

EXPLANATORY MEMORANDUM FOR PROPOSED NEW CONSTITUTION

This Explanatory Memorandum is to assist members to understand the proposed new Constitution and why it is appropriate to adopt it.

Members who wish to review the proposed new Constitution can inspect it on the Club's website and it at the Club where it is on display on the Club Notice Board together with a copy of the existing Memorandum and Articles of Association.

Members may also obtain a copy of the proposed new Constitution and the existing Memorandum and Articles of Association upon request at the Club's office.

The existing Memorandum and Articles of Association of the Club were adopted many years ago. Although they have been amended in a piecemeal fashion over time, the Club's lawyers have advised that in many respects the existing Memorandum and Articles of Association are significantly out of date and do not strictly comply with what is contained in the Corporations Act, Registered Clubs Act, Liquor Act, Gaming Machines Act or their respective Regulations.

A summary of the proposed new Constitution and its principal features is set out below. **Significant variations from the existing Memorandum and Articles of Association have been set out in bold.** However, there are many additional new provisions which reflect the requirements of various pieces of legislation which impact on the Club. These have not been set out in bold.

NAME

1. Rule 1 states that the name of the company is Swansea RSL Club.

PRELIMINARY

2. Rule 2 contains introductory rules about the status of the Club as a company limited by guarantee and the legal effect of the Constitution.

DEFINITIONS

3. Rule 3 sets out definitions and terms used in the proposed new Constitution.

OBJECTS

4. Rule 4 sets out the objects for which the Club was established.
5. The objects reflect those in the existing Memorandum and Articles of Association. However, slight alterations have been made to bring the objects into line with the Liquor Act and Registered Clubs Act.

WINDING UP AND MEMBER'S LIABILITY

6. Rule 5 states that the liability of the members is limited. That limit is \$1.00 as set out in Rule 6.
7. Rule 6 provides that each member of the Club undertakes to contribute such amount as may be required not exceeding \$1.00 if the Club is wound up and the assets of the Club are insufficient to discharge the liabilities. This undertaking continues for a period of 12 months after the person ceases to be a member.
8. Rules 7.1 and 7.2 provide that on the winding up of the Club, if there remains any assets after the satisfaction of all debts and liabilities, those assets shall not be distributed among the members but shall be given or transferred to Swansea Sub-Branch of the RSL. This reflects the current Memorandum.
9. **The current Memorandum also goes on to provide that if the Swansea Sub-Branch does not exist at the time, all surplus property must be given to the New South Wales RSL State Branch.**

10. **The chances of any liquidation are very low. Nonetheless, the Board proposes in the new Constitution, that if a liquidation did occur, and, there are surplus assets, and the Swansea Sub-Branch does not exist at that time, the members can determine how those assets will be distributed.**
11. **Accordingly, the new Constitution provides that, if the Sub-Branch does not exist at the time of the winding up, any surplus assets will be given to another institution or institutions determined by the members at the time of the winding up, provided that the institutions have objects similar to that of the Club and are prohibited on distributing their assets to their members to the same extent as the Club.**

PROPERTY AND INCOME

12. Rule 8 deals with the property and income of the Club to ensure compliance with the Registered Clubs Act. For example, it includes rules that reflect the fact that:
 - (a) that the property and income of the Club must be applied solely towards the promotion of the objects of the Club;
 - (b) a director of the Club can not be appointed or elected to any office of the Club paid by salary or wages or any similar basis of remuneration; and
 - (c) the payment in good faith of reasonable and proper remuneration to any officer, employee or to any member of the Club for services actually rendered is not prohibited.

