



# Constitution

Date: 30 August 2021

**NWS SPIRIT FOOTBALL CLUB INCORPORATED**

**ABN (89 226 427 338)**

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# NWS Spirit Football Club Inc

## Constitution Incorporated association

### 1. NAME OF THE CLUB

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The name of the club is NWS Spirit Football Club Incorporated (**Club**).

### 2. DEFINITIONS AND INTERPRETATIONS

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#### 2.1 Definitions

In this Constitution unless the context requires otherwise:

**Act** means the *Associations Incorporation Act 2009* (NSW), as amended or replaced from time to time.

**AGM** means the annual General Meeting of the Club required to be held in accordance with the Act.

**Appointed Director** means a Director appointed under **clause 14.3**.

**Association Boundary** has the meaning given to it in the FNSW by-laws.

**General Manager** means the General Manager that may be appointed under **clause** Error! Reference source not found.. If a General Manager has not been appointed by the Directors, all references to "General Manager" in this Constitution will be taken to refer to the Public Officer.

**Club Director** means a Director appointed by NWSF under clause 14.2.

**Constitution** means this Constitution as amended from time to time.

**Director** means a director of the Club and includes the Club Directors, Appointed Directors and the Initial Directors.

**Directors** mean all or some of the Directors of the Club acting as a board.

**FNSW** means Football NSW Limited (ABN 25 003 215 923), being the organisation responsible for governing and administering football in New South Wales.

**GDR** means the NWSF 'Grievance and Disciplinary Regulations' as amended by NWSF from time to time.

**General Meeting** means any general meeting of Members of the Club, including the Annual General Meeting.

**GPT Chairperson** means the person elected as such from time to time under the NWSF constitution.

**Initial Directors** means the directors at the time of adoption of this Constitution as outlined in **Schedule 1**.

**Initial Member** means each person holding office as a director of NWSF at the time this Constitution is adopted by the Club.

**Member** means a person registered under **clause 8** as a Member of the Club.

**MOU** means the memorandum of understanding between NWSF and the Club as referred to in the NWSF constitution.

**NWSF** means North West Sydney Football Ltd (ACN 635 227 897), being the organisation responsible for conducting, controlling and managing all levels of football in the Region.

**Objects** mean the objects of the Club in **clause 3**.

**Public Officer** means a person appointed as public officer under **clause 17**.

**Region** means the area specifically determined by FNSW from time to time as the relevant Association Boundary in which NWSF operates.

**Register** means the register of Members kept under the Act.

**Special Resolution** has the same meaning as that given to it in the Act.

**Teams** mean NWS Spirit Football Club and any other representative teams operated by the Club and representing NWSF and the Region from time to time.

## 2.2 Interpretation

In this Constitution unless the context requires otherwise:

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person includes a body corporate, an unincorporated body or other entity and conversely;
- (e) a reference to a clause is to a clause of this Constitution;
- (f) a reference to any Member includes the Member's successors, and permitted assigns;
- (g) the Objects and powers of the Club must be construed independently of each other and without limiting the generality of other objects or powers;
- (h) the use of examples, or the mentioning of anything after "include", "includes" or "including", does not limit what else might be included; and

- (i) if any part of this Constitution is invalid or unenforceable, that part is to be read down to the extent of the invalidity or unenforceability without affecting the remaining provisions.

### **2.3 The Act**

- (a) In this Constitution, unless the context requires otherwise, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (b) The model rules created under the Act are displaced by this Constitution and accordingly do not apply to the Club.

## **3. OBJECTS**

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The Club is established solely for the Objects. The Objects of the Club are to:

- (a) recognise NWSF as the association responsible for football in the Region;
- (b) act as a representative of NWSF for the administration of the Teams;
- (c) manage and administer the Teams;
- (d) enter the Teams in FNSW-sanctioned football competitions;
- (e) conduct, on behalf of NWSF, representative football programs associated with the Teams and NWSF;
- (f) operate at all times in accordance with the MOU;
- (g) raise funds for the achievement of the above Objects in any lawful manner, which may include engaging in commercial activities; and
- (h) undertake and or do all such things or activities which are necessary, incidental or conducive to the advancement of these Objects.

## **4. POWERS OF THE CLUB**

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Solely for furthering the Objects, the Club, in addition to any other powers it has under the Act, has the legal capacity and powers of a company limited by guarantee as set out under section 124 of the *Corporations Act 2001* (Cth).

## **5. INCOME AND PROPERTY OF THE CLUB**

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### **5.1 Sole Purpose**

The income and property of the Club must be used solely in promoting the Objects and in exercising the Club's powers. Subject to this Constitution none of the Club's income or property will be distributed, paid or transferred directly or indirectly by way of dividend or bonus or by way of profit to or amongst the Members or Directors of the Club.

