

CONSTITUTION

FOR

THE SYDNEY KENDO CLUB

*Approved by special resolution
at a special general meeting
held on 21 February 2009*

Constitution for the Sydney Kendo Club

A. PRELIMINARY:

1. The Club:

- 1.1 This Constitution governs the Sydney Kendo Club, being an incorporated association.
- 1.2 The Sydney Kendo Club was originally established in about 1974 as an unincorporated association in order for its members to learn, practice, play and teach Kendo.
- 1.3 The objects of the Sydney Kendo Club include the promotion, teaching, practicing and enjoyment of Kendo.
- 1.4 The Sydney Kendo Club exists as a “not for profit” organisation, where all money raised and collected is spent, at the discretion of the committee, in order to achieve the objects specified in clause 1.3 above.

2. Definitions:

- 2.1 In this Constitution:
 - (a) “**club sensei**” means the person or persons appointed, from time to time, by the committee under section 17 below.
 - (b) “**committee**” means the committee formed under Part C of this Constitution.

Constitution for the Sydney Kendo Club

- (c) "**dojo steward**" means the person holding office under this Constitution as the dojo steward of the Sydney Kendo Club.
- (d) "**Director-General**" means the Director-General of the Department of Fair Trading.
- (e) "**junior member**" means person who is a member of the Sydney Kendo Club and who is under the age of, eighteen (18).
- (f) "**member**" means person who is either a junior member or an ordinary member.
- (g) "**ordinary member**" means person who is a member of the Sydney Kendo Club and who is, or is over the age of eighteen (18).
- (h) "**president**" means the person holding office under this Constitution as president of the Sydney Kendo Club.
- (i) "**secretary**" means the person holding office under this Constitution as secretary of the Sydney Kendo Club.
- (j) "**special general meeting**" means a general meeting of the Sydney Kendo Club other than an annual general meeting.
- (k) "**the Act**" means the *Associations Incorporation Act 1984* , as amended from time to time.

Constitution for the Sydney Kendo Club

- (j) "**the Regulation**" means the *Associations Incorporation Regulation* 1999, as amended from time to time.
- (k) "**treasurer**" means the person holding office under this Constitution as treasurer of the Sydney Kendo Club.
- (l) "**unincorporated club**" means the unincorporated association known as the "Sydney Kendo Club" which was established in 1974 and which its members have voted to incorporate under the Act.

2.2 In this Constitution:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Constitution have a corresponding meaning;
- (d) a reference to a function includes a reference to a power, authority and duty;
- (e) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty;
- (f) a reference to a section, clause or schedule is a reference to a section of, clause of and schedule to, this Constitution;

Constitution for the Sydney Kendo Club

- (g) a reference to this Constitution includes any schedule thereto;
 - (h) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
 - (i) a reference to any legislation or to any provision of any legislation shall include any modification or re-enactment of, or any legislative provisions substituted for, and all legislation and statutory instruments issued under, such legislation or such provision.
- 2.3 The terms of this Constitution are to be interpreted having regard to:
- (a) the underlying purpose of the Sydney Kendo Club which is to enable its members to learn, practice, play and teach Kendo; and
 - (b) the provisions of the *Interpretation Act 1987*, as amended from time to time, which are to apply as if this Constitution were an Act enacted by the New South Wales Parliament.

B. MEMBERSHIP:

3. Membership qualifications:

- 3.1 A person is qualified to be a member of the Sydney Kendo Club if, but only if:
- (a) the person is a person referred to in section 15 (1) (a), (b) or (c) of the Act and has not ceased to be a member of the Sydney Kendo

Constitution for the Sydney Kendo Club

Club at any time after incorporation of the Sydney Kendo Club under the Act; or

- (b) the person is a natural person who:
 - (i) wishes to learn, practice, play and/or teach Kendo; and
 - (ii) has been approved for membership of the Sydney Kendo Club by the committee.

4. Admission to membership:

4.1 A nomination of a person for membership of the Sydney Kendo Club:

- (a) must be made by the nominee in writing in the general form set out in Schedule 1 to this Constitution; and
- (b) must be lodged with the secretary of the Sydney Kendo Club.

4.2 As soon as practicable after receiving a nomination for membership, the secretary must refer the nomination to the committee which is to determine whether to approve or to reject the nomination.

4.3 As soon as practicable after the committee makes that determination, the secretary must:

- (a) notify the nominee, in writing, that the committee approved or rejected the nomination (whichever is applicable); and

Constitution for the Sydney Kendo Club

- (b) if the committee approved the nomination, request the nominee to pay (within the period of 28 days after receipt by the nominee of the notification) the membership fees otherwise payable in accordance with this Constitution.

4.4 The secretary must, on payment by the nominee of the amounts referred to in clause 4.3 (b) within the period referred to in that provision, enter the nominee's name in the register of members and, on the name being so entered, the nominee becomes:

- (a) if the nominee is under the age of 18, a junior member; or
- (b) if the nominee is or is over the age of 18, an ordinary member.

5. Junior members:

5.1 Notwithstanding anything else contained in this Constitution, a junior member:

- (a) shall not be entitled to receive notice of any general meeting of the Sydney Kendo Club;
- (b) shall not be entitled to vote at any general meeting of the Sydney Kendo Club; and
- (c) shall not be entitled to be elected as an office bearer of the Sydney Kendo Club.

