



CONSTITUTION

AusTriathlon Ltd

ACN 007 356 907

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CORPORATIONS ACT
COMPANY LIMITED BY GUARANTEE
CONSTITUTION

of

TRIATHLON AUSTRALIA LIMITED ACN 007 356 907

1. NAME

The name of the company is Triathlon Australia Limited (**Company**).

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Constitution unless the contrary intention appears:

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

Affiliated Club means a club or association which is a legal entity whose objects are principally the participation or advancement of the sport of Triathlon and which is a financial member of a STTA.

Annual General Meeting or **AGM** means the annual general meeting of the Company conducted in accordance with **Rule 18**.

Appointed Director means a Director appointed under **Rule 30**.

Aquathlon means the sport comprising the combination of the disciplines of swimming and running.

Aquabike means the sport comprising the combination of the disciplines of swimming and cycling.

Board means the body consisting of the Directors of the Company under **Rule 28**.

Board Meeting means a meeting of the Board in person, by teleconference or by videoconference.

By-Laws means any by-law, regulation or policy made by the Board under **Rule 39**.

Chair means the chair of the Board elected under **Rule 34.3**.

Chief Executive Officer or **CEO** means the chief executive officer or such other person or persons appointed by the Board having such functions as are set out under this Constitution.

Company means Triathlon Australia Limited (ACN 007356 907).

Constitution means this Constitution of the Company.

Delegate means a person elected or appointed from time to time by a STTA to act for and on behalf of that STTA and represent the STTA at General Meetings or otherwise.

Director means a member of the Board elected or appointed in accordance with this Constitution and includes the Elected Directors and the Appointed Directors.

Duathlon means the sport comprising the combination of the disciplines of cycling and running.

Elected Director means a Director elected under **Rule 29**.

Elite Athlete means any person who has:

- represented Australia in Triathlon at the previous Olympic Games, Paralympic Games or Commonwealth Games; or
- received and is in current possession of a valid Triathlon Australia Professional Elite Licence; or
- nominated for an international Triathlon since the previous Olympic Games, Paralympic Games or Commonwealth Games and was approved by Triathlon Australia's National Performance Director for selection and this person is:
 - under the age of 18; or
 - an internationally classified Paratriathlete.

Elite Athletes' Commission or **EAC** means the delegated body of the Company established under **Rule 38** to advise the Board of the interests of Elite Athletes and the effect of its governance policies and decisions on the interests of Elite Athletes.

Financial Year means the year ending 30 June in each year.

General Meeting means the AGM or any SGM of the Company.

Individual Member means an individual who is a financial member of a STTA, or an Affiliated Club.

Intellectual Property means all rights subsisting in copyright, trade names, trademarks, logos, designs, equipment, images (including photographs, videos or films) or service marks (whether registered or registrable) relating to the Company or any event or competition, product, publication, calendar of events or activity (including all Australian Championships) developed, conducted, promoted or administered by the Company.

Life Member means a person appointed to life membership under **Rule 12.3**.

Members means the STTAs, Affiliated Clubs, Individual Members and Life Members, and such other categories of members as created in accordance with **Rule 12.2**.

National Team Member means an Elite Athlete who has been selected to represent Australia during the previous twelve months at one or more of:

- (a) the Olympic Games; or
- (b) the Paralympic Games; or
- (c) the Commonwealth Games; or
- (d) a TRI World Championship race; or
- (e) a TRI World Cup race.

For the avoidance of doubt a National Team Member is also a Professional Athlete.

Nominations Committee means the nominations committee established by the Directors under **Rule 37**, the complete and specific duties, functions and rules of which shall be defined in the By-Laws.

Objects mean the Objects of the Company in **Rule 3**.

Professional Athlete means an Elite Athlete who is an Individual Member and who holds a professional licence issued by the Company in its sole discretion, in accordance with policies determined by the Board from time to time.

Special General Meeting or **SGM** means a meeting of the Company convened in accordance with **Rule 23**.

Special Resolution means a resolution passed in accordance with the Act:

- (a) of which at least twenty-one (21) days' notice has been given; and
- (b) that has been passed by at least seventy-five percent 75% of the votes cast by Members entitled to vote on the resolution.

State means a State or Territory of Australia.

STTAs means Triathlon ACT Inc.; Triathlon New South Wales Limited.; Triathlon Queensland Ltd.; Triathlon SA Inc.; Triathlon NT Inc.; Triathlon Tasmania Inc.; Triathlon Victoria Inc.; and Triathlon Western Australia Inc. or such other incorporated body as may be recognised by the Company as the sole controlling body for the sport of Triathlon in a State and who agree to be bound by this Constitution.

Triathlon means the sport comprising the combination of the disciplines of swimming, cycling and running and includes long distance Triathlon, Cross Triathlon and Winter Triathlon and the sports of Duathlon, Aquathlon, Aquabike and related other multi-sports. Triathlon can be a real life or virtual or electronic competition or activity.

TRI Competition Rules means the competition rules published by TRI as amended from time to time which prescribes the rules and regulations for the conduct of Triathlon races.

TRI Representative means any person who has been elected or appointed to, and is currently serving on, the TRI Executive Board either directly or as a result of Continental Confederation representation. For the avoidance of doubt, this does not include representation on committees, commissions or tribunals.

World Triathlon or **TRI** means the world governing body for Triathlon under the jurisdiction of an international governing body recognised by the International Olympic Committee, Conseil Internationale du Sport Militaire or General Association of International Sports Federations and formerly known as the International Triathlon Union.

2.2 Interpretation

- (a) In this Constitution:
 - (i) a reference to a function includes a reference to a power, authority and duty;
 - (ii) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty;

- (iii) words importing the singular include the plural and vice versa;
 - (iv) words importing any gender include the other genders;
 - (v) references to persons include corporations and bodies politic;
 - (vi) references to a person include the legal personal representatives, successors and permitted assigns of that person;
 - (vii) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any legislative authority having jurisdiction);
- (b) Expressions referring to **writing** shall unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail.
 - (c) If any provision of this Constitution or any phrase contained in it is invalid or unenforceable in any jurisdiction, the phrase or provision is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable, and otherwise shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of the Constitution or affecting the validity or enforceability of that provision in any other jurisdiction.
 - (d) Except where the contrary intention appears in this Constitution, an expression in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act has the same meaning as that provision of the Act.
 - (e) The Company is established solely for the Objects.
 - (f) The replaceable rules referred to in the Act are displaced by this Constitution.

