

Dated 7 April 2016

Constitution of

**Cruising Yacht Club of Australia
(ACN 000 116 423)**

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Corporations Act of Australia

Constitution

of

Cruising Yacht Club of Australia (ACN 000 116 423)

A company limited by guarantee

1. Preliminary

This is the Constitution of the Company known as the Cruising Yacht Club of Australia.

1.1. The Company is limited by Guarantee

The Company is limited by guarantee and the liability of Members is limited as provided in this Constitution.

1.2. Objects of the Company

The objects of the company are:

- (a) To promote and encourage Yachting, and
- (b) To do all things incidental to the objects.

Without limiting these objects or the other provisions of this Constitution or the By-Laws, reference may be made to the intention of the founding members of the company which is set out in the objects referred to in the Memorandum of Association of the "Cruising Yacht Club of Australia" in existence at the date of registration of the Company.

1.3. Application of income and property

The Company must apply its income solely towards promoting the objects of the Company and subject to this Constitution.

No part of the Company's income may be paid or transferred directly or indirectly by way of dividend bonus or otherwise to Members.

Notwithstanding any rule in this Constitution the Company may pay:

- (a) interest at a commercial rate;

- (b) reasonable and proper rent for premises demised or let to the Company;
- (c) authorised expenses of a Director, Flag Officer or Treasurer; and
- (d) in good faith, the reasonable and proper remuneration to any member, Director, Secretary or employee in return for any services actually rendered to the Company.

1.4. **Replaceable rules not to apply**

The provisions of the Corporations Act that are referred to as replaceable rules are replaced by the rules set out in this Constitution.

1.5. **Definitions**

The following definitions apply in this Constitution unless the contrary intention appears.

Act means the Corporations Act 2001 (Cth).

Board means all or some of the Directors acting collectively under this document.

By-Laws means any rules or regulations made by the Directors pursuant to this Constitution.

Club's Register means a Register of Yachts owned by Ordinary Members of the Club.

Company means Cruising Yacht Club of Australia (ACN 000 116 423). In this Constitution the word "company" is interchangeable with the word "Club."

Constitution means this Constitution as amended from time to time.

Corporations Act means the *Corporations Act 2001 (Cth)*

Director means a person holding office as a Director of the Company

Flag Officer means a director appointed to any one of the following offices:

- (a) the Commodore;
- (b) the Vice Commodore,
- (c) a Rear Commodore, and

any person appointed to the office of Admiral in accordance with this Constitution.

Member means a person whose name is entered in the Register as a member of the Company.

Ordinary Resolution means a resolution passed at a meeting of Members by a majority of the Members present and voting at that meeting.

Register of Members means the register of members of the Company under the Corporations Act.

Register of Guests means a form of record with the name and address of the guest and which is signed by the member or person responsible for that guest.

Registered Clubs Act means the *Registered Clubs Act (NSW)*

Registered Office means the registered office of the Company.

Secretary means a person appointed as the secretary of the Company in accordance with this Constitution.

Section means a section of the Corporations Act.

Special Resolution means a resolution passed at a meeting of members by a 75 per cent majority of the members present and voting at that meeting.

Voting member means an Ordinary Member who is entitled to vote at a general meeting of the Company.

Yacht Owning member means a Voting member who is the owner of not less than a 50% interest in a commissioned monohull sailing yacht with a waterline length (LWL) not less than 7.0 metres which:

- (a) is eligible to be accepted as an entry in any ocean race conducted by the Club under the rules for the time being governing ocean racing conducted by the Club, and
- (b) is listed on the Club's Register of Yachts owned by Ordinary Members, and

provided that to be eligible to be elected or appointed to office as a director or Flag Officer only one person shall be treated as the Yacht Owning member when two people own the yacht.

YSA means the Youth Sailing Academy.

1.6. Interpretation of this Constitution

Headings are inserted for convenience and do not affect the interpretation of this Constitution. The following rules also apply in interpreting this constitution, except where the context makes it clear that a contrary intention is to apply:

- (a) words importing any gender include all other genders;
- (b) the word "person" includes a firm, a body corporate, an unincorporated body or association or an authority;
- (c) the singular includes the plural and vice versa;
- (d) a reference to a law includes regulations and instruments made under the law;

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- (e) a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision;
 - (f) a power, an authority or a discretion vested in a Director, the Directors, the Company in general meeting or a member may be exercised at any time and from time to time;
 - (g) the word “including” when introducing an example does not limit the meaning of the words to which the example relates.

Unless the contrary intention appears in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, an expression has the same meaning as in that provision of the Corporations Act.

1.7. Liability limited

The liability of the members is limited.

Each member undertakes to contribute to the assets of the Company if it is wound up while the member is a member, or within one year after the member ceases to be a member, for payments of the debts and liabilities of the Company incurred before the member ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of contributions between themselves, any amount required not exceeding \$2.00.

1.8. Director not entitled to Directors fees or to be an employee

A Director is not entitled to

- (a) be employed by the Company; or
- (b) be paid any fees for being a Director.

2. Membership

2.1. The members

The number of members of the Company shall be such number of ordinary and other members as the Board determines from time to time.

The members recorded on the Register of Members at the date of the adoption of this Constitution continue as members subject to this Constitution and the By-Laws.

