

## SHOALHAVEN EX SERVICEMEN'S CLUB LIMITED

ABN 81 000 845 358

### EXPLANATORY MEMORANDUM FOR PROPOSED NEW CONSTITUTION

Enclosed with this Memorandum is a Notice of the Annual General Meeting of the Club which is to be held on Sunday the 24<sup>th</sup> June 2018

At the Annual General Meeting the members will be asked to consider and if thought fit pass a Special Resolution to adopt a new Constitution to replace the existing Memorandum and Articles of Association of the Club.

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

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

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

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Articles have been amended over time, the Club's lawyers have advised that in many respects the existing document is out of date and does not strictly comply with what is contained in the *Corporations Act*, *Registered Clubs Act*, *Liquor Act*, *Gaming Machines Act* or their respective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

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

#### NAME

1. Rule 1 states that the name of the company is Shoalhaven Ex Servicemen's Club Limited.

#### PRELIMINARY

2. Rule 2.1 states that the Club is a company limited by guarantee and a non-proprietary company.
3. Rule 2.2 provides that the company is established for the purposes set out in the Constitution.
4. Rule 2.3 provides that the replaceable rules referred to in the *Corporations Act* are displaced or modified as provided in the Constitution.
5. Rule 2.4 provides that the Club must supply a member with a copy of the Club's Constitution if a copy is requested by a member as prescribed by the *Corporations Act*.

#### DEFINITIONS

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

## **OBJECTS**

7. Rule 4 sets out the objects for which the Club was established and the powers to support those Objects.
8. The objects reflect those in the existing Memorandum of Association and now more accurately reflect the Club's main purpose being the promotion and encourage of sport. In addition, slight alterations have been made to bring the objects into line with the *Liquor Act* and *Registered Clubs Act*.

## **WINDING UP AND MEMBER'S LIABILITY**

9. Rule 5 states that the liability of the members is limited. That limit is \$2.00 as set out in Rule 6 and is the same amount as currently applies.
10. Rule 6 provides that each member of the Club undertakes to contribute such amount as may be required not exceeding \$2.00 if the Club is wound up and the assets of the Club are insufficient to discharge the liabilities. This undertaking continues for a period of 12 months after the person ceases to be a member.
11. Rules 7.1 and 7.2 provide that on the winding up of the Club, if there remains any assets after the satisfaction of all debts and liabilities, those assets shall not be distributed among the members but shall be given or transferred to a sporting club, institution or institutions that is or are carried on predominately for the encouragement of a game or sport and which has or have objects similar to the objects of the Club and prohibit the distribution of its or their income and property amongst its or their members to an extent at least as great as is imposed on the Club. The institution or institutions shall be determined by a majority of members entitled to vote.
12. Rule 7.3 adopts clause 9 of the Memorandum of Association and provides that in order for a resolution to wind up the Club to be valid it must be passed by at least eighty per cent (80%) of those eligible voting members who attend and vote at a general meeting of the Club.

## **PROPERTY AND INCOME**

13. Rule 8.1 provides that the property and income of the Club must be applied solely towards the promotion of the objects of the Club.
14. Rules 8.2 and 8.3 set out specific requirements of the *Registered Clubs Act* in relation to benefits available to members.
15. Rule 8.4 provides that a director of the Club cannot be appointed or elected to any office of the Club paid by salary or wages or any similar basis of remuneration.
16. Rule 8.5 provides that the payment in good faith of reasonable and proper remuneration to any officer, employee or to any member of the Club for services actually rendered is not prohibited.
17. Rule 8.6 specifies that a director shall not receive from the Club remuneration or any other benefit in money or monies worth except by way of an honorarium, reasonable

out of pocket expenses or interest on money lent by the director to the Club or rent on property leased to the Club by the director.

