

ROWING AUSTRALIA FOUNDATION LIMITED

CONSTITUTION

1. NAME

The name of the company is **Rowing Australia Foundation Limited ACN 672 501 898**.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Constitution, unless the context otherwise requires:

Accounting Year means the period from the date of incorporation of the Foundation until 30 June 2024 and the 12-month period ending on 30 June in each subsequent year.

the Act means the Corporations Act 2001 (C'th) as amended and any statutory modification or re-enactment thereof and includes any regulations made thereunder.

Appointed Directors means Directors appointed or holding office pursuant to clause 6.3.

ASF means the Australian Sports Foundation established under the Sports Commission Act 1989 and also includes any successor in title and any other entity or organisation established to carry out the same or similar functions as the Australian Sports Foundation for the purposes of raising money to promote and support sport and sporting organisations.

Board means the Directors, acting as a Board of Directors.

Chairperson means, at any relevant time, the Director elected as chairperson of the Board under clause 6.7.

Constitution means this Constitution as amended from time to time.

Director means a director of the Foundation.

donation means a donation to the Foundation, whether made:

- (a) by way of cash donation directly to the Foundation or indirectly through the ASF, or
 - (b) by way of the donation or transfer of any other valuable asset
- and **donate** and **donated** have corresponding meanings.

Elected Directors means Directors who hold office under sub-clause 6.2(a).

Ex Officio Member means a member by reason of clause 4.3.

Foundation means Rowing Australia Foundation Limited ACN 672 501 898.

general meeting means a general meeting of the Foundation convened under clauses 5.1 or 5.2.

General Member means a member by reason of sub-clause 4.2(e).

General Membership Fee means at any relevant time the annual membership fees applicable to General Members (which, until otherwise determined by the Board pursuant to sub-clause 4.7(a), shall be \$50.00 per annum).

Investment Fund means the Foundation's Investment Fund established and managed in accordance with the Investment Fund Rules.

Investment Fund Rules means the provisions of clauses 11.1 to 11.10 inclusive.

member means a member of the Foundation of any category.

membership fees means the fees determined for each category of membership in accordance with sub-clause 4.7(a).

ordinary resolution means a resolution passed by a majority of members present and voting at a general meeting of members.

RA Athletes means athletes (which shall include coxswains) who are at any relevant time participating in rowing training programs supported by Rowing Australia or who are selected by Rowing Australia to represent Australia in international rowing events.

RA President means the president of Rowing Australia at any relevant time.

Register means the Register of Members maintained by the Secretary pursuant to clause 4.10.

rowing means and includes any form of rowing (including para rowing, indoor rowing and coastal rowing) supported and promoted by Rowing Australia.

Rowing Australia means Rowing Australia Limited ACN 126 080 519.

Secretary means the person from time to time appointed in accordance with clause 7.1.

Special Resolution has the meaning ascribed to it in clause 5.8.

Super Majority Resolution has the meaning ascribed to it in clause 5.9.

Voting Member means any member other than a member of a category of membership which expressly denies voting rights to its members.

2.2 Interpretation

Unless the context otherwise requires:

- (a) clause headings are included for convenience only and shall be ignored in the interpretation of this Constitution;
- (b) a reference to a clause or sub-clause is a reference to a clause or sub-clause in this Constitution as amended, replaced or substituted and as in force at any relevant time;
- (c) words importing the singular shall include the plural and vice versa, words importing a gender shall include other genders and vice versa and references to a person shall be construed as including a reference to a natural person or any other legal entity;
- (d) references to any statute or shall include all regulations and other instruments made thereunder and all consolidations, amendments, re-enactments and replacements thereof.

2.3 Replaceable Rules

The Replaceable Rules in the Act will not apply to this Constitution.

3. OBJECTS OF THE FOUNDATION AND RELATED PROVISIONS

3.1 Objects

The objects of the Foundation are:

- (a) to promote and support Rowing Australia and the sport of rowing at a national level;
- (b) to raise money for Rowing Australia and RA Athletes from members and supporters by way of donations, bequests and other fund raising activities;
- (c) to establish and manage the Foundation Investment Fund as an ongoing stable source of capital and income to support the activities of Rowing Australia and RA Athletes; and
- (d) to perform such other activities as may be incidental to the objects referred to above.

3.2 Prohibited Activities

- (a) Except as permitted under sub-clause (b) or with the approval of a Super Majority Resolution, the Foundation may not carry on any trading or commercial activity nor may it borrow any money or enter into any contract or agreement under which it may incur any material liability.
- (b) Notwithstanding sub-clause (a), the Foundation may:
 - (i) open and maintain bank accounts and deposit funds with licensed deposit taking institutions;
 - (ii) undertake all steps from time to time necessary or expedient to establish the Foundation Investment Fund in accordance with the Investment Fund Rules;
 - (iii) undertake any and all activities necessary or expedient to manage, invest and disburse the Foundation Investment Fund as authorised by, and in accordance with, the Investment Fund Rules;
 - (iv) incur expenditure and enter into commercial arrangements where such expenditure or arrangements are
 - (1) to promote the Foundation or support social or fund-raising events for its members;
 - (2) to assist in the proper administration of the Foundation including the appointment of auditors, the engagement of solicitors or accountants or other advisers; and
 - (3) to employ staff or engage contractors to assist with the management of the Foundation or with any activity which the Foundation is permitted under this Constitution to undertake including (without limiting the generality of the foregoing) the establishment and management of the Foundation Investment Fund.