2.2. Membership not transferable to another person, only to another class of membership

A member may not transfer the membership to another person.

The Board may transfer a member from membership in one class to membership in another class, with the member’s consent.

2.3. **Classes of members**

The classes and sub classes of membership in existence at the date of the adoption of this Constitution continue as classes and sub classes of membership subject to this Constitution and the By-Laws, and the rules prescribed by the Registered Clubs Act.

The classes and sub classes of membership in existence at the date of the adoption of this Constitution are:

- (a) Ordinary Members:
 - (i) Full Members;
 - (ii) Life Members;
 - (iii) Country Members;
 - (iv) Overseas Members;
 - (v) Associate Members;
 - (vi) Sailing Associate Members;
 - (vii) Crew Members;
 - (viii) Junior Members;
 - (ix) YSA Crew;
 - (x) YSA Junior;
 - (xi) Regional Member.
- (b) Honorary Members
- (c) Sponsor Members;
- (d) Provisional Members, and
- (e) Temporary Members.

2.4. **The Members who are entitled to vote, to enjoy full privileges and to hold Office**

Only Full Members, Life Members, and Country Members are entitled to vote at general meetings of the Company and enjoy full privileges.

Only Full Members, Life Members, and Country Members are eligible to be elected or appointed to office as a Director or Flag Officer.

2.5. Eligibility for election as an Ordinary member

To be eligible for election to ordinary membership the candidate in each sub class must be over the age of 18 years (with the exception of Junior Members) and must satisfy the criteria as follows:

- (a) to be a Full Member, a person must fulfil all eligibility criteria determined by the Board from time to time;
- (b) to be a Life Member, a person must
 - (i) in the opinion of the Board have rendered valuable service to the Club; and
 - (ii) on recommendation of the Board, be elected as a Life Member by resolution of the members in a general meeting;
- (c) to be a Country Member a person must:
 - (i) reside outside a 300 Kilometre radius from Sydney; and
 - (ii) not work in Sydney,

provided that if the member's circumstances change after election to membership in this class, either by moving residence inside the 300 Kilometre radius of Sydney or by commencing work in Sydney, the member must promptly notify the Secretary of the change in circumstances and apply for a transfer to Full Membership.
- (d) to be an Overseas Member a person must:
 - (i) reside permanently outside Australia; or
 - (ii) be an Ordinary Member seeking transfer to this class when that member intends to be absent from Australia for a continuous period of twelve months or more.
- (e) to be an Associate Member a person must:
 - (i) be the partner or child of an existing or deceased Ordinary Member.
- (f) to be a Crew Member a person must
 - (i) be at least 18 and not more than 29 years of age;
- (g) to be a Junior Member a person must:
 - (i) be under the age of 18 years, and
 - (ii) intend to take part in yachting activities organised by the Club.

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- (h) to be a YSA Crew Member a person must:
 - (i) be at least 18 years of age and not more than 25 years of age, and
 - (ii) must be taking part in the activities of the YSA.
 - (i) to be YSA Junior Member a person must:
 - (i) be under the age of 18 years, and
 - (ii) take part in activities organised by the Club and the YSA.
 - (j) to be a Regional Member a person must:
 - (i) reside outside a 150 Kilometre radius from Sydney; and
 - (ii) not work in Sydney,
 - (iii) provided that if the member's circumstances change after election to membership in this class, either by moving residence inside the 150 Kilometre radius from Sydney or by commencing work in Sydney, the member must promptly notify the Secretary of the change in circumstances and apply for a transfer to Full Membership.

The members of these classes will enjoy rights and privileges, and pay fees which are determined by the Board from time to time.

2.6. **Restrictions on some classes and sub classes of member**

Overseas Members, Associate Members, Sailing Associate Members, Crew Members, Junior Members, YSA Crew Members, YSA Junior Members and Regional Members, Sponsor Members, Honorary Members, Provisional Members and Temporary Members shall not be entitled or eligible to;

- (a) attend or vote at any meeting of the Company;
- (b) be elected or appointed to the office of director or any other office in the Company; or
- (c) apply for or hold a permanent marina berth licence.

2.7. **Honorary Members**

The Board may elect a person to be an Honorary Member for such duration as the Board determines.

The following persons may be elected as Honorary members:

- (a) the Patron or Patrons for the time being of the Club as appointed by the Board, or
- (b) any prominent citizen or local dignitary visiting the Club.

2.8. **Sponsor Members**

The Board shall determine the number of members of each corporate group or association who may become Sponsor Members of the Club in recognition of their sponsorship of the Club and its associated activities.

A Sponsor Member remains a member only for the duration of any sponsorship provided or for such other period as the Board shall determine in each case.

2.9. **Provisional Members**

A person may be admitted as a Provisional Member if that person:

- (a) has applied to be elected as a Full Member;
- (b) has paid the subscription fee, and
- (c) is proposed and seconded by a Director.

A Provisional Member shall be admitted for periods of six months at a time provided that no person shall remain a Provisional Member for a period in excess of fifteen consecutive months, or such other period as the Board may determine, from time to time

2.10. **Temporary Members**

Subject to the Registered Clubs Act, this Constitution and the By-Laws, a person may be admitted as a Temporary member if that person is;

- (a) a visitor whose permanent place of residence in New South Wales is not less than a distance of 5 kilometres from the Club;
- (b) a Full member of another Club which is registered under the Registered Clubs Act and which has similar objects to those of the Club;
- (c) invited by a Committee of the Club or a full member of the Club, and 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 for the duration of that day, or
- (d) an interstate or overseas visitor.