Constitution for the Sydney Kendo Club

5.2 A person admitted as a junior member shall automatically become an ordinary member upon attaining the age of 18.

6. Life & Honorary membership:

6.1 The committee may, in its absolute discretion, award any person over the age of eighteen whom it considers appropriate, and regardless of whether that person is an ordinary member:

(a) Life Membership of the Sydney Kendo Club; and/or

(b) Honorary membership of the Sydney Kendo Club.

6.2 Subject to clause 6.4 below, a person awarded Life Membership of the Sydney Kendo Club, shall be entitled to exercise all of the rights, entitlements and privileges of an ordinary member and shall otherwise be regarded as an ordinary member:

(a) until that person dies; and

(b) without any obligation to pay any membership fees otherwise payable in accordance with this Constitution.

6.3 Subject to clause 6.4 below, a person awarded Honorary Membership of the Sydney Kendo Club, shall be entitled to exercise all of the rights, entitlements and privileges of an ordinary member and shall otherwise be regarded as an ordinary member:

Constitution for the Sydney Kendo Club

- (a) for the period determined by the committee; and
 - (b) without any obligation to pay any membership fees otherwise payable in accordance with this Constitution.
- 6.4 A person awarded Life Membership and/or Honorary Membership of the Sydney Kendo Club shall, subject to clauses 6.2 (b), 6.3 (a) and 6.3 (b) above, be subject to the terms of this Constitution as are applicable to ordinary members including, without limitation, sections 7, 8, 9 and 14 of this Constitution.

7. Cessation of membership:

- 7.1 A person ceases to be a member of the Sydney Kendo Club if the person:
- (a) dies; or
 - (b) resigns membership; or
 - (c) is expelled from the Sydney Kendo Club by the committee.

8. Membership entitlements not transferable:

- 8.1 A right, privilege or obligation which a person has by reason of being a member:
- (a) is not capable of being transferred or transmitted to another person; and

(b) terminates on cessation of the person's membership.

9. Resignation of membership:

9.1 A member of the Sydney Kendo Club is not entitled to resign that membership except in accordance with this clause.

9.2 A member of the Sydney Kendo Club who has paid all amounts payable by the member to the Sydney Kendo Club in respect of his or her membership may resign as a member by first giving to the secretary written notice of at least one month (or such other period as 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.

9.3 If a member of the Sydney Kendo Club ceases to be a member under clause 9.2, 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.

10. Register of members:

10.1 The treasurer must establish and maintain a register of all members which must include the name and address of each member together with the date on which the person became a member.

10.2 The register of members must be kept at the principal place of administration of the Sydney Kendo Club and must be open for

Constitution for the Sydney Kendo Club

inspection, free of charge, by any member of the Sydney Kendo Club at any reasonable hour.

10.3 A member of the Sydney Kendo Club may obtain a copy of any part of the register of members on payment of a fee of \$1 for each page copied or, if some other amount is determined by the committee, that other amount.

11. Membership fees:

11.1 A member of Sydney Kendo Club must pay an annual membership fee or a quarterly membership fee to the Sydney Kendo Club.

11.2 Subject to clause 11.4 below, the annual membership fee shall be:

- (a) for an ordinary member, \$200 which must be paid in the month of July of each year; and
- (b) for a junior member, \$100 which must be paid in the month of July of each year.

11.3 Subject to clause 11.4 below, the quarterly membership fee shall be:

- (a) for an ordinary member, \$60 which must be paid every quarter after becoming a registered member; and
- (b) for a junior member, \$30 which must be paid every quarter after becoming a registered member.

Constitution for the Sydney Kendo Club

11.4 The Committee may, in its absolute discretion, vary the sums payable as the annual membership fee and the quarterly membership fee.

12. Members' liabilities:

12.1 The liability of a member of the Sydney Kendo Club to contribute towards the payment of the debts and liabilities of the Sydney Kendo Club or the costs, charges and expenses of the winding up of the Sydney Kendo Club is expressly limited to the amount, if any, unpaid by the member in respect of membership of the Sydney Kendo Club as required by section 9.

13. Resolution of disputes between members:

13.1 Disputes between members, in their capacity as members, are to be referred to either:

- (a) the committee for mediation; or
- (b) a community justice centre for mediation in accordance with the *Community Justice Centres Act 1983*, as amended from time to time.

13.2 At least 7 days before a mediation session is to commence, the parties are to exchange statements of the issues that are in dispute between them and supply copies to the mediator.

14. Expelling members:

14.1 A complaint may be made to the committee by any person that a member:

Constitution for the Sydney Kendo Club

- (a) has persistently refused or neglected to comply with a provision or provisions of this Constitution;
- (b) has persistently and wilfully acted in a manner prejudicial to the interests of the Sydney Kendo Club;
- (c) has persistently and wilfully acted in a manner inconsistent with the proper learning, practicing, playing and/or teaching of Kendo;
or
- (d) has otherwise brought the art of Kendo or the Sydney Kendo Club into disrepute.

