

**NEW SOUTH WALES TOUCH ASSOCIATION INCORPORATED**

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**CONSTITUTION**

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# **ASSOCIATIONS INCORPORATION ACT (1984) (NSW)**

## **CONSTITUTION**

### **OF**

## **NEW SOUTH WALES TOUCH ASSOCIATION INCORPORATED**

### **PART I – OBJECTS, POWERS AND INTERPRETATION**

#### **1. NAME OF ASSOCIATION**

The name of the association is New South Wales Touch Association Incorporated ("**Association**").

#### **2. OBJECTS OF ASSOCIATION**

The Association is the peak body for the administration of Touch in New South Wales. The objects for which the Association is established and maintained are to:

- (a) promote, encourage, foster, develop, extend, govern and control the sport of Touch in New South Wales for human beings;
- (b) co-ordinate, encourage, assist and support the activities of the Regions and Affiliated Clubs and their co-operation with each other;
- (c) promote, organise and conduct championships, competitions and other events pertaining to the sport as may from time to time be considered expedient;
- (d) establish and maintain standardised playing rules and regulations;
- (e) select support and/or sponsor any representative team or teams for any purposes associated with Touch;
- (f) act as the disciplinary and adjudicating body in respect to all matters pertaining to Touch in New South Wales;
- (g) co-operate with organisations controlling the game in other states and countries in the promotion and control of the sport of Touch.

#### **3. POWERS OF ASSOCIATION**

Solely for furthering the objects set out above the Association has, in addition to the rights, powers and privileges conferred on it under the Act, the legal capacity and powers of a company as set out under section 124 of the Corporations Act.

#### **4. INTERPRETATION**

##### **4.1 Definitions**

In this Constitution unless the contrary intention appears, these words shall have the following meanings:

“**Act**” means the Associations Incorporation Act 1984 (NSW) or any other act under which the Association may be incorporated from time to time.

“**Affiliated Club**” means a touch club which is recognised as a member of the Association under **Rule 8**.

“**Board**” means the body consisting of the Directors under **Rule 24**.

“**By-Law**” means any by-law, regulation or policy made by the Board under **Rule 32**.

“**Delegate**” means the persons elected or appointed from time to time by a Region or Affiliated Club to act for and on behalf of that Region or Affiliated Club and represent the Region or Affiliated Club at General Meetings or otherwise.

“**Director**” means a member of the Board elected or appointed in accordance with this Constitution and includes the Interested Directors and the Independent Director.

“**Financial Year**” means the year ending 31 December in any year.

“**General Manager**” means the person who is appointed under this Constitution to carry out the duties set out in **Rule 30**.

“**General Meeting**” means the annual or any special general meeting of the Association.

“**Independent Director**” means a Director appointed under **Rule 26**.

“**Individual Member**” means a registered financial individual member of the Association.

“**Intellectual Property**” means all rights or goodwill subsisting in copyright, business names, names, trade marks (or signs), logos, designs, patents or service marks (whether registered or registrable) relating to the Association or any event, competition or activity of or conducted, promoted or administered by the Association.

“**Interested Director**” means a Director elected under **Rule 25**.

“**Life Member**” means an individual upon whom life membership of the Association has been conferred under **Rule 7.3**.

“**Member**” means a member for the time being of the Association under **Part III** of this Constitution.

“**Ordinary Member**” means a registered financial individual member of an Affiliated Club.

“**Region**” means an entity recognised under **Part II** to administer the sport of Touch in a particular region.

“**Regional Committee**” means the regional committee established by the Board under **Rule 31.3(a)**.

“**Seal**” means the common seal of the Association and includes any official seal of the Association.

“**Special Resolution**” means a special resolution passed in accordance with the Act.

“**Technical Committee**” means the technical committees established by the Board under **Rule 31.4(a)** and any other technical committees established by the Board from time to time.

“**Touch**” means the sport played under the rules as determined by the Australian Touch Association Inc.

## 4.2 Interpretation

In this Constitution:

- (a) a reference to a function includes a reference to a power, authority and duty;
- (b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing any gender include the other genders;
- (e) references to persons include corporations and bodies politic;
- (f) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any legislative authority having jurisdiction); and
- (h) a reference to "writing" shall unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail.

## 4.3 Severance

If any provision of this Constitution or any phrase contained in them is invalid or unenforceable in any jurisdiction, the phrase or provision is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable. If the rule or phrase can not be so read down it shall be severed to the extent of the invalidity or unenforceability. Such severance shall not affect the remaining provisions of this Constitution or affect the validity or enforceability of any provision in any other jurisdiction.

#### **4.4 Expressions in Act**

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

### **PART II – REGIONS**

#### **5. REGIONS**

##### **5.1 Regions**

The Association shall consist of such Regions as are recognised by the Association to conduct Touch in a particular geographic area or on behalf of a particular group. The boundaries of each Region shall be as decided by the Board from time to time.

##### **5.2 Recognition of Regions as Members**

A Region shall be recognised as a Member of the Association and shall administer Touch in its particular geographical area or on behalf of its constituents, subject to the direction of the Association and in accordance with the objects of the Association.

##### **5.3 Compliance of Regions**

Each Region shall:

- (a) be incorporated in New South Wales under the Act or similar legislation;
- (b) elect or appoint 1 Delegate to represent it at General Meetings in accordance with this Constitution;
- (c) provide the Association with copies of its audited accounts, annual report and other associated documents within 30 days of the Region's annual general meeting;
- (d) adopt in principle, the objects of the Association and adopt rules which reflect and which are generally in conformity with this Constitution;
- (e) do all that is reasonably necessary to enable the objects of the Association to be achieved;
- (f) at all times operate with, and promote, mutual trust and confidence between the Association and the Members in pursuit of these objects; and
- (g) at all times act on behalf of and in the interests of the Members and the sport of Touch.