## 5.2 Payments to Members

No part of the income or property of the Club may be paid or otherwise distributed, directly or indirectly, to any Member or Director except for payments to a Member or Director in good faith in the promotion of the Objects and as approved by the Directors as follows:

- (a) out-of-pocket expenses incurred by a Director in performing a duty as a Director of the Club; or
- (b) a service rendered to the Club by a Director or Member in a professional or technical capacity or as an employee, other than in the capacity as a Director or Member of the Club, where:
  - (i) the provision of the service has the prior approval of the Directors; and
  - (ii) the amount payable is not more than an amount which commercially would be reasonable payment for the service.

## 6. LIABILITY OF MEMBERS

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### 6.1 Members' Liability

The liability of the Members is limited.

### 6.2 Members' Contributions

Every Member of the Club undertakes to contribute to the assets of the Club if it is wound up while they are a Member, or within one year after the Member ceases to be a Member, for:

- (a) the payment of the debts and liabilities of the Club, contracted before the Member ceased to be a Member; and
- (b) the expenses of winding up the Club.

### 6.3 Amount of Members' Contributions

The amount of the contribution under **clause 6.2** must not exceed \$1.00 per Member in any circumstances.

## 7. ALTERATION OF CONSTITUTION

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

## 8. MEMBERSHIP

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### 8.1 Members

The Members are:

- (a) the Initial Members; and



- (b) any other persons the Directors admit to membership in accordance with this Constitution.

## **8.2 Eligibility for Membership**

- (a) Every applicant for membership of the Club, must apply in writing to the Directors.
- (b) An applicant for membership, and Member, must be a director of NWSF:
  - (i) at the time of applying for membership of the Club; and
  - (ii) for the duration of their membership of the Club.

## **8.3 Consideration of applications**

- (a) Where an applicant for membership:
  - (i) complies with the eligibility requirements in **clause 8.2**, the Directors must admit the applicant as a Member of the Club; or
  - (ii) does not comply with the eligibility requirements in **clause 8.2**, the Directors must reject the admission of the applicant.
- (b) Upon the acceptance or rejection of an application for membership, the Club must as soon as practicable give the applicant notice in writing of acceptance or rejection.
- (c) The Directors must give written reasons for rejecting an application in accordance with **clause 8.3(a)(ii)**.

## **8.4 Rights and obligations of Members**

- (a) Members are entitled to all the rights of membership under this Constitution.
- (b) Members agree to be bound by this Constitution and by any rules, regulations or by-laws of the Club.

## **8.5 No membership fee**

No fee is payable:

- (a) by an applicant for membership; or
- (b) by way of an annual membership fee; or
- (c) by the Members in relation to their membership of the Club.

## **9. REGISTER OF MEMBERS**

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- (a) The Directors must keep a Register of:
  - (i) the names and addresses of all Members;

- (ii) the dates of their admission as Members;
  - (iii) particulars of resignations, termination and reinstatement of membership; and
  - (iv) any further particulars as the Directors or the Members at any General Meeting may require from time to time.
- (b) The Register will be open for inspection and copying in accordance with the Act.

## **10. DISCIPLINE OF MEMBERS**

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Where the Directors are advised of an allegation, not being vexatious, trivial or frivolous, or considers that a Member or Director 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 Directors or any duly authorised committee; or
- (b) acted in a manner unbecoming of a Member/Director or prejudicial to the Objects and the interests of the Club, NWSF and/or football, or another Member/Director; or
- (c) brought themselves, another Member/Director, the Club, NWSF or football into disrepute,

such allegations shall be referred to a sub-committee appointed by the Directors to investigate whether or not to convene a tribunal to hear a matter against any Member/Director.

## **11. CESSATION OF MEMBERSHIP**

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A person immediately ceases to be a Member if the person:

- (a) dies;
- (b) resigns as a Member by giving written notice to the Club;
- (c) ceases, for whatever reason, to hold office as a director of NWSF;
- (d) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under a law relating to mental health; or
- (e) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors.

## **12. GRIEVANCE PROCEDURE**

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- (a) The grievance procedure set out in this clause applies to disputes under this Constitution between a Member and:
  - (i) another Member; or

- (ii) the Club.
- (b) The parties to the dispute must meet (which may, if agreed by the parties, take place by using any technology that allows the parties to clearly and simultaneously communicate with each other) and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all parties.
- (c) If the parties are unable to resolve the dispute at the meeting or if a party fails to attend that meeting, then the parties may, within 10 days, refer the dispute to Community Justice Centres New South Wales (or such other similar body in circumstances where Community Justice Centres New South Wales is no longer in existence) for resolution.
- (d) The Directors may prescribe additional grievance procedures in by-laws consistent with this **clause 12**.

## **13. GENERAL MEETINGS**

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### **13.1 Calling General Meetings**

- (a) AGMs of the Club are to be held:
  - (i) according to the Act; and
  - (ii) otherwise as determined by the Directors, including as to date and venue.
- (b) The Directors may convene a General Meeting when they think fit and must do so:
  - (i) on the requisition in writing of at least two Members; or
  - (ii) if required by the Act.
- (c) The Directors may change the venue for, postpone or cancel a General Meeting, if they consider that the meeting has become unnecessary, or the venue would be unreasonable or impractical or a change is necessary in the interests of conducting the meeting efficiently, but:
  - (i) a meeting which is not called by a Directors' resolution; and
  - (ii) a meeting which is called in accordance with a members' requisition,

may not be postponed or cancelled without the prior written consent of the persons who called or requisitioned the meeting.

