

# Model constitution

Under the *Associations Incorporation Act 2009*

## **About this model constitution**

The constitution of an incorporated association forms the structure within which the association operates.

To assist associations develop their constitution, NSW Fair Trading has prepared this model constitution, which covers the matters required by law. An association may:

- adopt this model constitution; or
- adopt a modified version of this model constitution.

## **Adopting the model constitution (without modification)**

Any changes made to the model constitution will automatically apply to all associations that have adopted the model constitution (without modification).

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## **Disclaimer**

This publication must not be relied on as legal advice. For more information please refer to the appropriate legislation or seek independent legal advice.

# Cherub Association of New South Wales Incorporated

## Constitution

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### BRIEFING NOTES:

These proposed changes represent a significant modification of the NSW Cherub Constitution from its current version, however NSW Fair Trading and the Associations Incorporation Act of 2009 require essential additions in order to comply with current legislation.

NSW Fair Trading provides a model constitution that can be used as is or modified. The committee decided to modify in order to ensure the new constitution reflects our needs as an association.

**BLACK** text is the NSW Fair Trading model constitution recommended language

**BLUE** text marks the items required by legislation

**RED** amendments and additions are the modifications made to the NSW Fair Trading model constitution to include original Cherub constitution items and/or update to our association structure and processes.

**PINK** text are in-text references to clauses, sub clauses or Articles that may need to be renumbered or updated once the draft is finalised. Pink also indicates references or definitions that need to be determined.

These are proposed changes, and we acknowledge that the attached is not a final version. The intention is to promote discussion to be able to present a final version for approval at the next AGM in March 2021.

Please refer to the Comparison guide to see how the old constitution was amalgamated into the model version.

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## Part 1 Preliminary

### 1 Definitions

(1) In this constitution:

**Annual Cherub Class Yacht Registration Fee** means the annual affiliation fee set by the Council to register a Cherub Class Yacht, its Owner, helmsman and crew.

**AS** refers to the governing body Australian Sailing

**Association** means the Cherub Association of New South Wales.

**Chairman** means the presiding Officer at all meetings of the Council, which shall be the President of the Association or such Councillor or Officer of the Association as nominated by the President.

**Cherub Class International Association or CCIA** means the, XXXXX

**Cherub Class Owner Fleet** means a fleet which shall be determined by the Council from time to time of Cherub Class Yachts racing together in a club affiliated to Australian Sailing, as specified by By-Law 7

**Cherub Class Yacht** means the 12ft restricted class yacht which has been measured and found to be in conformity with CCIA Rules and Restrictions as is in possession of a valid Certificate of Registration issued by or under the authority of CCIA.

**Cherub National Council of Australia or CNCA** means the XXXXX

**Council or Council Members** means the council of representatives consisting of Officers of the Association and the representative Councillors from each Member Fleet

**Council Meetings** means all meetings called by the Council pursuant to article XXXXX

**Councillors** means the two (2) nominated representatives from each Member Fleet

**Member Fleet** means a Cherub Class Owner Fleet which has been admitted as a member of the Association pursuant to Article XXXXX

**Officers** means the office-bearers elected by the Owners to manage the Council

**Owner** means an owner or part owner of a Cherub Class Yacht registered with the Association or such person who has been duly appointed by proxy to represent the owner or part owner, provided no more than one person represents each registered boat

**the Act** means the *Associations Incorporation Act 2009*.

**the Regulation** means the *Associations Incorporation Regulation 2016*.

(2) In this constitution:

- (a) a reference to a function includes a reference to a power, authority and duty, and
  - (b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.
- (3) The provisions of the *Interpretation Act 1987* apply to and in respect of this constitution in the same manner as those provisions would so apply if this constitution were an instrument made under the Act.

## **Part 2 Association**

### **2 Name**

- (1) Cherub Association of New South Wales Incorporated.

### **3 Address**

- (1) The address of the Association shall be as from time to time determined by the Council of the Association.

### **4 Objectives**

- (1) To regulate and promote the Cherub class within the State of New South Wales alongside the Cherub Class International Association and under the authority of the Cherub National Council of Australia.
- (2) To affiliate with and follow the requirements of the Cherub National Council of Australia, Australian Sailing and any other body which in the opinion of the Council is likely to further its objectives.
- (3) To promote and coordinate interfleet competition and to organise and control an annual NSW Cherub class championship.
- (4) To pursue and further the interests of the Cherub Class Yachts, its owners and sailors.