## 5.4 Operation of Rules

The Association and the Regions agree:

- (a) that they are bound by this Constitution and that this Constitution operates to create uniformity in the way in which the objects of the Association and the sport of Touch are to be conducted, encouraged, promoted and administered in Australia;
- (b) to act in good faith and loyalty to each other to ensure the maintenance and enhancement of the sport of Touch, its standards, quality and reputation for the collective and mutual benefit of the Members and the sport of Touch;
- (c) to make full and proper disclosure to each other of all matters of importance to the Association and the sport of Touch;
- (d) not to acquire a private advantage at the expense of any of the Association or any other Region or the sport of Touch;
- (e) to act for and on behalf of the interests of the sport of Touch, the Association and the Members; and
- (f) that should a Region have administrative, operational or financial difficulties, including but not limited to where a Region:
  - (i) takes or has taken or has instituted against it any action or proceeding, whether voluntary or compulsory, having as its object the winding up of the Region; or
  - (ii) enters into a composition or arrangement with its creditors, other than a voluntary winding up by members for the purpose of reconstruction or amalgamation; or
  - (iii) a mortgagee or other creditor takes possession of any of its assets;

the Association may, in its absolute discretion act to assist that Region in whatever manner and on such conditions as the Association considers appropriate, including, but not limited to the appointment of an administrator.

## 6. REGION CONSTITUTIONS

### 6.1 Constitution

The constituent documents of each Region shall clearly reflect the objects of the Association and shall be in a form acceptable to the Board.

### 6.2 Amendments to Region Constitutions

- (a) Each Region shall take all steps necessary to ensure its constituent documents and rules are in a form acceptable to the Board and shall ensure its documents are amended in conformity with future amendments made to this Constitution.

- (b) Regions shall have 1 year from the approval of this Constitution under the Act in which to amend their constitution in accordance with this Constitution, and for such time as their constitutions do not conform shall not be unduly penalised for such non-compliance, to the extent that such non-compliance is not wilful or calculated to cause harm or prejudice to the Association.

### **PART III – MEMBERSHIP**

## **7. MEMBERS**

### **7.1 Category of Members**

The Members of the Association shall consist of:

- (a) the Regions, which subject to this Constitution, shall be represented by their Delegates who shall have the right to attend, debate and vote at General Meetings for and on behalf of the Regions;
- (b) the Affiliated Clubs, which subject to this Constitution, shall be represented by their Delegates who shall have the right to attend, debate and vote at General Meetings for and on behalf of the Affiliated Clubs;
- (c) Ordinary Members, who subject to this Constitution, may attend and debate at General Meetings, but have no right to vote at General Meetings;
- (d) Individual Members, who subject to this Constitution, may attend and debate at General Meetings, but have no right to vote at General Meetings;
- (e) Life Members, who subject to this Constitution, may attend and debate at General Meetings, but have no right to vote at General Meetings;
- (f) Patrons, who subject to this Constitution, may attend and debate at General Meetings, but have no right to vote at General Meetings;
- (g) such new categories of Members, created in accordance with **Rule 7.2** below.

### **7.2 Creation of New Categories**

The Board has the right and power from time to time to create new categories of membership with such rights, privileges and obligations as are determined applicable (other than voting rights), even if the effect of creating a new category is to alter rights, privileges or obligations of an existing category of Members. No new category of membership may be granted voting rights.

### **7.3 Life Members**

- (a) The Board may nominate a person who has rendered distinguished or special service to the sport of Touch at the State level, for life membership. The nomination must be on the prescribed form (if any) and must be submitted to the General Manager at least 60 days before the date set down for the Annual General Meeting.

- (b) The nomination for Life Member shall be considered at the Annual General Meeting. A resolution of the Annual General Meeting to confer life membership must be passed by Special Resolution. The vote on such resolution will be taken by secret ballot.
- (c) Conditions, obligations and privileges of life membership shall be as prescribed in the By-Laws.

#### **7.4 Patrons**

The Board may recognise a person as a patron of the Association. The conditions, obligations and privileges of the patrons shall be as prescribed in the By-Laws.

#### **7.5 Deeming Provisions**

- (a) All persons who were individual members, ordinary members, life members or patrons of the Association prior to the time of approval of this Constitution under the Act, shall be deemed Individual Members, Ordinary Members, Life Members and Patrons respectively from the time of approval of this Constitution under the Act, and will be entitled to such benefits as are conferred on them by the Association.
- (b) All organisations who were regions or affiliates of the Association prior to the time of approval of this Constitution under the Act, shall be deemed Regions and Affiliated Clubs respectively from the time of approval of this Constitution under the Act, and will be entitled to such benefits as are conferred on them by the Association.

### **8. AFFILIATED CLUBS AND INDIVIDUAL MEMBERS**

#### **8.1 Affiliated Clubs**

- (a) To be eligible for membership, an Affiliated Club must be incorporated or in the process of incorporation, which process shall be complete within 2 years of applying for membership under this Constitution.
- (b) For such time as an Affiliated Club is not incorporated, the secretary of any such unincorporated Affiliated Club shall be deemed to be the Member (on behalf of the unincorporated Affiliated Club), and shall be entitled to exercise the same voting and other rights and have the same obligations and shall follow such procedures on behalf of the unincorporated Affiliated Club as incorporated Affiliated Clubs, to the extent that this is possible.
- (c) Any dispute or uncertainty as to the application of this Constitution to an unincorporated Affiliated Club shall be resolved by the Board in its sole discretion.
- (d) Failure to incorporate within the period stated in **Rule 8.1(a)** shall result in the expulsion of the secretary (acting on behalf of the unincorporated Affiliated Club) from membership. The unincorporated club shall not be entitled to re-apply for membership until such time as it is incorporated.

