club in general meeting but subject nevertheless to the provisions of the Act and the Registered Clubs Act and of this Constitution and to any regulations not being inconsistent with this Constitution from time to time made by the Club in general meeting, provided that no such regulation shall invalidate any prior act of the board which would have been valid if such regulation had not been made. In particular, but without derogating from the general powers hereinbefore conferred, the board shall have power from time to time:
- (a) To delegate any of its powers (other than this power of delegation) to committees consisting of such member or members of the board or such full members of the Club as it may from time to time think fit and may from time to time revoke such delegation. Any committee so formed shall in the exercise of the powers so delegated conform to any regulation or restriction that may from time to time be imposed upon it by the board. The President shall have the right to be ex officio a member of all such committees. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting of a committee shall be determined by a majority of votes of the



members present and in the case of an equality of votes the chairman shall have a second or casting vote. The meetings and proceedings of any committee consisting of 2 or more members shall be governed by the provisions herein contained for regulating the meetings and proceedings of the board so far as the same are applicable thereto and are not superseded by this Rule or by any regulation made by the board pursuant to this Rule.

- (b) To make such By-laws not inconsistent with this constitution as in the opinion of the board are necessary or desirable for the proper control, administration and management of the Club's finances, affairs, interests, effects and property and for the convenience, comfort and well-being of the members of the Club and to amend or rescind from time to time any such By-laws.

### **BY-LAWS**

- 53. Any By-law made under this constitution shall come into force and has the full authority of a By-law of the Club on being posted upon the notice board.

### **SECTIONS AND COMMITTEES**

- 54. The Board may permit any section created under this Constitution to adopt a name distinctive of such section (provided it be described as a section of the Club) and to become affiliated with the body controlling the game or activity in New South Wales or Australia on such terms and conditions (not inconsistent with this Constitution or the Registered Clubs Act) as such controlling body may from time to time require and to pay on behalf of the Club, capitation fees to any such controlling body or as required by such body.
- 55. A person is ineligible to be a member of any section created under this Constitution unless he or she is a financial member of the Club.
- 56. The Board may empower any section or committee created under this Constitution to open and operate an account in the name of the section in such bank or financial institution as the Board may from time to time approve, provided that the persons eligible to operate upon any such account must be approved by the Board which from time to time may remove and replace such persons or any of them.
- 57. Subject to the absolute control and supervision of the Board, each such section or committee created under this Constitution shall manage its own affairs but must make regular reports to the Board (or otherwise as may be required from time to time by the Board). The minutes and records of the section or committee must also be produced by or on behalf of the Board within 14 days of a written request by the secretary to the section or committee or to an office-holder of the section or committee.
- 58. Subject to this Rule, the constitutions and rules or by-laws of each such section created under this Constitution may be amended from time to time by a majority of the members for the time being of such section at a general meeting of such members either Annually or at a meeting convened specifically for such purpose,

provided that no amendment proposed to and approved by the meeting of the members of the section shall have effect unless and until it has been approved by resolution of the Board.

59. Any disciplinary action which is taken by a section or committee created under this Constitution in respect of any member of such section or committee must at once be reported to the Board together with the reasons for such action and with a recommendation as to further action (if any) to be taken by the Board.

## **PROCEEDINGS OF THE BOARD**

60. The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit, provided that the Board shall meet whenever it deems it necessary but at least once in each calendar month for the transaction of business and a record of all members of the Board present and of all resolutions and proceedings of the Board shall be entered in a Minute Book provided for that purpose. The President shall preside as Chairman at every meeting of the Board or if at any meeting he or she is not present or is unwilling or unable to act, then the Vice President shall act as Chairman. If the Vice President is not present or is unwilling or unable to act, then the members of the Board present may elect their own Chairman.
61. The quorum for meetings of the Board shall be a majority of positions on the board.
62. The President may at any time convene a meeting of the Board and the secretary upon the request of not less than 3 members of the Board must convene a meeting of the Board.
63. Subject to this Constitution, questions arising at any meeting of the Board shall be decided by a majority of votes and a determination by a majority of the members of the Board shall for all purposes be deemed to be a determination of the Board. In the event of an equality of votes, the Chairman of the meeting shall have a second or casting vote.
64. The continuing members of the Board may act notwithstanding any vacancy in the Board, but if and so long as their number is reduced below the number fixed by or pursuant to this Constitution as the necessary quorum of the Board, the continuing member or members may act for the purpose of increasing the number of members of the Board to that number or of summoning a general meeting of the Club, but for no other purpose.
65. All acts done by any meeting of the Board or by any person acting as a member of the Board shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such member of the Board or person acting as aforesaid, or that the members of the Board or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a member of the Board.
66. A resolution in writing signed by all the members of the Board for the time being entitled to receive notice of a meeting of the Board, 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 identical wording each signed by one or more members of the Board. The resolution is passed when the last director signs.