## Part 3 Membership

### 5 Membership generally

- (1) Membership shall be accorded to Cherub Class Owners Fleets within NSW including ACT. The Council shall have absolute discretion to accord membership to any other national or international Cherub Class Owner Fleet.
- (2) A Cherub Class Owners Fleet may be formed in any club affiliated to Australian Sailing where there are Cherubs actively engaged in racing together, as specified in By-Law 7.
- (3) It shall be a condition of membership that Cherub Class Owners Fleets applying for membership agree in writing to observe and be bound by this Constitution and the By-Laws as amended from time to time.
- (4) The Council may at its discretion bestow life membership on any individual, who in the opinion of the Council has rendered meritorious service to the Association. The said Honorary Life Member shall be entitled to attend and address the Council at any meeting of the Association, however, the said member shall hold no voting rights.
- (5) The Council may appoint one or more individuals as Patron(s) of the association for the purpose of promulgating the objects of this constitution. A Patron may only be removed from office upon resolution of the Council which shall be confirmed in writing by a majority of Members of the Council.

### 6 Application for membership

- (1) An application by a Cherub Class Owners Fleet for membership as a Member Fleet of the association:
  - (a) must be made in writing (including by email or other electronic means, if the committee so determines) in the form determined by the committee, and
  - (b) must be lodged (including by electronic means, if the committee so determines) with the secretary of the association, and
  - (c) must provide details of registered numbers, names and owners of Cherubs registered with the fleet.
- (2) As soon as practicable after receiving an application for membership, the secretary must refer the application to the committee, which is to determine whether to approve or to reject the application by resolution of a two-third majority of Councillors and Officers of the Association present and entitled to vote.
- (3) As soon as practicable after the committee makes that determination, the secretary must:

- (a) notify the applicant in writing (including by email or other electronic means, if the committee so determines) that the committee approved or rejected the application (whichever is applicable),
- (4) The secretary must, enter or cause to be entered the applicant's name in the register of members and, on the name being so entered, the applicant becomes **a Member Fleet of the Association**.

## 7 Cessation of membership

A **Member Fleet** ceases to be a member of the association if that **Member Fleet**:

- (a) **ceases** to exist, or
- (b) resigns membership, or
- (c) is expelled from the association, or

## 8 Resignation of membership

- (1) A **Member Fleet** of the association may resign from membership of the association by first giving to the secretary written notice of at least **30 days** (or any other period that the committee may determine) of the member's intention to resign and, on the expiration of the period of notice, the member ceases to be a member.
- (2) If a **Member Fleet** of the association ceases to be a member under **subclause (1)**, and in every other case where a member ceases to hold membership, the secretary must make an appropriate entry in the register of members recording the date on which the member ceased to be a member.

## 9 Duty of members

- (1) **Member Fleets shall be responsible for controlling the Cherub class within their respective clubs to observe and be bound by this Constitution and the By-Laws as amended from time to time, CCIA Rules and Restrictions.**
- (2) **Collect from Owners of Cherub Class Yachts and remit to the Association the annual Cherub Class Yacht Registration Fee as determined by the Council from time to time according to the number of Cherubs registered with the fleet.**
- (3) **Provide the Association annually with details of Owners registered numbers, names and details of their fleet.**
- (4) **Obey the lawful directions of the Council to the extent that those said directions further interests of the Cherub Class Yachts, its owners and sailors.**

## 10 Register of members

- (1) The secretary must establish and maintain a register of **Member Fleets and Owners** of the association (whether in written or electronic form) specifying the name and postal, residential or email address of each **Owner** who is a

member of the association together with the date on which the person became a member.

- (2) The register of **Owners** must be kept in New South Wales:
  - (a) at the main premises of the association, or
  - (b) if the association has no premises, at the association's official address.
- (3) The register of **Owners** must be open for inspection, free of charge, by any member of the association at any reasonable hour.
- (4) A member of the association may obtain a copy of any part of the register on payment of a fee of not more than \$1 for each page copied.
- (5) If a member requests that any information contained on the register about the member (other than the member's name) not be available for inspection, that information must not be made available for inspection.
- (6) A member must not use information about a person obtained from the register to contact or send material to the person, other than for:
  - (a) the purposes of sending the person a newsletter, a notice in respect of a meeting or other event relating to the association or other material relating to the association, or
  - (b) any other purpose necessary to comply with a requirement of the Act or the Regulation.
- (7) If the register of members is kept in electronic form:
  - (a) it must be convertible into hard copy, and
  - (b) the requirements in **subclauses (2) and (3)** apply as if a reference to the register of members is a reference to a current hard copy of the register of members.