## **8.2 Application for Membership**

An application for membership by an Affiliated Club or Individual Member must be:

- (a) in writing on the form prescribed from time to time by the Board, from the applicant or its nominated representative and lodged with the Association;
- (b) in the case of an application for Affiliated Club membership, accompanied by a copy of the applicant's constitution (which must be acceptable to the Association and be substantially in conformity with this Constitution) and register of members; and
- (c) accompanied by the appropriate fee.

## **8.3 Discretion to Accept or Reject Application**

- (a) The Association may accept or reject an application and shall not be required or compelled to provide any reason for such acceptance or rejection.
- (b) Where the Association accepts an application, the applicant shall become a Member. Membership of the Association shall be deemed to commence upon acceptance of the application by the Association. The General Manager shall amend the register accordingly as soon as practicable.
- (c) Where the Association rejects an application the Association shall refund any fees forwarded with the application and the application shall be deemed rejected by the Association.

## **8.4 Membership Renewal**

- (a) Affiliated Clubs, Ordinary Members and Individual Members must reapply for membership with the Association in accordance with the procedures set down by the Association in By-Laws from time to time.
- (b) Upon request by the Association, an Affiliated Club must lodge with the Association an updated copy of its constitution (including all amendments) and provide details of any change in its Delegate, and any other information reasonably required by the Association. Each Affiliated Club is to ensure that its constitution is amended in conformity with amendments made to this Constitution.

## **9. SUBSCRIPTIONS AND FEES**

**9.1** The annual membership subscription (if any), fees and any levies payable by Members (or any category of members) to the Association, the basis of, the time for and manner of payment shall be as determined by the Board from time to time.

**9.2** Any Member which or who has not paid all monies due and payable by that Member to the Association shall (subject to the Board's discretion) have all rights under this Constitution immediately suspended from the expiry of the time prescribed for payment of those monies. Such rights will be suspended until such time as the monies are fully paid or otherwise in the Board's discretion. In the meantime, the Member shall have no automatic right to resign from the Association, and shall be dealt with in the Board's discretion, which includes the right to expel,

suspend, disqualify, fine, discipline or retain that Member as a Member, or impose such other conditions or requirements as the Board considers appropriate.

## **10. REGISTER OF MEMBERS**

### **10.1 General Manager to Keep Register**

The General Manager shall keep and maintain a register of Members in which shall be entered such information as is required under the Act from time to time.

### **10.2 Inspection of Register**

Having regard to confidentiality considerations, an extract of the register, excluding the address of any Delegate, Individual Member, Ordinary Member, Life Member, Patron or Director shall be available for inspection (but not copying) by Members, upon reasonable request.

## **11. EFFECT OF MEMBERSHIP**

Members acknowledge and agree that:

- (a) this Constitution constitutes a contract between each of them and the Association and that they are bound by the Rules and the By-Laws;
- (b) they shall comply with and observe this Constitution and the By-Laws and any determination, resolution or policy which may be made or passed by the Board or any duly authorised committee;
- (c) by submitting to this Constitution and the By-Laws they are subject to the jurisdiction of the Association;
- (d) this Constitution is made in pursuit of a common object, namely the mutual and collective benefit of the Association, the Members and the sport of Touch;
- (e) this Constitution and By-Laws are necessary and reasonable for promoting the objects of the Association and particularly the advancement and protection of the sport of Touch; and
- (f) they are entitled to all benefits, advantages, privileges and services of Association membership.

## **12. DISCONTINUANCE OF MEMBERSHIP**

### **12.1 Notice of Resignation**

Subject to this Constitution any Member which has paid all monies due and payable to the Association and has no other liability (contingent or otherwise) to the Association may resign from the Association by giving 1 months' notice in writing to the Association of such intention to withdraw or resign and upon the expiration of that period of notice, the Member shall cease to be a Member. A Life Member or Patron who has paid all monies due and payable to the Association may resign by notice in writing with immediate effect.

## **12.2 Expiration of Notice Period**

Subject to **Rule 12.5** upon the expiration of any notice period applicable under **Rule 12.1** an entry, recording the date on which the Member who or which gave notice ceased to be a Member shall be recorded in the register.

## **12.3 Forfeiture of Rights**

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

## **12.4 Membership may be Reinstated**

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

## **12.5 Cessation of Membership**

Where an Affiliated Club ceases to be a Member in accordance with this Constitution or the Act, the Ordinary Members of that Affiliated Club may cease or remain Members to the extent (if any) and for such time (if any) as is determined in the sole discretion of the Board.

## **13. DISCIPLINE OF MEMBERS**

### **13.1 Disciplinary Action**

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

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

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

## PART IV - GENERAL MEETINGS

### 14. DELEGATES

#### 14.1 Appointment of Delegates

Each Region and Affiliated Club shall appoint 1 Delegate for such term as is deemed appropriate by the Region and Affiliated Club. A Delegate must:

- (a) be a Member of the Association;
- (b) be appropriately empowered by the appointing Region or Affiliated Club to consider, make decisions and vote at General Meetings;
- (c) not be a Director.