## **LIQUOR & GAMING**

18. Rules 9.1 and 9.2 provide that liquor shall only be supplied to persons of or over the age of 18 years in accordance with the *Registered Clubs Act*.
19. Rule 9.3 states that a person using the gaming facilities of the Club must be of or over the age of 18 years.
20. Rules 9.4 to 9.6 inclusive prohibit a person associated with the Club from receiving direct or indirect benefits including but not limited to monetary payments or commissions from liquor sales and/or the use of poker machines at the Club.

## **MEMBERSHIP**

21. Rule 10.1 provides that the number of full members shall not exceed the maximum permissible under the *Registered Clubs Act*. The *Registered Clubs Act* no longer provides a maximum number of members. Accordingly, the Club would not have a maximum number of members unless one is reintroduced by the *Registered Clubs Act*.
22. Rule 10.2 states that no person under the age of 18 years is to be admitted as a member of the Club except as a Junior member.
23. Rules 10.3 and 10.4 set out the categories of membership of the Club. Full membership of the Club shall be divided into the following categories:
  - Service members;
  - Associate members;
  - Junior members; and
  - Life members.
24. Rule 10.5 provides that the number of full members having the right to vote in the election of the Board shall not be less than the minimum number of full members required by the *Registered Clubs Act*.

### **Service Members**

25. Rules 10.6 and 10.7 set out the eligibility requirements and the entitlements of Service members which reflect the existing Articles and practice of the Club. Service members have the right to attend and vote at all meetings of the Club and subject to the Constitution the right to nominate for and be elected to the Board.

### **Associate Members**

26. Rules 10.8 through to 10.11 set out the eligibility requirements and the entitlements of Associate members. Associate members who have been members of the Club for a period of at least 5 consecutive years have the right to attend and vote at all meetings of the Club, vote in the election of the Board and, subject to the Constitution, the right to nominate for and be elected to the Board except they cannot be elected as President of the Club

27. Under rules 10.10 and 10.11 Associate members who have been members of the Club for a period of less than 5 consecutive years shall have the right to attend general meetings and introduce guests into the Club but shall not be entitled to vote at general meetings, vote in the election of the Board or be able to be elected or appointed to the Board.

### **Junior Members**

28. Rules 10.12 to 10.14 inclusive set out the eligibility requirements and the entitlements of Junior members which reflect the existing Articles and practice of the Club. Junior members must participate in the sporting activities of the Club but are not allowed to attend and vote at meetings of the Club nor are they able to be elected to the Board.

### **Life Members**

29. Rules 10.15 to 10.26 inclusive set out the eligibility requirements and the entitlements of Life members which reflect the existing Articles and practice of the Club.

### **Transfer between classes of membership**

30. Rule 11 provides for the transfer of members between classes of membership.
31. Rule 11.2 provides that the Board may transfer any Junior member who attains the age of eighteen (18) years to another category of membership for which the Junior member has the necessary qualifications.

### **Provisional Members**

32. Rule 12 deals with Provisional membership. Any person may apply for Provisional membership upon entering the Club, completing and submitting to the Club the appropriate membership form and paying the membership subscription in advance. A Provisional member is entitled to use the facilities of the Club pending a determination by the Board on that person's suitability for membership or for six (6) weeks whichever is the sooner.

### **Honorary Members**

33. Rule 13 deals with Honorary membership in a way that is consistent with the *Registered Clubs Act*.

### **Temporary Members**

34. Rule 14 deals with Temporary membership in a way that is consistent with the requirements of the *Registered Clubs Act*.

## **ELECTION OF MEMBERS**

35. **Rule 15 deals with the system of electing members to the Club. The current requirement that an application for membership be proposed and seconded by Service members or Associate members with at least five (5) years membership at the Club has been removed as it is not legally required and only acts as an obstacle to persons seeking to join the Club.** Applicants for membership will only be required to supply proof of their identity at the time of submitting the application for membership.