### **13.2 Notice of General Meetings**

- (a) Notice of every General Meeting must be given in any manner authorised by **clause 25** to each person who is at the date of the notice:
  - (i) a Member;

- (ii) a Director; or
  - (iii) the auditor of the Club.
- (b) At least 21 days' notice of a General Meeting must be given, and the notice must
  - (i) specify the date, time and place of the meeting; and
  - (ii) except as provided by the Act, state the general nature of the business to be transacted at the meeting.
- (c) A person may waive notice of a General Meeting by written notice to the Club.
- (d) The non-receipt of notice of a General Meeting by, or a failure to give notice of a General Meeting to, any person entitled to receive notice of a General Meeting does not invalidate any thing done or resolution passed at the General Meeting if:
  - (i) the non-receipt or failure occurred by accident or error; or
  - (ii) before or after the meeting, the person has notified or notifies the Club of the person's agreement to that thing or resolution.
- (e) A person's attendance at a General Meeting waives any objection that person may have to:
  - (i) a failure to give notice, or the giving of a defective notice, of the meeting unless, at the beginning of the meeting, the person objects to the holding of the meeting; and
  - (ii) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.
- (f) No business other than that stated in the notice of meeting may be transacted at a General Meeting.

### **13.3 General Meetings by technology**

- (a) The contemporaneous linking together by telephone or other electronic means of a sufficient number of the Members in person, to constitute a quorum constitutes a General Meeting, provided each Member has a reasonable opportunity to participate at the meeting.
- (b) All the provisions in this Constitution relating to General Meetings apply, so far as they can and with any necessary changes, to General Meetings by telephone or other electronic means.
- (c) A Member who takes part in a General Meeting by telephone or other electronic means is taken to be present in person at the meeting.

- (d) A General Meeting by telephone or other electronic means is taken as held at the place decided by the chairperson of the meeting, as long as at least one of the Members involved was at that place for the duration of the meeting.

#### **13.4 Quorum at General Meetings**

- (a) No business may be transacted at a General Meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of Members is present when the meeting proceeds to business.
- (b) A quorum consists of:
  - (i) if there is only one Member entitled to vote, that Member; and
  - (ii) in any other case, three Members entitled to vote, unless the Members have fixed a higher number of Members entitled to vote, and present at the meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for a General Meeting:
  - (i) where the meeting was convened on the requisition of Members, the meeting must be dissolved; or
  - (ii) in any other case the meeting stands adjourned to the day, and at the time and place, that the Directors decide or, if the Directors do not make a decision, to the same day in the next week at the same time and place, and if at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

#### **13.5 Chairperson of General Meetings**

- (a) The chairperson of Directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each General Meeting.
- (b) If at a General Meeting:
  - (i) there is no chairperson of Directors;
  - (ii) the chairperson of Directors is not present within 15 minutes after the time appointed for the meeting; or
  - (iii) the chairperson of Directors is present within that time but is not willing to act as chairperson of the meeting,the Members present must elect as chairperson of the meeting:
  - (iv) another Director who is present and willing to act; or

- (v) if no other Director present at the meeting is willing to act, a Member who is present and willing to act.

### **13.6 Conducting and adjourning General Meetings**

- (a) A question arising at a General Meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chairperson of the meeting, whose decision is final.
- (b) The chairperson of a General Meeting may, and must do so if directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting except the business left unfinished at the meeting from which the adjournment took place.
- (c) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
- (d) Except as provided by **clause 13.6(c)**, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- (e) Where a meeting is adjourned, the Directors may change the venue of, or postpone or cancel, the adjourned meeting.

### **13.7 Decisions at General Meetings**

- (a) Except where a Special Resolution is required by the Act, questions arising at a General Meeting must be decided by a majority of votes cast by the Members present at the meeting. Such a decision is for all purposes a decision of the Members.
- (b) Where the votes on a proposed resolution are equal:
  - (i) the chairperson of the meeting does not have a second or casting vote; and
  - (ii) the proposed resolution is taken as lost.
- (c) A resolution put to the vote of a General Meeting must be decided on a show of hands unless, before the vote is taken or before or immediately after the declaration of the result of the show of hands, a poll is demanded by:
  - (i) the chairperson of the meeting;
  - (ii) at least two Members present and with the right to vote on the resolution; or
  - (iii) a Member or Members present at the meeting and representing at least 5% of the total voting rights of all the Members entitled to vote on the resolution on a poll.

