

*ASSOCIATIONS INCORPORATION ACT 1985 (SA)*

# **Holmesdale Memorial Tennis Club Constitution**

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# ASSOCIATIONS INCORPORATION ACT 1985 (SA)

## CONSTITUTION

### 1. NAME OF CLUB

The name of the club is "Holmesdale Memorial Tennis Club Incorporated".

### 2. DEFINITIONS AND INTERPRETATION

#### 2.1 Definitions

In this constitution, unless the contrary intention appears:

- **'Act'** means the *Associations Incorporation Act 1985 (SA)*.
- **'Management Committee'** means the body managing the club and consisting of the elected committee members.
- **'Constitution'** means this constitution of the club.
- **'Financial year'** means the year ending on the next 31 March following incorporation and thereafter a period of 12 months commencing on 1 April and ending on 31 March each year.
- **'Individual member'** means a registered, financial member of the club who is at least 18 years of age.
- **'Junior member'** means a registered member of the club who is younger than 18 years of age.
- **'Life member'** means an individual appointed as a life member of the club under **clause 5.2**.
- **'Local area'** means the geographical area for which the club is responsible as recognised by the regional and/or state organisations for tennis of which the club is a member.
- **'Member'** means a member of the club for the time being under **clause 5**.
- **'Objects'** means the objects of the club in **clause 3**.
- **'Special resolution'** means a special resolution defined in the Act.
- **'Sport'** means the sport of tennis.
- **'Club Colours'** means Royal Blue and Gold.

#### 2.2 Interpretation

In this constitution:

- (a) A reference to a function includes a reference to a power, authority and duty.
- (b) A reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty.

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

### **2.3 The Act**

Except where the contrary intention appears, in this constitution an expression that deals with a matter under the Act has the same meaning as that provision of the Act. Model rules under the Act are expressly displaced by this constitution.

### **3. OBJECTS OF THE CLUB**

The club is established solely for the objects. The objects of the club are established to:

- (a) conduct, encourage, promote, advance and administer tennis throughout the local area;
- (b) act, at all times, on behalf of and in the interest of the members and tennis in the local area;
- (c) affiliate and otherwise liaise with the regional and/or state organisations of which the club is a member and adopt their rule and policy frameworks to further these objects;
- (d) abide by, promulgate, enforce and secure uniformity in the application of the rules of tennis;
- (e) advance the operations and activities of the club throughout the local area;
- (f) have regard to the public interest in its operations; and
- (g) undertake and or do all such things or activities which are necessary, incidental or conducive to the advancement of these objects.

### **4. POWERS OF THE CLUB**

Solely for furthering the objects, the club has, in addition to the rights, powers and privileges conferred on it under section 25 of the Act, the legal capacity and powers of a company as set out under section 124 of the *Corporations Act 2001 (Cth)*.

## **5. MEMBERS**

### **5.1 Members**

The members of the club shall consist of:

- (a) life members, who subject to this constitution, shall have the right to receive notice of general meetings and to be present, to debate and to vote at general meetings
- (b) individual members, who subject to this constitution, shall have the right to receive notice of general meetings and to be present, to debate and to vote at general meetings
- (c) junior members, who subject to this constitution, shall have no right to receive notice of general meetings and no right to be present or debate or vote at general meetings, unless they are 16 and over.

### **5.2 Life Members**

- (a) The management committee may recommend to the AGM that any person who has rendered distinguished service to the club be appointed as a life member.
- (b) A resolution of the AGM to confer life membership on the recommendation of the management committee must be a special resolution.

## **6. MEMBERSHIP APPLICATION**

### **6.1 Application for membership**

An application for membership must be:

- (a) in writing on the form prescribed from time to time by the management committee (if any), from the applicant or its nominated representative and lodged with the club
- (b) accompanied by the appropriate fee, if any.

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

- (a) The club may accept or reject an application whether the applicant has complied with the requirements in **clause 6.1** or not. The club shall not be required or compelled to provide any reason for such acceptance or rejection.
- (b) Where the club accepts an application, the applicant shall become a member. Membership shall be deemed to commence upon acceptance of the application by the club. The register shall be amended accordingly as soon as practicable.
- (c) Where the club rejects an application, it shall refund any fees forwarded with the application and the application shall be deemed rejected by the club.

### **6.3 Renewal**

Members (other than life members) must renew their membership annually in accordance with the procedures set down by the club in regulations from time to time.