## **JOINING FEES, SUBSCRIPTIONS AND LEVIES**

36. Rule 16 deals with joining fees, subscriptions and levies. Subscriptions shall be due and payable in advance annually or as otherwise determined by the Board. Renewal notices must be sent to all members. Any person who has not paid his or her subscription by the due date shall cease to be entitled to the privileges of membership of the Club and may by resolution of the Board be removed from membership of the Club.

## **NON-FINANCIAL MEMBERS**

37. **Rule 17 sets out the rights and privileges that non-financial member are not entitled to.**

## **REGISTERS OF MEMBERS AND GUESTS**

38. Rule 18 sets out the registers the Club is required to maintain in respect of full, Honorary and Temporary members as well as guests of members over the age of eighteen years. This is consistent with the *Registered Clubs Act*.

## **ADDRESSES OF MEMBERS**

39. Rule 19 states that members must advise the Club of any change in their address within seven (7) days to ensure compliance with the *Registered Clubs Act* and to keep records up to date.

## **DISCIPLINARY PROCEEDINGS**

40. Rule 20 deals with powers of the Board to discipline members. The provisions reflect the existing Articles, except that the proposed new Constitution provides that the Secretary or the Board may suspend a member if the member has been issued with a notice of a charge, until the hearing **or for up to five (5) weeks. In addition to this members will be given 14 days' notice of the charge instead of 7 days and the majority required to find the charge established and impose a penalty will be two-thirds.**
41. **Rule 21 clarifies that the Board may, by resolution, delegate its disciplinary powers to a disciplinary committee comprising at least three (3) directors.** The Board retains the power to review a decision of a disciplinary committee provided the Board follows the procedure set out in Rule 21.3.
42. Rule 22 sets out that any member suspended pursuant to Rules 20 or 21 shall cease to be entitled to the rights and privileges of membership, which include the right to attend at the premises of the Club, the right to participate in the social and sporting activities of the Club, the right to vote, the right to attend meetings of the Club and the right to be elected to the Board.
43. Rule 23 deals with the power given to the Secretary and employees of the Club under the *Liquor Act* to remove any person who, when on the premises of the Club, is then intoxicated, violent, quarrelsome, disorderly or smoking in a smoke free area and to prevent that person from returning to the Club. These powers given to the Secretary and employees are no wider than those given under the *Liquor Act*.
44. Rule 24 deals with the procedure for a member to resign from the Club.

## **GUESTS**

45. Rule 25 deals with guests and reflects the provisions of the *Registered Clubs Act*.
46. Every guest must be introduced by a member and that member must complete and sign the Guests Register in order for that guest to enter the Club. The only exception to this is in relation to a guest who is a minor. A minor may be admitted as a guest of a member without the member having to complete the Guests Register. However, the minor (like any other guest) must remain in the reasonable company of that member at all times while on the premises of the Club.

## **PATRONS**

47. Rule 26 deals with patrons of the Club. The members of the Club may appoint patrons at a general meeting. Patrons who are not full members of the Club shall be Honorary members of the Club whilst they remain a patron of the Club.

## **BOARD OF DIRECTORS**

48. Rule 27.1 deals with the composition of the Board. The Board shall continue to consist of eight (8) directors who shall comprise;
  - a President (who shall be either a Life member (Service) or a Service member);
  - two (2) Vice Presidents (one of whom shall be a Life member (Service) or a Service member and one of whom shall be a Life member (Associate) or an Associate member with at least 5 years consecutive membership of the Club);
  - a Treasurer (who shall be a Life member (Service), a Life member (Associate) or a Service member or an Associate member with at least 5 years consecutive membership of the Club);
  - and four (4) other ordinary directors (two of whom shall be Life members (Service) or Service members and 2 of whom shall be Life members (Associate) or Associate members with at least 5 years consecutive membership of the Club).
49. Rule 27.2 provides that the Board will continue to be elected in accordance with the Triennial Rule as set out in the Registered Clubs Act. This remains the same.
50. Rule 27.3 provides that:
  - Life members;
  - Service members; and
  - Associate members (who have been members of the Club for a continuous period of at least 5 years.are eligible to nominate for and be elected to the Board.
51. Rule 27.4 states that a member who is an employee or currently under suspension or not a financial member shall not be eligible to stand for or be elected or appointed to the Board.