14.2 On receiving such a complaint, the committee:

- (a) must cause notice of the complaint to be served on the member concerned;
- (b) must give the member 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 in connection with the complaint.

14.3 The committee may, by resolution, expel the member from the Sydney Kendo Club or suspend the member from membership of the Sydney Kendo Club if, after considering the complaint and any submissions made

Constitution for the Sydney Kendo Club

in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved.

14.4 If the committee expels or suspends a member, the secretary must, within 7 days after the action is taken, cause written notice to be given to the member of:

- (a) the action taken;
- (b) the reasons given by the committee for having taken that action;
and
- (c) the member's right of appeal under section 15.

14.5 The expulsion or suspension does not take effect:

- (a) until the expiration of the period within which the member is entitled to appeal against the resolution concerned; or
- (b) if within that period the member exercises the right of appeal, unless and until:
 - (i) the Sydney Kendo Club confirms the resolution under clause 15.5; and/or
 - (ii) the person or persons appointed by the Executive Committee of the New South Wales Kendo Association confirms the resolution under clause 15.7,

whichever is the later.

15. Right of appeal of disciplined member:

To the Sydney Kendo Club in general meeting:

- 15.1 A member may appeal to the Sydney Kendo Club in general meeting against a resolution of the committee under section 14, within 7 days after notice of the resolution is served on the member, by lodging with the secretary a notice to that effect.
- 15.2 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.
- 15.3 On receipt of a notice from a member under clause 15.1, the secretary must notify the committee which is to convene a special general meeting of the Sydney Kendo Club to be held within 28 days after the date on which the secretary received the notice.
- 15.4 At a special general meeting of the Sydney Kendo Club convened under clause 15.3:
- (a) no business other than the question of the appeal is to be transacted; and

Constitution for the Sydney Kendo Club

- (b) the committee and the member must be given the opportunity to state their respective cases orally or in writing, or both; and
 - (c) the ordinary members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- 15.5 If at the special general meeting the Sydney Kendo Club passes a special resolution in favour of the confirmation of the resolution, the resolution is confirmed.
- 15.6 If the general meeting the Sydney Kendo Club passes a special resolution in favour of the confirmation of the resolution, the secretary must, within 7 days after the action is taken, cause written notice to be given to the member of the confirmation and of the member's right of appeal under clause 15.7.

To the Executive Committee of the New South Wales Kendo Association:

- 15.7 A member may appeal to the Executive Committee of the New South Wales Kendo Association against a resolution of the general meeting of the Sydney Kendo Club under clause 15.5, within 7 days after notice of the resolution is served on the member, by lodging with the secretary of the New South Wales Kendo Association a notice to that effect.
- 15.8 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.

Constitution for the Sydney Kendo Club

- 15.9 An appeal made pursuant to clause 15.7 above, shall be conducted by the person or persons nominated by the Executive Committee of the New South Wales Kendo Association, in its absolute discretion, to determine the appeal.
- 15.10 The person or persons appointed by the Executive Committee of the New South Wales Kendo Association pursuant to clause 15.9 above shall conduct the Appeal in any manner he/she/they consider to be appropriate provided that the Sydney Kendo Club and the member must be given the opportunity to state their respective cases orally or in writing, or both.
- 15.11 If person or persons appointed by the Executive Committee of the New South Wales Kendo Association confirm the decision of the general meeting of the Sydney Kendo Club, the resolution of the committee is confirmed.
- 15.12 If person or persons appointed by the Executive Committee of the New South Wales Kendo Association confirms the resolution of the committee, the secretary must, within 7 days after the confirmation, cause written notice to be given to the member of the confirmation.

C THE COMMITTEE:

16. Powers of the committee:

16.1 The committee is to be called the committee of the Sydney Kendo Club and, subject to the Act, the Regulation and this Constitution and to any resolution passed by the Sydney Kendo Club in general meeting:

- (a) is to control and manage the affairs of the Sydney Kendo Club;
- (b) may exercise all such functions as may be exercised by the Sydney Kendo Club, other than those functions that are required by this Constitution to be exercised by a general meeting of members of the Sydney Kendo Club;
- (c) has power to perform all such acts and do all such things as appear to the committee to be necessary or desirable for the proper management of the affairs of the Sydney Kendo Club;
- (d) subject to section 19 below, has power to appoint any person or persons as a club sensei for the purpose of teaching its members;
- (e) is to use its best efforts to ensure that the Sydney Kendo Club stays solvent;
- (f) is to use its best efforts to achieve the objects outlined in clause 1.3 above; and

Constitution for the Sydney Kendo Club

- (g) is to use its best efforts to increase the Sydney Kendo Clubs' profile and goodwill in Australia and internationally.

17. The Committee:

17.1 The committee is to consist of:

- (a) the office-bearers of the Sydney Kendo Club, each of whom is to be elected at the annual general meeting of the Sydney Kendo Club under section 18; and
- (b) each of the club sensei appointed under section 19.

17.2 The office-bearers of the Sydney Kendo Club are to be:

- (a) the president;
- (b) the treasurer;
- (c) the secretary; and
- (d) the dojo steward.

17.3 Each of the office-bearers is, subject to this Constitution, to hold office until the conclusion of the annual general meeting following the date of the member's election, but is eligible for re-election.