3.3 No Dividends or other Distributions to Members or Directors

The income and property of the Foundation shall be applied solely towards the promotion of the objects of the Foundation and no portion thereof shall be paid or applied directly or indirectly by way of dividend, bonus or otherwise by way or profit to the members, nor shall any payment be made to a Director other than for:

- (a) the payment of out-of-pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board;
- (b) payment for any service rendered to the Foundation by the Director in a professional or technical capacity, other than in the capacity of Director, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which would be a reasonable commercial payment for the service; or
- (c) payment of any salary or wage due to the Director as an employee of the Foundation where the terms of employment have been approved by the Board.

3.4 Disposal on Winding up

If upon a winding up or dissolution (other than for the purposes of reconstruction or amalgamation) of the Foundation there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members but shall be dealt with in accordance with clause 14.2.

3.5 Liability of Members is Limited

- (a) The liability of members is limited.
- (b) Every member undertakes to contribute to the property of the Foundation, in the event of the same being wound up while he or she is a member, or within one year after he or she ceases to be a member, for payment of the debts and liabilities of the Foundation (contracted before he or she ceases to be a member) and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding ten dollars (\$10.00).

4. MEMBERSHIP OF THE FOUNDATION

4.1 Application for Membership

- (a) A person wishing to become a member of the Foundation may make application to the Secretary in such form as the Board may from time to time require.
- (b) In making such application, the applicant must
 - (1) specify the category of membership for which the applicant is applying; and
 - (2) agree to be bound by this Constitution.
- (c) Provided the Secretary is satisfied that the applicant is eligible for membership of the relevant category, and has received the fees (if any) payable by the applicant upon joining the Foundation, the Secretary will accept the applicant as a member of the Foundation and enter the applicant's name on the Register.

4.2 Categories of Membership

The Foundation shall include the following categories of membership, all of which are subject to the provisions of clauses 4.1, 4.7 and 4.8.

- (a) Governors
 - (i) A person may be admitted to membership of the Foundation as a "Governor" if that person has donated in aggregate not less than \$500,000 to the Foundation.

- (ii) A member who is a Governor shall remain a Governor of the Foundation for as long as the Governor continues to pay General Membership Fees.

(b) Champions

- (i) A person may be admitted to membership of the Foundation as a “Champion” if that person has donated in aggregate not less than \$20,000 to the Foundation in the preceding 5 Accounting Years.
- (ii) A member who is a Champion shall remain a Champion of the Foundation for so long as the member continues to meet the criteria set out in paragraph (i) and continues to pay General Membership Fees.
- (iii) Upon ceasing to meet the criteria set out in paragraph (i), a Champion shall be admitted to membership as a “Benefactor”.

(c) Benefactors

- (i) A person may be admitted to membership of the Foundation as a “Benefactor” if that person has donated in aggregate not less than \$20,000 to the Foundation.
- (ii) A member who is a Benefactor shall remain a Benefactor of the Foundation for so long as the Benefactor continues to pay General Membership Fees.

(d) Major Donors

- (i) A person may be admitted to membership of the Foundation as a “Major Donor” if that person has donated in aggregate not less than \$5,000 to the Foundation.
- (ii) A Major Donor shall remain a Major Donor of the Foundation for so long as the Major Donor continues to pay Membership Fees.

(e) General Members

A person may be admitted to membership of the Foundation as a General Member if that person has paid the General Membership Fees.

4.3 Ex Officio Membership

- (a) The following persons shall be Ex Officio Members of the Foundation at any relevant time:
 - (i) the directors of Rowing Australia at that time; and
 - (ii) persons who are life members of Rowing Australia at that time.
- (b) Ex Officio Members are relieved from payment of any membership fees, but shall have all the rights and privileges of members.

4.4 Life Membership

- (a) A member who has rendered outstanding service to the Foundation may be admitted to life membership of the Foundation by resolution carried by a simple majority of those present and voting at a general meeting, following the submission to such meeting of an appropriate recommendation from the Board.
- (b) A Life Member is relieved from payment of any membership fees, but shall have all the rights and privileges of a member.

4.5 Bequests

- (a) The Foundation will encourage its members and supporters to make bequests to the Foundation in their wills and testamentary dispositions and may establish ways to publicly recognise such bequests including, where desired, membership of the Foundation in a category of membership the Board considers appropriate.
- (b) Sub-clause 11.2 (b) will not apply to money or other assets donated to the Foundation by way of bequest or testamentary disposition where the terms of such bequest or testamentary disposition require such money or assets to be applied in some manner inconsistent with that sub-clause.