#### 14.2 Regions and Affiliated Clubs to Advise

Each Region and Affiliated Club shall advise the Association of its Delegate within 14 days of the appointment or any change of the Delegate, including the name, address and contact details of the Delegate.

### 15. GENERAL MEETINGS

15.1 An Annual General Meeting of the Association shall be held in accordance with the provisions of the Act and this Constitution and on a date and at a venue to be determined by the Board.

15.2 All General Meetings other than the Annual General Meeting shall be Special General Meetings and shall be held in accordance with this Constitution.

### 16. NOTICE OF GENERAL MEETING

#### 16.1 Notice of General Meetings

- (a) Notice of every General Meeting shall be given to Regions and Affiliated Clubs at the address appearing in the register kept by the Association. No other person shall be entitled as of right to receive notices of General Meetings.
- (b) Notice of General Meeting shall be given at least sixty (60) days prior to the General Meeting and shall specify the place and day and hour of the General Meeting.
- (c) The agenda for the General Meeting stating the business to be transacted at the General Meeting shall be given at least thirty (30) days prior to the General Meeting, together with any notice of motion received from Regions or Affiliated Clubs.

#### 16.2 Entitlement to Attend General Meeting

Notwithstanding any other Rule, no Member shall be represented at, or take part in a General Meeting, unless all monies (set in accordance with **Rule 9**) then due and payable to the Association are paid.

## **17. BUSINESS**

### **17.1 Business of General Meetings**

- (a) The business to be transacted at the Annual General Meeting includes the consideration of accounts, reports of the Board (including in relation to the activities of the Association during the last preceding Financial Year) and auditors and the election of Directors and Life Members.
- (b) All business that is transacted at a General Meeting, and also all that is transacted at the Annual General Meeting, with the exception of those matters set out in **Rule 17.1(a)** shall be special business. "Special business" is business of which a notice of motion has been submitted in accordance with **Rule 18.1**.

### **17.2 Business Transacted**

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

## **18. NOTICES OF MOTION**

### **18.1 Notice of Motion to be Submitted**

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

### **18.2 Unsuccessful Notice of Motion**

A motion of which due notice has been given, if unsuccessful, cannot be resubmitted, nor may any other motion having similar effect be moved at a subsequent General Meeting for a period of twelve (12) months. The Chairman shall determine whether a motion is a motion having a similar effect.

## **19. SPECIAL GENERAL MEETINGS**

### **19.1 Special General Meetings May be Held**

The Board may, whenever it thinks fit, convene a Special General Meeting of the Association and, where, but for this Rule more than 15 months would elapse between Annual General Meetings, shall convene a Special General Meeting before the expiration of that period.

### **19.2 Requisition of Special General Meetings**

- (a) The Board shall on the requisition in writing of ten per cent (10%) of the Regions and Affiliated Clubs convene a Special General Meeting.
- (b) The requisition for a Special General Meeting shall state the object(s) of the meeting, shall be signed by the Regions and Affiliated Clubs making the requisition and be sent to the Association. The requisition may consist of several documents in a like form, each signed by 1 or more of the Regions and Affiliated Clubs making the requisition.

- (c) If the Board does not cause a Special General Meeting to be held within 3 months after the date on which the requisition is sent to the Association, the Regions and Affiliated Clubs making the requisition, or any of them, may convene a Special General Meeting to be held not later than 3 months after that date.
- (d) A Special General Meeting convened by the Regions and Affiliated Clubs under this Constitution shall be convened in the same manner, or as nearly as possible as that, in which meetings are convened by the Board.

## **20. PROCEEDINGS AT GENERAL MEETINGS**

### **20.1 Quorum**

No business shall be transacted at any General Meeting unless a quorum is present at the time when the meeting proceeds to business. A quorum for General Meetings of the Association shall be ten per cent (10%) of the Regions and Affiliated Clubs.

### **20.2 Chairman of Board Preside**

The Chairman shall, subject to this Constitution, preside as Chairman at every General Meeting of the Association. If the Chairman is not present, or is unwilling or unable to preside, the Directors shall choose one of their number present who shall, subject to this Constitution, preside as chairman for that meeting only.

### **20.3 Adjournment of Meeting**

- (a) If within half an hour from the time appointed for the General Meeting a quorum is not present the meeting shall be adjourned to such other day and at such other time and place as the Chairman may determine. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the meeting will lapse.
- (b) The Chairman may, with the consent of any General Meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a General Meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (d) Except as provided in **Rule 20.3(c)** it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

### **20.4 Voting Procedure**

At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded:

- (a) by the Chairman; or

(b) by the majority of the Delegates.

## **20.5 Recording of Determinations**

Unless a poll is demanded under **Rule 20.4**, a declaration by the Chairman that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the Association shall be conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution.

## **20.6 Where Poll Demanded**

If a poll is duly demanded under **Rule 20.4** it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chairman directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

## **20.7 Resolutions at General Meetings**

Except where a Special Resolution is required, all questions at General Meetings shall be determined by the majority of votes (as set out in **Rule 21**). Except as otherwise provided in this Constitution, in the case of an equality of votes on a question at a General Meeting, the Chairman is entitled to a casting vote.

## **20.8 Minutes**

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

## **21. VOTING AT GENERAL MEETINGS**

**21.1** Each Region and Affiliated Club shall, subject to this Constitution, be entitled to 1 vote at General Meetings. No other Member shall be entitled to vote, but shall subject to this Constitution have, and be entitled to exercise, those rights set out in **Rule 7.1**.

## **22. PROXY AND POSTAL VOTING**

### **22.1 Proxy Voting Not Permitted**

Proxy voting shall NOT be permitted at General Meetings.