52. Rule 27.7 is a new rule which requires directors to undertake such mandatory director training as stipulated by the *Registered Clubs Act* (unless exempted).

### **ELECTION OF BOARD**

53. Rule 28 sets out the system for electing the Board. The provisions are more comprehensive than the existing Articles however they generally reflect them and the established practice of the Club.

### **POWERS OF THE BOARD**

54. Rule 29 deals with the Board's powers more comprehensively than the existing Articles. The power of the Board to dispose of Club land has been amended to clarify that the power is subject to the restrictions contained in the *Registered Clubs Act* and the *Liquor Act*.

### **PROCEEDINGS OF THE BOARD**

55. Rule 30 deals with proceedings of the Board and reflect the existing Articles.
56. The President or one of the Vice Presidents may at any time and the Secretary shall upon the request of at least two (2) directors convene a meeting of the Board.
57. The quorum for a meeting of the Board shall be five (5) directors provided that one of the President, the 2 Vice Presidents or the Treasurer must be present at the meeting to constitute a valid quorum. .
58. All decisions of the Board are determined by a majority vote. In the case of an equality of votes the chairperson of the meeting has a second or casting vote. This is a new provision.

### **DECLARATIONS OF INTERESTS BY DIRECTORS**

59. Rule 31 relates to directors interested in matters that come before the Board. The provisions reflect the requirements of the *Registered Clubs Act* and the *Corporations Act*.
60. Directors are required to declare any material personal interest that they may have in a matter that relates to the affairs of the Club.
61. A director with a material personal interest must abstain from taking any part in any discussion or voting on any matter in which that director has such interest.

### **CONTRACTS BETWEEN THE CLUB, DIRECTORS AND SECRETARY**

62. Rule 32 provides the circumstances where the Club can enter into a contract with a director.
63. Rule 33 prohibits the Club from entering into a commercial arrangement or contract with the Secretary, a close relative of the Secretary, or any company or other body in which the Secretary or a close relative of the Secretary has a controlling interest. However, this does not apply to a contract of employment, or any other contract permitted by the *Registered Clubs Act*.

### **REMOVAL FROM OFFICE OF DIRECTORS**

64. Rule 34 provides that the members in general meeting may by ordinary resolution remove any director, or the whole Board, before the expiration of his, her or their period of office and appoint another person or persons in his, her or their place. This is consistent with the *Corporations Act* and the existing Articles.

#### **VACANCIES ON THE BOARD**

65. Rule 35.1 clarifies how a vacancy on the Board arises.
66. Rule 35.3 states that the Board has the power to fill a casual vacancy. Any person appointed to fill a casual vacancy will hold office only until the next Annual General Meeting in accordance with the Triennial Rule.

#### **GENERAL MEETINGS**

67. Rules 36.1 to 36.18 inclusive relate to the calling and holding of general meetings (and Annual General Meetings) of the Club. The provisions are more comprehensive than the existing Articles. However, they reflect the existing Articles, the *Corporations Act* and the established practice of the Club.

#### **ATTENDANCE AND VOTING AT GENERAL MEETINGS**

68. Rules 36.19 to 36.31 inclusive relate to attendance and voting at general meetings.
69. Life members, Service members and, in the case of Associate members, those Associate members who have been members of the Club for a continuous period of at least 5 years, may attend and vote at a general meeting (and an Annual General Meeting) of the Club.
70. Proxy voting is not permitted. This is a requirement of the *Registered Clubs Act*.
71. Every member eligible to vote, either by show of hands or a poll, is entitled to one vote.
72. A member, who is also an employee of the Club, is not permitted to vote. This is a requirement of the *Registered Clubs Act*.
73. All questions and resolutions (other than Special Resolutions) shall be decided by a simple majority of votes.
74. Voting shall be on a show of hands unless a poll is demanded.