4.6 Creation, Variation and Abolition of Membership Categories

- (a) The Board may, if authorised by a Special Resolution, create new categories or classes of membership, but may not without the approval of a Super Majority Resolution create a category of membership for which the annual membership fee is less than the General Membership Fee.
- (b) The Board may, if authorised by a Special Resolution, vary or abolish any existing or future category or class of membership.
- (c) The Board may, if authorised by a Special Resolution, vary the terms (including the stipulated donation amounts) of the categories of membership set out in sub-clauses (a)-(d) of clause 4.2.

4.7 Membership Fees

- (a) The Board may set and vary membership fees (which may, if the Board considers it appropriate, include joining fees). Membership fees may be different for various categories of membership provided that the fees applicable to any class or category of membership cannot be less than the General Membership Fee. The Board may also determine and vary the timing and manner of payment of membership fees.
- (b) The Board may, with the approval of an ordinary resolution (and subject to any limitations or conditions contained in such resolution), offer long term memberships to members on such terms (and for such fees) as the Board considers reasonable.

4.8 Suspension and Termination of Membership

- (a) The Board may suspend any member who has not paid his or her membership fees within 30 days of the due date for payment and may terminate the membership of any member who has not paid the applicable membership fees within 3 months of the due date for payment.
- (b) The Board may, with the approval of an ordinary resolution at a general meeting, suspend or terminate the membership of any member (the "Relevant Member") for misconduct or similar cause. No resolution may be put to members under this sub-clause unless the Relevant Member has been given a reasonable opportunity to understand and respond to the grounds upon which the Board relies in seeking the suspension or termination of the Relevant Member's membership and (provided the Relevant Member has not already been suspended under sub-clause (a) above) the Relevant Member will be entitled to attend and speak at the general meeting at which the motion to suspend or terminate has been proposed.
- (c) A person ceases to be a member of the Foundation:

- (1) if the person dies;
- (2) if the person resigns from membership; or
- (3) if the person's membership is terminated under clause 4.8 (a) or (b).

4.9 Membership Rights not Transferrable

A right, privilege or obligation which a person has by reason of being a member of the Foundation:

- (a) is not capable of being transferred or transmitted to another person, and
- (b) terminates on cessation of the person's membership.

4.10 Register of Members

- (a) The Secretary will establish and maintain a register of members showing the name and current contact details for each member and such member's category of membership.
- (b) The Register shall be kept at the principal place of administration of the Foundation.

5. GENERAL MEETINGS

5.1 Annual General Meetings

- (a) The Board must, at least once in each calendar year and within 5 months after the expiration of each Accounting Year, convene an annual general meeting of members. Such meeting is to be convened on such date and at such place and time as the Board determines.
- (b) An annual general meeting must be described as such in the notice convening it.
- (c) In addition to any other business which the Board may wish to conduct at an annual general meeting, the business of the annual general meeting will be the following:
 - (1) to confirm the minutes of the last preceding annual general meeting and of any general meeting held since that meeting;
 - (2) to review of the activities of the Foundation since the preceding annual general meeting;
 - (3) to receive the financial statements of the Foundation for the Accounting Year most recently ended and to consider any questions or issues arising therefrom; and
 - (4) to elect the Elected Directors.

5.2 Other General Meetings

- (a) A general meeting of the Foundation may be convened by the Chairperson at any time.
- (b) In addition, the Chairperson must, on the requisition in writing of:
 - (1) a Director; or
 - (2) not less than 5 per cent of the total number of Voting Members, convene a general meeting of the Foundation.
- (c) For the purposes of sub-clause 5.2(b), a requisition for a general meeting must:

- (1) state the purpose or purposes of the meeting;
- (2) be signed by the Director or Voting Members making the requisition; and
- (3) be lodged with the Chairperson or the Secretary.

Such requisition may consist of several documents in a similar form, each signed by one or more of the persons making the requisition.

- (d) If the Chairperson fails to convene a general meeting within 1 month after the date on which a requisition of the Director or Voting Members for the meeting is lodged with the Chairperson or the Secretary, the Director or any one or more of the Voting Members who made the requisition may convene a general meeting to be held not later than 3 months after that date.
- (e) A general meeting convened by the Director or a member as referred to in sub-clause (d) must be convened as nearly as is practicable in the same manner as general meetings are convened by the Chairperson.

5.3 Notice of General Meetings

- (a) Unless the nature of the business proposed to be dealt with at a general meeting requires a Special Resolution or a Super Majority Resolution of members, the Secretary must, at least 14 days before the date fixed for the holding of the general meeting, give a notice to each member specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- (b) If the nature of the business proposed to be dealt with at a general meeting requires a Special Resolution or a Super Majority Resolution of the Foundation, the Secretary must, at least 21 days before the date fixed for the holding of the general meeting, cause notice to be given to each member specifying, in addition to the matters required under sub-clause (a), the intention to propose one or more resolutions as Special Resolutions or a Super Majority Resolutions.