Constitution for the Sydney Kendo Club

17.4 In the event of a casual vacancy occurring in the membership of the committee, the committee may appoint a member of the Sydney Kendo Club to fill the vacancy and the member so appointed is to hold office, subject to this Constitution, until the conclusion of the annual general meeting next following the date of the appointment.

18. Election of the office bearers:

18.1 Nominations of candidates for election as office-bearers of the Sydney Kendo Club:

- (a) must be made in writing by the nominee, being an ordinary member; and
- (b) must be delivered to the secretary of the Sydney Kendo Club at least 2 days before the date fixed for the holding of the annual general meeting at which the election is to take place.

18.2 If insufficient nominations are received to fill all vacancies on the committee, the candidates nominated are taken to be elected and further nominations are to be received at the annual general meeting.

18.3 If insufficient further nominations are received, any vacant positions remaining on the committee are taken to be casual vacancies.

18.4 If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are taken to be elected.

Constitution for the Sydney Kendo Club

18.5 If the number of nominations received exceeds the number of vacancies to be filled, a ballot is to be held.

18.6 The ballot for the election of office-bearers is to be conducted at the annual general meeting in such usual and proper manner as the committee may direct.

19. Club sensei:

19.1 Subject to the terms of section 19 and the other sections of this Constitution, the committee may, in its absolute discretion, appoint a person as a club sensei for such period as the committee thinks fit.

19.2 The committee must inform the ordinary members of the appointment of a person as club sensei within 14 days of that appointment.

19.3 A person is eligible to be appointed as a club sensei if, and only if, that person:

(a) has been graded in Kendo by a body recognised by the NSW Kendo Association, 4th Dan or higher;

(b) is an ordinary member of the Sydney Kendo Club;

(c) agrees to use his/her best efforts to:

(i) teach Kendo to the members;

Constitution for the Sydney Kendo Club

- (ii) improve the kendo skills of the members;
- (iii) otherwise, achieve the objects outlined in clause 1.3 above;
and

(d) agrees to accept, without demur, the termination of his/her position as a club sensei upon the written request of the committee.

19.4 At any one time, a maximum of four (4) persons may hold the position of a club sensei.

19.5 A person appointed as a club sensei:

- (a) shall, subject to removal under clause 19.7 and section 24, immediately become a member of the committee; and
- (b) shall be relieved from the obligation to pay any membership fee otherwise payable in accordance with this Constitution; but
- (c) shall not otherwise be entitled to any remuneration or reward,

during the currency of their appointment as club sensei.

19.6 All members shall accord to a person appointed as a club sensei every respect and courtesy as would otherwise be expected from a student to a teacher.

Constitution for the Sydney Kendo Club

- 19.7 The committee may, in its absolute and unfettered discretion and without cause, immediately terminate the appointment of a person as club sensei by giving that person written notice of its decision to terminate that appointment.
- 19.8 The decision of the committee to terminate the appointment of a person as club sensei, shall be final and binding and shall not be the subject of any review or challenge.
- 19.9 A person whose appointment is terminated under clause 19.7 shall not be precluded, by reason of that termination, from subsequent appointment as a club sensei.
- 20. President:**
- 20.1 The president of the Sydney Kendo Club must, as soon as practicable after being appointed as president, lodge notice with the Sydney Kendo Club of his or her address.
- 20.2 In addition to the matters otherwise provided for in this Constitution, it is the duty of the president of the Sydney Kendo Club to:
- (a) provide leadership to the committee;
 - (b) provide leadership to the Sydney Kendo Club; and
 - (c) otherwise ensure that the objects set out in clause 1.3 above are, to the best of his/her ability, achieved.

Constitution for the Sydney Kendo Club

21. Secretary:

21.1 The secretary of the Sydney Kendo Club must, as soon as practicable after being appointed as secretary, lodge notice with the Sydney Kendo Club of his or her address.

21.2 In addition to the matters otherwise provided for in this Constitution, it is the duty of the secretary to keep minutes of:

(a) all appointments of office-bearers and members of the committee;

(b) the names of members of the committee present at a committee meeting or a general meeting;

(c) all proceedings at committee meetings and general meetings; and

(d) otherwise ensure that the objects set out in clause 1.3 above are, to the best of his/her ability, achieved.

21.3 Minutes of proceedings at a meeting must be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting.

22. Treasurer:

22.1 The treasurer of the Sydney Kendo Club must, as soon as practicable after being appointed as treasurer, lodge notice with the Sydney Kendo Club of his or her address.

Constitution for the Sydney Kendo Club

22.2 In addition to the matters otherwise provided for in this Constitution, it is the duty of the treasurer of the Sydney Kendo Club to ensure:

- (a) that all money due to the Sydney Kendo Club is collected and received and that all payments authorised by the Sydney Kendo Club are made; and
- (b) that correct books and accounts are kept showing the financial affairs of the Sydney Kendo Club, including full details of all receipts and expenditure connected with the activities of the Sydney Kendo Club;
- (c) that an annual financial report is prepared and presented to the committee, which shall include:
 - (i) a statement of the financial position of the Sydney Kendo Club as at the end of the relevant financial year;
 - (ii) a statement of the financial performance of the Sydney Kendo Club during the relevant financial year; and
 - (iii) a budget for the following financial year; and
- (d) otherwise ensure that the objects set out in clause 1.3 above are, to the best of his/her ability, achieved.