Temporary Members shall not be required to pay an entrance fee or annual subscription.

2.11. **Guests**

Subject to the Registered Clubs Act, this Constitution and the By-Laws any member, except a Temporary Member, may introduce a guest to the Club.

A guest shall not be introduced:

- (a) more frequently than permitted in the By-Laws or under the Registered Clubs Act, or

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- (b) if that person has been expelled from the Club for misconduct or non-payment of subscription or fees; or
 - (c) if that person has been suspended by the Board.

2.12. **Guests shall be in the company of a member**

A guest shall at all times remain in the reasonable company of the member who introduced the guest and countersigned the entry in the Register of Guests.

A guest shall not be supplied with liquor on the premises of the Club except at the invitation of and in the company of a member.

Members shall be responsible for the conduct of any guests they may introduce to the Club

A guest shall not remain on the premises of the club any longer than the member who introduced that guest.

On introduction of a guest, a member shall enter the name and address of the guest in the Register of Guests and shall countersign that entry.

2.13. **New members**

New Ordinary Members shall be elected by the Board and the Board must ensure that each candidate for membership:

- (a) fulfils all eligibility criteria prescribed by the Company, for the class of membership to which that person is to be admitted;
- (b) agrees to be bound by this Constitution and any By-Laws; and
- (c) pays the entrance fee and the subscription fees (if any) prescribed for that class of membership as determined by the Board from time to time.

The procedure for the election of members will be determined by the Board.

2.14. **Fees for membership subscription**

The fees for annual subscription for the different classes of members will be determined by the Board, from time to time, subject to the following:

- (a) A fifteen year member who attains the age of 65 years and who has retired from employment or business may, on application to the Board, be granted a reduction of one half of the fees for a Full Member;
- (b) the fees for a thirty year member will be one quarter of the fees for a Full Member;
- (c) the fees for a fifty year member will be one tenth of the fees for a Full Member.

2.15. **No entrance fees for certain members**

There will be no entrance fees charged for the following members:

- (a) Associate Members who are the partner of a Full Member or a Life Member;
- (b) Honorary Members; or
- (c) Sponsor Members.

2.16. Ceasing to be a member

A member ceases to be a member on:

- (a) resignation;
- (b) death;
- (c) becoming bankrupt or making an arrangement or composition with creditors of the person's joint or separate estate generally;
- (d) becoming of unsound mind or a person whose estate is liable to be dealt with in any way under a law relating to mental health;
- (e) the termination of the person's membership, or
- (f) expulsion.

2.17. Resignation

A member may resign membership by notice in writing to the Company with immediate effect or with effect from a specified date occurring not more than six months after the service of the notice.

2.18. Termination of Membership for failure to pay moneys

If a member fails to pay any annual subscription fee or other amount to the Company within two months of its due date (or such longer period as the Board may determine in a particular circumstance), the Secretary may give written notice to the member requiring payment within one month.

If the amount to be paid remains unpaid at the expiry of that one month period the member will automatically cease to be a member and the person's name will be removed from the Register.

2.19. Reinstatement

Notwithstanding anything else in this Constitution, where a person has ceased to be a member by reason only of non-payment of subscription fee, on payment of the full amount due, the Secretary shall arrange for that person to be proposed in a written application for reinstatement by a Director and shall cause the applicant's name and address to be conspicuously displayed on the Company's premises for at least seven days. The Board may at any meeting after 14 days from the date of such display elect that person as a member without requiring the payment of any entrance fee.

2.20. Disciplinary Procedures

If a member fails to comply with this Constitution or the By-Laws or is, in the opinion of the Board, guilty of any conduct prejudicial to the interests of the Company or unbecoming of a member or such as to render the member unfit for membership, the Board may:

- (a) reprimand the member;
- (b) fine the member, provided that such fine shall not exceed one half of the annual subscription of a Full Member of the Club;
- (c) suspend the member from exercising the rights and privileges of membership for such period as the Directors determine; or
- (d) expel the member.

2.21. Procedure to Expel a Member

The Board may, by resolution, expel from the Company any Member and remove that Member's name from the Register of Members.

At least 7 days before the Board holds a meeting to consider a resolution to expel a Member, the Board must give a written notice, to the Member, which states:

- (a) the allegations against the Member;
- (b) the proposed resolution for the Member's expulsion;
- (c) that the Member has an opportunity at the meeting to address the allegations either orally or in writing; and
- (d) that if the Member notifies the Secretary in writing at least 24 hours before the Board meeting, subject to Section 249F the Member may elect to have the question of that Member's expulsion dealt with by the Company in a general meeting.

Where a general meeting is held to consider whether a member should be expelled, a member will be expelled on the passing of a resolution by a majority of those present and voting in favour of the expulsion of that member. The voting for a resolution under this rule will take place by way of a poll.

The Directors must comply with the principles of natural justice when acting under this Rule.

3. Meetings of Members

3.1. **General Meetings**

The Company must hold an Annual General Meeting.