5.4 Quorum at General Meetings

- (a) No item of business is to be transacted at a general meeting unless a quorum of Voting Members is present during the time the meeting is considering that item.
- (b) A quorum will exist for the transaction of the business of a general meeting if:
 - (1) at least 50% of the Voting Members; or
 - (2) at least 10 Voting Members
 (whichever is the lesser) are present in person or by proxy.
- (c) If within half an hour after the appointed time for the commencement of a general meeting a quorum is not present, the meeting:
 - (1) if convened on the requisition of Voting Members, is to be dissolved, and
 - (2) in any other case, is to stand adjourned to the same day in the following week at the same time and (unless another place is specified at the time of the adjournment by the person presiding at the meeting or communicated by written notice to members given before the day to which the meeting is adjourned) at the same place.
- (d) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the Voting Members present in person or by proxy (being at least 5) is to constitute a quorum.

5.5. Presiding Member

- (a) The Chairperson is to preside as chair of each general meeting of the Foundation.
- (b) If the Chairperson is absent or unwilling to chair a general meeting, the Voting Members present must elect one of their number to chair the meeting.

5.6 Adjournment

- (a) The chairperson of a general meeting at which a quorum is present may, with the consent of the majority of Voting Members present at the meeting, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (b) If a general meeting is adjourned for 14 days or more, the Secretary must give notice of the adjourned meeting to each member stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- (c) Except as provided in sub-clauses (a) or (b), notice of an adjournment of a general meeting or of the business to be transacted at an adjourned meeting is not required to be given.

5.7 Voting Procedures at General Meetings

- (a) A question arising at a general meeting of the Foundation is to be determined on a show of hands of Voting Members present and, unless a poll is demanded (either before or immediately following the declaration of the show of hands), a declaration by the chairperson that a resolution has been carried (or carried by a particular majority) or has been lost is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- (b) On any question at a general meeting of the Foundation, a poll may be demanded by the chairperson or by at least 3 Voting Members present.
- (c) If a poll is demanded, the poll must be taken:
 - (1) immediately in the case of a poll which relates to the election of the chairperson of the meeting or to the question of an adjournment, or
 - (2) in any other case, in such manner and at such time before the close of the meeting as the chairperson directs,and the resolution of the poll on the matter is taken to be the resolution of the meeting on that matter.

5.8 Special Resolutions

A resolution of the Foundation is a Special Resolution if:

- (a) it is proposed at a general meeting of which at least 21 days' written notice specifying the intention to propose the resolution as a special resolution was given to members in accordance with clause 5.3; and
- (b) it is passed by a majority which comprises at least 75% of the votes cast on the resolution.

5.9 Super Majority Resolution

A resolution of the Foundation is a Super Majority Resolution if:

- (a) it is proposed at a general meeting of which at least 21 days' written notice specifying the intention to propose the resolution as a Super Majority Resolution was given to members in accordance with clause 5.3; and
- (b) not less than 30 Voting Members are present in person or by proxy at the general meeting; and
- (c) the resolution is passed by a majority which comprises:
 - (i) at least 75% of the total number of votes cast on the resolution; and
 - (ii) a majority of the votes cast on the resolution by Ex Officio Members.

5.10 Voting Rights

- (a) On any question arising at a general meeting a Voting Member has only one vote.
- (b) In the case of an equality of votes on a question at a general meeting, the chairperson of the meeting is entitled to exercise a second or casting vote.

5.11 Proxies

- (a) A Voting Member may appoint a person as a proxy to attend and vote on the member's behalf in accordance with the Act but not otherwise. A proxy so appointed may exercise the rights of the appointing member on the basis and subject to the restrictions provided in the Act but not otherwise.
- (b) An appointment of a proxy is valid if it is in accordance with the Act or in any other form (including electronic) that the Board may prescribe or accept.

5.12 Information to be Provided

Without prejudice to the nature of the information which may be required to be provided to the members for the purposes of any other resolution, where a Super Majority Resolution is to be submitted for consideration by members at a general meeting, the Board (or, if the Board is not proposing or supporting the resolution, a person who is proposing or supporting the passing of the resolution) must provide sufficient information to the Voting Members of the Foundation to enable them to make an informed decision.

5.13 Evidence of Members' Proceedings

Where any matter has been referred to a meeting of members, a certificate from the chairperson of the meeting stating:

- (a) that the meeting was duly held in accordance with the Constitution; and
- (b) the manner in which the matter was determined by the meeting,

shall be conclusive evidence of the matters so certified.

5.14 Circular Resolutions

A resolution in writing signed by all Voting Members shall be as valid and effective as if it had been passed at a duly convened and held meeting of members and shall be deemed to have been passed when it is signed by the last of the Voting Members to sign it. Any such resolution may consist of several documents in identical wording each signed by one or more Voting Members.

6. BOARD OF DIRECTORS

6.1 Management of the Foundation

Subject to the Act and to this Constitution, the Board:

- (a) will control and manage the affairs of the Foundation,
- (b) may exercise all such functions as may be exercised by the Foundation, other than those functions that are required to be exercised by a general meeting of members of the Foundation, and
- (c) has power to perform all such acts and do all such things as appear to the Board to be necessary or desirable for the proper management of the affairs of the Foundation.