LIQUOR & GAMING

13. Rules 9.1 and 9.2 provide that liquor shall only be supplied to persons of or over the age of 18 years in accordance with the Registered Clubs Act.
14. Rule 9.3 states that a person using the gaming facilities of the Club must be of or over the age of 18 years.
15. Rules 9.4 to 9.6 inclusive prohibit a person associated with the Club from receiving direct or indirect benefits including but not limited to monetary payments or commissions from liquor sales and/or the use of poker machines at the Club.
16. **Rule 9.7 is a new provision which provides that members will have to abide by the Club's Policies in relation to responsible service of alcohol, responsible conduct of gambling and anti-money laundering and that failure to do so could result in exclusion from the premises without disciplinary proceedings. The obligations on the Club to ensure compliance in relation to responsible service of liquor, and responsible conduct of gambling, and anti-money laundering are becoming more and more onerous and the Club needs to be able to enforce its obligations through its policies outside of disciplinary procedures.**

MEMBERSHIP

17. Rule 10.1 states that no person under the age of 18 years is to be admitted as a member of the Club.
18. Rules 10.2 and 10.3 set out the categories of membership of the Club. Full membership of the Club shall be divided into the following categories:
 - (a) Ordinary members; and
 - (b) Life members.
19. Rule 10.4 provides that the number of full members having the right to vote in the election of the Board shall not be less than the minimum number of full members required by the Registered Clubs Act. The Act currently requires a majority of the total number of members must be eligible to vote in Board elections.

Ordinary Members

20. Rules 10.5 to 10.7 inclusive set out the eligibility requirements and the entitlements of Ordinary members which reflect the existing Articles.
21. While there is only one category of Ordinary membership, the proposed new Constitution retains the position that only members who are also members of the Swansea RSL Sub-Branch have the right to:
- (a) be elected as President, Senior Vice President, Junior Vice President and to one of the three (3) Ordinary director positions; and
 - (b) vote on special resolutions to amend the Constitution.
22. The proposed new Constitution also provides that to exercise these rights, the relevant member will also need to have been a member for at least 2 years. This replaces the current somewhat imprecise language of being a member for at least the most recent two 31 Decembers.

Life Members

23. Rules 10.8 to 10.15 inclusive set out the eligibility requirements and the entitlements of Life members which reflect the existing Articles and practice of the Club.

Provisional Members

24. Rule 11 deals with Provisional membership, which can be made either in the Club or online. However, if the application is on line, an applicant for membership must verify their identity at the Club before they can enter the premises. A Provisional member is entitled to use the facilities of the Club pending a determination by the Board on that person's suitability for membership.

Honorary and Temporary Members

25. Rule 12 deals with Honorary membership and Rule 13 deals with Temporary membership. The proposed new Constitution updates the Rules and reflects the current provisions of the Registered Clubs Act in relation to Honorary and Temporary members.

ELECTION OF MEMBERS

26. Rule 14 deals with the system of electing members to the Club.
27. Rule 14 includes a new system that allows for on line applications for membership of the Club.
28. **Under the existing Articles, every candidate for membership must be proposed by one and seconded by another member of the Club. The proposed new Constitution does not retain a requirement for a proposer or seconder.** Applicants for membership will only be required to supply proof of their identity. There is no requirement in the Registered Clubs Act or the Corporations Act for new members to be proposed and seconded by existing members.

JOINING FEES, SUBSCRIPTIONS AND LEVIES

29. Rule 15 deals with joining fees, subscriptions and levies and reflects the current provisions of the Registered Clubs Act. That Act no longer provides for a minimum subscription. Accordingly, the proposed new Constitution does not contain a minimum subscription.

NON-FINANCIAL MEMBERS

30. Rule 16 sets out the rights and privileges that non-financial members are not entitled to.

REGISTERS OF MEMBERS AND GUESTS

31. Rule 17 sets out the registers the Club is required to maintain in respect of Full, Honorary and Temporary members as well as guests of members over the age of eighteen years. This is consistent with the Registered Clubs Act.

ADDRESSES OF MEMBERS

32. Rule 18 states that members must advise the Club of any change in their contact details including address within 7 days.