### **22.2 Postal Ballot**

Should an issue arise between General Meetings which requires a decision or ratification by the Regions and Affiliated Clubs, the Board may call a postal vote in such manner as it considers necessary.

## PART V - THE BOARD

### 23. POWERS OF THE BOARD

**23.1** Subject to the Act and this Constitution the business of the Association shall be managed, and the powers of the Association shall be exercised, by the Board. In particular, the Board as the controlling authority of the Association shall be responsible for acting on all state issues in accordance with the objects of the Association and shall operate for the collective and mutual benefit of the Association and the sports of Touch throughout New South Wales and shall:

- (a) govern the sport of Touch in New South Wales in accordance with the objects of the Association;
- (b) determine major strategic directions of the Association;
- (c) review the Association's performance in achieving its pre-determined aims, objectives and policies; and
- (d) manage national responsibilities.

### 24. COMPOSITION OF THE BOARD

#### 24.1 Board Composition

The Board shall comprise:

- (a) the Chairman (an Interested Director) elected in accordance with **Rule 25**;
- (b) the Director of Finance (an Interested Director) elected in accordance with **Rule 25**;
- (c) Two (2) Interested Directors elected in accordance with **Rule 25**;
- (d) One (1) Independent Director which shall be appointed in accordance with **Rule 26**. An Independent Director may not serve as Chairman.

### 25. ELECTION OF INTERESTED DIRECTORS

#### 25.1 Qualifications for Interested Directors

- (a) Nominees for Interested Director positions on the Board must meet the qualifications as prescribed from time to time by the Board and set out in the By-Laws.
- (b) Interested Directors should have a knowledge of Touch and its stakeholders and a commitment to the development of Touch.
- (c) Nominees for Interested Director positions on the Board must declare any position they hold in a Region or Affiliated Club, including as an office bearer, director or a paid appointee.

## 25.2 Elections of Interested Directors

- (a) The General Manager shall call for nominations sixty (60) days before the date of the Annual General Meeting. All Regions and Affiliated Clubs shall be notified of the call for nominations.
- (b) Nominations for Interested Directors must be:
  - (i) in writing;
  - (ii) on the prescribed form (if any) provided for that purpose;
  - (iii) signed by a nominator and seconder, who must be a Delegate of a Region or Affiliated Club; and
  - (iv) certified by the nominee (who must be a Member) expressing his or her willingness to accept the position for which he or she is nominated.
- (c) Nominations must be received by the General Manager at least forty five (45) days prior to the Annual General Meeting.
- (d) If the number of nominations received for the Board is equal to the number of vacancies to be filled or if there are insufficient nominations received to fill all vacancies on the Board, then those nominated shall only be elected if they are elected by the Members by secret ballot in such usual and proper manner as the Chairman directs. If the nominees are not elected or if there are vacancies to be filled, the vacancies shall be filled by the Board in accordance with **Rule 27.3**.
- (e) If the number of nominations exceeds the number of vacancies to be filled, a secret ballot shall be taken in such usual and proper manner as the Chairman directs.
- (f) The voting shall be conducted by exhaustive ballot, the procedure for which will be detailed in By-Laws.

## 25.3 Term of Appointment

- (a) Interested Directors shall be elected in accordance with this Constitution for a term of 2 years, which shall commence from the conclusion of the Annual General Meeting at which the election occurred until the conclusion of the second Annual General Meeting following.
- (b) The Chairman and 1 Interested Director shall be elected in each year of odd number and the Director of Finance and 1 Interested Director shall be elected, in each year of even number.
- (c) Should any adjustment to the term of Interested Directors elected under this Constitution be necessary to ensure rotational terms in accordance with this Constitution, this shall be determined by the Board. Elections to subsequent Boards shall then proceed in accordance with the procedures in this Constitution with approximately half the Board retiring each year.

## **26. APPOINTMENT OF INDEPENDENT DIRECTOR**

### **26.1 Appointment of Independent Director**

The Interested Directors shall appoint 1 Independent Director.

### **26.2 Qualifications for Independent Director**

The Independent Director may have specific skills in commerce, finance, marketing, law or business generally or such other skills which compliment the Board composition, but need not have experience in or exposure to the sport of Touch. They do not need to be Members of the Association.

### **26.3 Term of Appointment**

The Independent Director shall be appointed by the Interested Directors in accordance with this Constitution for a term of 1 year, which shall commence six weeks after the Annual General Meeting until six weeks after the conclusion of the next Annual General Meeting following.

## **27. VACANCIES OF BOARD MEMBERS**

### **27.1 Grounds for Termination of Director**

In addition to the circumstances (if any) in which the office of a Director becomes vacant by virtue of the Act, the office of a Director becomes vacant if the Director:

- (a) dies;
- (b) becomes bankrupt or makes any arrangement or composition with his creditors generally;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in anyway under the law relating to mental health;
- (d) resigns his office in writing to the Association;
- (e) is absent without the consent of the Board from 2 consecutive meetings of the Board;
- (f) holds any office of employment of the Association;
- (g) without the prior consent or later ratification of the Members in General Meeting holds any office of profit under the Association;
- (h) is directly or indirectly interested in any contract or proposed contract with the Association and fails to declare the nature of his interest;
- (i) is removed from office by Special Resolution under **Rule 27.2**; or
- (j) would otherwise be prohibited from being a director of a corporation under the Corporations Act or is disqualified from office under the Act.