6.2 Constitution of the Board

The Board is to consist of:

- (a) five (5) Elected Directors (or such greater number not exceeding eight (8) as the Board may from time to time determine), each of whom must be a member of the Foundation and must be elected in accordance with clause 6.6; and
- (b) the Appointed Directors (if any).

6.3 Appointed Directors

- (a) The President of Rowing Australia shall be entitled (but not obliged) to nominate one (1) of the Rowing Australia directors to be an Appointed Director.
- (b) The Board shall be entitled (but not obliged) to nominate one (1) member to be an Appointed Director.
- (c) Persons nominated by the President of Rowing Australia or by the Board to be Appointed Directors shall be appointed as Directors of the Foundation promptly after such nomination is made.

6.4 Term of Office

- (a) Each Elected Director will, subject to clause 8.1, hold office until the conclusion of the third annual general meeting following the date of the member's election, but is eligible for re-election.
- (b) Each Appointed Director will, subject to clause 8.1, hold office until:
 - (1) in the case of a Director appointed under sub-clause 6.3(a), the Director ceases to be a director of Rowing Australia or the RA President terminates such Director's appointment by notice in writing to the Board; or
 - (2) in the case of a Director appointed under sub-clause 6.3(b), the Board terminates such appointment.
- (c) In the event of a casual vacancy occurring in the number of Elected Directors, the Board may appoint a member of the Foundation to fill the vacancy and the member so appointed is to hold office, subject to clause 8.1, for the balance of the term of the Elected Director being replaced.
- (d) The Directors at the date of adoption of this Constitution shall, subject to clause 8.1, continue to be members of the Board until the conclusion of the first annual general meeting following the adoption of this Constitution.

6.5 Nomination of Elected Directors

Nominations of candidates for election as Elected Directors of the Foundation:

- (a) must be made in writing, signed by 2 Voting Members of the Foundation and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination), and
- (b) must be delivered to the Secretary at least 7 days before the date fixed for the holding of the annual general meeting at which the election is to take place.

6.6 Election of Elected Directors

- (a) At each annual general meeting at which an election is to take place, the Voting Members must elect the Elected Directors from the candidates nominated in accordance with clause 6.5.
- (b) If the number of nominations received exceeds the number of vacancies to be filled, a ballot is to be held.
- (c) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are taken to be elected.
- (d) If insufficient nominations are received to fill all vacancies on the Board, the candidates nominated are taken to be elected and further nominations are to be received at the annual general meeting.
- (e) If insufficient further nominations are received, any vacant positions remaining on the Board are taken to be casual vacancies.
- (f) Where a ballot is required to be held, it will be conducted in such usual and proper manner as the Board may direct.

6.7 Chairperson

The Board will elect, from among its number, the Chairperson of the Foundation. The Chairperson so elected will hold that office until removed or replaced by the Board or until ceasing to be a Director (whichever occurs first).

7. BOARD APPOINTMENTS**7.1 Secretary**

- (a) The Board will appoint a person to be the Secretary of the Foundation and may remove or replace any person so appointed.
- (b) It is the function of the Secretary:
 - (1) to accept and process applications for membership;
 - (2) to maintain the Register;
 - (3) to ensure that the Foundation promptly files or lodges for registration all documents which the Foundation is required to file or lodge with the Australian Securities and Investments Commission;
 - (4) to keep minutes of every Directors' meeting and every general meeting of the Foundation; and
 - (5) to carry out such other functions and duties as the Chairperson may specify.

7.2 Auditor

- (a) The Board may, and must if so required by law or by an ordinary resolution, appoint an auditor to audit the books and records of the Foundation.
- (b) Any auditor appointed by the Board may only be removed or replaced with the approval of an ordinary resolution.
- (c) The auditor shall have the right to attend and speak at the Annual General Meeting and at any general meeting of members.

7.3 Treasurer

- (a) The Board may (but need not) appoint a person to be the Treasurer of the Foundation and may remove or replace any person so appointed.
- (b) The Treasurer will carry out such functions and duties as the Board may specify.

8. CASUAL VACANCIES

8.1 When Occurring

For the purposes of this Constitution, a member of the Board ceases to be a Director if the Director:

- (a) dies,
- (b) ceases to be a member of the Foundation,
- (c) becomes an insolvent under administration within the meaning of the Act,
- (d) resigns office by notice in writing given to the Secretary,
- (e) is removed from office under clause 9.1,
- (f) becomes a mentally incapacitated person, or
- (g) being an Elected Director, is absent without the consent of the Board from all meetings of the Board held during a period of 6 months.

9. REMOVAL OF DIRECTOR

9.1 Removal by Members in General Meeting

The Foundation in general meeting may by ordinary resolution remove any member of the Board other than an Appointed Director from the office of Director before the expiration of the Director's term of office and may by resolution appoint another person to hold office until the expiration of the term of office of the member so removed.