- (d) A demand for a poll does not prevent a General Meeting continuing for the transaction of any business except the question on which the poll has been demanded.
- (e) Unless a poll is duly demanded, a declaration by the chairperson of a General Meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Club, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (f) If a poll is duly demanded at a General Meeting, it must be taken in such manner and either at once or after an interval or adjournment or otherwise, as the chairperson of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded.
- (g) A poll demanded at a General Meeting on the election of a chairperson of the meeting or on a question of adjournment must be taken immediately.
- (h) The demand for a poll may be withdrawn.
- (i) If the Club has only one Member, the Club may pass a resolution by the Member recording it and signing the record.

### **13.8 Voting rights**

- (a) Subject to this Constitution, at a General Meeting every Member present has one vote.
- (b) An objection to the qualification of a person to vote at a General Meeting must be:
  - (i) raised before or at the meeting at which the vote objected to is given or tendered; and
  - (ii) referred to the chairperson of the meeting, whose decision is final.
- (c) A vote not disallowed by the chairperson of a meeting under **clause 13.8(b)** is valid for all purposes.

### **13.9 Postal and electronic voting**

- (a) Postal voting or voting by electronic communication may be permitted from time to time in such instances and on such resolutions as the Directors may determine.
- (b) When permitted by the Directors, postal or electronic voting shall be conducted in accordance with the Act, including that any particular resolution voted on by postal ballot or electronic communication must only be voted on using that method, and not in conjunction with voting in person at the General Meeting.

### 13.10 No proxy voting

Proxy voting, voting by representative and voting by attorney, are not permitted at General Meetings of the Club.

### 13.11 Written resolutions

- (a) The Club may pass a resolution without a General Meeting being held if all the Members entitled to vote on the resolution sign a document (or individual copies if the wording is identical in each copy) containing a statement that they are in favour of the resolution out set in the document. The resolution is passed when the last Member signs.
- (b) Any written resolution passed in accordance with this clause satisfies any requirement in the Constitution or in the Act (to the extent permitted by the Act) that the resolution be passed at a General Meeting.

## 14. DIRECTORS

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### 14.1 Appointing and removing Directors

- (a) Subject to **clause 14.1(c)**, there must be not less than five and no more than seven Directors.
- (b) There will be:
  - (i) five Club Directors all of whom will be appointed under **clause 14.2**; and
  - (ii) up to two Appointed Directors who may be appointed in accordance with **clause 14.3**.
- (c) The Club may by resolution passed at a General Meeting increase or reduce the minimum or maximum number of Directors; and
- (d) The first Directors are the Initial Directors.
- (e) Portfolios may be allocated to Directors.

### 14.2 Club Directors

- (a) NWSF may by resolution in writing:
  - (i) appoint any Club Director, provided:
    - (A) the number of Club Directors does not exceed the maximum number in **clause 14.1(b)(i)** or as set by the Members under **clause 14.1(c)**;
    - (B) that NWSF considers the recommendations for appointment from the other Club Directors, and that the recommendations would not be unreasonably refused by NWSF;



- (C) before appointing the Director, the proposed director signs a consent to act as a Director; and
  - (ii) remove any Director; and
  - (iii) subject to 14.2 (a)(i)(B), appoint another person as a Club Director.
- (b) A Club Director will continue to hold office until he or she dies or until his or her office is vacated under **clauses 14.2(a)(ii) or 14.5**.
  - (c) A resolution by NWSF for the purposes of this **clause 14.2** will be valid where it is in writing and signed by an authorised representative of NWSF.
  - (d) There is no limited to the maximum consecutive years that may be served by a Club Director.

### 14.3 Appointed Directors

- (a) The Directors may appoint up to two Appointed Directors in accordance with this Constitution.
- (b) Appointed Directors should have skills that complement and/or supplement any skill gaps that may exist in the Directors, with the aim of ensuring that the Directors have all the necessary skills to govern the Club. Appointed Directors do not need to be Members or have experience in, or exposure to, football or the Team.
- (c) Directors appointed under **clause 14.3(a)** may be appointed by the Directors in accordance with this Constitution for a term of up to two years, which shall commence and conclude on dates as determined by the Directors.
- (d) Following the adoption of this Constitution, no person who has served as an Appointed Director for a period of up to two consecutive full terms (four years) shall be eligible for re-appointment as a Director for at least two years following the date of conclusion of their last term as a Director.

### 14.4 Casual vacancies

- (a) NWSF may appoint any individual as a Director, either to fill a casual vacancy or as an addition to the existing Directors provided:
  - (i) the number of Directors does not exceed the maximum number in **clause 14.1(b)(ii)** or as set by the Members under **clause 14.1(c)**; and
  - (ii) before appointing the Director, the proposed director signs a consent to act as a Director.
- (b) A Director appointed under **clause 14.4(a)** holds office only until the conclusion of the next AGM following his or her appointment but is eligible for reappointment under **clause 14.2**.

## 14.5 Vacation of office

The office of a Director becomes vacant:

- (a) in the circumstances prescribed by the Act;
- (b) if the Director becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (c) if the Director is removed from office:
  - (i) by NWSF under **clause 14.2(a)(ii)**; or
  - (ii) by ordinary resolution of the Members;
- (d) if the Director fails to attend meetings of Directors for at least three consecutive meetings or at least four meetings over a period of 12 months without leave of absence unless the Directors subsequently decide to grant a leave of absence; or
- (e) if the Director resigns by written notice to the Club.