DISCIPLINARY PROCEEDINGS

33. Rule 19 deals with powers of the Board to discipline members. The provisions are more comprehensive than the existing Articles and reflect current common practice in the Registered Clubs Industry.
34. **The current Articles provide that a member can be represented at a disciplinary hearing, including by way of legal representation. This rule is not retained in the proposed new Constitution. Disciplinary matters under a club constitution are determined by the Board or disciplinary committee AND are not matters where lawyers need to be present. The Club Board is not legally represented at such meetings and the Board is not aware of any other club which gives a member a right to legal representation at such a proceeding.**
35. **The Constitution also contains a new rule giving the Secretary/General Manager the power to suspend a member for up to three (3) months. If the member disagrees with the suspension, the matter can then be determined by the Board or disciplinary sub committee. This will allow for minor disciplinary matters to be determined by the General Manager and not consume Club time unnecessarily.**
36. **Rule 20 clarifies that the Board may, by resolution, delegate its disciplinary powers to a disciplinary committee comprising three (3) directors.** The Board retains the power to review a decision of a disciplinary committee provided the Board follows the procedures set out in Rule 20 and provided further that the member is notified that the Board is reviewing a decision of the disciplinary committee.
37. Any member suspended pursuant to Rules 19 or 20 shall cease to be entitled to the rights and privileges of membership, which include the right to attend at the premises of the Club, the right to participate in the social and sporting activities of the Club, the right to vote, the right to attend meetings of the Club and the right to be elected to the Board.
38. Rule 22 deals with the power given to the Secretary and employees of the Club under the Liquor Act to remove any person who, when on the premises of the Club, is then intoxicated, violent, quarrelsome, disorderly or smoking in a smoke free area and to prevent that person from returning to the Club. These powers given to the Secretary and employees are no wider than those given under the Liquor Act.
39. Rule 23 deals with the procedure for a member to resign from the Club.

GUESTS

40. Rule 24 deals with guests and reflects the provisions of the Registered Clubs Act. Every guest must be introduced by a member and that member must complete and sign the Guests Register in order for that guest to enter the Club. The only exception to this is in relation to a guest who is a minor. A minor may be admitted as a guest of a member without the member having to complete the Guests Register.

PATRONS

41. Rule 25 states that the Club may appoint patrons from time to time and sets out the membership status of a patron who is not a member.

BOARD OF DIRECTORS

- 42. Rule 26 deals with the composition of the Board and reflects the current Articles of the Club.
- 43. The Board shall consist of a President, Senior Vice President, Junior Vice President and four (4) Ordinary directors.
- 44. **The term of office for directors has been amended from three (3) years to revert to the previous practice of two (2) years.**
- 45. **In 2022, the Constitution was amended by way of a special resolution to provide for three (3) year terms for directors. However, the Club's solicitors have advised that this method of election is not possible under the Registered Clubs Act.**
- 46. **Accordingly, the directors elected to office in 2023 continue to hold office until the Annual General Meeting in 2026, which is when the next election is scheduled to be held.**
- 47. **However in 2026, members will vote for the Board for a term of two (2) years and then those directors will hold office for a two (2) year term, with elections every two (2) years thereafter to ensure the Club complies with the Registered Clubs Act.**
- 48. Rule 26.3 provides that only Life members and Ordinary members may stand for and be elected or appointed to the Board as provided for in the current Articles. Ordinary members who are members of the Swansea RSL Sub-Branch are the only members eligible to be elected as President, Senior Vice President, Junior Vice President and to one of the four (4) Ordinary director positions, which reflects the existing Articles. That is, four (4) of the seven (7) directors will still need to be members of the Sub-Branch.
- 49. A member who is an employee or currently under suspension or not a financial member shall not be eligible to stand for or be elected or appointed to the Board.
- 50. The proposed new Constitution also contains additional grounds on which a person will be ineligible to stand for election to the Board, such as if they have been suspended from membership or do not have a director identification number as required by the Corporations Act.