9.2 Member Entitled to make Representations

If a Director to whom a proposed resolution referred to in clause 9.1 relates makes representations in writing to the Secretary or Chairperson (not exceeding a reasonable length) and requests that the representations be notified to the members of the Foundation, the Secretary or the Chairperson may send a copy of the representations to each member of the Foundation or, if the representations are not so sent, the member

is entitled to require that the representations be read out at the meeting at which the resolution is considered.

10. BOARD MEETINGS

10.1 Frequency of Meetings

- (a) The Board must meet at least four (4) times in each period of 12 months at such place and time as the Board may determine.
- (b) Additional meetings of the Board may be convened by the Chairperson or by any member of the Board.

10.2 Notice of Meetings

- (a) Oral or written notice of a meeting of the Board must be given by the Chairperson or the Secretary to each member of the Board at least 48 hours (or such shorter period as may be unanimously agreed on by the members of the Board) before the time appointed for the holding of the meeting.
- (b) Notice of a meeting given under sub-clause (a) must specify the general nature of the business to be transacted at the meeting and no business other than that business is to be transacted at the meeting, except business which the Board members present at the meeting unanimously agree to transact.

10.3 Quorum

- (a) Any 4 (four) members of the Board constitute a quorum for the transaction of business at a meeting of the Board.
- (b) No business is to be transacted by the Board unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to stand adjourned to the same place and at the same hour of the same day in the following week.
- (c) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.

10.4 Chairperson

At a meeting of the Board:

- (a) the Chairperson is to chair the meeting, or
- (b) if the Chairperson is absent or unwilling to act, such one of the remaining members of the Board as may be chosen by the Directors present at the meeting is to chair the meeting.

10.5 Voting and Decisions

- (a) Questions arising at a meeting of the Board are to be determined by a majority of the votes of Directors present at the meeting.
- (b) Each Director present at a meeting of the Board (including the person chairing the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the person chairing the meeting may exercise a second or casting vote.
- (c) Subject to clause 10.3, the Board may act despite any vacancy on the Board.

- (d) Any act or thing done or suffered, or purporting to have been done or suffered, by the Board is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the Board.

10.6 Meetings by Telephone or Video Teleconference

- (a) For the purposes of this Constitution, and without prejudice to any other form of meeting recognized by law, a meeting of the Board may be conducted utilising telephone or video teleconferencing facilities.
- (b) Where a meeting is conducted by telephone or video teleconferencing facilities, a member of the Board will be deemed to be present at the meeting for so long as he or she is able to hear and be heard by all other participants in the meeting and it shall be the responsibility of the chairperson of the meeting to ensure that all participants maintain such communication throughout the meeting.
- (c) All of the provisions in this Constitution relating to meetings of the Board (including without limit provisions relating to notices, quorums and voting procedures) shall apply equally to meetings conducted in accordance with this clause.

10.7 Circular Resolutions

A resolution in writing signed by all members of the Board shall be as valid and effective as if it had been passed at a duly convened and held meeting of the Board and shall be deemed to have been passed when it is signed by the last of the members of the Board to sign it. Any such resolution may consist of several documents in identical wording each signed by one or more members of the Board.

11. FOUNDATION INVESTMENT FUND

11.1 Defined Terms

For the purposes of the Investment Fund Rules, the following terms shall have the meanings ascribed to them below.

Annual CPI Increase means the percentage (if any) by which the CPI Index has increased between the first and last days of an Accounting Year.

Approved Investments means:

- (a) deposits with any bank or financial institution in Australia;
- (b) bonds or notes issued by any Commonwealth, State or local government authority;
- (c) shares, rights, options, debentures, notes, bonds or other securities which are, at the time the investment is made:
 - (i) quoted for trading on the Australian Stock Exchange and issued by companies which are included in the Standard & Poors ASX 200 Index; or
 - (ii) quoted for trading on the London Stock Exchange and issued by companies which are included in the Financial Times Stock Exchange 100 Index; or
 - (iii) quoted for trading on the New York Stock Exchange and issued by companies which are included in the Standard & Poors 500 Index;
- (d) loans secured by first registered mortgages over real property provided the amount of the loan is not more than 60% of the value of the mortgaged property at the time the loan is made;

- (e) the purchase of real property;
- (f) an interest rate swap or a currency swap entered into for the purpose of protecting the Investment Fund from a potential interest rate or currency exposure relating to another investment;
- (g) an investment in a managed fund which has been rated by an independent, reputable and nationally recognised research house as having a rating which is (or is the equivalent of) “recommended” or some higher rating; and
- (h) such other investments as the Foundation may by Super Majority Resolution approve from time to time.

CPI Index means the Consumer Price Index, All Groups, as published by the Australian Bureau of Statistics or, if such index is no longer published, an index or similar indicator of annual inflation which the Board in its absolute discretion accepts as providing a comparable measure of annual inflation in Sydney.

Custodian means a company established or engaged to hold Approved Investments as nominee or custodian for the Foundation.

Distribution means a distribution of capital or income (or both) to Rowing Australia approved by the Board under clause 11.9.