## 11 Fees and subscriptions

- (1) The Annual Cherub Class Yacht Registration fee shall be fixed by the Council.
- (2) The Annual Cherub Class Yacht Registration Fee shall be defined to include an annual affiliation fee for the Owner, helmsman and crew.
- (3) The Annual Cherub Class Yacht Registration Fees shall fall due on 1 November each year.
- (4) Failure of any Member Fleet to meet the above obligations shall automatically debar any Owner within that Member Fleet from the affairs of the Association and interfleet or championship competitions for the Cherub Class Yachts until such time as the obligation has been met.

## 12 Members' liabilities

The liability of a **Member Fleet** of the association to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of the winding up of the association is limited to the amount, if any,

unpaid by the member in respect of membership of the association as required by **Article XXXXX**.

## 13 Resolution of disputes

To be determined

## 14 Disciplining of members

- (1) A complaint may be made to the committee by any person that a **Member Fleet or Owner** of the association:
  - (a) has refused or neglected to comply with a provision or provisions of this constitution, or
  - (b) has wilfully acted in a manner prejudicial to the interests of the association.
- (2) The committee may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.
- (3) If the committee decides to deal with the complaint, the committee:
  - (a) must cause notice of the complaint to be served on the **Member Fleet or Owner** concerned, and
  - (b) must give the **Member Fleet** or Owner at least 14 days from the time the notice is served within which to make submissions to the committee in connection with the complaint, and
  - (c) must take into consideration any submissions made by the **Member Fleet or Owner** in connection with the complaint.
- (4) The committee may, by resolution, expel the **Member Fleet or Owner** from the association or suspend the **Member Fleet or Owner** from membership of the association if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved and the expulsion or suspension is warranted in the circumstances.
- (5) If the committee expels or suspends a **Member Fleet or Owner**, the secretary must, within 7 days after the action is taken, cause written notice to be given to the member of the action taken, of the reasons given by the committee for having taken that action and of the **Member Fleet or Owner's** right of appeal under **clause 12**.
- (6) The expulsion or suspension does not take effect:
  - (a) until the expiration of the period within which the **Member Fleet or Owner** is entitled to appeal against the resolution concerned, or
  - (b) if within that period the **Member Fleet or Owner** exercises the right of appeal, unless and until the association confirms the resolution under **clause 12**, whichever is the later.

## 15 Right of appeal of disciplined member

- (1) A **Member Fleet or Owner** may appeal to the association in general meeting against a resolution of the committee under **clause 11**, within 7 days after notice of the resolution is served on the member, by lodging with the secretary a notice to that effect.
- (2) The notice may, but need not, be accompanied by a statement of the grounds on which the member intends to rely for the purposes of the appeal.
- (3) On receipt of a notice from a **Member Fleet or Owner** under **subclause (1)**, the secretary must notify the committee, which is to convene a general meeting of the association to be held within 28 days after the date on which the secretary received the notice.
- (4) At a general meeting of the association convened under subclause (3):
  - (a) no business other than the question of the appeal is to be transacted, and
  - (b) the committee and the **Member Flee or Owner** must be given the opportunity to state their respective cases orally or in writing, or both, and
  - (c) the **Officers and Councillors** present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- (5) The appeal is to be determined by a simple majority of votes cast by **Officers and Councillors** of the association.

## Part 4 The committee

### 16 Powers of the committee

Subject to the Act, the Regulation, this constitution and any resolution passed by the association in general meeting, the committee:

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

### 17 Composition and membership of committee

- (1) The committee is to consist of:
  - (a) the **Officers** of the association, and
  - (b) **two Councillors nominated by each Member Fleet**,  
each of whom is to be elected at the annual general meeting of the association under **Article 18**.
- (2) **At least one Councillor from each Member Fleet shall be an owner. The other Councillor if not an owner, shall be elected by the members of the club conducting races for the Member Fleet.**
- (3) **All nominations of Councillors shall be subject to approval by the Council which shall not be bound to give any reasons for disapproval. If a Councillor nominated by a Member Fleet not be approved, the Member Fleet shall nominate another person**
- (4) The **Officers** of the association are as follows:
  - (a) the president,
  - (b) the vice-president,
  - (c) the treasurer,
  - (d) the secretary,
  - (d) **the technical officer,**
  - (d) **the race secretary,**
  - (d) **the public officer,**
  - (d) **the publicity officer, and**
  - (d) **the registrar.**
- (5) **Any number of offices may be held jointly by the one person.**

- (6) There is no maximum number of consecutive terms for which a committee member may hold office, **with the exception of the President who shall hold office for no longer than three consecutive years.**
- (7) Each member of the committee is, subject to this constitution, to hold office until immediately before the election of committee members at the annual general meeting next following the date of the member's election, and is eligible for re-election.