Constitution for the Sydney Kendo Club

23. Dojo steward:

23.1 The dojo steward of the Sydney Kendo Club must, as soon as practicable after being appointed as dojo steward, lodge notice with the Sydney Kendo Club of his or her address.

23.2 It is the duty of the dojo steward to:

- (a) lead the members in warm up;
- (b) lead the members in meditation;
- (c) assist the president in providing leadership to the Sydney Kendo Club; and
- (d) otherwise ensure that the objects set out in clause 1.3 above are, to the best of his/her ability, achieved.

24. Casual vacancies:

24.1 For the purposes of this Constitution, a casual vacancy in the office of a member of the committee occurs if the member:

- (a) dies; or
- (b) ceases to be a member of the Sydney Kendo Club; or
- (c) becomes bankrupt; or

- (d) resigns office by notice in writing given to the secretary; or
- (e) is removed from office under section 25; or
- (f) becomes a mentally incapacitated person; or
- (g) is absent without the consent of the committee from all meetings of the committee held during a period of 6 months.

25. Removal of committee member:

25.1 The Sydney Kendo Club in general meeting may by resolution:

- (a) remove any member of the committee from the office held by that member before the expiration of the member's term of office; and
- (b) appoint another person to hold office until the expiration of the term of office of the member so removed.

25.2 If a member of the committee to whom a proposed resolution referred to in clause 25.1 relates makes representations in writing to the secretary or president (not exceeding a reasonable length) and requests that the representations be notified to the members of the Sydney Kendo Club, the secretary or the president may send a copy of the representations to each member of the Sydney Kendo Club or, if the representations are not so sent, the member is entitled to require that the representations be read out at the meeting at which the resolution is considered.

25.3 A resolution made under clause 25.1, shall be final and binding and shall not be the subject of any review or challenge.

26. Meetings of the committee:

26.1 The committee must meet at least 4 times in each period of 12 months at such place and time as the committee may determine.

26.2 Additional meetings of the committee may be convened by the president or by any member of the committee.

26.3 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 such other period as may be unanimously agreed on by the members of the committee) before the time appointed for the holding of the meeting.

26.4 Notice of a meeting given under clause 26.3 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.

26.5 Any 3 members of the committee constitute a quorum for the transaction of the business of a meeting of the committee.

26.6 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

Constitution for the Sydney Kendo Club

- 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.
- 26.7 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.
- 26.8 At a meeting of the committee:
- (a) the president is to preside; or
 - (b) if the president is absent or unwilling to act, such one of the remaining members of the committee as may be chosen by the members present at the meeting is to preside.
- 27. Delegation by committee to sub-committee:**
- 27.1 The committee may, by instrument in writing, delegate to one or more sub-committees (consisting of such ordinary member or members of the Sydney Kendo Club as the committee thinks fit) the exercise of such of the functions of the committee as are specified in the instrument, other than:
- (a) this power of delegation; and
 - (b) a function which is a duty imposed on the committee by the Act or by any other law.
- 27.2 A function the exercise of which has been delegated to a sub-committee under this rule may, while the delegation remains un-revoked, be

Constitution for the Sydney Kendo Club

- exercised from time to time by the sub-committee in accordance with the terms of the delegation.
- 27.3 A delegation under this section may be made subject to such conditions or limitations as to the exercise of any function, or as to time or circumstances, as may be specified in the instrument of delegation.
- 27.4 Despite any delegation under this rule, the committee may continue to exercise any function delegated.
- 27.5 Any act or thing done or suffered by a sub-committee acting in the exercise of a delegation under this rule has the same force and effect as it would have if it had been done or suffered by the committee.
- 27.6 The committee may, by instrument in writing, revoke wholly or in part any delegation under this rule.
- 27.7 A sub-committee may meet and adjourn as it thinks proper.
- 28. Voting and decisions of the committee:**
- 28.1 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 members of the committee or sub-committee present at the meeting.
- 28.2 Each member present at a meeting of the committee or of any sub-committee appointed by the committee (including the person presiding at

Constitution for the Sydney Kendo Club

- the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.
- 28.3 Subject to clause 26.5, the committee may act despite any vacancy on the committee.
- 28.4 Any act or thing done or suffered, or purporting to have been done or suffered, by the committee or by a sub-committee appointed by the committee, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the committee or sub-committee.

D. GENERAL MEETINGS:

29. Annual general meetings - holding of:

- 29.1 The Sydney Kendo Club must, at least once in each calendar year and within the period of 6 months after the expiration of each financial year of the Sydney Kendo Club, convene an annual general meeting of its ordinary members.
- 29.2 Clause 29.1 has effect subject to any extension or permission granted by the Director-General under section 26 (3) of the Act.

Constitution for the Sydney Kendo Club

30. Annual general meetings-calling of and business at:

30.1 The annual general meeting of the Sydney Kendo Club is, subject to the Act and to section 29 above, to be convened on such date and at such place and time as the committee thinks fit.