3. OBJECTS

The Objects are to:

- (a) be the national governing body for Triathlon and be recognised as such by the Australian Sports Commission, the Australian Olympic Committee, Paralympics Australia, Commonwealth Games Australia, TRI and;
- (b) become and remain the only Australian affiliate of TRI or its successor or assign, and represent and promote the interests of the members to TRI;
- (c) unite the STTAs, Affiliated Clubs and Individual Members;
- (d) encourage, administer, promote, advance and manage Triathlon in Australia through competition and commercial means;
- (e) ensure that Triathlon in Australia is carried on in a manner, which secures and enhances the safety of participants, officials, spectators and the public and which allow the sports to be competitive and fair;

- (f) adopt, formulate, issue, interpret, implement and amend from time-to-time By-Laws, rules and such other regulations as are necessary for the control and conduct of Triathlon in Australia;
- (g) develop, manage and govern Triathlon in Australia in accordance with and having regard to the rules and regulations of the Company;
- (h) arrange for national championships and the selection of national teams and training squads;
- (i) determine, arrange and publish an annual Australian Triathlon calendar of events;
- (j) pursue through itself or other such entity commercial arrangements, including sponsorship and marketing opportunities, as are appropriate to further the Objects;
- (k) formulate or adopt and implement appropriate policies, including policies in relation to sexual harassment, equal opportunity, equity, drugs in sport, health, safety, infectious diseases and such other matters as arise from time to time as issues to be addressed in Triathlon;
- (l) do all that is reasonably necessary to enable these Objects to be achieved and to enable the Members to receive the benefits which these Objects are intended to achieve;
- (m) co-operate or join with or support any association, organisation, society, individual whose activities or purposes are similar to those of the Company or which advance Triathlon in Australia;
- (n) have regard to the public interest in its operations; and
- (o) undertake and or do all such things or activities as are necessary, incidental or conducive to the advancement of these Objects.

4. CONSTITUTIONAL POWER

- (a) The Company is recognised by the Australian Government including Sport Australia, the Australian Olympic Committee, Paralympics Australia, Commonwealth Games Australia and other government and sporting organisations as the controlling body in Australia for Triathlon.
- (b) The Company is the only Australian national sporting body affiliated to TRI in respect of Triathlon under the provisions of the constitution of TRI.
- (c) The Company has, under its affiliation to TRI, agreed to be bound by the constitution of TRI.
- (d) The Company will use its best endeavours to comply with and be bound by the standards and technical requirements set out in the TRI Competition Rules and will apply where possible those standards and technical requirements to all Triathlon races in Australia that are sanctioned by the Company.
- (e) The Company is empowered, subject to consideration by its technical committee to grant or withhold race sanctioning in respect of all Triathlon races conducted in Australia. The Company may delegate certain responsibilities in respect of race sanctioning to STTAs.

- (f) The Company will, to the best of its ability, uphold and enforce the policies and procedures as published from time to time by TRI.
- (g) The Company will, to the best of its ability, uphold and enforce the doping policy of TRI and will, to the best of its ability ensure that its Members uphold the doping policy of TRI.
- (h) In respect of any Triathlon race to be conducted in Australia the Company will accept as valid any race licence issued by TRI to any competing Elite Athlete.
- (i) The Company is empowered to require the Members to uphold and comply with all of the provisions of this Constitution, to the extent permitted by the laws governing the Members in the jurisdiction in which they reside, are formed or operate, as the case may be.

5. GENERAL POWERS

- (a) Solely for furthering the Objects the Company has the legal capacity and powers of a company limited by guarantee set out under section 124 of the Act.
- (b) Without limiting the powers of the Company under **Rule 5(a)**, it is expressly acknowledged that the Company shall be empowered to publish, from time to time, such rules, By-Laws and procedures as it may in its absolute discretion deem appropriate for the proper organisation and administration of Triathlon in Australia. Those rules, By-Laws and procedures shall include, but not be limited to:
 - (i) the sanctioning rules adopted by the Company from time to time;
 - (ii) the integrity policies adopted by the Company; and
 - (iii) any other policies and procedures adopted by the Company.
- (c) As the governing body in Australia for Triathlon the Company will oversee, manage and control the national operation of Triathlon and Australia's international representation in Triathlon and is empowered to ensure compliance by the Members with this Constitution as amended from time to time and the rules, By-Laws and procedures established under this Constitution as amended from time to time.

6. APPLICATION OF PROPERTY AND INCOME

- (a) The income and property of the Company must be applied solely towards the promotion of the Objects.
- (b) No portion of the income or property of the Company may be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any Member.
- (c) No remuneration or other benefit in money or money's worth may be paid or given by the Company to any Member who holds any office of the Company.
- (d) Nothing contained in **Rules 6(a)** or **6(c)** prevents payment in good faith of or to any Member:
 - (i) for any services actually rendered to the Company whether as an employee or otherwise;

- (ii) for goods supplied to the Company in the ordinary and usual course of business;
- (iii) of interest on money borrowed from any Member;
- (iv) of rent for premises demised or let by any Member to the Company;
- (v) for any out-of-pocket expenses incurred by the Member on behalf of the Company;

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

7. ADDITION, ALTERATION OR AMENDMENT

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

8. LIABILITY OF MEMBERS

The liability of the Members is limited.

9. MEMBER'S CONTRIBUTIONS

Every Member undertakes to contribute to the assets of the Company in the event of it being wound up while a Member, or within one year after ceasing to be a Member for payment of the debts and liabilities of the Company contracted before the time at which it ceases to be a Member, and the costs, charges and expenses of winding up and for an adjustment of the rights of contributors among themselves, such amount as may be required not exceeding one dollar (\$1).

10. DISTRIBUTION OF PROPERTY ON WINDING UP

If upon winding up or dissolution of the Company there remains after satisfaction of all its debts and liabilities any assets or property, the same shall not be paid to or distributed amongst the Members but shall be paid to or distributed to an organisation or organisations having objects similar to the Objects of the Company and which prohibits the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company by **Rule 6** and which is also not carried on for profit and which is similarly exempt (or entitled to be exempt) from income tax. Such organisation will be determined by the Members at or before the time of dissolution, and in default thereof by such judge of the Supreme Court of New South Wales as may have or acquire jurisdiction in the matter.

11. ACCOUNTS

True accounts shall be kept of the sums of money received and expended by the Company and the manner in respect of which such receipt and expenditure takes place and of the property, assets and liabilities of the Company. Once at least in every year the accounts of the Company shall be examined by one or more properly qualified auditor or auditors who shall report to the Members in accordance with the provisions of the Act.

12. MEMBERS

12.1 *Categories of Members*

Membership of the Company is divided into the following categories:

- (a) the STTAs, which subject to this Constitution must be represented by their Delegates who may attend, debate and vote at General Meetings for, and on behalf of, the STTAs;
- (b) the Affiliated Clubs, which subject to this Constitution may appoint a representative to attend General Meetings, but have no right to debate or vote at General Meetings;
- (c) Individual Members, who subject to this Constitution may attend General Meetings, but have no right to debate or vote at General Meetings;
- (d) Life Members, who subject to this Constitution may attend and debate at General Meetings, but have no right to vote at General Meetings; and
- (e) such other categories of Member as may be created from time to time under **Rule 12.2**.