## **18 Election of committee members**

- (1) **The Officers of the Association shall be elected by the Owners in attendance at the Annual General Meeting. Casual Vacancies arising during the year may be filled by the Council as per Article 17**
- (2) **The Council may appoint an auditor at the Annual General Meeting who shall have power to fill casual vacancies arising amongst the Officers.**
- (3) **The Council may appoint such other officer-bearers or form such sub-committees as it may deem necessary for the proper conduct of the affairs of the Association.**

## **19 Secretary**

- (1) The secretary of the association must, as soon as practicable after being appointed as secretary, lodge notice with the association of his or her address.
- (2) It is the duty of the secretary to keep minutes (whether in written or electronic form) of:
  - (a) all appointments of office-bearers and members of the committee, and
  - (b) the names of members of the committee present at a committee meeting or a general meeting, and
  - (c) all proceedings at committee meetings and general meetings.
- (3) **Minutes of all meetings shall be circulated to all Council members by the Secretary within 30 days of the meeting.**

## **20 Treasurer**

It is the duty of the treasurer of the association to ensure:

- (a) that all money due to the association is collected and received and that all payments authorised by the association are made, and
- (b) that correct books and accounts are kept showing the financial affairs of the association, including full details of all receipts and expenditure connected with the activities of the association.

## 21 Casual vacancies

- (1) In the event of a casual vacancy occurring in the membership of the committee, the committee may appoint a member of the association to fill the vacancy and the member so appointed is to hold office, subject to this constitution, until the annual general meeting next following the date of the appointment.
- (2) A casual vacancy in the office of a **Officer or Councillor** of the committee occurs if the **Officer or Councillor**:
  - (a) dies, or
  - (b) ceases to be a member of the association, or
  - (c) is or becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth, or
  - (d) resigns office by notice in writing given to the secretary, or
  - (e) is removed from office under **clause 19**, or
  - (f) becomes a mentally incapacitated person, or
  - (g) is absent without the consent of the committee from 3 consecutive meetings of the committee, or
  - (h) is convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than 3 months, or
  - (i) is prohibited from being a director of a company under Part 2D.6 (Disqualification from managing corporations) of the *Corporations Act 2001* of the Commonwealth.

## 22 Removal of committee members

- (1) The association in general meeting may by resolution remove any **Officer or Councillor** before the expiration of the **Officer or Councillor's** term of office by a majority vote of Councillors and Officers of the Association and may by resolution appoint another person to hold office until the expiration of the term of **Officer or Councillor** so removed.

## 23 Committee meetings and quorum

- (1) The committee must meet at least 1 time in each period of 12 months at a place and time that the committee may determine.
- (2) Additional meetings of the committee may be convened by the president or by any member of the committee.
- (3) Oral or written notice of a meeting of the committee must be given by the secretary to each member of the committee at least 48 hours (or any other period that may be unanimously agreed on by the members of the committee) before the time appointed for the holding of the meeting.

- (4) Notice of a meeting given under **subclause (3)** must specify the general nature of the business to be transacted at the meeting and no business other than that business is to be transacted at the meeting, except business which the committee members present at the meeting unanimously agree to treat as urgent business.
- (5) Any 4 members of the committee constitute a quorum, **where 2 of whom are Officers**, for the transaction of the business of a meeting of the committee.
- (6) **Visitors to Council meetings shall be admitted by oral or written invitation of the President or Secretary of the Association.**
- (7) **Standing orders for conduct of Council meetings shall be determined by the Council from time to time.**
- (8) No business is to be transacted by the committee unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to stand adjourned to the same place and at the same hour of the same day in the following week.
- (9) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.
- (10) At a meeting of the committee:
  - (a) the president or, in the president's absence, the vice-president is to preside, or
  - (b) if the president and the vice-president are absent or unwilling to act, one of the remaining members of the committee chosen by the members present at the meeting is to preside.

## **24 Appointment of association members as committee members to constitute quorum**

- (1) If at any time the number of committee members is less than the number required to constitute a quorum for a committee meeting, the existing committee members may appoint a sufficient number of members of the association as committee members to enable the quorum to be constituted.
- (2) A member of the committee so appointed is to hold office, subject to this constitution, until the annual general meeting next following the date of the appointment.
- (3) This **clause** does not apply to the filling of a casual vacancy to which **clause 18** applies.