## **27.2 Removal of a Director**

- (a) The Association in a General Meeting may by Special Resolution remove any Director, before the expiration of their term of office. If a Director is removed in accordance with this Rule the office of the Director becomes vacant and shall be filled in accordance with the procedure set out in **Rule 27.3**.
- (b) Where the Director to whom a proposed resolution referred to in **Rule 27.2(a)** makes representations in writing to the General Manager and requests that such representations be notified to the Members, the General Manager may send a copy of the representations to each Region or, if they are not so sent, the Director may require that they be read out at the meeting, and the representations shall be so read.

## **27.3 Casual Vacancies**

- (a) A vacancy in the position of an Interested Director shall be filled by the Directors until the next Annual General Meeting of the Association. If the term of the Interested Director has not expired, the Members shall fill the vacancy for the remainder of the Directors term.
- (b) Any Independent Director casual vacancy may be filled by the Interested Directors from among appropriately qualified persons, for the remainder of the Director's term.
- (c) Only an elected Director, that is an Interested Director, can be elevated to fill the casual vacancy of the Chairman.

## **27.4 Remaining Directors May Act**

In the event of a casual vacancy or vacancies in the office of a Director, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of the Board, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum.

## **28. MEETINGS OF THE BOARD**

### **28.1 Board to Meet**

The Board shall meet as often as is deemed necessary in every calendar year for the dispatch of business and may adjourn and, subject to this Constitution otherwise regulate, its meetings as it thinks fit. The General Manager shall, on the requisition of 2 Directors, convene a meeting of the Board within a reasonable time.

### **28.2 Decisions of Board**

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

### 28.3 Resolutions not in Meeting

- (a) A resolution in writing, signed or assented to by telegram, cablegram, radiogram, facsimile, telex, electronic mail or other form of visible or other electronic communication by all the Directors shall be as valid and effectual as if it had been passed at a meeting of Directors duly convened and held. Any such resolution may consist of several documents in like form each signed by 1 or more of the Directors.
- (b) Without limiting the power of the Board to regulate their meetings as they think fit, a meeting of the Board may be held where 1 or more of the Directors is not physically present at the meeting, provided that:
  - (i) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously, whether by means of telephone or other form of communication;
  - (ii) notice of the meeting is given to all the Directors entitled to notice in accordance with the usual procedures agreed upon or laid down from time to time by the Board and such notice specifies that Directors are not required to be present in person;
  - (iii) in the event that a failure in communications prevents condition (i) from being satisfied by that number of Directors which constitutes a quorum, and none of such Directors are present at the place where the meeting is deemed by virtue of the further provisions of this Rule to be held, then the meeting shall be suspended until condition (i) is satisfied again. If such condition is not satisfied within 15 minutes from the interruption the meeting shall be deemed to have terminated;
  - (iv) any meeting held where 1 or more of the Directors is not physically present shall be deemed to be held at the place specified in the notice of meeting provided a Director is there present and if no Director is there present the meeting shall be deemed to be held at the place where the Chairman is located.

### 28.4 Quorum

At meetings of the Board the number of Directors whose presence (or participation under **Rule 28.3**) is required to constitute a quorum is 3 Directors.

### 28.5 Notice of Board Meetings

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

### 28.6 Validity of Board Decisions

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

## **28.7 Chairman of Board Meeting**

The Chairman shall preside at every meeting of the Board. If the Chairman is not present, or is unwilling or unable to preside, the Directors shall choose one of their number to preside as chairman for that meeting only.

## **29. CONFLICTS**

### **29.1 Directors' Interests**

A Director is disqualified by holding any place of profit or position of employment in the Association or in any company or incorporated association in which the Association is a shareholder or otherwise interested or from contracting with the Association either as vendor, purchaser or otherwise except with express resolution of approval of the Board. Any such contract or any contract or arrangement entered into by or on behalf of the Association in which any Director is in any way interested will be voided for such reason.

### **29.2 Conflict of Interest**

A Director shall declare his interest in any:

- (a) contractual matter;
- (b) selection matter;
- (c) disciplinary matter; or
- (d) other financial matter;

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

### **29.3 Disclosure of Interests**

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

### **29.4 General Disclosure**

A general notice that a Director is a member of any specified firm or company and is to be regarded as interested in all transactions with that firm or company is sufficient declaration under **Rule 29.3** as regards such Director and the said transactions. After such general notice it is not necessary for such Director to give a special notice relating to any particular transaction with that firm or company.

**29.5 Recording Disclosures**

It is the duty of the General Manager to record in the minutes any declaration made or any general notice given by a Director in accordance with **Rule 29.3 and 29.4**.

**30. GENERAL MANAGER****30.1 Appointment of General Manager**

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

**30.2 General Manager to Act as Secretary and Public Officer**

The General Manager shall act as and carry out the duties of secretary and public officer of the Association (unless prohibited by law) and shall administer and manage the Association in accordance with this Constitution.

**30.3 Specific Duties**

The General Manager shall:

- (a) as far as practicable attend all Board meetings and General Meetings;
- (b) prepare the agenda for all Board meetings and all General Meetings;
- (c) record and prepare minutes of the proceedings of all meetings of the Board and the Association; and
- (d) regularly report on the activities of, and issues relating to, the Association.

**30.4 Broad Power to Manage**

Subject to the Act, this Constitution, the By-Laws and any directive of the Board, the General Manager has power to perform all such things as appear necessary or desirable for the proper management and administration of the Association.