A meeting of members

- (a) may be convened at any time by the Board or a Director; and
- (b) must be convened when requested by Voting members in accordance with the Corporations Act.

3.2. **Methods of Receiving Notices and Annual Reports**

Members may choose to receive paper copies of Notices of Meetings and Annual Reports in the mail or members may make an election to receive them electronically.

3.3. **Notice of General Meeting**

Except where Section 249H(2) of the Corporations Act applies, at least 21 days notice must be given of a meeting of the members, exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given.

A notice of a general meeting must:

- (a) set out the place, date and time of meeting and, if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner;
- (b) state the general nature of the business to be dealt with at the meeting; and
- (c) if a Special Resolution is to be proposed, set out an intention to propose the Special Resolution and clearly state the resolution.

The non-receipt of notice of a general meeting by, or the accidental omission to give notice of a general meeting to, any person entitled to receive that notice does not invalidate any resolution passed at the general meeting.

3.4. **Postponement or cancellation of meeting**

Subject to Sections 249D(5) and 250N, the Board may cancel or postpone a meeting to a date and time determined by them and subject to these the following:

- (a) written notice of cancellation or postponement of a general meeting must be given individually to each Voting member and must specify the reason for cancellation or postponement;
- (b) a notice postponing the holding of a general meeting must specify:
 - (i) a date and time for the holding of the rescheduled meeting; and

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- (ii) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
 - (iii) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner;
- (c) the number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear day's notice of a general meeting required to be given by this Constitution;
 - (d) the only business that may be transacted at a postponed general meeting is the business specified in the notice convening the original general meeting.

The accidental omission to give notice of the cancellation or postponement of a meeting or the non-receipt of any such notice by any Voting member or person entitled to notice does not invalidate that cancellation or postponement or any resolution passed at a postponed meeting.

This Rule does not apply to a general meeting convened by Voting members under Section 249F of the Corporations Act or by the Board pursuant to a request of Voting members under the Corporations Act.

3.5. **Auditor entitled to notice of meeting**

The Company must give its auditor:

- (a) notice of a general meeting in the same way that a Voting member is entitled to receive notice; and
- (b) any other communications relating to the general meeting that a Voting member is entitled to receive.

3.6. **Use of Technology**

The Company may hold a meeting of Members at 2 or more venues using any technology that gives members as a whole a reasonable opportunity to participate.

4. **Proceedings at general meetings of Members**

4.1. **Representation of member**

A Voting member must be present and vote in person.

4.2. **Quorum**

There is a quorum at a general meeting if 30 Voting members entitled to vote are present.

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it.

If within 30 minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a) if convened by, or on request of, Voting members, is dissolved; and
- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Board appoints.

If a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

4.3. **Appointment and powers of chairman of general meeting**

The Commodore is entitled to preside as chairman at a general meeting.

If a general meeting is held and the Commodore is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act, the following may preside as chairman of the meeting (in order of precedence):

- (a) the Vice Commodore;
- (b) a Rear Commodore chosen by a majority of the Directors present;
- (c) a Director chosen by a majority of the Directors present;
- (d) the only Director present;
- (e) a Voting member chosen by a majority of the Voting members present in person.

The chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting;

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- (c) may, having regard where necessary to the Corporations Act terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting; and

in these circumstances a decision by the chairman is final.

4.4. **Adjournment of general meetings**

The chairman may, at any time during a meeting, and must if so directed by the meeting, adjourn the meeting to a new day, time or place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

In exercising the discretion to adjourn a meeting, the chairman may seek the approval of the Voting members present.

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more, in which circumstance, a notice of the adjourned meeting must be given as required for the original meeting.

A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

4.5. **Voting on a resolution**

At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is demanded:

- (a) before the vote is taken;
- (b) before the voting results on the show of hands is declared; or
- (c) immediately after the voting results on the show of hands is declared, by the chairman; or
- (d) by not less than three members entitled to vote on the resolution.

On a show of hands, a declaration by the chairman is conclusive evidence of the result.

4.6. **Questions decided by majority**

Subject to the requirements of the Corporations Act, (except where a Special Resolution is required) a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

4.7. **Poll**

If a poll is properly demanded, it must be taken at the time of the meeting and the result of the poll is the resolution of the meeting.

A poll may not be demanded on the election of a chairman and a poll demanded on a question of adjournment must be taken immediately.

A demand for a poll may be withdrawn.

A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

4.8. **Equality of votes - chairman's casting vote**

If there is an equality of votes:

- (a) on a poll, but not on a show of hands; or
- (b) for two or more candidates on a ballot,

then the chairman of the meeting is entitled to a casting vote in addition to any vote to which the chairman is entitled as a member.

5. **Votes of members**

5.1. **Entitlement to vote**

- (a) each Ordinary Member in attendance at a general meeting has one vote; and
- (b) a member is not entitled to be present or to vote at a general meeting if at the date of the meeting that member's annual subscription fees or other moneys payable by that member to the Company are in arrears by more than two months (or such longer period as the Board may allow in special circumstances).

5.2. **Objection to voting qualification**

An objection may not be raised to the right of a person to attend or vote at a meeting or an adjourned meeting except at that meeting or the adjourned meeting.

Any such objection must be referred to the chairman of the meeting, whose decision is final.