## 14.6 Interested Directors

- (a) The Directors may make regulations requiring the disclosure of interests that a Director, and any person considered by the Directors as related to or associated with the Director, may have in any matter concerning the Club or a related body corporate. Any regulations made under this Constitution bind all Directors.
- (b) Unless the Act permits, a Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
  - (i) be present while the matter is being considered at the meeting; or
  - (ii) vote on the matter.
- (c) A Director contracting with or being interested in any arrangement involving the Club is not liable to account to the Club for any profit realised by or under that contract or arrangement merely because the Director holds office as a Director or because of the fiduciary obligations arising out of that office provided the Director complies with the disclosure requirements under **clause 14.6(a)** and the Act regarding the interest.
- (d) A contract made by a Director with the Club and a contract or arrangement entered into by or on behalf of the Club in which any Director may be in any way interested is not avoided or rendered void merely because the Director holds office as a Director or because of the fiduciary obligations arising out of that office.
- (e) A Director is not disqualified, subject to **clause 14.6(a)** and any decision of the Directors, merely because he or she is a Director, from contracting with the Club in any respect including, but not limited to:

- (i) selling property to, or purchasing property from, the Club;
  - (ii) lending money to the Club with or without interest or security;
  - (iii) guaranteeing the repayment of money borrowed by the Club for a commission or profit;
  - (iv) underwriting or guaranteeing the subscription for securities in any related body corporate or other body corporate promoted by the Club or in which the Club is interested as a shareholder or otherwise, for a commission or profit; or
  - (v) being employed by the Club or acting in any professional capacity (except as auditor) on behalf of the Club.
- (f) Subject to **clause 14.6(a)**, a Director may hold another position (except as auditor) in the Club or any related body corporate in conjunction with his or her Directorship and may be appointed to that position on terms as to remuneration, tenure and otherwise that the Directors decide.
- (g) A Director:
- (i) may be or become a director or other officer of, or otherwise interested in, any related body corporate or other body corporate promoted by the Club or in which the Club is interested as a shareholder or otherwise; and
  - (ii) is not accountable to the Club for any remuneration or other benefits he or she receives as a Director or officer of, or from having an interest in, that body corporate.

#### **14.7 Remuneration of Directors**

A Director may not be paid for services as a Director but, with the approval of the Directors and subject to the Act, may be:

- (a) paid by the Association for services rendered to it other than as a Directors; and
- (b) reimbursed by the Association for their reasonable travelling, accommodation and other expenses when:
  - (i) travelling to or from meetings of the Directors, a Committee or the Association; or
  - (ii) otherwise engaged on the affairs of the Association.

#### **14.8 Powers and duties of Directors**

- (a) The Directors are responsible for managing the Club's affairs and carrying out the Objects of the Club. The Directors may exercise to the exclusion of the Club in General Meeting any of the Club's powers which are not required, by the Act or by this Constitution, to be exercised by the Club in General Meeting.

- (b) The Directors may:
  - (i) appoint or employ a person to be an officer, agent or attorney of the Club for the purposes, with the powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the Directors), for the period and on the conditions they think fit;
  - (ii) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and
  - (iii) subject to any contract between the Club and the relevant officer, agent or attorney, remove or dismiss any officer, agent or attorney at any time, with or without cause.
- (c) A power of attorney may contain any provisions for the protection and convenience of the attorney or persons dealing with the attorney that the Directors think fit.

#### **14.9 Proceedings of Directors**

- (a) The Directors may meet together and adjourn and otherwise regulate their meetings as they think fit.
- (b) The contemporaneous linking together by telephone or other electronic means of a sufficient number of the Directors to constitute a quorum constitutes a meeting of the Directors. All the provisions in this Constitution relating to meetings of the Directors apply, so far as they can and with any necessary changes, to meetings of the Directors by telephone or other electronic means.
- (c) A Director who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (d) A meeting by telephone or other electronic means is taken as held at the place decided by the chairperson of the meeting, as long as at least one of the Directors involved was at that place for the duration of the meeting.
- (e) If, before or during the meeting, any technical difficulty occurs as a result of which one or more Directors cease to participate, the chairperson may adjourn the meeting until the difficulty is remedied or may, where a quorum of Directors remains present, continue with the meeting.

#### **14.10 Convening meetings of Directors**

- (a) A Director may convene a meeting of the Directors whenever he or she thinks fit.
- (b) The Public Officer or General Manager must, on the requisition of a Director, convene a meeting of the Directors.