**30.5 General Manager may Employ**

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

**PART VI - MISCELLANEOUS****31. DELEGATIONS****31.1 Board may Delegate Functions to Committees**

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

### 31.2 Delegation by Instrument

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

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

### 31.3 Regional Committee

- (a) The Board shall establish a regional committee under the power of delegation in **Rule 31.2**.
- (b) The Regional Committee shall meet at least twice a year to:
  - (i) inform the Board of significant membership issues;
  - (ii) assist the Board to design or review the organisation's strategic direction;
  - (iii) discuss statewide issues;
  - (iv) provide feedback to the Board on the results of its governance decisions in practice at the Affiliated Club level.
- (c) The members of the Regional Committee shall comprise:
  - (i) the Region Delegates or a representative from the Region; and
  - (ii) the Directors.

### 31.4 Technical Committees

- (a) The Board shall establish the following technical committees under the power of delegation in **Rule 31.2**:
  - (i) Coaching;
  - (ii) Player Development;
  - (iii) Participation;
  - (iv) Referee.
- (b) The following procedure shall apply in relation to the appointment of members of the Technical Committee:
  - (i) The Board shall call for nominations for members of the Technical Committees from the Members.
  - (ii) Nominations shall be called for the position of chairman and general committee members.

- (iii) The Board is to appoint the chairman, and the other members of the Technical Committee after considering the recommendation of the chairman.
- (iv) If insufficient nominations are received from the Members or the nominations are considered inappropriate by the Board, the Board shall appoint the positions on the Technical Committee in its discretion.

### **31.5 Delegated Function Exercised in Accordance With Terms**

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

### **31.6 Procedure of Delegated Entity**

- (a) The procedures for any committee established shall, with any necessary or incidental amendment, be the same as that applicable to meetings of the Board under **Rule 28**. The quorum shall be determined by the committee, but shall be no less than the majority of the total number of committee members.
- (b) A Director or the General Manager shall be ex-officio members of any committee so appointed.
- (c) Within 14 days of any meeting of any committee, the committee shall send a copy of the minutes and any supporting documents to the General Manager.

### **31.7 Delegation may be Conditional**

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

### **31.8 Revocation of Delegation**

The Board may by instrument in writing, revoke wholly or in part any delegation made under this Rule, and may amend, repeal or veto any decision made by such committee under this Rule where such decision is contrary to this Constitution, the By-Laws, the Act, the objects of the Association or the committee's delegation.

## **32. BY-LAWS**

### **32.1 Board to Formulate By-Laws**

The Board may (by itself or by delegation to a committee) formulate, approve, issue, adopt, interpret and amend such by-laws, regulations and policies ("By-Laws") for the proper advancement, management and administration of the Association, the advancement of the objects of the Association and the sport of Touch as it thinks necessary or desirable. Such By-Laws must be consistent with this Constitution.

### **32.2 By-Laws Binding**

All By-Laws made under this Rule shall be binding on the Association and Members.

### **32.3 By-Laws Deemed Applicable**

All by-laws, regulations and policies of the Association in force at the date of the approval of this Constitution under the Act insofar as such by-laws, regulations and policies are not inconsistent with, or have been replaced by this Constitution, shall be deemed to be By-Laws under this Rule.

### **32.4 Notices Binding on Members**

Amendments, alterations, interpretations or other changes to By-Laws shall be advised to Regions by means of notices approved by the Board and prepared and issued by the General Manager. Regions and Affiliated Clubs shall be obliged to draw such notices to the attention of their respective Members. Notices are binding upon all Members.

## **33. RECORDS AND ACCOUNTS**

### **33.1 General Manager to Keep Records**

The General Manager shall establish and maintain proper records and minutes concerning all transactions, business, meetings and dealings of the Association and the Board and shall produce these as appropriate at each Board meeting or General Meeting.

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

Proper accounting and other records shall be kept in accordance with the Act, generally accepted accounting principles and/or any applicable code of conduct. The books of account shall be kept in the care and control of the General Manager.

### **33.3 Inspection of Records**

Subject to privacy and commercial considerations, the Board may in its discretion make the records, books and other documents of the Association available for inspection (but not copying) by a Region or Affiliated Club at any reasonable hour. The Board may impose reasonable charges in relation to such inspection.

### **33.4 Board to Submit Accounts**

The Board shall submit to the Annual General Meeting the accounts of the Association in accordance with the Act.

### **33.5 Negotiable Instruments**

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Association, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by 2 persons appointed in writing by the Board.

**34. AUDITOR**

**34.1** A properly qualified auditor or auditors shall be appointed and the remuneration of such auditor or auditors fixed by the Board. The auditor's duties shall be regulated in accordance with the Act, or if no relevant provisions exist under the Act, in accordance with generally accepted accounting principles and/or any applicable codes of conduct.

**35. NOTICE****35.1 Manner of Notice**

- (a) Notices may be given by the General Manager to any Member by sending the notice by post or facsimile transmission or where available, by electronic mail, to the Member's registered address, facsimile number or electronic mail address.
- (b) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing and posting the notice. Service of the notice is deemed to have been effected 2 days after posting.
- (c) Where a notice is sent by facsimile transmission, service of the notice shall be deemed to be effected upon receipt of a confirmation report confirming the facsimile was sent to/or received at the facsimile number to which it was sent.
- (d) Where a notice is sent by electronic mail, service of the notice shall be deemed to be effected upon receipt of a confirmation report confirming the electronic mail message was received at the electronic mail address to which it was sent.

**35.2 Notice of General Meeting**

Notice of every General Meeting shall be given in the manner authorised and to the persons entitled to receive notice under this Constitution.

**36. SEAL****36.1 Safe Custody of Seal**

The General Manager shall provide for safe custody of the Seal.

**36.2 Affixing Seal**

The Seal shall only be used by authority of the Board and every document to which the seal is affixed shall be signed by 2 Directors or a Director and the General Manager.