## **25 Use of technology at committee meetings**

- (1) A committee meeting may be held at 2 or more venues using any technology approved by the committee that gives each of the committee's members a reasonable opportunity to participate.
- (2) A committee member who participates in a committee meeting using that technology is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

## 26 Voting and decisions

- (1) Questions arising at a meeting of the committee or of any sub-committee appointed by the committee are to be determined by a majority of the votes of **Councillors and Officers** of the committee present at the meeting.
- (2) **Each Councillor and the President, Vice-President, Secretary, Treasurer and Technical Officer shall be entitled to one vote at all Meetings of the Council except in respect of the election of Officers of the Association at the Annual General Meeting where Article 18 shall apply.**
- (2) In the case of an equality of votes on a question at a general meeting, the chairperson of the meeting is entitled to exercise a second or casting vote.
- (4) **Any Officer of the Association entitled to vote who holds two or more offices jointly or represents a Member Fleet as Councillor shall exercise only one vote at any meeting of the Council.**

## Part 5 General meetings

### 27 Annual general meetings - holding of

- (2) The association must hold its annual general meetings:
  - (a) within 6 months after the close of the association's financial year, or
  - (b) within any later time that may be allowed or prescribed under section 37 (2) (b) of the Act.

### 28 Annual general meetings - calling of and business at

- (1) The annual general meeting of the association is, subject to the Act and to **clause 25**, to be convened on the date and at the place and time that the committee thinks fit.
- (2) In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting is to include the following:
  - (a) to confirm the minutes of the last preceding annual general meeting and of any special general meeting held since that meeting,
  - (b) to receive from the committee reports on the activities of the association during the last preceding financial year,
  - (c) to elect office-bearers of the association and ordinary committee members,
  - (d) to receive and consider any financial statement or report required to be submitted to members under the Act.
- (3) An annual general meeting must be specified as that type of meeting in the notice convening it.

### 29 Special general meetings - calling of

- (1) The committee may, whenever it thinks fit, convene a special general meeting of the association.
- (3) A requisition of members for a special general meeting:
  - (a) must be in writing, and
  - (b) must state the purpose or purposes of the meeting, and
  - (c) must be signed by the members making the requisition, and
  - (d) must be lodged with the secretary, and
  - (e) may consist of several documents in a similar form, each signed by one or more of the members making the requisition.
- (4) If the committee fails to convene a special general meeting to be held within 1 month after the date on which a requisition of members for the meeting is lodged with the secretary, any one or more of the members who made the

requisition may convene a special general meeting to be held not later than 3 months after that date.

- (5) A special general meeting convened by a member or members as referred to in **subclause (4)** must be convened as nearly as is practicable in the same manner as general meetings are convened by the committee.
- (6) For the purposes of **subclause (3)**:
  - (a) a requisition may be in electronic form, and
  - (b) a signature may be transmitted, and a requisition may be lodged, by electronic means.

### 30 Notice

- (1) **Except if the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the association, the secretary must, at least 7 days before the date fixed for the holding of the general meeting, give a notice to each member specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.**
- (2) **If the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the association, the secretary must, at least 21 days before the date fixed for the holding of the general meeting, cause notice to be given to each member specifying, in addition to the matter required under **subclause (1)**, the intention to propose the resolution as a special resolution.**
- (3) No business other than that specified in the notice convening a general meeting is to be transacted at the meeting except, in the case of an annual general meeting, business which may be transacted under **clause 26 (2)**.
- (4) A member desiring to bring any business before a general meeting may give notice in writing of that business to the secretary who must include that business in the next notice calling a general meeting given after receipt of the notice from the member.

### 31 Quorum for general meetings

- (1) No item of business is to be transacted at a general meeting unless a quorum of members entitled under this constitution to vote is present during the time the meeting is considering that item.
- (2) Four members present (being members entitled under this constitution to vote at a general meeting) constitute a quorum for the transaction of the business of a general meeting.
- (3) If within half an hour after the appointed time for the commencement of a general meeting a quorum is not present, the meeting:
  - (a) if convened on the requisition of members—is to be dissolved, and
  - (b) in any other case—is to stand adjourned to the same day in the following week at the same time and (unless another place is specified at the time of the adjournment by the person presiding at the meeting or

communicated by written notice to members given before the day to which the meeting is adjourned) at the same place.

- (4) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members present (being at least 3) are to constitute a quorum.