67. (a) A director must in accordance with the Act disclose to the first practicable meeting of the Board any material personal interest which that director has in a matter that relates to the affairs of the Club. "Material personal interest" for the purposes of this Constitution includes but is not limited to an interest in a contract or proposed contract which involves the Club.
- (b) The disclosure must include details of the nature and extent of the director's material personal interest and the relation of that interest to the affairs of the Club. The disclosure must be recorded in the minutes of that meeting of the Board.
- (c) Without limiting the application of Section 191(2) of the Act, paragraph (b) does not apply to an interest:
- (i) which the director has as a member of the Club and which is held in common with the other members of the Club; or
  - (ii) which relates to a contract that insures, or would insure, the director against liabilities the director incurs as an officer of the Club (but only if the contract does not make the Club or a related body corporate the insurer).
- (d) A director who has a material personal interest in a matter that is being considered at a meeting of the Board:
- (i) must not vote on the matter (or in relation to a proposed resolution under paragraph (e)(i) in relation to the matter, whether in relation to that or a different director); and
  - (ii) must not be present while the matter (or a proposed resolution of that kind) is being considered at the meeting.
- (e) Paragraph (d) does not apply if:
- (i) the Board has passed a resolution that identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the Club, and states that those other directors voting for the resolution are satisfied that the interest should not disqualify the director from voting or being present; or
  - (ii) the Australian Securities and Investments Commission has declared or ordered that the director may be present while the matter is being considered at the meeting, vote on the matter, or both be present and vote.
- (f) Section 39 of the Registered Clubs Act will apply if a director discloses an interest in a contract or proposed contract which involves the Club.

## **VACANCIES ON THE BOARD**

68. Subject to compliance with the Act, the members in general meeting may by ordinary resolution of which at least 2 months notice to the Club has been given, remove any director before the expiration of his or her term of office and may by ordinary resolution appoint another person in his or her place. The member so appointed will hold office only until the conclusion of the next Annual General Meeting.
69. The office of a director will be immediately vacated, and a casual vacancy thereby created, if that person:
- (a) dies;
  - (b) becomes disqualified from managing any company under Part 2D.6 of the Act and is not given permission to manage the Club under Sections 206F or 206G of the Act;
  - (c) fails to disclose in accordance with the Act the nature of any material personal interest in a matter that relates to the affairs of the Club;
  - (d) becomes of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (e) is absent from meetings of the Board for a continuous period of 3 months without leave of absence from the Board;
  - (f) by notice in writing given to the secretary, resigns from office;
  - (g) becomes prohibited from being a director by reason of any order made under the Registered Clubs Act;
  - (h) becomes an employee of the Club;
  - (i) ceases to hold a qualification by which that person was appointed to or elected to office;
  - (j) ceases to be a member entitled to hold office on the Board; or
  - (k) ceases to be a member of the Club.
70. The Board shall have power at any time, and from time to time, to appoint any eligible member to the Board to fill a casual vacancy. The member so appointed shall hold office only until the conclusion of the next Annual General Meeting.

## **GENERAL MEETINGS**

71. A general meeting called the Annual General Meeting must be held at least once in every calendar year at such time and place as may be determined by the Board but within 5 months of the end of the Club's financial year. All general meetings other than Annual General Meetings shall be called general meetings.