**36.3 Director's Interest**

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

## **37. ALTERATION OF CONSTITUTION**

**37.1** This Constitution shall not be altered except by Special Resolution.

## **38. INDEMNITY**

### **38.1 Directors to be Indemnified**

Every Director, auditor, manager, employee or agent of the Association shall be indemnified to the extent provided under the directors and officers insurance policy of the Association (if any) against any liability incurred by him/her in his/her capacity as Director, auditor, manager, employee or agent in defending any proceedings, whether civil or criminal, in which judgement is given in his/her favour or in which he/she is acquitted or in connection with any application in relation to any such proceedings in which relief is, under the Act, granted to him/her by the Court.

### **38.2 Association to Indemnify**

The Association shall indemnify its Directors and employees to the extent provided under the directors and officers insurance policy of the Association (if any) against all damages and costs (including legal costs) for which any such Director or employee may be or become liable to any third party in consequence of any act or omission except wilful misconduct:

- (a) in the case of a Director performed or made whilst acting on behalf of and with the authority, express or implied of the Association; and
- (b) in the case of an employee, performed or made in the course of, and within the scope of his/her employment by the Association.

## **39. WINDING UP**

### **39.1 Winding Up of the Association**

Subject to this **Rule 39**, the Association may be wound up in accordance with the provisions of the Act.

### **39.2 Liability of Members**

The liability of the Members of the Association is limited.

### **39.3 Members' Contributions**

Every Member of the Association undertakes to contribute to the assets of the Association in the event of it being wound up while a Member, or within 1 year after ceasing to be a Member for payment of the debts and liabilities of the Association contracted before the time at which he or she ceases to be a Member, and the costs, charges and expenses of winding up and for an adjustment of the rights of contributors among themselves, such amount as may be required not exceeding \$1.00.

### **39.4 Distribution of Property on Winding Up**

If upon winding up or dissolution of the Association there remains after satisfaction of all its debts and liabilities any assets or property, the same shall not be paid to or distributed amongst the Members of the Association but shall be given or transferred to some body or bodies having objects similar to the objects of the Association and which prohibits the distribution of its or their income and property among its or their Members to an extent at least as great as is imposed on the Association by this Constitution and which is also not carried on for profit and which is similarly exempt (or entitled to be exempt) from income tax. Such body or bodies to be determined by the Members of the Association at or before the time of dissolution, and in default thereof by such judge of the relevant Supreme Court or such other court as may have or acquire jurisdiction in the matter.

#### **40. SOURCE OF FUNDS**

**40.1** The funds of the Association may be derived from annual membership subscriptions, fees and levies payable by Members, donations, grants, sponsorships and such other sources as the Board determines.

#### **41. APPLICATION OF INCOME**

##### **41.1 Income and Property Applied to Objects**

The income and property of the Association shall be applied solely towards the promotion of the objects of the Association as set out in this Constitution.

##### **41.2 No Income to Members**

Except as prescribed in this Constitution:

- (a) no portion of the income or property of the Association shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any Member; and
- (b) no remuneration or other benefit in money or money's worth shall be paid or given by the Association to any Member who holds any office of the Association.

##### **41.3 Payments in Good Faith**

Nothing contained in **Rule 41.2** shall prevent payment in good faith of or to any Member for:

- (a) any services actually rendered to the Association whether as an employee or otherwise;
- (b) goods supplied to the Association in the ordinary and usual course of operation;
- (c) interest on money borrowed from any Member;
- (d) rent for premises demised or let by any Member to the Association;
- (e) any out-of-pocket expenses incurred by the Member on behalf of the Association; or

- (f) any other reason;

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

## **42. GRIEVANCE PROCEDURE**

### **42.1 Grievance by a Member**

Where a Member of the Association has a grievance with another Member or with the Association (but not being any of the grounds set out in **Rule 13**) and that Member considers the grievance warrants investigation and action by the Association, the Member shall follow the procedure set out in this **Rule 42**.

### **42.2 Grievances Officer**

The Member shall contact, either by telephone or in writing, the Association's grievances officer ("Grievance Officer"), appointed by the Board (but not a member of the Board), and advise they have a grievance which they wish to discuss. The identity of the nominated Grievances Officer will be communicated to all Members of the Association by written notice. Where a grievance is to be submitted in writing it should be addressed clearly to the Grievances Officer and marked "Private & Confidential".

### **42.3 Action by Grievances Officer**

- (a) Where a grievance has been received by the Grievances Officer she or he shall, as soon as practicable, meet with, or discuss the grievance with the aggrieved Member. The Grievances Officer may take whatever steps and conduct whatever investigations necessary to determine whether the grievance is legitimate.
- (b) Where the Grievances Officer determines the grievance is legitimate she or he shall take all reasonable steps to resolve the grievance.
- (c) Where the Grievances Officer determines the grievance is not legitimate she or he shall advise the aggrieved Member accordingly. If the aggrieved Member is not satisfied with the Grievances Officer's determination they may take whatever further action they consider necessary or appropriate.
- (d) Where the Grievances Officer is unable to resolve a grievance or considers the grievance of a very serious nature they shall report the grievance to the General Manager and/or the Board for action.
- (e) All grievances received by the Grievances Officer, and all information surrounding the circumstances of a grievance which is discovered by the Grievances Officer on investigation shall be confidential and may be communicated only to the General Manager and/or the Board.

### **42.4 Procedures by Grievances Officer**

In investigating a grievance and/or determining its legitimacy, the Grievances Officer shall observe and apply the procedures applicable to a proceeding under **Rule 13**, in so far as they are applicable.