12.2 *Creation of new categories*

- (a) Subject to **Rule 12.2(b)**, the Board may create new categories of membership from time to time with such rights, privileges and obligations as the Board may determine, even if the effect of creating a new category is to alter rights, privileges or obligations of an existing category of Members.
- (b) Any new category of membership established by the Board under **Rule 12.2(a)** may not be granted voting rights at General Meetings.

12.3 *Life Members*

- (a) Each year the Board will call for nominations from STTAs for persons to be considered for life membership of the Company. The Board may recommend to the AGM that one or more persons duly nominated who has rendered distinguished or special service to Triathlon at the national level, have life membership conferred on them.
- (b) A resolution of an AGM to confer life membership must be passed by Special Resolution. Unless there is agreement from all voting members that it is not required, the vote on such resolution will be taken by secret ballot.
- (c) Conditions, obligations and privileges of life membership (if any) shall be as prescribed in the By-Laws.

12.4 *Affiliated Clubs and Individual Members*

Affiliated Clubs and Individual Members shall be deemed Members of the Company upon being accepted as members of their respective STTA. In applying for membership of a STTA, Affiliated Clubs and Individual Members shall consent to being Members of the Company. Each STTA shall require as a condition of membership that all Affiliated Clubs and Individual Members consent to being Members of the Company.

12.5 Membership Renewal

To remain Members, Individual Members and Affiliated Clubs must:

- (a) renew their membership with their respective STTA annually; and
- (b) otherwise remain registered financial members of their STTA in accordance with the procedures applicable from time to time; and
- (c) must pay the annual fees prescribed by the Company from time to time (if any) to the Company through their respective STTA. For the removal of doubt this Clause does not prevent STTAs and Affiliated Clubs from requiring payment to them by their members of annual fees prescribed by the STTAs and Affiliated Clubs.

13. STATE & TERRITORY ASSOCIATIONS

13.1 Recognition of STTAs

The entity which is recognised by the Company as the only official representative of, and controlling authority for, Triathlon in a State (in the Board's sole discretion, which shall be exercised reasonably) is or shall be recognised as a Member and shall administer Triathlon in that particular State in accordance with the Objects. Each STTA shall be named according to the State in which it is located.

13.2 Obligations of STTAs

Each STTA must:

- (a) be incorporated in its particular State;
- (b) elect or appoint one (1) Delegate to represent it at General Meetings in accordance with this Constitution;
- (c) provide the Company with copies of its annual statement of accounts (and if audited, a copy of its audited annual statement of accounts), annual report and other associated documents required to be lodged with the STTA's registering Governmental authority or agency, within 30 days of the STTA's annual general meeting, or such further time as is agreed between the Company and the STTA;
- (d) abide by and adopt rules which reflect and which are generally in conformity with this Constitution, the By-Laws and any determination, resolution or policy which may be made or passed by the Board or at a General Meeting;
- (e) apply its property and capacity in pursuit of the Objects and Triathlon;
- (f) act in good faith and with loyalty to ensure the maintenance and enhancement of the Company and Triathlon, its standards, quality and reputation for the collective and mutual benefit of the Members and Triathlon;
- (g) act at all times in accordance with all requirements that may be imposed on it by applicable State or Commonwealth law;
- (h) at all times act on behalf of and in the interests of the Members and the sport of Triathlon;

- (i) provide a copy of the STTA's current constitution, details of any amendment to its constitution within 30 days of the amendment and full details of the current office bearers of the STTA from time to time;
- (j) maintain, in a form and with such details as are reasonably acceptable to the Company, a register of all Affiliated Clubs and Individual Members in its State; and
- (k) subject to privacy considerations, provide a copy of the register at a time and in a form acceptable to the Company, and provide prompt and regular updates of that register to the Company when reasonably requested by the Company.

13.3 Operation of Rules

The Company and each STTA agrees:

- (a) that they are bound by this Constitution and that this Constitution operates to create mutual trust, confidence and uniformity in the way in which the Objects and Triathlon are to be conducted, encouraged, promoted and administered in Australia;
- (b) to act in good faith and with loyalty to each other to ensure the maintenance and enhancement of the standards, quality and reputation of Triathlon for the collective and mutual benefit of the Members and Triathlon;
- (c) not to do or permit to be done any act or thing which might adversely affect or derogate from the standards, quality and reputation of Triathlon and its maintenance and enhancement;
- (d) to make full and proper disclosure to each other of all matters of importance to the Company and Triathlon;
- (e) not to acquire a private advantage at the expense of any of the Company or any other STTA or Triathlon;
- (f) to promote the economic and sporting success, strength and stability of each other and to act interdependently with each other in pursuit of the Objects;
- (g) to act for and on behalf of the interests of Triathlon, the Company and the Members;
- (h) that should a STTA have administrative, governance, operational or financial difficulties, including but not limited to where a STTA:
 - (i) takes or has taken or has instituted against it any action or proceeding, whether voluntary or compulsory, having as its object the winding up of the STTA; or enters into a composition or arrangement with its creditors, other than a voluntary winding up by members for the purpose of reconstruction or amalgamation; or
 - (ii) has a mortgagee or other creditor takes possession of any of its assets,

the Company may, at the written request of the STTA act to assist that STTA including, where permitted by law, by appointing an external manager to the STTA.

14. SUBSCRIPTION AND FEES

- (a) The Board shall determine the annual subscription (if any) and fees payable by Members (or any category of Members) to the Company, and the time for and

manner of payment. For the removal of doubt the annual subscription and fees referred to in this Rule do not include the annual subscription and fees by STTAs or Affiliated Clubs as being payable to them by their members.

- (b) Any Member which or who has not paid all money due and payable by that Member to the Company will (subject to the Board's discretion, which shall be exercised reasonably) have all rights under this Constitution (including the right to vote at General Meetings) immediately suspended from the expiry of the time prescribed for payment of that money. The Member's rights will be suspended until the money is fully paid or otherwise in the Board's discretion. In the meantime, the Member will have no automatic right to resign from the Company, and will be dealt with in the Board's discretion, which includes the right to expel, suspend, disqualify, fine, discipline or retain that Member as a Member, or impose such other conditions or requirements as the Board considers appropriate.