30.2 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 Sydney Kendo Club during the last preceding financial year;
- (c) to elect office-bearers of the Sydney Kendo Club;
- (d) to receive and consider the statement which is required to be submitted to members under section 26 (6) of the Act.

30.3 An annual general meeting must be specified as such in the notice convening it.

31. Special general meetings-calling of:

31.1 The committee may, whenever it thinks fit, convene a special general meeting of the Sydney Kendo Club.

- 31.2 The committee must, on the requisition in writing of at least 5 per cent of the total number of ordinary members, convene a special general meeting of the Sydney Kendo Club.
- 31.3 A requisition of ordinary members for a special general meeting:
- (a) must state the purpose or purposes of the meeting;
 - (b) must be signed by the members making the requisition;
 - (c) must be lodged with the secretary; and
 - (d) may consist of several documents in a similar form, each signed by one or more of the members making the requisition.
- 31.4 If the committee fails to convene a special general meeting to be held within 1 month after that date on which a requisition of the ordinary members for the meeting is lodged with the secretary, any one or more of the ordinary members who made the requisition may convene a special general meeting to be held not later than 3 months after that date.
- 31.5 A special general meeting convened by an ordinary member or members as referred to in clause 31.4 above, must be convened as nearly as is practicable in the same manner as special general meetings are convened by the committee and any ordinary member who consequently incurs a reasonable expense is entitled to be reimbursed by the Sydney Kendo Club for any reasonable expense so incurred.

32. Notice:

- 32.1 Except if the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the Sydney Kendo Club, the secretary must, at least 14 days before the date fixed for the holding of the general meeting, give a notice to each ordinary member specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- 32.2 If the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the Sydney Kendo Club, 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 ordinary member specifying, in addition to the matter required under clause 32.1, the intention to propose the resolution as a special resolution.
- 32.3 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 30.2.
- 32.4 An ordinary 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 ordinary member.

33. Procedure:

- 33.1 No item of business is to be transacted at a general meeting unless a quorum of ordinary members entitled under this Constitution to vote is present during the time the meeting is considering that item.
- 33.2 Ten ordinary members present in person (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.
- 33.3 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 ordinary 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.
- 33.4 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 ordinary members present (being at least 3) is to constitute a quorum.

34. Presiding member:

34.1 The president is to preside as chairperson at each general meeting of the Sydney Kendo Club.

34.2 If the president is absent or unwilling to act, the members present must elect one of their number to preside as chairperson at the meeting.

35. Adjournment:

35.1 The chairperson of a general meeting at which a quorum is present may, with the consent of the majority of ordinary 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.

35.2 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 ordinary member stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.

35.3 Except as provided in clauses 35.1 and 35.2, 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.

36. Making of decisions:

- 36.1 Subject to clauses 36.2, 37.2 and 37.4 below, all other resolutions placed before a general meeting of the Sydney Kendo Club shall be determined by the majority of ordinary members present (either in person or by proxy).
- 36.2 A question arising at a general meeting of the Sydney Kendo Club is to be determined on a show of hands, and, unless before or on the declaration of the show of hands a poll is demanded.
- 36.3 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 Sydney Kendo Club, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- 36.4 At a general meeting of the Sydney Kendo Club, a poll may be demanded by:
- (a) the chairperson; or
 - (b) at least 3 ordinary members present in person or by proxy at the meeting.
- 36.5 If a poll is demanded at a general meeting, the poll must be taken:

- (a) immediately in the case of a poll which relates to the election of the chairperson of the meeting or to the question of an adjournment; or
- (b) in any other case, in such manner and at such time before the close of the meeting as the chairperson directs,

and the resolution of the poll on the matter is taken to be the resolution of the meeting on that matter.

37. Special resolution required for amendment of objects and Constitution:

37.1 A resolution of the Sydney Kendo Club is a special resolution:

- (a) if it is passed by a majority which comprises at least three-quarters of such ordinary members of the Sydney Kendo Club as, being entitled under this Constitution so to do, vote in person or by proxy at a general meeting of which at least 21 days' written notice specifying the intention to propose the resolution as a special resolution was given in accordance with this Constitution; or
- (b) where it is made to appear to the Director-General that it is not practicable for the resolution to be passed in the manner specified in paragraph (a), if the resolution is passed in a manner specified by the Director-General.

37.2 The statement of objects of the Sydney Kendo Club may be altered, rescinded or added to only by a special resolution at a general meeting of the Sydney Kendo Club.

Constitution for the Sydney Kendo Club

37.3 Subject to section 47 below, this Constitution may be altered, rescinded or added to only by a special resolution at a general meeting of the Sydney Kendo Club.

38. Voting:

38.1 On any question arising at a general meeting of the Sydney Kendo Club an ordinary member has one vote only.

38.2 All votes must be given personally or by proxy.

38.3 The chairperson of a general meeting shall be entitled to hold any number of proxies, however, no other ordinary member may hold more than 5 proxies.

38.4 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.

38.5 An ordinary member or proxy is not entitled to vote at any general meeting of the Sydney Kendo Club unless all money due and payable by the ordinary member or proxy to the Sydney Kendo Club has been paid, other than the amount of the annual subscription payable in respect of the then current year.