ELECTION OF BOARD

- 51. Rule 27 sets out the system for electing the Board of Directors. The provisions are more comprehensive than the existing Articles. However, they broadly reflect the existing Articles and the established practice of the Club.

POWERS OF THE BOARD

- 52. Rule 28 deals with the Board's powers more comprehensively than the existing Constitution. The power of the Board to dispose of Club land has been amended to clarify that the power is subject to the requirements of the Registered Clubs Act and the Liquor Act.

PROCEEDINGS OF THE BOARD

- 53. Rule 29 deals with proceedings of the Board and reflect the existing Articles.
- 54. The President may at any time and the Secretary shall upon the request of not less than two (2) directors convene a meeting of the Board.
- 55. The quorum for a meeting of the Board is four (4) directors present. This reflects the current Articles.
- 56. All decisions of the Board are determined by a majority vote. In the case of an equality of votes the chairperson of the meeting has a second or casting vote.

DECLARATIONS OF INTERESTS BY DIRECTORS

- 57. Rule 30 relates to directors interested in matters that come before the Board. The provisions reflect the requirements of the Registered Clubs Act and the Corporations Act.
- 58. Directors are required to declare any material personal interest that they may have in a matter that relates to the affairs of the Club.
- 59. A director with a material personal interest must abstain from taking any part in any discussion or voting on any matter in which that director has such interest.

ACCOUNTABILITY CODE

- 60. Rule 32 refers to the Registered Clubs Accountability Code which applies to the Club.

REMOVAL FROM OFFICE OF DIRECTORS

- 61. Rule 33 provides that the members in general meeting may by ordinary resolution remove any director, or the whole Board, before the expiration of his, her or their period of office and appoint another person or persons in his, her or their place.

VACANCIES ON THE BOARD

- 62. Rule 34.1 clarifies how a vacancy on the Board arises.
- 63. Rule 34.3 states that the Board has the power to fill a casual vacancy. Any person appointed to fill a casual vacancy will hold office only until the next Biennial General Meeting.

GENERAL MEETINGS

- 64. Rules 35.1 to 35.18 inclusive relate to the calling and holding of general meetings (and Annual General Meetings) of the Club. The provisions are more comprehensive than the existing Articles. However, they reflect the existing Articles, the Corporations Act and the established practice of the Club in all respects other than the two amendments referred to in paragraphs 66 and 77 below.
- 65. The Corporations Act requires an Annual General Meeting to be held within five (5) months of the close of the financial year of the Club. The proposed new Constitution reflects the Corporations Act.
- 66. **The provisions relating to members requesting general meetings of the Club have been amended.**
- 67. **The existing Articles permit 15 members to request a general meeting of the Club. This does not reflect the requirement of the Corporations Act.**
- 68. **The Corporations Act permits 5% of the voting membership to request a general meeting. The proposed new Constitution reflects the Corporations Act.**
- 69. Rules 35.19 to 35.30 deal with the business of the Annual General Meeting, the auditor's right to attend meetings and the position of chair of general meetings.

ATTENDANCE AND VOTING AT GENERAL MEETINGS

- 70. Rules 35.31 to 35.44 inclusive relate to attendance and voting at general meetings.
- 71. Proxy voting is not permitted. This is a requirement of the Registered Clubs Act.
- 72. Every member eligible to vote, either by show of hands or a poll, is entitled to one vote.

73. A member, who is also an employee of the Club, is not permitted to vote. This is a requirement of the Registered Clubs Act.
74. All questions and resolutions (other than Special Resolutions) shall be decided by a simple majority of votes.
75. Voting shall be on a show of hands unless a poll is demanded by five (5) members. This reflects the Corporations Act.

QUORUM AT GENERAL MEETINGS

76. Rule 35 also states the quorum required for general meetings is 20, which reflects the current Articles and sets out the procedure to be followed if a quorum is not present. These Rules are consistent with the existing Articles. No business may be transacted at a general meeting unless a quorum of members is present.