## 32 Presiding member

- (1) The president or, in the president's absence, the vice-president, is to preside as chairperson at each general meeting of the association.
- (2) If the president and the vice-president are absent or unwilling to act, the members present must elect one of their number to preside as chairperson at the meeting.

## 33 Adjournment

- (1) The chairperson of a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (2) If a general meeting is adjourned for 14 days or more, the secretary must give written or oral notice of the adjourned meeting to each member of the association stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- (3) Except as provided in **subclauses (1) and (2)**, notice of an adjournment of a general meeting or of the business to be transacted at an adjourned meeting is not required to be given.

## 34 Making of decisions

- (1) A question arising at a general meeting of the association is to be determined by:
  - (a) a show of hands or, if the meeting is one to which **clause 37** applies, any appropriate corresponding method that the committee may determine, or
- (2) If the question is to be determined by a show of hands, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book of the association, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- (3) **Subclause (2)** applies to a method determined by the committee under **subclause (1) (a)** in the same way as it applies to a show of hands.
- (4) If the question is to be determined by a written ballot, the ballot is to be conducted in accordance with the directions of the chairperson.

## 35 Special resolutions

A special resolution may only be passed by the association in accordance with section 39 of the Act.

## 36 Voting

- (1) Each Owner shall be entitled to one vote at a general meeting for the election of Officers of the Association.
- (2) On any question arising at a general meeting, each Councillor and the President, Vice-President, Secretary, Treasurer and Technical Officer shall be entitled to one vote.
- (4) Any Officer of the Association entitled to vote who holds two or more offices jointly or represents a Member Fleet as Councillor shall exercise only one vote at a general meeting of the Association.
- (2) In the case of an equality of votes on a question at a general meeting, the chairperson of the meeting is entitled to exercise a second or casting vote.
- (3) A member is not entitled to vote at any general meeting of the association unless all money due and payable by the member to the association has been paid.

## 37 Proxy votes

- (1) Any Councillor may appoint a proxy at meetings of the Association and may at any time revoke such appointment. Such appointments or revocations shall be in writing.

## 38 Postal or electronic ballots

- (1) The association may hold a postal or electronic ballot (as the committee determines) to determine any issue or proposal (other than an appeal under clause 12).
- (2) A postal or electronic ballot is to be conducted in accordance with Schedule 3 to the Regulation.

## 39 Use of technology at general meetings

- (1) A general meeting may be held at 2 or more venues using any technology approved by the committee that gives each of the association's members a reasonable opportunity to participate.
- (2) A member of an association who participates in a general meeting using that technology is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

## **Part 6 Miscellaneous**

### **40 Insurance**

The association may effect and maintain insurance.

### **41 Indemnity**

Every Councillor, Officer and Patron of the Association shall be indemnified by the Association and it shall be the duty of the Association to pay all costs, losses or expenses which he or they may incur, become liable to by reason of any contact entered into, out of any deed done by him or they in any way in the discharge of his or their duties in accordance with this Constitution and the amount of this indemnity shall immediately attach as a lien upon the property of the Association

### **42 Funds - source of**

- (1) The funds of the association are to be derived from entrance fees and annual subscriptions of members, donations and, subject to any resolution passed by the association in general meeting, any other sources that the committee determines.
- (2) All money received by the association must be deposited as soon as practicable and without deduction to the credit of the association's bank or other authorised deposit-taking institution account.
- (3) The association must, as soon as practicable after receiving any money, issue an appropriate receipt.

### **43 Funds - management of**

- (1) Subject to any resolution passed by the association in general meeting, the funds of the association are to be used solely in pursuance of the objects of the association in the manner that the committee determines.
- (2) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by 2 authorised signatories.

### **44 Association is non-profit**

Subject to the Act and the Regulation, the association must apply its funds and assets solely in pursuance of the objects of the association and must not conduct its affairs so as to provide a pecuniary gain for any of its members.