A vote not disallowed under such an objection is valid for all purposes.

6. **The Directors**

6.1. **Number of Directors**

The Board of Directors of the Company will consist of 11 Directors, until the end of the meeting of the Annual General Meeting on 19 July 2016.

The Board of Directors of the Company will consist of 9 Directors, on and from the end of the meeting of the Annual General Meeting on 19 July 2016.

6.2. **Appointment of Director**

The Board may at any time appoint an eligible person to be a Director to fill a casual vacancy.

6.3. Eligibility

A member is eligible to be appointed as a Director if:

- (a) that person has been a Voting member for not less than one year; and
- (b) immediately following that appointment, not less than one half of the Directors or, if their number is not a multiple of two, the number nearest to but not less than one half, are Yacht Owning members.

6.4. Nomination and election

At least 21 days before an annual general meeting the Secretary must invite members to nominate candidates for appointment to offices becoming vacant at that annual general meeting.

Any two Voting members may nominate an eligible person for appointment by notice in writing to the Secretary not less than 14 days prior to the annual general meeting.

Candidates' names will be published at the Registered Office of the Company and given to Voting members not less than seven days prior to the date of the annual general meeting.

In the event that the number of candidates is less than or equal to the number of vacancies to be filled at an Annual General Meeting, all candidates will be taken to be appointed as Directors.

In the event that the number of candidates exceeds the number of vacancies to be filled at an annual general meeting, Directors will be elected by a ballot conducted in accordance with the following:

- (a) the ballot paper must contain the names of the candidates in alphabetical order;
- (b) a ballot paper will only be taken to be validly completed by a Voting member if the Voting member casts a vote for such number of candidates as does not exceed the number of vacancies to be filled, and
- (c) candidates will be elected in descending order of the number of votes cast in their favour until all vacancies are filled.

6.5. Rotation of Flag Officers and Directors

At the Annual General Meeting in each year all the Flag Officers and Directors shall automatically retire from office and shall be eligible for re-election provided that no Flag Officer shall be eligible to hold the same office for more than 2 consecutive years. This Rule shall not apply to the Admiral.

The retirement of a Flag Officer or Director at an Annual General Meeting takes effect at the end of that meeting.

6.6. Removal of Director

The Company in general meeting may by Ordinary Resolution remove a Director from office as a Director.

6.7. Remuneration of Directors

A Director may not be paid any remuneration for services as a Director.

6.8. Expenses

A Director is entitled to be reimbursed out of the funds of the Company for such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the affairs of the Company.

6.9. Director's interests

A Director is not disqualified by the Director's office and the fiduciary relationship established by it from holding any office or place of profit, other than that of auditor, under the Company or a related body corporate of the Company.

A Director may, subject to the Corporations Act:

- (a) be or become a Director of or otherwise hold office or a place of profit in any other company promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise;
- (b) contract or make any arrangement with the Company or any related body corporate whether as a vendor, purchaser, lawyer or accountant or other professional person or otherwise and any contract or arrangement entered or to be entered into by or on behalf of the Company or any related body corporate in which any Director is in any way interested is not avoided for that reason.

Notwithstanding these Rules, a Director who:

- (a) holds any office or place of profit ; or
- (b) is involved in a contract or arrangement,

is not, by reason only of that fact or any interest resulting from it or the fiduciary relationship established by it, liable to account to the Company for any remuneration or other benefits accruing from it.

A Director or a firm of which the Director is a partner or employee may act in a professional capacity, other than as auditor, for the Company or any related body corporate and a Director or a Director's firm is entitled to remuneration for professional services as if the relevant Director was not a Director.

Each Director must disclose that Director's interests to the Company in accordance with both the Corporations Act and the Registered Clubs Act (NSW).

A Director who has a material personal interest in a matter that is being considered at a meeting of the Directors may not:

- (a) vote on the matter; or
- (b) be present while the matter (or a proposed resolution of that kind) is being considered at the meeting,

provided that these restrictions may at any time or times be suspended or relaxed to any extent and either prospectively or retrospectively by resolution of the Company in general meeting, if that is permitted by the Corporations Act.

The Director may not be counted in the quorum present at any Director's meeting at which the contract, proposed contract or arrangement or other matter is considered if the Director is permitted by the Corporations Act to be present during the consideration.

A Director does not have an interest in a matter relating to an existing or proposed contract of insurance merely because the contract insures, or would insure, the Director against a liability incurred by the Director as an officer of the Company or of a subsidiary of the Company.

A Director may, despite the Director's interest, and whether or not the Director is entitled to vote, or does vote, participate in the execution of any instrument by or on behalf of the Company whether through signing or sealing the same or otherwise.

6.10. Vacation of office of Director

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) ceases to be a Voting member;
- (b) becomes of unsound mind or is mentally incapable of performing the functions of that office;
- (c) resigns from the office by notice in writing to the Company;
- (d) in the case of a Director who was a Yacht Owning member as at the date of appointment, ceases to be a Yacht Owning member and does not within three months of ceasing, again become a Yacht Owning member, except where the remaining number of Directors who are Yacht Owning members remain a majority of those Directors.
- (e) is removed from the office at a general meeting;
- (f) becomes prohibited from being a Director of the Company by reason of bankruptcy or an order made under the Corporations Act;
- (g) is not present at meetings of the Directors for a continuous period of six months without leave of absence being given by the Board of Directors.