39. Appointment of proxies:

39.1 Each ordinary member is to be entitled to appoint another ordinary member as proxy by notice given to the secretary no later than 24 hours

Constitution for the Sydney Kendo Club

- before the time of the general meeting in respect of which the proxy is appointed.
- 39.2 Notwithstanding clause 39.1, the secretary may, in his or her absolute discretion, accept notice of the appointment of a proxy at any time prior to the holding of the first vote at any general meeting in respect of which the proxy is appointed.
- 39.3 The notice appointing the proxy is to be in the form set out in Schedule 2 to this Constitution.

E. MISCELLANEOUS:

40. Insurance:

- 40.1 The Sydney Kendo Club may effect and maintain insurance.

41. Fundraising:

- 41.1 The funds of the Sydney Kendo Club are ordinarily derived from membership fees and donations.
- 41.2 Subject to any resolution passed by the Sydney Kendo Club in general meeting, the committee shall be entitled to raise funds from such further and other sources as the committee shall determine.
- 41.3 All money received by the Sydney Kendo Club must be deposited as soon as practicable and without deduction to the credit of the Sydney Kendo Club's bank account.

Constitution for the Sydney Kendo Club

41.4 The Sydney Kendo Club must, as soon as practicable after receiving any money, issue an appropriate receipt.

42. Funds management:

42.1 Subject to the terms of clause 42.3 below, the funds of the Sydney Kendo Club are only to be used in order to achieve the objects set out in clause 1.3 above.

42.2 Notwithstanding anything else contained in this Constitution, the funds of the Sydney Kendo Club may be used to assist a member or a club sensei provided that that assistance is directly related to, and concerned with, advancing and achieving the objects set out in clause 1.3 above.

42.3 Prior to the expenditure of the funds pursuant to clauses 42.1 and 42.2 above, the funds of the Sydney Kendo Club may only be invested with:

- (a) a banking institution or building society; or
- (b) such other person or entity as is approved by the ordinary members of the Sydney Kendo Club in general meeting.

42.4 All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by any 2 members of the committee or employees of the Sydney Kendo Club, being ordinary members or employees authorised to do so by the committee.

Constitution for the Sydney Kendo Club

43. Common seal:

43.1 The common seal of the Sydney Kendo Club must be kept in the custody of the president.

43.2 The common seal must not be affixed to any instrument except by the authority of the committee and the affixing of the common seal must be attested by the signatures either of 2 members of the committee or of 1 member of the committee and the secretary.

44. Custody of books:

44.1 Except as otherwise provided by this Constitution, the trustee must keep in his or her custody or under his or her control all records, books and other documents relating to the Sydney Kendo Club.

45. Inspection of books:

45.1 The records, books and other documents of the Sydney Kendo Club must be open to inspection, free of charge, by a member of the Sydney Kendo Club at any reasonable hour.

46. Service of notices:

46.1 For the purpose of this Constitution, a notice may be served on or given to a person:

- (a) by delivering it to the person personally; or

- (b) by sending it by pre-paid post to the address of the person; or
- (c) by sending it by facsimile transmission to an address specified by the person for giving or serving the notice; or
- (d) by sending it by e-mail or some other form of electronic transmission to an address specified by the person for giving or serving the notice.

46.2 For the purpose of this Constitution, a notice is taken, unless the contrary is proved, to have been given or served:

- (a) in the case of a notice given or served personally, on the date on which it is received by the addressee;
- (b) in the case of a notice sent by pre-paid post, on the date when it would have been delivered in the ordinary course of post;
- (c) in the case of a notice sent by facsimile transmission on the date it was sent or, if the machine from which the transmission was sent produces a report indicating that the notice was sent on a later date, on that date; and
- (d) in the case of a notice sent by e-mail or some other form of electronic transmission, on the date it was sent or, if the machine from which the transmission was sent produces a report indicating that the notice was sent on a later date, on that date.

Constitution for the Sydney Kendo Club

47. Amendment to schedules:

47.1 Notwithstanding clause 37.3 above but subject to clause 47.2 below, the committee shall be entitled to vary the form of:

(a) the Application for Membership set out in schedule 1 to this Constitution; and/or

(b) the Proxy Form set out in schedule 2 to this Constitution.

47.2 Where the committee makes a variation in accordance with clause 47.1 (b) above, the committee shall give notice of that variation to the members no later than 28 days before the calling of the next general meeting of the Sydney Kendo Club.

48. Transition to the Sydney Kendo Club:

48.1 Upon incorporation of the Sydney Kendo Club, all persons who were members of the unincorporated club shall immediately:

(a) if the person is under the age of 18, become a junior member;

(b) if the person is, or is over the age of, 18, become an ordinary member,

provided that that person has paid all outstanding membership fees due to the unincorporated club.

Constitution for the Sydney Kendo Club

48.2 The books and records of the unincorporated club shall become the property of the Sydney Kendo Club.

48.3 All monies, equipment, property (whether real or personal) and all other rights and entitlements held by the unincorporated club shall become the property of the Sydney Kendo Club.