## 45 Distribution of property on winding up of association

- (1) The immediate past President shall upon dissolution of the Association at their absolute discretion distribute all remaining property of the Association as they see fit within six (6) calendar months of final dissolution.
- (2) Any funds remaining shall be distributed among the remaining Member Fleets at the time of dissolution on a pro-rata basis of the number of Cherub Class Yachts registered with each fleet.
- (3) Perpetual trophies which are the property of the Association shall be given to the Member Fleets whose representatives won the trophy on the last occasion they were contested

## 46 Change of name, objects and constitution

- (1) An application for registration of a change in the association's name, objects or constitution in accordance with section 10 of the Act is to be made by the public officer or a committee member.
- (2) No deletion, addition or amendment of this Constitution shall be made except at the Annual General Meeting and unless Notice of Motion in writing of such alteration has been lodged by a Member Fleet to Council at least sixty (60) days before the Annual General Meeting. Such motions shall be notified to all Member Fleets at least thirty (30) days before the said Annual General Meeting.
- (3) Deletions of, additions to or amendments of the Constitution shall require a three-quarters affirmation majority vote of Councillors and Officers of the Association present and entitled to vote.
- (4) All such alterations to this Constitution shall not become effective before the lapse of thirty (30) days after the Annual General Meeting at which the vote is declared and Council shall immediately prologue the result to all Member Fleets.
- (5) The Constitution shall mean all matters contained in Articles numbered 1 to 52 inclusive.

## 47 Custody of books etc

Except as otherwise provided by this constitution, all records, books and other documents relating to the association must be kept in New South Wales:

- (a) at the main premises of the association, in the custody of the public officer or a member of the association (as the committee determines), or
- (b) if the association has no premises, at the association's official address, in the custody of the public officer.

## 48 Inspection of books etc

- (1) The following documents must be open to inspection, free of charge, by a member of the association at any reasonable hour:
  - (a) records, books and other financial documents of the association,
  - (b) this constitution,
  - (c) minutes of all committee meetings and general meetings of the association.
- (2) A member of the association may obtain a copy of any of the documents referred to in **subclause (1)** on payment of a fee of not more than \$1 for each page copied.
- (3) Despite **subclauses (1) and (2)**, the committee may refuse to permit a member of the association to inspect or obtain a copy of records of the association that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the association.

## 49 Common Seal

- (1) The common seal of the Association must be kept in the custody of the public officer.
- (2) The common seal must not be affixed to any instrument except by the authority of the Council and the affixing of the common seal must be attested by the signatures either of two members of the Council or of one member of the Council and the public officer or secretary.

## 50 Financial year

The financial year of the association is:

- (a) each period of 12 months after the expiration of the previous financial year of the association, commencing on 1 April and ending on the following 31 March.

## 51 Racing Rules

- (1) All races conducted by or on behalf of the association shall be conducted under the current Racing Rules and safety regulations of Australian Sailing, and the current CCIA Rules and Restrictions, provided that any Special Rules or Regulations, made by the Association for the conduct of its own races shall apply first, and provided further that such Special Rule or Regulation is made within the discretionary powers allowed by the Racing Rules Committee or appropriate safety sub-committee of Australian Sailing.
- (2) Any appeal against a decision of the Race Committee shall be referred to Australian Sailing, and shall be accompanied by the prescribed fee. Any

decision of Australian Sailing on an appeal shall be final except where the Australian Sailing on its own motion refers it to another yachting authority.

## **52 By-Laws**

The Council shall have power to make, alter or repeal By-Laws as they deem necessary or expedient or convenient for the proper conduct and management of the Association, providing that the making, alteration or repeal of such By-Laws shall be effected by a majority affirmative votes of all Councillors and Officers of the Association entitled to vote and providing further that no By-Laws shall be inconsistent of CCIA Rules and Restrictions both as amended from time to time.

## Part 7 By-Laws

### 1 – Measurement

- (1) The Technical Officer shall act as State Measurer for NSW.
- (2) Other Cherub Class Measurers may be nominated by the Technical Officer and their appointment shall be subject to approval by resolution of Council.
- (3) Member Fleets may nominate Cherub Class Sail Measurers and their appointment shall be subject to approval by resolution of Council.
- (4) In measuring a Cherub Class Yacht, its equipment and sails, current CCIA Rules and Regulations shall govern the measure.
- (5) Only Measurers approved by resolution of Council shall measure Cherub Class Yachts, equipment and sails
- (6) Measurements shall be recorded in duplicate on a form to be adopted by Council from time to time. Upon completion of a measurement and where the yacht is found to be in conformity with the CCIA Rules and Regulations both forms shall be signed by the owner or builder and the Measurer. Where doubt exists as to the conformity of the yacht the Measurer shall complete a statement of reasons for doubt and the owner or builders only shall sign the forms.
- (7) The owner shall pay to the Measurer the measurement fee together with travelling or other expenses incurred by the Measurer in the discharge of his duties. The measurement fee shall be fixed by the Council from time to time.
- (8) The owner shall retain one copy of the measurement form and the Measurer shall forward the other copy together with the measurement fee to the Secretary of the Association.
- (9) For any measurement or re-measurement of a Cherub Class Yacht the owner shall pay the prescribed fee whether the yacht is approved or not.
- (10) The Technical Officer may direct that any Cherub Class Yacht be re-measured.
- (11) No measurer, or sail measurer may measure a Cherub Class Yacht or its equipment or sails which he/she owns or has constructed or manufactured.
- (12) In the event that doubt exists as to the conformity of a yacht the secretary shall forward the measurement form to the CNCA. Technical Officer for a ruling based on the measurer's statement.