15. EFFECT OF MEMBERSHIP

Members acknowledge and agree that:

- (a) the Constitution constitutes a contract between each of them and the Company and that they are bound by the Constitution and the By-laws;
- (b) they must comply with and observe the Constitution, the By-Laws, policies and any determination or resolution which may be made or passed by the Company or by the Board;
- (c) by submitting to the Constitution and the By-Laws they are subject to the jurisdiction of the Company;
- (d) the Constitution is made in the pursuit of a common object, namely the mutual and collective benefit of the Company, the Members and Triathlon;
- (e) the Constitution and By-Laws are necessary and reasonable for promoting the Objects and particularly the advancement and protection of Triathlon;
- (f) neither membership of the Company nor this Constitution gives rise to:
 - (i) any proprietary right of Members in, to or over the Company or its property or assets; or
 - (ii) any expectation or automatic right of a Member to renewal of their membership of the Company; or
 - (iii) subject to the Act and the Company acting in good faith, the right of Members to natural justice, unless expressly provided for in this Constitution; and
- (g) they are entitled to all benefits, advantages, privileges and services of Company membership.

16. DISCONTINUANCE OF MEMBERSHIP

16.1 *Notice of Resignation*

Subject to this Constitution any Member which or who has paid all money due and payable to the Company and has no other liability (contingent or otherwise) to the Company may

resign from the Company by giving three (3) months' notice in writing to the Company of such intention to withdraw or resign. Upon the expiration of that period of notice, the Member shall cease to be a Member. A Life Member who has paid all money due and payable to the Company may resign by notice in writing with immediate effect.

16.2 Expiration of Notice Period

Subject to **Rule 16.3** upon the expiration of any notice period applicable under **Rule 16.1** an entry, recording the date on which the Member who or which gave notice ceased to be a Member shall be recorded in the register of Members.

16.3 Failure to Re-Affiliate

If an Affiliated Club has not re-affiliated with its STTA or an Individual Member has not renewed their STTA membership within one (1) month of re-affiliation or membership renewal falling due, that Member's membership of the Company will be deemed to have lapsed from that time.

16.4 Member to Re-Apply

A Member whose membership has been discontinued or has lapsed under **Rule 16.3** must seek renewal or re-apply for membership in accordance with these Rules.

16.5 Delegate Position Lapses

The position of a Delegate of a STTA lapses immediately on cessation of membership of the STTA.

16.6 Cessation of Membership

Where a STTA or Affiliated Club ceases to be a Member in accordance with this Constitution or the Act, the Individual Members and Affiliated Clubs of that STTA may cease or remain Members to the extent (if any) and for such time (if any) as is determined in the sole discretion of the Board. The discretion of the Board in this Rule shall be exercised reasonably.

16.7 Forfeiture of Rights

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

16.8 Reinstatement of Membership

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

17. DISCIPLINE OF MEMBERS

Where the Board is advised or considers that a Member has allegedly:

- (a) breached, failed, refused or neglected to comply with a provision of this Constitution, the By-Laws or any resolution or determination of the Board or any duly authorised committee; or
- (b) acted in a manner unbecoming of a Member or prejudicial to the Objects and interests of the Company and/or Triathlon; or
- (c) brought themselves, the Company or Triathlon into disrepute;

the Board may commence or cause to be commenced investigatory and/or disciplinary proceedings against that Member, and that Member will be subject to, and submits unreservedly to the jurisdiction, procedures, penalties and appeal mechanisms (if any) of the Company as may be set out in the By-Laws or as may be otherwise determined by the Board.

18. GENERAL MEETINGS

18.1 Powers of the General Meeting

- (a) The Members in General Meeting must act in accordance with the Objects and for the mutual and collective benefit of the Members and Triathlon. The Members in General Meeting may in addition to its other powers and functions under the Act:
 - (i) elect and dismiss Directors in accordance with this Constitution and the Act;
 - (ii) alter the Constitution in accordance with this Constitution;
 - (iii) consider and if considered appropriate, endorse the strategic plan;
 - (iv) consider and pass or reject any proposed Special Resolutions including any Special Resolution to alter this Constitution; and
 - (v) admit or remove new STTAs as Members.
- (b) An AGM of the Company must be held in accordance with the provisions of the Act and this Constitution and on a date and at a venue and by such medium as determined by the Board.
- (c) All General Meetings other than the AGM shall be SGMs and shall be held in accordance with this Constitution.
- (d) The Company may hold a General Meeting at two or more venues using any technology that gives the Delegates as a whole a reasonable opportunity to participate.

19. DELEGATES

19.1 Appointment of Delegates

Each STTA must appoint one (1) Delegate for such term as is deemed appropriate by the STTA. A Delegate must:

- (a) be an Individual Member of the STTA that appoints the Delegate;
- (b) be appropriately empowered by the appointing STTA to consider, make decisions and vote at General Meetings on its behalf; and

- (c) not be a Director.

19.2 STTA to Advise

Each STTA shall, at least forty-eight (48) hours prior to any General Meeting, advise the CEO of its appointed Delegate.

20. NOTICE OF GENERAL MEETING

20.1 Notice of General Meetings

- (a) Notice of every General Meeting must be given to Members in accordance with **Rule 49** at the address appearing in the register kept by the Company. No other person is entitled as of right to receive notices of General Meetings.
- (b) Subject to the provisions of the Act regarding agreements for shorter notice periods, not less than twenty-one days' written notice (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) must be given of any General Meeting. The notice must:
- (i) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - (ii) state the general nature of the meeting's business; and
 - (iii) if a Special Resolution is to be proposed at the meeting, set out an intention to propose the Special Resolution and state the resolution.

20.2 Entitlement to Attend General Meeting

Notwithstanding any other rule, a Member (including a STTA) has no entitlement to be represented at, or take part in a General Meeting, unless all money then due and payable to the Company by the Member has been paid.

21. BUSINESS

21.1 Business of General Meetings

- (a) The business to be transacted at the AGM includes the consideration of accounts, reports of the Board (including in relation to the activities of the Company during the last preceding Financial Year) and auditors, appointment of the auditor and the election of the Directors and admission of Life Members.
- (b) All business that is transacted at a General Meeting, and also all that is transacted at the AGM, with the exception of those matters set out in **Rule 21.1(a)** shall be special business. **Special business** is business of which a notice of motion has been submitted in accordance with **Rule 22**.

21.2 Business Transacted

No business other than that stated on the notice can be transacted at that meeting.

22. NOTICES OF MOTION

All notices of motion for inclusion as special business at a General Meeting must be submitted in writing (in the required form) to the CEO not less than forty-five (45) days (excluding receiving date and meeting date) prior to the General Meeting.

23. SPECIAL GENERAL MEETINGS

23.1 *SGMs May be Held*

The Board may, whenever it thinks fit, convene a SGM of the Company and, where, but for this rule more than fifteen (15) months would elapse between AGMs, shall convene a SGM before the expiration of that period.