MEMBERS' RESOLUTIONS AND STATEMENTS

77. **Rule 36 introduces new provisions relating to members' resolutions and statements which are consistent with the Corporations Act.**
78. **The current Articles provide that two members, as proposer and seconder, can give notice of proposed business for the Annual General Meeting up to 10 days before the meeting and that the business is then placed on the Club Notice Board. This is not consistent with the Corporations Act which requires business of the Annual General Meeting to be included in the notice of meeting, and at least 21 clear days of the notice must be given to members.**
79. The proposed new Constitution provides that individual members may submit items of business and notices of motion provided they are received by the Secretary of the Club at least forty-two (42) days prior to the date fixed for an Annual General Meeting. Forty-two (42) days will allow sufficient time for the item of business or notice of motion to be incorporated into the notice of meeting and sent to members and if necessary for the Board to get advice about the particular item of business or notice of motion.
80. This does not effect the rights of members to ask questions at the Meeting. Rather, the Board retains the discretion as to whether to include items of business or notices of motion in the business of the Annual General Meeting.
81. Rule 36 also sets out the procedure for members to compel the Board to include an item of business or a notice of motion in the business of an Annual General Meeting.

MINUTES

82. Rule 37 provides that minutes of all resolutions and proceedings at general meetings must be entered in the Minute Book within one month of the meeting and signed by the chairperson of that meeting or the chairperson of the next succeeding meeting.

ACCOUNTS

83. Rule 38 deals with the accounts and reporting to members and is consistent with the Corporations Act and Registered Clubs Act.

FINANCIAL YEAR

84. Rule 39 provides that the financial year of the Club shall commence on the first day of January in each year and will end on the last day of December in that year. There is no change to the financial year of the Club.

AUDITOR

85. Rule 40 requires the Club to appoint an auditor. The auditor holds office until removed by the members in general meeting or resigns from office or dies. This is a requirement of the Corporations Act.

SECRETARY

86. Rule 41 requires the Board to appoint one Secretary who will be the Chief Executive Officer of the Club for the purposes of the Registered Clubs Act.

EXECUTION OF DOCUMENTS

87. Rule 42 deals with execution of documents by the Club.

NOTICES

88. Rule 43 deals with the requirements of giving notice to members in a way which is consistent with the Registered Clubs Act and Corporations Act, to allow the Club to make full use of electronic notification. Any member who still wants notices sent by post can do so by request.

INDEMNIFICATION OF OFFICERS

89. Rule 44 deals with the insurance and indemnification of the officers and auditors of the Club in accordance with the Corporations Act.

INTERPRETATION

90. Rule 45 provides that a decision of the Board on the construction or interpretation of the Constitution or any Rule, or any By-Law of the Club made pursuant to this Constitution or on any matter arising therefrom, shall be conclusive and binding on all members of the Club

AMENDMENTS TO CONSTITUTION

91. Rule 46 provides for amendments to the Constitution. The Constitution can only be amended by way of Special Resolution passed at a general meeting of members. Life members and Ordinary members who are also members of the Sub Branch and who have been members of the Club for at least two (2) years shall be the only members eligible to vote on any Special Resolution to amend the Constitution.
92. Rule 47 contains rules to reflect the provisions of the Registered Clubs Act in relation to voting at general meetings.

It is hoped that this summary will provide members with sufficient background and information to enable them to make an informed decision in relation to the proposed special resolution to adopt the new Constitution. However, there may be matters about which members may have questions not covered by this Memorandum. In those circumstances, they are invited to raise their questions either with the President or the Secretary of the Club who if necessary will obtain advice from the Club's lawyers to pass back to the member.

The Board of the Club considers that the proposed new Constitution as being a significant improvement on the existing Constitution and recommend that members vote in favour of the Special Resolution.

To be passed the Special Resolution will need votes from not less than three quarters of those members who being eligible to do so vote in person at the meeting.

Dated: 2025.

Mr Kiel Emerton
General Manager

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