7. Flag Officers and the Treasurer

7.1. Continuation of appointment of Flag Officers and Treasurer

The Company will appoint a Commodore, a Vice Commodore, two Rear Commodores and a Treasurer.

The Commodore, Vice Commodore, Rear Commodores and Treasurer in office at the time of adoption of this Constitution continue in office subject to this Constitution.

7.2. Appointment of Flag Officer or Treasurer

The Directors may at any time appoint an eligible person to be a Flag Officer or Treasurer to fill a casual vacancy.

7.3. Appointment of Admiral

The Board may appoint an Admiral who, if not a member, shall be ex officio an Honorary Member of the Company.

7.4. Eligibility for appointment as Flag Officers or Treasurer

A member is not eligible to be appointed:

- (a) as a Flag Officer (other than the Admiral) or Treasurer unless that person:
 - (i) has been a Voting member for not less than one year; and
 - (ii) is a Director (including a Director appointed at any general meeting at which the appointment as Flag Officer is to take place);
- (b) as a Commodore or a Vice Commodore unless that person is a Yacht Owning member;
- (c) as a Rear Commodore unless immediately following that appointment at least one Rear Commodore is a Yacht Owning member.

7.5. Removal of Flag Officer or Treasurer

The Company in general meeting may by Ordinary Resolution remove a Flag Officer or Treasurer from office as a Flag Officer or Treasurer, as the case may be.

7.6. Remuneration of Flag Officers and Treasurer

A Flag Officer or Treasurer may not be paid any remuneration for services as a Flag Officer or Treasurer.

7.7. Expenses

A Flag Officer or Treasurer is entitled to be reimbursed out of the funds of the Company for such reasonable travelling, accommodation and other expenses as the Flag Officer or Treasurer may incur when on the affairs of the Company.

7.8. **Vacation of office of Flag Officer**

The office of a Flag Officer becomes vacant if the Flag Officer:

- (a) ceases to be a Director; or
- (b) resigns from the office by notice in writing to the Company; or
- (c) in the case of Flag Officer who was a Yacht Owning member at the date of appointment, ceases to be a Yacht Owning member and does not within three months of so ceasing again become a Yacht Owning member.

The office of a Treasurer becomes vacant if the Treasurer:

- (a) ceases to be a Director; or
- (b) resigns from the office by notice in writing to the Company.

A Director may remain in the office of Director even after resigning from the role of a Flag Officer or Treasurer.

7.9. **Flag Officer's flags**

The Admiral's flag shall be blue with the constellation of the Southern Cross in gold and rectangular in shape.

The Commodore's flag will be blue with the constellation of the Southern Cross in gold with a swallow-tail.

The Vice-Commodore's flag will be similar to the Commodore's flag with the addition of one red ball in the lower canton.

The Rear Commodores' flags will be similar to the Commodore's flag with the addition of two red balls, one in the upper canton and one in the lower canton.

A retired Commodore's flag will be similar to the Commodore's flag with the addition of the letter "R" in red in the lower canton.

8. **Powers of Board of Directors**

The business of the Company is to be managed by or under the direction of the Board.

The Board may exercise all of the powers of the Company except any powers that the Corporations Act or this Company's Constitution requires the Company to exercise in general meeting

These powers include but are not limited to the following:

- (a) to make and amend such By-Laws binding the members as they think fit as long as those By-Laws are not inconsistent with this Constitution;
- (b) to impose such levies on members and collect such fees as the Directors consider are necessary or expedient for the efficient operation

of the Company or for some extraordinary expenditure or commitment of the Company;

- (c) to exempt any member having not less than thirty (30) years continuous membership from such levies and retain their Full Membership on payment of one-quarter of the normal subscription;
- (d) to determine the annual subscription for each category of membership in each financial year, provided that any increase in subscription is not in excess of an amount equivalent to fifteen percent (15%) of the current subscription level, in the event of which a greater increase must be approved by the members by Ordinary Resolution at a general meeting;
- (e) to make calls from time to time on members or any class or classes of members provided that any call on members is subject to the approval by the members by Special Resolution at a general meeting, and
- (f) to permit a member of any class to pay their annual subscription and/or development fund contribution and/or call in two equal instalments half-yearly in advance. Arrangements to do so must be agreed with the Secretary or the Treasurer within 30 days of the renewal date and within six months of the first day of the subscription year.

9. By-Laws

Each member is bound by and must comply with the By-Laws.

By-Laws and amendments to the By-laws come into force upon being made or amended, as the case may be, by the Board.

The By-Laws in existence at the date of the adoption of this Constitution continue as By-Laws subject to this Constitution.

The members may by resolution passed in general meeting disallow any By-Law made or amended by the Board. No such disallowance will invalidate any decision or act made or taken pursuant to such By-Law prior to the disallowance unless the resolution specifically so directs.

10. Proceedings of Directors

10.1. Directors' meetings

The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors. A meeting of Directors must be held at least once in each calendar month.

10.2. Chairman of Directors

The Commodore will be chairman of meetings of Directors.

If a Directors' meeting is held and the Commodore is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act, the following may preside as chairman of the meeting (in order of precedence):

- (a) the Vice Commodore;
- (b) a Rear Commodore chosen by a majority of the Directors present, or
- (c) a Director chosen by a majority of the Directors present.