23.2 *Requisition of SGMs*

- (a) The Board must on the requisition in writing of the majority of STTAs convene a SGM.
- (b) The requisition for a SGM must state the object(s) of the meeting, be signed by the STTAs making the requisition and be sent to the Company. The requisition may consist of several documents in a like form, each signed by one (1) or more of the STTAs making the requisition.
- (c) If the Board does not cause a SGM to be held within three (3) months after the date on which the requisition is sent to the Company, the STTAs making the requisition, or any of them, may convene a SGM to be held not later than three (3) months after that date. A SGM convened by STTAs under this Constitution shall be convened in the same manner, or as nearly as possible as that, in which meetings are convened by the Board.

24. STAKEHOLDER FORUM

24.1 *Power to convene Stakeholder Forums*

The Directors may from time to time convene a Stakeholder Forum to proactively engage and collaborate with Members.

24.2 *Notice of Stakeholder Forums*

- (a) The Directors may determine the notice, if any, provided to Members (or categories of Members) for a proposed Stakeholder Forum, including the period and method of notice.
- (b) The notice may include the purpose and intent of a particular Stakeholder Forum, including any proposed items for discussion, in addition to the purposes outlined in **clause 24.1**.

24.3 *Conduct of a Stakeholder Forum*

- (a) The format of proceedings at a Stakeholder Forum shall be at the discretion of the Directors.
- (b) The Directors shall determine who shall chair the Stakeholder Forum, including who shall lead or facilitate particular discussion items.

- (c) A Stakeholder Forum is not a General Meeting and there is no quorum requirement for a Stakeholder Forum.
- (d) Items for discussion which were not included in the notice issued under **clause 24.2** (if any) may, with the permission of the chair, be raised for discussion.

25. PROCEEDINGS AT GENERAL MEETINGS

25.1 Quorum

No business may be transacted at any General Meeting unless a quorum is present at the time when the meeting proceeds to business. A quorum for General Meetings of the Company shall be the majority of STTAs present.

25.2 Board Chair to Preside

Subject to this Constitution, the Chair appointed under **Rule 34.3** must preside as Chair at every General Meeting of the Company. If the Chair is not present, or is unwilling or unable to preside, the Directors must choose one (1) of their number present who must, subject to this Constitution, preside as chair for that meeting only.

25.3 Adjournment of Meeting

- (a) If within half an hour from the time appointed for the General Meeting a quorum is not present, the meeting must be adjourned to such other day and at such other time and place as the chair of the meeting may determine. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the meeting will lapse.
- (b) The chair of the meeting may, with the consent of any General Meeting at which a quorum is present, and must, if so directed by the meeting, adjourn the meeting from time to time and from place to place but no business must be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a General Meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- (d) Except as provided in **Rule 25.3(c)** it is not necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

25.4 Voting Procedure

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 (before or on the declaration of the result of the show of hands) demanded by the:

- (a) chair of the meeting; or
- (b) majority of the Delegates.

25.5 Recording of Determinations

Unless a poll is demanded under **Rule 25.4**, a declaration by the chair of the meeting that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the

proceedings of the Company will be conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution.

25.6 *Where Poll Demanded*

If a poll is duly demanded under **Rule 25.4** it must be taken in such manner and either at once or after an interval or adjournment or otherwise as the chair of the meeting directs and the result of the poll will be the resolution of the meeting at which the poll was demanded.

25.7 *Resolutions at General Meetings*

Except where a Special Resolution is required, all questions at General Meetings must be determined by a majority of votes (as set out in **Rule 26**).

25.8 *Minutes*

The CEO must keep minutes of the resolutions and proceedings of each General Meeting in books provided for that purpose, together with a record of the names of persons present at all meetings.

26. VOTING AT GENERAL MEETINGS

Subject to this Constitution each STTA represented at a General Meeting is entitled to one (1) vote at General Meetings. No other Member (including the Directors) is entitled to a deliberative vote, but subject to this Constitution will have, and be entitled to exercise, those rights set out in **Rule 12.1**.

26.1 *Casting Vote*

In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting will have a casting vote.

26.2 *Disallowance of Vote*

A challenge to a right to vote at a General Meeting:

- (a) may only be made at the meeting; and
- (b) must be determined by the chair of the meeting whose decision is final.

Every vote not so disallowed is valid for all purposes.

26.3 *Proxy Voting*

Proxy voting shall be permitted at General Meetings in such manner as directed by the Board from time to time.

26.4 *Written Resolutions*

The Company may pass a resolution without a General Meeting being held if all Delegates sign a document containing a statement that they are in favour of the resolution set out in the document. The provisions of this Rule do not apply to a resolution to remove the auditor.

26.5 *Separate Documents*

Separate copies of the document may be used for signing by Delegates if the wording of the resolution statement is identical on each copy. The resolution is passed when the last Delegate signs.

27. VIRTUAL MEETINGS OF THE COMPANY

27.1 *Virtual Meeting*

- (a) A General Meeting or a Directors' Meeting may be held by means of a Virtual Meeting, provided that:
 - (i) the number of Members or Directors (as applicable) participating is not less than a quorum required for a General Meeting or Directors' Meeting (as applicable); and
 - (ii) the meeting is convened and held in accordance with the Corporations Act.
- (b) All provisions of this Constitution relating to a meeting apply to a Virtual Meeting in so far as they are not inconsistent with the provisions of this **clause 27**.

27.2 *Conduct of Virtual Meeting*

The following provisions apply to a Virtual Meeting of the Company:

- (a) all persons participating in the meeting must be linked by telephone, audio-visual or other instantaneous means for the purpose of the meeting;
- (b) each of the persons taking part in the meeting must be able to hear and be heard by each of the other persons taking part at the commencement of the meeting and each person so taking part is deemed for the purposes of this Constitution to be present at the meeting;
- (c) at the commencement of the meeting each person must be distinguishable to the chair;
- (d) a person may not leave a Virtual Meeting by disconnecting his or her telephone, audio-visual or other communication equipment unless that person has previously notified the chair;
- (e) a person may conclusively be presumed to have been present and to have formed part of a quorum at all times during a Virtual Meeting unless that person has previously notified the chair of leaving the meeting; and
- (f) a minute of proceedings of a Virtual Meeting is sufficient evidence of the proceedings and of the observance of all necessary formalities if the minute is certified to be a correct minute by the chair.

28. POWERS AND COMPOSITION OF THE BOARD

28.1 *Powers of the Board*

Subject to the Act and this Constitution the business of the Company will be managed, and the powers of the Company will be exercised, by the Board. In particular, the Board as the

controlling authority of the Company will be responsible for acting on all national issues in accordance with the Objects and will operate for the collective and mutual benefit of the Company and Triathlon throughout Australia and must:

- (a) govern Triathlon in accordance with the Objects;
- (b) enact the strategic direction of the Company as endorsed by the General Meeting;
- (c) by itself or by delegation to a committee, formulate, approve, issue, adopt, interpret and amend such By-Laws, regulations and policies for the proper advancement, management administration of the Company, the advancement of the Objects and Triathlon as it thinks is necessary or desirable;
- (d) review the Company's performance in achieving its pre-determined aims, objectives, By-Laws and policies;
- (e) manage the Company's international responsibilities.