### 2 – Registration

- (1) Registration takes place upon receipt of a measurement form together with the measurement fee and the annual Cherub Class Yacht registration fee, and subject to conformity with CCIA and CNCA.
- (2) The secretary shall forward the measurement form together with such fees as are payable to CNCA for issue of a Certificate of Registration.
- (3) The Certificate of Registration is cancelled when a Cherub Class Yacht changes ownership, and a new owner desirous of obtaining a Certificate of

Registration shall forward to the Secretary of the Association such fee as may be determined by Council from time to time but which shall be not less than \$1.00 for issue of a new Certificate of Registration and details of the change in ownership.

- (4) Each Member Fleet shall collect from each of its Cherub Owners an annual registration fee which shall be deemed to include an affiliation fee for the owners, helmsman and crew. The annual registration fee shall be as determined by Council from time to time, but shall not be less than \$0.00 per Cherub Class Yacht.
- (5) No Cherub Class Yachts shall be permitted to enter races conducted or sponsored by the Association or any Member Fleet unless the Annual Registration Fee has been paid.
- (6) Each Member Fleet shall remit to the Association within seven days the Annual Registration fees collected from Cherub Owners.

### **3 – Deleted**

### **4 – Racing**

- (1) No yacht may score points or be awarded prizes in any event conducted or sponsored by the Association unless;
  - (a) The yacht has been entered by a member of a Club affiliated to Australian Sailing
  - (b) The helmsman is an amateur member of a Club affiliated to Australian Sailing
  - (c) The Cherub Class Yacht is in possession of a valid Certificate of Registration issued by or under the authority of CCIA.
  - (d) Deleted
  - (e) Permission for change of crew shall have been obtained from the Race Committee. Under no circumstances will crew changes be permitted to suit weather conditions.
- (2) The annual N.S.W. State Championship shall be conducted each year in rotation between Member Fleet venues as decided by Council.
- (3) The annual N.S.W. State Championship shall be conducted over not less than five heats.
- (4) Points shall be scored, heats discarded and any ties resolved in accordance with the Low Point System, as set out in RRS Appendix A. The Council may approve modification of this system provided that modification is clearly set out in the Notice of Race for the event in question..
- (5) For the NSW Cherub State Championships:
  - (a) The Notice of Race and the Sailing Instructions for the State Championships shall be approved by the Council prior to the first of September.

- (b) The Notice of Race for the State Championship shall include details as to the general length and nature of the courses for each heat.
  - (c) The Sailing Instructions shall include full details of the course for each heat including the nominal length and shape of the courses.
  - (d) Changes to the course details in the Sailing Instructions shall only be made with the approval of the Council.
- (6) Prior to, and/or in conjunction, with State Titles the association may conduct state team selection trials to nominate a team to represent New South Wales at the national titles.
- (7) Points shall be scored for all state team selection trials using the low point system.

## **5 – Amendments of CCIA Rules and Restrictions**

- (1) Should any member fleet propose any alterations to CCIA Rules and Restrictions it shall submit such proposed alterations to the Association in writing and be signed by five affiliated owners of Cherub Class Yachts.
- (2) The secretary shall circulate such proposed alteration to all Member Fleets at least 21 days before the Council meeting at which it is to be voted.
- (3) Such proposed alteration shall require two-thirds affirmative majority of those Council members entitled to vote.
- (4) In the event of the proposed alteration being adopted the Secretary shall submit such proposed charge within seven (7) days of the Council meeting at which the vote is declared to CNCA in the form of a Notice of Motion for postal ballot.

## **6 – Deleted**

## **7 – Cherub Class Owners Fleet definition**

Until otherwise decided by resolution of Council, the minimum number of racing together in a Club affiliated to Australian Sailing which shall comprise a fleet shall be two (2).

## **8 – Alteration to By-Laws**

Any addition, deletion or alteration to the By-Laws shall be lodged in writing to the Secretary at or before a Council meeting and circulated to all Council Members as a Notice of Motion prior to the next Council meeting.