10.3. **Questions decided by majority**

Questions arising at a meeting of Directors are to be decided by a majority of votes of Directors present and entitled to vote and any such decision is for all purposes to be deemed a decision of the Directors.

10.4. **Chairman's casting vote**

In the event of an equality of votes, the chairman of the meeting has a casting vote.

10.5. **Quorum for Directors' meeting**

The quorum for a Directors meeting is six or any greater number determined by the Directors from time to time. For the purposes of this Rule, a quorum is present during the consideration of a matter at a meeting of the Directors only if at least six Directors are present who are entitled to vote on any matter.

A Director is treated as being present at a meeting held by audio or audio-visual communication if the director is able to be heard by all others attending the meeting.

10.6. **Remaining Directors may act**

The continuing Directors may act despite a vacancy in their number but, if and so long as their number is reduced below the quorum for meetings of the Directors, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or of convening a general meeting.

10.7. **Directors' committees**

The Directors may delegate any of their powers, other than powers required by law to be dealt with by Directors as a Board, to a committee which is subject to the direction of the Directors.

Such delegation must be recorded in the Company's Minute Book.

Any recommendation of the committee must be ratified at a Board Meeting.

10.8. **Proceedings of Directors' committees**

The Directors may elect one of their number as chairman of the meetings of a committee.

If a meeting of a committee is held and:

- (a) a chairman has not been elected; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members of the committee present may elect one of their numbers to be chairman of the meeting.

A committee may meet and adjourn as it thinks proper.

Questions arising at a meeting of a committee are to be determined by a majority of votes of the members of the committee present and voting.

The chairman, in addition to the chairman's deliberative vote, has a casting vote.

10.9. Written resolution by Directors

If all the Directors entitled to receive notice of a Board meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a Board resolution in those terms is passed at the time when the last Director signs.

A Director is deemed to have signed a document containing such a statement if the approval of that statement is contained in an email sent by that Director.

10.10. Use of technology

A Directors' meeting or a meeting of a committee may be called or held using any technology consented to by each Director. The consent may be a standing one. A Director may only withdraw consent within a reasonable period before the meeting.

10.11. Validity of acts of Directors

Subject to the other provisions of this Constitution all acts of the Directors, a committee or a member of a Directors committee are valid even if it is afterwards discovered that there was a defect in the appointment, election or qualification of any of them or that any of them were disqualified or had vacated office.

11. Secretary

11.1. Appointment of Secretary

There must be one Secretary of the Company who is to be appointed by the Directors.

11.2. Suspension and removal of Secretary

The Directors may suspend or remove the Secretary from that office.

11.3. **Powers, duties and authorities of Secretary**

The Directors may vest in the Secretary such powers, duties and authorities as they may determine from time to time and the Secretary must exercise all such powers and authorities subject at all times to the control of the Directors.

12. **Club burgee**

12.1. **Club burgee**

The burgee of the Cruising Yacht Club of Australia will be blue with the constellation of the Southern Cross in gold in the form held by the Secretary.

12.2. **Flying of burgee**

The By-Laws shall provide that the burgee must not be flown on any yacht that is owned by a member unless the member is present when that yacht is being used.

13. **Inspection of records**

Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of members (other than Directors).

A member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

14. **Service of documents**

This Rule does not apply to the giving of a notice of meeting of members.

The Company may give a document to a member:

- (a) personally;
- (b) by sending it by post (by airmail if to an address outside Australia) to the address for the member in the Register or an alternative address (if any) nominated by the member; or
- (c) by sending it to a fax number or electronic address (if any) nominated by the member.

A member may give a document to the Company or to the Secretary:

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- (a) in the case of the Secretary, personally;
 - (b) by sending it by post to the registered office of the Company; or
 - (c) by sending it to a fax number or electronic address (if any) nominated by the Company.

If a document is sent by post, delivery of the document is:

- (a) taken to be effected by properly addressing, prepaying and posting a letter containing the document; and
- (b) taken to be effective on the third day after the date of its posting.

If a document is sent by facsimile or electronic transmission, delivery of the document is:

- (a) taken to be effected by properly addressing and transmitting the facsimile or electronic transmission, and
- (b) taken to be effective on the day following its transmission.

15. Audit and accounts

15.1. Company to keep accounts

The Directors must cause the Company to keep accounts of the business of the Company in accordance with the requirements of the Corporations Act and the Registered Clubs Act.

15.2. Company to audit accounts

The Directors must cause the accounts of the Company to be audited in accordance with the requirements of the Corporations Act.

16. Indemnity

16.1. Indemnity of officers

Every person who is or has been a Director or Secretary of the Company or its subsidiaries is entitled to be indemnified out of the property of the Company against:

- (a) every liability incurred by that person in that capacity (except a liability for legal costs) and
- (b) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings whether civil or criminal or of an administrative nature, in which that person becomes involved because of that capacity

unless:

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- (c) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
 - (d) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

16.2. **Insurance**

The Company may pay or agree to pay a premium for a contract insuring a person who is or has been a Director or Secretary of the Company and its subsidiaries against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

17. **Winding-up or dissolution**

If upon the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property, that property will not be paid to or distributed among the members but will be given or transferred to some other institution or institutions:

- (a) having objects similar to the objects of the Company; and
- (b) whose constitution prohibits the distribution of its or their income and property among its or their members to an extent at least as great as imposed under this Constitution,

such institution or institutions to be determined by the members, at or before the time of winding up or dissolution.