28.2 Composition of the Board

The Board will comprise not less than six (6) but no more than nine (9) Directors as follows:

- (a) six (6) Elected Directors who will be elected under **Rule 29**; and
- (b) up to three (3) Appointed Directors who may be appointed in accordance with **Rule 30**.

The Board may determine the interests of the Company are best served by the allocation of titles and portfolios to Directors. The Board may vary the titles and portfolios of each of the Directors in accordance with the needs of the Company from time to time.

28.3 Qualifications for Directors

- (a) Candidates for Director positions on the Board must meet any qualifications as may be prescribed from time to time by the Board and set out in the By-Laws and must have specific skills and experience that complement the current composition of the Board, which may include skills and experience in commerce, finance, marketing, law or business generally or such other skills identified by the Board which complement the Board composition, but which need not include experience in or exposure to Triathlon. Candidates for Director positions do not need to be Members of the Company when they apply but, if they are successful, they must become Members of the Company as soon as practicable after their election or appointment.
- (b) Candidates for Director positions on the Board must declare any position or other material personal interest they hold in a STTA, including as an office bearer, director or paid appointee. If the candidate is elected or appointed as a Director, they must resign from any position held in a STTA.
- (c) Notwithstanding their description as an Elected or Appointed Director all Directors must be independent, and be seen to be independent, of any interests in Triathlon and must be aware of, and meet, their duties as Directors under this Constitution and the Act.
- (d) A former CEO is not eligible to be a Director until three (3) years have expired since they ceased being CEO.

- (e) A Director who has served the maximum number of terms that they may serve under **Rule 31** of this Constitution is not eligible for election or appointment as a Director until three (3) years have expired since they ceased being a Director.

28.4 Nominations Committee

- (a) A Nominations Committee shall be formed, the role of which shall include the task of assessing all candidates for Elected Director and Appointed Director positions (including casual vacancies). The Nominations Committee has power to determine that a candidate is not appropriate for further consideration by the Company, the Directors or the Members but only if the decision of the Nominations Committee is unanimous.
- (b) The complete and specific duties, functions and rules of the Nominations Committee are set out in the By-Laws.

29. ELECTION OF ELECTED DIRECTORS

- (a) The Company Secretary must call for nominations for Elected Director positions at least sixty (60) days before the date of the AGM. All STTAs must be notified of the call for nominations.
- (b) Any Member may nominate a person to fill an Elected Director position that is to be the subject of an election at the next AGM.
- (c) STTAs shall have regard to gender equity amongst the membership of the Board when nominating candidates for election to the Board.
- (d) Nominations for Elected Director positions must be:
 - (i) on the prescribed form provided by the Company for that purpose (if any);
 - (ii) signed by the Member who is nominating the nominee; and
 - (iii) signed by the nominee (who must be a Member or become a Member, if they are elected) expressing their willingness to accept the position for which they have been nominated.
- (e) Nominations must be received by the Company Secretary at least forty-two (42) days prior to the AGM.
- (f) If the number of nominations received for Elected Director positions is equal to the number of vacancies to be filled or if there are insufficient nominations received to fill all Elected Director vacancies on the Board, then those nominated must only be elected if they are elected by STTAs by secret ballot conducted in accordance with **Rule 29(g)**. If nominees are not elected or if there are vacancies to be filled, **Rule 33** applies.
- (g) If the number of nominations exceeds the number of vacancies to be filled, a secret ballot shall be taken in such usual and proper manner as the chair of the meeting directs.
- (h) The voting shall be conducted by exhaustive ballot, the procedure for which will be detailed in the By-Laws.

30. APPOINTMENT OF APPOINTED DIRECTORS

- (a) Appointed Directors may be appointed by the Board in accordance with its requirements from time to time, however always in accordance with this Constitution.
- (b) A Director appointed under this Rule cannot be a person who, within the previous twelve (12) months, was an unsuccessful nominee for the position of an Elected Director unless such appointment is approved by a majority of STTAs.
- (c) In appointing Appointed Directors under this Constitution, the Board shall have regard to the desire to achieve gender equity amongst the membership of the Board.

31. TERMS OF OFFICE

- (a) All Directors other than those appointed under **Rule 28.2(b)** shall hold office for a three (3) year term.
- (b) Directors appointed under **Rule 28.2(b)** shall hold office for such term as is determined by the Directors appointing them but in any event for a maximum of three (3) years.
- (c) Subject to **Rule 31(d)** all Directors shall, upon the expiration of their respective terms of office, be eligible for re-election for a maximum of ten (10) consecutive years.
- (d) Notwithstanding **Rule 31(c)**, where a Director is also a TRI representative they may serve a maximum of twelve (12) years.
- (e) Two (2) Elected Directors shall retire each year so after three (3) years all six (6) Elected Directors will have retired. Subject to this Constitution retiring Directors are eligible for re-election or reappointment.
- (f) Should any adjustment to the term of Directors elected under this Constitution be necessary to ensure rotational terms in accordance with this Constitution, this shall be determined by the Board. If the Board can not determine as between Directors who have been in office for the same period, those to retire are to be selected by lot. Elections to subsequent Boards shall then proceed in accordance with the procedures in this Constitution with approximately half the Board retiring each year.
- (g) Subject to this Constitution the Directors are not entitled to be paid remuneration. The Directors may be paid travelling and other expenses that they properly incur in:
 - (i) attending Board Meetings or any meetings of committees of the Board;
 - (ii) attending any General Meetings; or
 - (iii) connection with the Company's business.

32. VACATION OF OFFICE OF DIRECTOR

32.1 *Grounds for termination of a Director*

The office of a Director is automatically vacated if the Director:

- (a) becomes bankrupt; or
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
- (c) resigns office by written notice to the Company at its registered office; or
- (d) becomes prohibited from being a director by virtue of the Act; or
- (e) accepts remuneration, payment or other benefits, other than prize money from the Company other than in accordance with this Constitution; or
- (f) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest in the manner required by this Constitution; or
- (g) is removed from office by Special Resolution under **Rule 32.2**; or
- (h) dies.

32.2 Removal of a Director

- (a) The Company in a General Meeting may remove any Director, before the expiration of their term of office, in accordance with the provisions of the Act. If a Director is removed in accordance with this Rule the office of the Director becomes vacant and shall be filled in accordance with **Rule 33**.
- (b) Where the Director to whom a proposed resolution referred to in **Rule 32.2(a)** makes representations in writing to the CEO and requests that such representations be notified to the Members, the CEO may send a copy of the representations to each Individual Member or, if they are not so sent, the Director may require that they be read out at the meeting, and the representations shall be so read.