Investment Account means any bank account, cash management account or share trading account established by the Board for the purposes of investing or managing the Fund in accordance with the Investment Fund Rules and also includes any such account held in the name of a Custodian.

Investment Committee means a committee of appropriately qualified persons (which may but need not include one or more Directors) established by the Board to manage or oversee the investment of all or any part of the Fund.

Maximum Distributable Amount means, in respect of any Accounting Year, the amount determined in accordance with clause 11.8.

Net Annual Increase means, in respect of any Accounting Year, the amount by which the value of the Fund has increased during that year, determined in accordance with clause 11.7.

Professional Adviser means a person, partnership or corporation holding all necessary licences and authorisations to provide advisory or fund management services to the Foundation.

11.2 Investment Fund

- (a) The Board will establish the Investment Fund by opening an Investment Account and transferring an initial amount into that account from its general reserves.
- (b) Thereafter, except as provided in sub-clause (c), as and when the Foundation raises money or acquires assets (including amounts or assets raised from membership fees, donations, bequests or other fund-raising activities) the Board will ensure that, after setting aside any amount necessary to meet the anticipated operating expenses and liabilities of the Foundation (including a prudent contingency) the balance of such money and assets raised is promptly transferred into the Investment Fund by being paid into an Investment Account or converted to an Approved Investment.
- (c) Sub-clause (b) will not apply to:

- (i) money raised by the Foundation to meet an immediate or urgent funding requirement of Rowing Australia for a specific purpose where the Board has resolved that it is appropriate for those money not to be transferred into (or become part of) the Investment Fund; or
- (ii) money and assets to which sub-clause 4.5(b) applies.
- (d) Money and assets transferred into the Investment Fund will be held, invested and disbursed in accordance with the Investment Fund Rules, except to the extent that any such Rules are over-ridden by clause 11.11.
- (e) The Board will ensure that money and assets not transferred to or forming part of the Investment Fund are kept separate from, and not co-mingled with, the money and assets forming part of the Investment Fund.

11.3 Management of the Investment Fund

- (a) The Board may, if it considers it expedient to do so, appoint a Professional Adviser or establish an Investment Committee assist or to make recommendations to the Board in relation to such matters as
 - (1) the establishment and operation of any Investment Account;
 - (2) the investment and management of the money and other investments comprising the Investment Fund;
 - (3) the establishment or engagement of a company to act as custodian trustee for all or part of the Investment Fund; and
 - (4) the determination of the Net Annual Increase and the Maximum Distributable Amount;
- (b) The Board may appoint Rowing Australia to manage some or all of the Investment Fund provided the Investment Fund (or such part) is kept separate from (and in no way co-mingled with) funds belonging to Rowing Australia.
- (c) In considering the manner in which the Investment Fund is held and invested, the Board will, among other considerations, have regard to:
 - (1) the balance between capital growth and income the Board would like the Investment Fund to achieve over the short, medium and long term; and
 - (2) the maturity dates for investments which may need to be liquidated in order to make Distributions to Rowing Australia.

11.4 Transfers into or out of the Investment Fund

- (a) All transfers of money into the Investment Fund will be made by deposit or transfer into an Investment Account.
- (b) No amounts may be withdrawn or transferred out of the Investment Fund except in accordance with the Investment Fund Rules.

11.5 Approved Investments Only

The Investment Fund may only be invested in Approved Investments.

11.6 Ownership and Directors of Custodian

If the Board elects to incorporate or acquire a company to act as custodian trustee for all or part of the Investment Fund, the shares in such custodian company will be held by the Foundation and the directors of the custodian company will be appointed by the Board.

11.7 Net Annual Increase

- (a) As soon as practicable after the conclusion of an Accounting Year, the Board will determine the Net Annual Increase of the Investment Fund for the Accounting Year just ended.
- (b) In respect of any Accounting Year, the Net Annual Increase will comprise:
- (1) the amount (if any) by which the value of the Investment Fund at the end of the Accounting Year (as reasonably determined by the Board) exceeds the value of the Investment Fund at the commencement of the Accounting Year
after deducting (to the extent not already deducted):
 - (2) all expenses directly related to the making, maintenance, management or sale of any investment (including without limitation bank fees and charges, brokerage fees; stamp duty and government charges and insurance costs);
 - (3) all expenses relating to the management of the Investment Fund and its investments (including without limitation legal, accounting, valuation, and any other advisory fees incurred in managing the Investment Fund, as well as the costs of remunerating any Professional Advisers); and
 - (4) the cost of establishing and maintaining any custodian trustee.