Appendix 1

Objects set out in the Memorandum and Articles of Association of the club at Incorporation

“The objects for which the Club is established are:

- (a) To encourage and promote the sport of yachting and boating and cruising for pleasure and the building and sailing of yachts and boats.
- (b) To encourage and promote ocean yacht races and to promote regattas anywhere in the world.
- (c) To purchase take on lease or otherwise acquire land (subject to the provisions of Section 34 of the Companies Act 1936) for the furtherance of the fore-going objects and to provide on such land or elsewhere in a convenient situation a club house or club houses, boat houses, wharves, jetties, piers, boat slips and boat building and repairing sheds, dining and refreshment rooms, garages, libraries and generally all such other buildings and other facilities as may be required for the use and convenience of members of the Club and their friends.
- (d) In furtherance of the objects of the Club to purchase, take on lease, acquire or build and to sell lease or otherwise dispose of boats, yachts, punts and ships of all descriptions.
- (e) To provide for the members of the Club and their friends all of any of the benefits, privileges, advantages, conveniences and accommodation usually to be obtained at a Club of a similar nature including reading, smoking and writing areas, library, residential accommodation and refreshment rooms and sports games and pastimes of all kinds whether indoor or outdoor.
- (f) To supply, buy, prepare, sell and deal in refreshments and provisions and all kinds of liquor (whether intoxication or not) tobacco, cigars, cigarettes, papers, magazines, books and publications, sport equipment, stationery and other articles and things likely to be required by members of the Club and their friends.

Provided that any profits gained from any such sales or dealings shall be used solely in furtherance of the objects of the Club.

- (g) To apply for obtain and hold any licence or licences necessary to be obtained and held for the purpose of effectuating all or any of the objects of the Club including a licence or licences for the sale and consumption of intoxicating liquors and the sale of tobacco, cigars, cigarettes and other commodities and to procure any person or persons to act as licensee or licensees and to hold any such licence or licences on behalf of the Club.
- (h) In furtherance of the objects of the Club to promote either alone or jointly with any other Club association or persons yacht races and boat races

and matches, competitions and exhibitions in relation to yachting and boating and yachts and boats in relation to any other sports or pastimes and to offer, give or contribute to prizes, trophies and awards and to guarantee prize money and expenses in connection with any such races, matches, competitions and exhibitions and generally to foster, promote, encourage and support the sports, yachting and boating and yacht racing and boat racing.

- (i) To promote and foster social intercourse amongst the members of the Club and for such purpose to promote, give and provide concerts, entertainments and amusements, banquets and dinners, balls and dances.
- (j) To provide the members with information and assistance for the arrangements and carrying out of cruises by means of charts, sailing regulations, books relating to cruising and such other means as may from time to time be determined by the Club or the Board of Directors.
- (k) To publish privately for the use of members a journal containing records of yacht races and accounts of cruises and articles and information relating to yachts racing and yachting generally.
- (l) To hire and employ all classes of persons considered necessary for the purpose of the Club and subject to Clause 3 to pay them and to other persons in return for services rendered to the Club salaries, wages, gratuities and pensions.
- (m) Subject to Section 34 of the said Act to invest any moneys of the Club not immediately required for the purposes thereof upon such securities and in such manner as may from time to time be determined and from time to time to vary such investments and dispose of all or any part thereof for the benefit of the Club.
- (n) To sell, improve, manage, develop, lease, mortgage, dispose of, turn to account or otherwise deal with all or any part of the property and rights to the Club, PROVIDED ALWAYS that no portion of the Club's premises which is covered by the Certificate of Registration shall be leased.
- (o) In furtherance of the objects of the Club to establish or promote or assist in the establishing or promoting and to subscribe to or become a member of any other Club or association whose objects are similar or in part similar to the objects of the Club or the establishment of promotion of which may be beneficial to the Club and whose constitution shall prohibit the distribution of its income and property among its members to an extent not less than is provided by Clause 3 of this Memorandum.
- (p) To support and subscribe to any charitable or public body or to any institution or society or Club which may be for the benefit of the Club or its employees or may be connected with the sport of yachting or boating; to give pensions, gratuities or charitable and to any persons who may have served the Club or to the wife, widow, children or other relatives of such persons, to make payments towards insurance; and to form and contribute to provident and benefit funds for the benefit of any persons employed by the Club.

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- (q) To borrow or raise and give security for money by the issue of or upon bonds, debentures, debenture stock, bills of exchange, promissory notes or other obligations or securities of the Club or by mortgage or charge upon all or any part of the property of the Club.
 - (r) To draw, accept, endorse, discount, execute and issue cheques, drafts, orders, promissory notes, bills of exchange, bills of lading warrants, bonds, coupons, debentures and other negotiable or transferable instruments.
 - (s) To pay all costs, charges and expenses of and incidental to or in connection with the incorporation of the Club.
 - (t) To do all such other lawful things as in the opinion of the Club are incidental or conducive to the attainment of the above objects or any of them.”