33. CASUAL VACANCIES

- (a) In the event of a vacancy or the death, removal, resignation or disqualification from office of a Director, the Board may appoint a new Director, to fill the casual vacancy. Such new Director will hold office for the balance of the term of the Director who has vacated the Board.
- (b) In the event of a vacancy or vacancies in the office of Directors, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a Board Meeting, they may act only for the purpose of ensuring the number of Directors are a number sufficient to constitute a quorum. Vacancies will be filled in accordance with this Constitution.

34. MEETINGS OF THE BOARD

34.1 Board to Meet

The Board shall meet as often as is deemed necessary, but at least five (5) times, in every calendar year for the dispatch of business and may adjourn and, subject to this Constitution otherwise regulate, its meetings as it thinks fit. The CEO shall, on the requisition of two (2) Directors, convene a meeting of the Board within a reasonable time.

34.2 Notice of Board Meetings

Unless all Directors agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their presence) not less than seven (7) days oral or written notice of the meeting of the Board shall be given to each Director by the CEO. The agenda shall be forwarded to each Director not less than three (3) days prior to such meeting.

34.3 Chair of Board

- (a) The Directors must at the first Board meeting after the AGM annually elect one (1) of their number to be the Chair by a majority vote.
- (b) The Director elected to be Chair under **Rule 34.3(a)** will, subject to remaining a Director, remain Chair for one (1) year from the date of their election until the first Directors' meeting after the following AGM and shall chair any meeting of Directors.
- (c) Despite **Rule 34.3(b)**, if:
 - (i) there is no person elected as Chair; or
 - (ii) the Chair is not present within 15 minutes after the time appointed for the holding of the meeting; or
 - (iii) the Chair is unwilling to act;

the Directors present may elect one (1) of their number to be chair of the meeting.
- (d) A Director elected as Chair may be re-elected as Chair in following years, so long as they remain a Director.

34.4 Decisions of Board

Subject to this Constitution, questions arising at any meeting of the Board shall be decided by a majority of votes and all questions so decided shall for all purposes be deemed a determination of the Board. All Directors shall have one (1) vote on any question. The Chair shall also have a casting vote where voting is equal.

34.5 Resolutions not in Meeting

- (a) A resolution in writing, signed or assented to by any form of visible or other electronic communication by all the Directors shall be as valid and effectual as if it had been passed at a Board Meeting duly convened and held. Any such resolution may consist of several documents in like form each signed by one (1) or more of the Directors.
- (b) Without limiting the power of the Board to regulate their meetings as they think fit, a Board Meeting may be held where one (1) or more of the Directors is not physically present at the meeting, provided that:
 - (i) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously, whether by means of telephone or other form of communication;
 - (ii) notice of the meeting is given to all the Directors entitled to notice in accordance with the usual procedures agreed upon or laid down from time to

time by the Board and such notice specifies that Directors are not required to be present in person;

- (iii) if a failure in communications prevents the condition in **Rule 34.5(b)(i)** from being satisfied by that number of Directors which constitutes a quorum, and none of such Directors are present at the place where the meeting is deemed by virtue of the further provisions of this Rule to be held, then the meeting shall be suspended until the condition in **Rule 34.5(b)(i)** is satisfied again. If such condition is not satisfied within fifteen (15) minutes from the interruption the meeting shall be deemed to have terminated;
- (iv) any meeting held where one (1) or more of the Directors is not physically present shall be deemed to be held at the place specified in the notice of meeting provided a Director is there present and if no Director is there present the meeting shall be deemed to be held at the place where the chair of the meeting is located.

34.6 Quorum

At meetings of the Board the number of Directors whose presence (or participation under **Rule 34.5**) is required to constitute a quorum is the majority of the Directors but, where casual vacancies exist, shall be a minimum of three (3) Directors.

34.7 Validity of Board Decisions

A procedural defect in decisions taken by the Board shall not result in such decision being invalidated.

34.8 Minutes

The Board will cause minute books to be kept in which the Company records within one (1) month:

- (a) proceedings and resolutions of General Meetings and other meetings of Members; and
- (b) proceedings and resolutions of Board Meetings (including meetings of a committee of the Board); and
- (c) resolutions passed by Members without a meeting; and
- (d) resolutions passed by the Board without a meeting.

The Board must ensure that minutes of a meeting are signed within a reasonable time after the meeting by the chair of the meeting or the chair of the next meeting. The Board must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution was passed.

35. CONFLICTS OF INTEREST

35.1 Directors' Interests

A Director is disqualified by holding any place of profit or position of employment in the Company, any STTA or in any company or incorporated association in which the Company is a shareholder or otherwise interested or by holding any position in a STTA (including an office bearer, director or paid appointee) from contracting with the Company either as

vendor, purchaser or otherwise except with express resolution of approval of the Board. Any such contract or any contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested shall, to the extent permitted by law, be voided for such reason.

35.2 Conflict of Interest

A Director shall declare any material personal interest they have or may have in any matter before the Board and/or in which a conflict of interest arises or may arise, and shall, unless otherwise determined by the Board, absent themselves from discussions of such matter and shall not be entitled to vote in respect of such matter. If the Director votes, the vote shall not be counted. In the event of any uncertainty as to whether it is necessary for a Director to absent themselves from discussions and refrain from voting, the issue should be immediately determined by vote of the Board, or if this is not possible, the matter shall be adjourned or deferred.

35.3 Disclosure of Interests

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

35.4 General Disclosure

A general notice that a Director is a member of any specified firm or company and is to be regarded as interested in all transactions with that firm or company is sufficient declaration under **Rule 35.3** as regards such Director and the said transactions. After such general notice it is not necessary for such Director to give a special notice relating to any particular transaction with that firm or company.

35.5 Recording Disclosures

The CEO shall record in the minutes and in the Company's conflicts register any declaration made or any general notice given by a Director in accordance with **Rules 35.3** and **35.4**.

36. CHIEF EXECUTIVE OFFICER

36.1 Appointment of CEO

The CEO shall be appointed by the Board for such term and on such conditions as it thinks fit. The CEO, shall be entitled to notice of, attend and participate in debate at, all meetings of the Board, but shall have no entitlement to vote.

36.2 Company Secretary

The Board shall appoint at least one (1) company secretary who may be the CEO.

36.3 Broad Power to Manage

The Company shall be managed by the CEO who may exercise all powers of the Company which are not, under the Act or these rules, required to be exercised by the Board or by the Company in General Meeting. The CEO shall administer the Company and Triathlon in

Australia in accordance with the rules and regulations of the TRI, this Constitution, the By-Laws and all policy directions.