#### 14.11 Notice of meetings of Directors

- (a) Subject to this Constitution, notice of a meeting of Directors must be given to each person who is at the time of giving the notice a Director, except a Director on leave of absence approved by the Directors.
- (b) A notice of a meeting of Directors:
  - (i) must specify the time and place of the meeting;
  - (ii) need not state the nature of the business to be transacted at the meeting;
  - (iii) may be given immediately before the meeting; and
  - (iv) may be given in person or by post, telephone, fax or other electronic means.
- (c) A Director may waive notice of a meeting of Directors by notifying the Club to that effect in person or by post, telephone, email or other electronic means.
- (d) The non-receipt of notice of a meeting of Directors by, or a failure to give notice of a meeting of Directors to, a Director does not invalidate any thing done or resolution passed at the meeting if:
  - (i) the non-receipt or failure occurred by accident or error;
  - (ii) before or after the meeting, the Director:
    - (A) has waived or waives notice of that meeting under **clause 14.11(c)**; or
    - (B) has notified or notifies the Club of his or her agreement to that thing or resolution personally or by post, telephone, email or other electronic means; or
  - (iii) the Director attended the meeting.
- (e) Attendance by a person at a meeting of Directors waives any objection which that person may have to a failure to give notice of the meeting.

#### 14.12 Quorum at meetings of Directors

- (a) No business may be transacted at a meeting of Directors unless a quorum of Directors is present at the time the business is dealt with.
- (b) A quorum consists of:
  - (i) if the Directors have fixed a number for the quorum greater than four, that number of Directors; or
  - (ii) in any other case, four Directors,

present at the meeting of Directors.

- (c) If there is a vacancy in the office of a Director then, subject to **clause 14.12(d)**, the remaining Directors may act.
- (d) If the number of Directors in office at any time is not sufficient to constitute a quorum at a meeting of Directors, or is less than the minimum number of Directors fixed under this Constitution, the remaining Directors must act as soon as possible to:
  - (i) increase the number of Directors to a number sufficient to constitute a quorum and to satisfy the minimum number of Directors required under this Constitution; or
  - (ii) convene a General Meeting for that purpose,

and until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

#### **14.13 Chairperson of Directors**

- (a) The Directors may elect one of the Directors as chairperson of Directors and may decide the period for which that Director is to be the chairperson.
- (b) The chairperson of Directors must (if present within 10 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each meeting of Directors.
- (c) If at a meeting of Directors:
  - (i) there is no chairperson of Directors;
  - (ii) the chairperson of Directors is not present within 10 minutes after the time appointed for the meeting; or
  - (iii) the chairperson of Directors is present within that time but is not willing to act as chairperson of the meeting,

the Directors present must elect one of the Directors present as chairperson of the meeting.

#### **14.14 Decisions of Directors**

- (a) A meeting of Directors at which a quorum is present may exercise all the powers and discretions vested in or exercisable by the Directors under this Constitution.
- (b) Questions arising at a meeting of Directors must be decided by a majority of votes cast by the Directors present. Such a decision is for all purposes a decision of the Directors.
- (c) Where the votes on a proposed resolution are equal:

- (i) the chairperson of the meeting does not have a second or casting vote; and
- (ii) the proposed resolution is taken as lost

#### 14.15 Written resolutions of Directors

- (a) If:
  - (i) all the Directors, other than any Director:
    - (A) on leave of absence approved by the Directors;
    - (B) who disqualifies himself or herself from considering the thing or resolution in question on the grounds that he or she is not entitled at law to do so or has a conflict of interest; or
    - (C) who the Directors reasonably believe is not entitled at law to do the thing or to vote on the resolution in question,  
  
assent to a document containing a statement to the effect that a thing has been done or resolution has been passed; and
  - (ii) the Directors who assent to the document would have constituted a quorum at a meeting of Directors held to consider that thing or resolution,  
  
then that thing or resolution is to be taken as having been done at or passed by a meeting of the Directors.
- (b) For the purposes of **clause 14.15(a)**:
  - (i) the meeting is to be taken as having been held:
    - (A) if the Directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a Director; or
    - (B) if the Directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a Director;
  - (ii) two or more separate documents in identical terms each of which is assented to by one or more Directors are to be taken as constituting one document; and
  - (iii) a Director may signify assent to a document by signing the document or by notifying the Club of the Director's assent in person or by post, telephone, email or other electronic means.
- (c) Where a Director signifies assent to a document otherwise than by signing the document, the Director must by way of confirmation sign the

document at the next meeting of the Directors attended by that Director, but failure to do so does not invalidate the thing or resolution to which the document relates.

- (d) Where a document is assented to in accordance with **clause 14.15(a)**, the document is to be taken as a minute of a meeting of Directors.

#### **14.16 Minutes of meetings and minutes of resolutions**

- (a) The Directors must ensure minutes of proceedings and resolutions of General Meetings and of meetings of Directors (including committees of Directors) are recorded in books kept for the purpose, within one month after the relevant meeting is held.
- (b) The Directors must ensure minutes of resolutions passed by Directors (and committees of Directors) without a meeting are recorded in books kept for that purpose within one month after the resolution is passed.
- (c) The minutes of a meeting must be signed within a reasonable time by the chairperson of the meeting or the chairperson of the next meeting.