72. The Board may whenever it thinks fit and must, as soon as practicable after receiving a request from not less than 5% of the full members of the Club or 100 full members (whichever is the lesser), convene a general meeting and, in the case of a request from members, the following provisions shall have effect:
- (a) the request shall state any resolution to be proposed at the meeting and must be signed by the members making the request and deposited at the Office and may consist of several documents in identical wording each signed by one or more of those members;
  - (b) if the Board does not within 21 days from the date of the request being so deposited duly proceed to convene the meeting, the members who made the request or any of them representing more than 50% of the members who made the request may themselves convene the meeting but any meeting so convened shall not be held after the expiration of 3 months from the date of such deposit;
  - (c) in the case of a meeting at which a resolution is to be proposed as a special resolution the Board shall be deemed not to have duly convened the meeting if it does not give such notice of such resolution as is required by the Act;
  - (d) any meeting convened under this Rule by the members shall be convened in the same manner or as nearly as possible as that in which meetings are convened by the Board;
  - (e) any reasonable expenses incurred by the members in convening any meeting under this Rule shall be repaid to the members by the Club.
73. Subject to the provisions of the Act relating to special resolutions, at least 21 days notice specifying the place, day and hour of a general meeting and in the case of special business the general nature of that business shall be given in the manner provided by this Constitution to all members entitled to attend and vote at general meetings of the Club, but the meeting shall not be invalidated by reason only of the accidental omission to give notice of the meeting to or the non-receipt of the notice of the meeting by any member, unless the Court on application of the member concerned or any other member entitled to attend the meeting, or the Australian Securities and Investments Commission, declares proceedings at the meeting invalid.
74. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. A quorum at all general meetings and at all Annual General Meetings shall not be less than 15 members present and entitled to vote.
75. If within 15 minutes from the time appointed for any general meeting a quorum is not present, the meeting shall if convened upon the request of members be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place or to such other day, time and place as the Board may determine but such period shall be less than one month. If at such adjourned general meeting a quorum is not present the members who are present and entitled to vote shall be a quorum and may transact the business for which the meeting was called.

## PROCEEDINGS AT GENERAL MEETINGS

76. The business of any Annual General Meeting shall be to receive and consider the reports prescribed by Section 317 of the Act and to elect in the manner provided in this Constitution the members of the Board and, subject to the Act, to appoint an Auditor or Auditors.
77. (a) Not less than 5% of, or 100, (whichever is the lesser) members having the right to vote at general meetings may, in accordance with the Act:
- (i) give the Club notice of a resolution that they propose to move at a general meeting; or
  - (ii) request the club to give members a statement about a resolution that is proposed to be moved at a general meeting or any other matter that may be properly considered at a general meeting.
- (b) In the case of receipt of such notice or request the Club must, subject to the Act, give notice of the resolution or distribute a copy of the statement to members at the same time, or as soon as practicable afterwards, and in the same way, as the Club gives notice of a general meeting.
78. The President shall be entitled to take the Chair at every general meeting. If the President is not present within 15 minutes after the time appointed for holding such meeting or is unwilling or unable to act, then the Deputy President shall act as Chairman. If the Deputy-President is not present within 15 minutes after the time appointed for holding the meeting or is unwilling or unable to act, then the members of the Club present shall elect a member of the Board to be Chairman of the meeting.
79. Every question submitted to a general meeting shall be decided by a show of hands (unless a poll is demanded by the Chairman or by not less than 5 members) and in the case of an equality of votes whether on show of hands or on a poll the Chairman of the meeting shall have a second or casting vote.
80. A person shall not:
- (a) attend or vote at any meeting of the Club or of the Board or of any committee thereof; or;
  - (b) vote at any election including an election of a member or of the Board.
- as the proxy of another person
81. (a) At any general meeting (unless a poll is demanded), a declaration by the Chairman that a resolution has been carried or carried by a particular majority or lost or not carried by a particular majority and an entry to that effect in the book containing the Minutes of the proceedings of the Club, shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against such resolution.

- (b) If a poll is demanded it must be taken in such manner and either at once or after the interval or adjournment or otherwise as the Chairman directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of the Chairman or on a question of adjournment must be taken immediately.
  - (c) A demand for a poll may be withdrawn.
82. The Chairman of a general meeting may with the consent of the meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. A resolution passed at any adjourned meeting shall for all purposes be treated as having been passed on the date when it was in fact passed and shall not be deemed to have been passed on any earlier date. It shall not be necessary to give any notice of any adjournment or of the business to be transacted at an adjourned meeting save when a meeting is adjourned for one month or more, when notice of the adjourned meeting shall be given as in the case of an original meeting.
83. Minutes of all resolutions and proceedings at general meetings must be entered within one month of the meeting in a book provided for that purpose and any such Minutes must be signed by the Chairman of the meeting to which it relates or by the Chairman of the next succeeding meeting and if purporting to be so signed shall be prima facie evidence of the proceedings to which it relates.