36.4 *CEO May Employ*

The CEO, in consultation with the Board, may employ such office personnel as are deemed necessary from time to time and such appointments shall be for such period and on such conditions as the CEO and the Board determine.

37. COMMITTEES & DELEGATES

37.1 *Board may Delegate Functions to Committees*

The Board may by instrument in writing create or establish or appoint from amongst its own members, the Members, or otherwise, committees to carry out such duties and functions, and with such powers, as the Board determines.

37.2 *Delegation by Instrument*

The Board may in the establishing instrument delegate such functions as are specified in the instrument for a committee, other than:

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

37.3 *Delegated Function Exercised in Accordance With Terms*

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

37.4 *Procedures of Committee*

- (a) The procedures for any committee established shall, with any necessary or incidental amendment, be the same as that applicable to meetings of the Board under **Rule 34**. The quorum shall be determined by the committee but shall be no less than the majority of the total number of committee members.
- (b) A Director or the CEO (or their authorised nominee(s)) shall be ex-officio members of any committee so appointed.
- (c) Within seven (7) days of any meeting of any committee, the committee shall send a copy of the minutes and any supporting documents to the CEO.

37.5 *Delegation may be Conditional*

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

37.6 *Revocation of Delegation*

The Board may by instrument in writing, revoke wholly or in part any delegation made under this Rule, and may amend, repeal or veto any decision made by such committee under this

rule where such decision is contrary to this Constitution, the By-Laws, the Act, the Objects or the committee's delegation.

38. ELITE ATHLETES' COMMISSION

38.1 Establishment

The Company must establish and maintain a delegated body to be known as the Elite Athletes' Commission (EAC) which will comprise up to five (5) Elite Athletes which must include an Elite Athlete who is also a paratriathlete and an Elite Athlete from each gender.

38.2 Terms of Reference

The Board will determine the terms of reference for the EAC. The terms of reference will be regularly reviewed by the Board in consultation with the EAC.

38.3 Operations of Elite Athletes' Commission

- (a) The operations of the Elite Athletes' Commission must be agreed to by its members from time to time.
- (b) The Elite Athletes' Commission must comply with all requirements of delegated bodies as set out in **Rule 37**.

39. BY-LAWS

39.1 Board to Formulate By-Laws

The Board may from time to time as circumstances dictate, formulate, interpret, adopt, make, alter and amend the By-Laws for the proper advancement, management and administration of the Company, the advancement of the Objects and Triathlon as it thinks necessary or desirable. The By-Laws must (as far as practicable) be in conformity with the rules and regulations of the TRI and must be consistent with this Constitution and all policy directives of the Company. The By-Laws are binding on all Members.

39.2 By-Laws Deemed Applicable

All By-Laws and regulations of the Company in force at the date of the approval of these rules (by whatever name including existing By-Laws) insofar as such rules and regulations are not inconsistent with, or have been replaced by this Constitution, shall continue in force under this Constitution.

39.3 Notices Binding

The CEO must bring to the notice of the Board and STTAs all By-Laws and any formulation, interpretation, amendment, alteration and repeal of them. STTAs shall be obliged to draw such notices to the attention of Members in their States. Notices are binding upon all Members.

40. COMMON SEAL

The Company may have a common seal. If it does, then:

- (a) the common seal must comply with the Act;
- (b) the Board will provide for the safe custody of the common seal; and

(c) the seal may only be used with the authority of the Board.

41. EXECUTION UNDER COMMON SEAL

If the Company has a common seal then it may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:

- (a) two (2) Directors of the Company; or
- (b) a Director and the CEO.

42. EXECUTION WITHOUT COMMON SEAL

The Company may execute a document without using a common seal if the document is signed by:

- (a) two (2) Directors of the Company; or
- (b) a Director and the CEO.

43. DIRECTORS' INTERESTS

A Director may NOT sign a document to which the seal of the Company is fixed where the Director is interested in the contract or arrangement to which the document relates.

44. NEGOTIABLE INSTRUMENTS

Any two (2) Directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument. This provision is subject to the Board determining that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

45. REGISTERS

Subject to the Act, the Board will cause the following company registers to be kept:

- (a) a register of Members;
- (b) where debentures are issued, a register of debenture holders.

Having regard to privacy and confidentiality considerations, an extract of the register of Members, excluding the address of any Individual Member or Director shall be available for inspection and copying by Members, upon reasonable request.

46. ACCOUNTING RECORDS

The Board will cause proper accounting and other records to be kept and will distribute copies of financial statements as required by the Act.

47. ACCESS TO RECORDS

The Board will from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of Members not being Directors. No Member has any right of inspecting any accounting or other records of the Company except as conferred by statute or authorised by the Board.

48. AUDITOR

- (a) A properly qualified auditor or auditors shall be appointed and the remuneration of such auditor or auditors fixed by the General Meeting and duties regulated in accordance with the Act.
- (b) The accounts of the Company including the profit and loss accounts and balance sheet shall be examined by the auditor at least once every year.

49. GIVING OF NOTICES

- (a) The Company may give notice to any Director or Member:
 - (i) personally; or
 - (ii) by sending it by post to the address of the Director as notified to the Board or the address for the Member in the register of members or the alternative address (if any) nominated by the Director or Member; or
 - (iii) by sending it to the electronic address (if any) nominated by the Director or the Member.
- (b) Any notice sent by post is taken to have been given three days after it is posted. Any notice sent by other electronic means is taken to be given on the business day after it is sent.

50. ENTITLEMENT TO NOTICES

- (a) Notice of every General Meeting will be given in any manner authorised by this Constitution to:
 - (i) the STTAs;
 - (ii) Affiliated Clubs;
 - (iii) the Directors;
 - (iv) Life Members; and
 - (v) the auditor for the time being of the Company.
- (b) No other person is entitled to receive notices of General Meetings. Notice to Individual Members shall be deemed given by notice being given in accordance with this Constitution to the STTA of that Individual Member.

51. INDEMNITY

- (a) To the extent permitted by law, the Company shall indemnify its Directors and employees out of the assets of the Company for any liability (including legal costs) incurred by a Director or employee:
 - (i) in or arising out of the conduct of the business of the Company, or in or arising out of the discharge of the duties or employment of the Director or employee, as the case may be; and

- (ii) to a person, other than the Company or a related body corporate of the Company, unless the liability arises out of conduct on the part of the Director or employee which involves a lack of good faith, or a liability for a pecuniary penalty or compensation order under s1317G or s 1317H of the Act.
- (b) Where the Board considers it appropriate, and to the extent to which the Company is not precluded by law from doing so, the Company may make payments of amounts by way of premium in respect of any contract effecting insurance on behalf of, or in respect of a Director or employee of the Company against any liability incurred by the Director or employee in or arising out of the conduct of the business of the Company, or in or arising out of the discharge of the duties or employment of the Director or employee, as the case may be.