#### **14.17 Committees of Directors**

- (a) The Directors may delegate any of their powers to one or more committees consisting of the number of Directors they think fit.
- (b) A committee to which any powers have been delegated must exercise the powers delegated in accordance with any directions given by the Directors.
- (c) The provisions of this Constitution that apply to meetings and resolutions of Directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee of Directors.

#### **14.18 Delegation to individual Directors**

- (a) The Directors may delegate any of their powers to one Director.
- (b) A Director to whom any powers have been delegated must exercise the powers delegated in accordance with any directions given by the Directors.

#### **14.19 Validity of acts**

An act done by a person acting as a Director, a meeting of Directors, or a committee of Directors attended by a person acting as a Director, is not invalidated merely because of:

- (a) a defect in the appointment of the person as a Director;
- (b) the person being disqualified to be a Director or having vacated office; or
- (c) the person not being entitled to vote,



if that circumstance was not known by the person, the Directors or the committee (as applicable) when the act was done.

## **15. COMMITTEES**

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### **15.1 Committees**

The Directors may by written instrument delegate any of their powers to committees consisting of such persons they think fit (including Directors, individuals and consultants), and may vary or revoke any delegation.

### **15.2 Powers delegated to Committees**

- (a) A committee must exercise the powers delegated to it according to the terms of the delegation and any directions of the Directors. A committee is responsible to and reports to the Directors.
- (b) Powers delegated to and exercised by a committee are taken to have been exercised by the Directors.

### **15.3 Committee meetings**

Committee meetings are governed by the provisions of this Constitution dealing with Directors' meetings, as far as they are capable of application.

## **16. GENERAL MANAGER**

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### **16.1 Appointment of General Manager**

The Directors may appoint a General Manager.

### **16.2 Powers, duties and authorities of General Manager**

- (a) If appointed the General Manager holds office on the terms and conditions (including any remuneration) and with the powers, duties and authorities, determined by the Directors.
- (b) The exercise of those powers and authorities, and the performance of those duties, by the General Manager are subject at all times to the control of the Directors.

### **16.3 Suspension and removal of General Manager**

Subject to the terms and conditions of the appointment, the Directors may suspend or remove the General Manager from that office.

### **16.4 Delegation by Directors to General Manager**

The Directors may delegate to the General Manager the power (subject to such reservations on the power as are decided by the Directors) to conduct the day-to-day management and control of the business and affairs of the Club. The delegation may include the power and responsibility to:

- (a) develop business plans, budgets, strategies, policies, processes and codes of conduct for consideration by the Directors and to implement them to the extent approved by the Directors;
- (b) manage the financial and other reporting mechanisms of the Club;
- (c) approve and incur expenditure subject to specified expenditure limits;
- (d) sub-delegate his or her powers and responsibilities to employees or internal management committees of the Club; and
- (e) any other powers and responsibilities that the Directors consider appropriate to delegate to the General Manager.

### **16.5 General Manager to attend meetings**

If appointed, the General Manager is entitled, subject to a determination otherwise by the Directors, to attend all meetings of the Club, all meeting of the Directors and any committees and may speak on any matter, but does not have a vote.

## **17. PUBLIC OFFICER**

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- (a) There must be a Public Officer who is to be appointed by the Directors under the Act.
- (b) In addition to the manner in which the office of public officer becomes vacant under the Act the Directors may suspend or remove the Public Officer from that office.
- (c) The Public Officer holds office on the terms and conditions and with the powers, duties and authorities, determined by the Act and the Directors. Subject to this Constitution the Public Officer is not entitled to remuneration unless the Public Officer is also the General Manager.

## **18. INSURANCE**

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### **18.1 Indemnity of officers**

Every person who is or has been:

- (a) a Director;
- (b) General Manager; or
- (c) Public Officer,

is entitled to be indemnified out of the property of the Club against:

- (d) every liability incurred by the person in that capacity (except a liability for legal costs); and
- (e) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an

administrative or investigatory nature, in which the person becomes involved because of that capacity, unless:

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

## **18.2 Insurance**

The Club may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director, Public Officer or General Manager against liability incurred by the person in that capacity, including a liability for legal costs, unless:

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

## **19. KEEPING AND INSPECTION OF RECORDS**

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### **19.1 Records**

- (a) The Directors shall establish and maintain proper records and minutes concerning all transactions, business, meetings and dealings of the Club and the Directors and shall produce these as appropriate at each Directors meeting or General Meeting.
- (b) The Directors will cause the Club records to be kept for a period of 7 years from their creation.

### **19.2 Inspection of records**

- (a) Members may on request inspect free of charge:
  - (i) the minutes of General Meetings; and
  - (ii) subject to **clause 19.2(b)**, the financial records, books, securities, this Constitution and any other relevant document of the Club.
- (b) The Directors may refuse to permit a Member to inspect records of the Club that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the Club, as determined by the Directors in their absolute discretion.
- (c) The Directors must on request make copies of this Constitution available to Members and applicants for membership free of charge.
- (d) Subject to **clause 19.2(b)**, a Member may make a copy of any of the other records of the Club referred to in this clause and the Club may charge a reasonable fee for provision of a copy of such a record.
- (e) For the purposes of this clause:

**relevant documents** mean the records and other documents, however compiled, recorded or stored, that relate to the incorporation and management of the Club and includes the following:

- (i) its financial statements;
- (ii) its financial records;
- (iii) this Constitution; and
- (iv) records and documents relating to transactions, dealings, business or property of the Club.