#### **QUORUM AT GENERAL MEETINGS**

75. Rules 36.32 to 36.35 inclusive detail the quorum required for general meetings. These rules reflect the current Articles.
76. **The quorum for any meeting convened by the Board or called by members will reduce from fifty to forty (40) members.**
77. No business may be transacted at a general meeting unless a quorum of members is present.
78. Rules 36.34 and 36.35 set out the procedure to be followed if a quorum is not present.

79. Rules 36.36 to 36.39 inclusive deal with the procedures to follow for adjournments of general meetings.

#### **MEMBERS' RESOLUTIONS AND STATEMENTS**

80. Rule 37 amends existing provisions relating to members submitting items of business and notices of motion for Annual General Meetings of the Club.
81. The proposed new Constitution provides that individual members may submit items of business and notices of motion provided they are received by the Secretary of the Club at least forty-two (42) days prior to the date fixed for an Annual General Meeting.
82. Forty-two (42) days will allow sufficient time for the item of business or notice of motion to be incorporated into the notice of meeting and sent to members and if necessary for the Board to get advice about the particular item of business or notice of motion.
83. The Board retains the discretion as to whether to include items of business or notices of motion in the business of the Annual General Meeting.
84. Rule 37 also sets out the procedure for members to compel the Board to include an item of business or a notice of motion in the business of an Annual General Meeting. The procedure reflects the requirements of the *Corporations Act*.

#### **MINUTES**

85. Rule 38 provides that minutes of all resolutions and proceedings at general meetings must be entered in the Minute Book within one month of the meeting and signed by the chairperson of that meeting or the chairperson of the next succeeding meeting.

#### **ACCOUNTS**

86. Rule 39 deals with the accounts and reporting to members and is consistent with the *Corporations Act* and *Registered Clubs Act*.

#### **FINANCIAL YEAR**

87. Rule 40 provides that the financial year of the Club shall commence on the first day of April in each year and will end on the last day of March in the same year. There is no change to the financial year of the Club.

#### **AUDITOR**

88. Rule 41 requires the Club to appoint an auditor. The auditor holds office until removed by the members in general meeting or resigns from office or dies. This is a requirement of the *Corporations Act*.

#### **SECRETARY**

89. Rule 42 requires the Board to appoint one Secretary who will be the Chief Executive Officer of the Club for the purposes of the *Registered Clubs Act*.

#### **EXECUTION OF DOCUMENTS**

90. Rule 43 deals with execution of documents and the common seal of the Club.

## **NOTICES**

91. Rule 44 deals with the requirements of giving notice to members. Where a notice of a meeting is sent by post it shall be deemed to have been effectively served on the member on the day following the posting.

## **INDEMNIFICATION OF OFFICERS**

92. Rule 45 deals with the insurance and indemnification of the officers and auditors of the Club in accordance with the *Corporations Act*.

## **INTERPRETATION**

93. Rule 46 provides that a decision of the Board on the construction or interpretation of the Constitution or any Rule, or any By-Law of the Club made pursuant to this Constitution or on any matter arising therefrom, shall be conclusive and binding on all members of the Club.

## **AMENDMENTS TO CONSTITUTION**

94. Rule 47 provides for amendments to the Constitution. The Constitution can only be amended by way of Special Resolution passed at a general meeting of members. Only Life members, Service members and Associate members but only those Associate members who have been members for at least a continuous period of 5 years shall be eligible to vote on any Special Resolution to amend the Constitution.

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

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

To be passed the Special Resolution will need votes from not less than three-quarters (75%) of those members who being eligible to do so vote in person at the meeting.

Dated: 2018

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Bernie Brown  
Chief Executive Officer