11.8 Maximum Distributable Amount

- (a) Promptly after the determination of Net Annual Increase, the Board will determine the Maximum Distributable Amount for the Accounting Year just ended in accordance with sub-clause (b).
- (b) In respect of any Accounting Year, the Maximum Distributable Amount will be an amount determined in accordance with the following formula:

$$\text{MDA} = [\text{NAI} - (\text{NAI} \times \text{ACI})] \times 60\%$$

Where:

MDA is the Maximum Distributable Amount;

NAI is the Net Annual Increase; and

ACI is the Annual CPI Increase

[For example, if the Net Annual Increase for the relevant Accounting Year is \$100,000, and the Annual CPI Index is 2.5%, the Maximum Distributable Amount will be \$58,500, being \$100,000 minus \$2,500 multiplied by 60%]

11.9 Distributions to Rowing Australia

- (a) Subject to the other provisions of this clause, the Board may at any time in its absolute discretion resolve to make Distributions to Rowing Australia out of the Investment Fund.
- (b) The Board may not in any Accounting Year approve Distributions which, in aggregate, exceed the Maximum Distributable Amount for the preceding Accounting Year.

- (c) The Board may not approve a Distribution if it has reasonable grounds to believe that the Distribution will be applied (directly or indirectly) towards Rowing Australia's general operating expenses or to reduce its existing liabilities.
- (d) For the avoidance of doubt (and without limiting other categories of expenditure which may be funded by Distributions), Distributions which fund or contribute to:
 - (1) the purchase by Rowing Australia of boats or other rowing, coaching or training equipment,
 - (2) the upgrade of Rowing Australia buildings or facilities;
 - (3) the hiring or contracting of additional coaches or staff to support Rowing Australia rowing programs;
 - (4) travel and accommodation expenses incurred by Rowing Australia to enable athletes and coaches to attend training camps or compete in overseas events; and
 - (5) financial support for athletes invited or selected into Australian teams, training centres or camps;
 will not contravene the prohibition in sub-clause (c).
- (e) The Board may, where it considers it appropriate, require Rowing Australia to provide an undertaking that a Distribution will, or will not, be applied in a particular manner and may withhold all or part of any Distribution until such undertaking has been provided.

11.10 Undistributed Amounts to be Retained in Investment Fund

To the extent that, in any Accounting Year, less than all of the Maximum Distributable Amount for the immediately preceding Accounting Year is distributed to Rowing Australia, the undistributed amount will be retained in the Investment Fund and will not be carried forward to subsequent years.

11.11 Investment and Distribution Provisions may be Over-ridden

The Investment Fund Rules may not be varied or over-ridden by the Board except with the approval of a Super Majority Resolution.

12. BOOKS AND RECORDS

- (a) The Secretary must ensure safe custody or control of all records, books and other documents relating to the Foundation.
- (b) The records, books and other documents of the Foundation (other than the Register of Members) must be open to inspection, free of charge, by a member at any reasonable hour.

13. NOTICES

- (a) For the purpose of this Constitution, a notice may be served on or given to a person:
 - (1) by delivering it to the person personally, or
 - (2) by sending it by email to the email address of the person which is recorded on the Register.
- (b) Nothing in this clause invalidates the service of any notice by any other means where the intended recipient has acknowledged receipt.

14. WINDING UP OR DISSOLUTION

14.1 Voluntary Winding up

Unless otherwise provided by law, the Foundation may only be dissolved or wound up by a Super Majority Resolution.

14.2 Distribution of Assets on Winding up

- (a) Subject to sub-clause (b), upon a winding up or dissolution of the Foundation (whether in accordance with a Super Majority Resolution or otherwise), all of the surplus assets of the Foundation will be contributed to Rowing Australia.
- (b) In the event that, at the time the Foundation is wound up, Rowing Australia has been (or is being) wound up or is insolvent or is subject to or under threat of any proceedings which might render it insolvent, all of the surplus assets of the Foundation will be contributed to one or more rowing clubs, associations or entities, each of which:
 - (1) is approved by the Foundation;
 - (2) has as one of its primary objects the promotion and development of the sport of rowing; and
 - (3) is a sporting body which is exempt from Australian income tax.

15. AMENDMENTS TO THIS CONSTITUTION

15.1 Amendments Requiring a Special Resolution

Except as provided in clause 15.2, the provisions of this Constitution may only be amended, replaced or rescinded by Special Resolution.

15.2 Amendments requiring Super Majority Resolution

No amendment to this Constitution may be made:

- (a) to clause 3.1;
- (b) to clause 4.3; or
- (c) to clause 5.9; or
- (d) to the Investment Fund Rules; or
- (e) to any other provision of this Constitution which requires (or is conditional on) the passing of a Super Majority Resolution if the effect of such amendment is to negate or reduce the requirement for the passing of a Super Majority Resolution,

unless the proposed amendment has first been approved by a Super Majority Resolution.

16. FOUNDING MEMBERS AND DIRECTORS

- (a) The members of the Foundation upon the adoption of this Constitution are:

<u>Name of Member</u>	<u>Category of Membership</u>
Malcolm William Batten	General Member
John Francis Boulton	General Member
Robert Geoffrey Scott	General Member
Bryan David Weir	General Member

(b) The Directors of the Foundation upon the adoption of this Constitution are:

ROBERT GEOFFREY SCOTT - CHAIRPERSON

MALCOLM WILLIAM BATTEN

JOHN FRANCIS BOULTBEE

BRYAN DAVID WEIR