## **20. ACCOUNTS**

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### **20.1 Records Kept in Accordance with Act**

Books, documents, securities and proper accounting and other records shall be kept in accordance with the Act, generally accepted accounting principles and/or any applicable code of conduct. All such records and the books of account shall be kept in the care and control of the Directors.

### **20.2 Directors to Submit Accounts**

The Directors shall submit to the AGM the accounts of the Club in accordance with the Act and will distribute copies of financial statements as required by the Act.

### **20.3 Transactions**

All cheques, promissory notes, bankers drafts, bills of exchange, other negotiable instruments, electronic transactions, and all receipts for money paid to the Club, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Directors determine from time to time.

### **20.4 Financial year**

The financial year of the Club shall be the year commencing 1 October and ending on 30 September.

## **21. AUDITOR**

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- (a) A properly qualified auditor or auditors shall be appointed by the Directors and the remuneration of such auditor or auditors fixed and duties regulated in accordance with the Act.
- (b) Members may remove an auditor from office by resolution made at a General Meeting in accordance with the Act.

## **22. WINDING UP**

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- (a) If on the winding up or dissolution of the Club, and after satisfaction of all its debts and liabilities, any property remains, that property must be given or transferred to:
  - (i) NWSF, being an entity that meets the requirements specified in (ii)(A) and (B) below; or
  - (ii) if NWSF or an applicable successor-in-title to NWSF is no longer incorporated, another body or bodies:
    - (A) having purposes similar to those of the Club; and
    - (B) whose constitution prohibits (or each of whose constitutions prohibit) the distribution of its or their income and property among its or their members to an extent at least as great as is imposed under this Constitution.
- (b) For the purposes of **clause 22(a)(ii)**, that body is, or those bodies are, to be determined by the Members at or before the time of dissolution or, failing that determination, by a judge who has or acquires jurisdiction in the matter.

## **23. REGULATIONS**

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### **23.1 Making and amending By-Laws**

- (a) The Directors may from time to time make by-laws which in their opinion are necessary or desirable for the control, administration and management of the Club's affairs and may amend, repeal and replace those by-laws.
- (b) Interpretation of such by-laws is solely the responsibility of the Directors.

### **23.2 Effect of By-Laws**

A by-law:

- (a) is subject to this Constitution and the MOU;
- (b) must be consistent with this Constitution and the MOU; and
- (c) when in force, is binding on all Members and has the same effect as a provision in this Constitution.

## **24. COMMON SEAL**

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- (a) If the Club has a common seal it shall:
  - (i) be kept in the custody of the Public Officer; and

- (ii) not be affixed to any instrument except by the authority of the Directors and the affixing of the common seal shall be attested by the signatures of two Directors.
- (b) A Director may not sign a document to which the seal of the Club is fixed where the Director is interested in the contract or arrangement to which the document relates.

## **25. NOTICE**

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### **25.1 Document includes notice**

In this **clause 25**, document includes a notice.

### **25.2 Methods of service on a Member**

The Club may give a document to a Member:

- (a) personally;
- (b) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or
- (c) by sending it to an email or other electronic address nominated by the Member.

### **25.3 Methods of service on the Club**

A Member may give a document to the Club:

- (a) by delivering it to the Club's registered office;
- (b) by sending it by post to the Club's registered office; or
- (c) by sending it to an email or electronic address nominated by the Club.

### **25.4 Post**

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, or sent from an address outside Australia, must be sent by airmail,
- (c) and in either case is taken to have been received on the fourth business day after the date of its posting.

### **25.5 Electronic transmission**

If a document is sent by email or any form of electronic transmission, delivery of the document is taken to:

- (a) be effected by properly addressing and transmitting the electronic transmission; and
- (b) have been delivered on the business day following its transmission.

## **26. SOURCE OF FUNDS**

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The funds of the Club may be derived from annual subscriptions, fees and levies payable by participants, donations, grants, distributions, sponsorships and such other sources as the Directors determine.

## **27. REGISTERED ADDRESS**

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The registered address of the Club must be:

- (a) an address where the Public Officer can generally be found and where documents can be served on the Public Officer; and
  - (b) in New South Wales.
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## SCHEDULE 1

### **1. Initial Directors**

- (a) Tim Martin
- (b) Peter Vousden
- (c) Frank Marchi
- (d) Lina Candy
- (e) Alf Cirino

### **2. Initial Members**

- (a) Helen Armson
- (b) Malcolm Arnold
- (c) Jodie Camden
- (d) Lindsay Donald, and
- (e) Tracey Williams