SCHEDULE 1 - CLAUSE 4.1

APPLICATION FOR MEMBERSHIP OF SYDNEY KENDO CLUB

A. Applicant's details:

First name:

Last name:

Address:

Home telephone number:

Work telephone number:

Mobile telephone number:

E-mail address:

Date of Birth:

Occupation:

Sex:

Grade:

B. Emergency contact details:

In the event of an emergency I authorise the representatives of the Club to contact:

Name:

Telephone number:

Relationship to applicant:

Constitution for the Sydney Kendo Club

C. Medical details:

Set out below are the details of any medical condition from which I suffer which need to be considered in the case of an emergency:

- (a) **[insert details]**
- (b)
- (c)

D. Application acceptance and acknowledgement:

I **[insert full name]** of **[insert address]** apply to be admitted as a member of the Sydney Kendo Club, an incorporated Sydney Kendo Club.

In the event of my admission as a member, I:

- (a) agree to be bound by the Constitution of the Sydney Kendo Club, as in force from time to time; and
- (b) acknowledge and accept the disclaimer attached hereto.

.....
Signature of applicant
Date

IMPORTANT DISCLAIMER

A. Protection of volunteers from liability:

The Sydney Kendo Club (“**the Club**”) is a “community organisation” run by “volunteers” who carry out “community work” within the meaning of Part 9 of the *Civil Liability Act, 2002* (“**the Act**”).

The aim of the Club is to promote and encourage members to learn authentic Kendo through vigorous training so as to gain physical and mental balance, and hence to achieve the philosophy behind Kendo.

As such, section 61 of the Act provides:

“A volunteer does not incur any personal civil liability in respect of any act or omission done or made by the volunteer in good faith when doing community work:

- (a) organised by a community organisation, or*
- (b) as an office holder of a community organisation.”*

B. Risk warning:

Physically, Kendo involves the individual striking another person with a bamboo sword (the *Shinai*). There are four main strike zones:- the head, the hands/forearms, the stomach and the throat.

Practising and playing Kendo requires the individual both to preform and receive many strikes (or attempted strikes) to the four main strike zones.

Constitution for the Sydney Kendo Club

In order to protect the body, players wear armour:- the *Men*, which is designed to protect the head and throat; *Kote*, which are designed to protect the hands/forearms; and the *Do* and *Tare* which are designed to protect the stomach and lower body.

Nevertheless, Kendo is a “dangerous recreational activity” within the meaning of Division 5 of Part 1A of the Act and, in accordance with the requirements of section 5M of the Act, **you are warned that practising and playing Kendo involves a significant risk of physical harm and injury.**

In this regard, section 5L (1) of the Act provides:

“A person (“the defendant”) is not liable in negligence for harm suffered by another person (“the plaintiff”) as a result of the materialisation of an obvious risk of a dangerous recreational activity engaged in by the plaintiff”

Further, section 5M (1) of the Act provides:

“A person (“the defendant”) does not owe a duty of care to another person who engages in a recreational activity (“the plaintiff”) to take care in respect of a risk of the activity if the risk was the subject of a risk warning to the plaintiff.”

Consequently, the Club, the Club Sensei, the Club’s members and its visitors are protected from liability through the Act.

Constitution for the Sydney Kendo Club

C. Before commencement:

Without prejudice to the protection afforded under the Act and otherwise through the common law, before you take up Kendo, it is recommended that you:

1. ensure that you are reasonably fit;
2. consult your doctor in order ensure that you are otherwise capable of playing Kendo. In particular, you should ensure that you do not suffer from any degenerative condition to, for example, your spine which would otherwise preclude you from practising and playing Kendo; and
3. take steps to understand the basic principles for playing Kendo.

D. Upon commencement:

If you attend a training session with the Club, then you will, on each occasion of your attendance, be taken to:

1. confirm that you are physically able to practice and play Kendo;
2. accept the significant risk of physical harm and injury arising from practising and playing Kendo; and
3. irrevocably agree to release and discharge the Club, the Club Sensei, the Club's members and its visitors from any and all liability, including any liability arising from:

Constitution for the Sydney Kendo Club

- (a) any advice given; and/or
- (b) from your participation in any exercise, demonstration or play.

E. Illness during sessions:

If at any time during the practise and playing of Kendo, you suffer from dizziness or any other injury or discomfort, you should immediately:

1. cease your practice and/or play; and
2. speak with the Club's instructor or first aid officer (who are named on the Club's website).

SCHEDULE 2 - CLAUSE 34.2

FORM OF APPOINTMENT OF PROXY

I, **[insert address]**

of **[insert address]**

being an ordinary member of the Sydney Kendo Club hereby appoint:

[insert full name of proxy]

being an ordinary member of the Sydney Kendo Club, as my proxy to vote for me on my behalf at the Annual General Meeting or Special General Meeting of the Sydney Kendo Club on **[insert date]** and at any adjournment of that meeting.

My proxy is authorised to vote in respect of any matter of business raised during the Meeting

Or **[strike out the undesired part]**:

My proxy is authorised to vote in the following resolutions to be considered by the Meeting in the following manner

(a) **[insert resolution]** For/Against

(b) **[insert resolution]** For/Against

(c) **[insert resolution]** For/Against

[insert details of resolutions and the way in which the proxy is to vote].

Constitution for the Sydney Kendo Club

.....

Name:

Date:

Note: A proxy vote may not be given to a person who is not an ordinary member of the Sydney Kendo Club.