## **ACCOUNTS AND AUDIT**

84. The Board must cause proper accounts and records to be kept with respect to the financial affairs of the Club in accordance with the Act and the Registered Clubs Act.
85. The books of account must be kept at the Office of the Club or at such other place as the Board thinks fit. The Club must at all reasonable times make its accounting records available in writing for the inspection of members of the Board and any other persons authorised or permitted by or under the Act, the Registered Clubs Act or any other Act to inspect such records.
86. The Club must, within 4 months after the end of the Club's financial year or not less than 21 days before each Annual General Meeting (whichever is the earlier), send to each member of the Club, but subject to Section 316 of the Act, either:
- (a) a copy of the financial report required under Section 295 of the Act, a copy of the directors' report required under Section 298 of the Act (including particulars of the number of members registered in the Register of members at the end of the Club's financial year) and a copy of the auditor's report required under Section 308 of the Act; or
  - (b) a concise report that complies with Section 314(2) of the Act.

87. The financial year of the Club shall commence on the first day of April and end on the last day of March in each year or, subject to the Act, be for such other period as the Board may determine.
88. Auditors shall be appointed and their duties regulated in accordance with the Act and their remuneration shall be fixed by the Board.

### **SECRETARY**

89. The Board must appoint one (and not more than one) secretary who shall be the chief executive officer of the Club.

### **EXECUTION OF DOCUMENTS**

90. (a) The Board must provide for the safe custody of the Seal of the Club.
- (b) The Club may execute a document (including a deed) with the Seal by fixing the Seal to the document and having the fixing of the Seal witnessed by one member of the Board and the secretary or some other person appointed by the Board.

### **NOTICES**

91. A notice may be given by the Club to any member either:
- (a) personally; or
- (b) by sending the notice by post to the address of the member recorded for that member in the Register of members kept pursuant to this Constitution; or
- (c) by sending the notice to the facsimile number or electronic address (if any) nominated by the member.
92. Where a notice is sent by post, service of the notice shall be given by properly addressing, prepaying and posting the notice, and is taken to have been given in the case of a notice convening a meeting on the day following that on which the notice was posted, and in any other case at the time at which the notice would have been delivered in the ordinary course of post.
93. Where a notice is sent by facsimile or by other electronic means, the notice is taken to have been given on the day following that on which the notice was sent.

### **INDEMNITY TO OFFICERS**

94. (a) Every person who is or was an officer of the Club may if the Board so determines be indemnified, to the maximum extent permitted by law, out of the property of the Club against any liability (other than a liability for legal costs) to another person incurred as such an officer except in relation to:
- (i) a liability owed to the Club or a related body corporate; or



- (ii) a liability for a pecuniary penalty order under Section 13170 of the Act or a compensation order under Section 1317H of the Act; or
  - (iii) a liability that is owed to someone other than the Club or a related body corporate and did not arise out of conduct in good faith.
- (b) Every person who is or was an officer of the Club may if the Board so determines be indemnified, to the maximum extent permitted by law, out of the property of the Club against any legal costs incurred as such an officer except:
- (i) in defending or resisting proceedings in which the person is found to have a liability for which the person could not be indemnified under Section 199A(2) of the Act; or
  - (ii) in defending or resisting criminal proceedings in which the person is found guilty; or
  - (iii) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the Court to have been established; or
  - (iv) in connection with proceedings for relief to the person under the Act in which the Court denies the relief.
- (c) The Club may pay a premium for a contract insuring a person who is or was an officer of the Club against a liability (other than one for legal costs) arising out of that person's conduct as such an officer except in relation to:
- (i) conduct involving a wilful breach of duty in relation to the Club; or a contravention of Sections 182 or 183 of the Act.

## **INTERPRETATION & CONSTRUCTION OF CONSTITUTION**

95. This Constitution must be read and construed subject to the provisions of the Act and the Registered Clubs Act, and to the extent that any of the provisions in this Constitution are inconsistent therewith and might prevent the Club being registered under the said Acts, those provisions will be inoperative and have no effect.

## **AMENDMENTS TO CONSTITUTION**

96. This Constitution may be altered or amended only by a resolution passed by a three-quarters majority of full members present and voting at a general meeting, being a meeting of which at least 21 days written notice specifying the intention to propose the resolution as a special resolution has been given in accordance with the Act.

## **MOSMAN ROWING CLUB LIMITED**

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