## 7. REGISTER OF MEMBERS

### 7.1 Club to Keep Register

The club shall keep and maintain a register in which shall be entered (as a minimum):

- (a) the full name, address and date of entry of each member
- (b) where applicable, the date of termination of membership of any member.

Members shall provide notice of any change and required details to the club within one month of such change.

### 7.2 Inspection of Register

Having regard to the Act, confidentiality considerations and privacy laws, an extract of the register, excluding the address or other direct contact details of any member, shall be available for inspection (but not copying) by members, upon reasonable request.

### 7.3 Use of register

Subject to the Act, confidentiality considerations and privacy laws, the register may be used to further the objects, in such manner as the management committee considers appropriate.

## 8. EFFECT OF MEMBERSHIP

Members acknowledge and agree that:

- (a) This constitution forms a contract between each of them and the club and that they are bound by this constitution and the regulations.
- (b) They shall comply with and observe this constitution and the regulations and any determination, resolution or policy which may be made or passed by the management committee or other entity with delegated authority.
- (c) By submitting to this constitution and regulations, they are subject to the jurisdiction of the club.
- (d) The constitution and regulations are necessary and reasonable for promoting the objects and particularly the advancement and protection of tennis.
- (e) They are entitled to all benefits, advantages, privileges and services of club membership.

## 9. DISCONTINUANCE OF MEMBERSHIP

### 9.1 Notice of Resignation

- (a) A member who has paid all arrears of fees payable to the club may resign or withdraw from membership of the club by giving one month's notice in writing to the club.
- (b) Once the club receives a notice of resignation of membership given under **clause 9.1(a)**, it must make an entry in the register that records the date on which the member ceased to be a member.

## 9.2 Discontinuance for Breach

- (a) Membership of the club may be discontinued by the management committee upon breach of any clause of this constitution or the regulations, including, but not limited to, the failure to pay any monies owed to the club, failure to comply with the regulations or any resolutions or determinations made or passed by the management committee or any duly authorised committee.
- (b) Membership shall not be discontinued by the management committee under **clause 9.2(a)** without the management committee first giving the accused member the opportunity to explain the breach and/or remedy the breach.
- (c) Where a member fails, in the management committee's view, to adequately explain the breach, that member's membership shall be discontinued under **clause 9.2(a)** by the club giving written notice of the discontinuance to the member. The register shall be amended to reflect any discontinuance of membership under this **clause 9.2** as soon as practicable.

## 9.3 Member to Re-Apply

A member whose membership has been discontinued under **clauses 9.2 or 9.3**:

- (a) must seek renewal or re-apply for membership in accordance with this constitution
- (b) may be re-admitted at the discretion of the management committee.

## 9.4 Forfeiture of Rights

A member who ceases to be a member, for whatever reason, shall forfeit all rights in and claims upon the club and its property and shall not use any property of the club including intellectual property. Any club documents, records or other property in the possession, custody or control of that member shall be returned to the club immediately.

## 9.5 Membership May be Reinstated

Membership, which has been discontinued under this **clause 9**, may be reinstated at the discretion of the management committee, with such conditions as it deems appropriate.

## 9.6 Refund of Membership Fees

Membership fees or subscriptions paid by the discontinued member may be refunded on a pro-rata basis to the member upon discontinuance at the discretion of the management committee.

## 10. SUBSCRIPTIONS AND FEES

The annual membership subscription (if any) and any fees or other levies payable by members to the club and the time for and manner of payment shall be as determined by the management committee.

## 11. POWERS OF THE MANAGEMENT COMMITTEE

Subject to the Act and this constitution, the business of the club shall be managed and the powers of the club shall be exercised by the management committee. In particular, the committee shall act in accordance with the objects and shall operate for the benefit of the members and the community throughout the local area.

## **12. COMPOSITION OF THE MANAGEMENT COMMITTEE**

### **12.1 Composition of the Management Committee**

The committee shall comprise:

- (a) six elected committee members who must all be members and who shall be elected under **clause 12.2**
- (b) other appointed committee members who need not be members and who may be appointed by the management committee.

### **12.2 Portfolios**

- (a) President
- (b) Vice President
- (c) Treasurer
- (d) Secretary
- (e) Club Captain
- (f) Junior Coordinator

### **12.3 Election and Appointment of Management Committee members**

- (a) The elected committee members shall be elected under **clause 13**.
- (b) The appointed committee members may be appointed at the recommendation of the management committee.

## **13. ELECTED MANAGEMENT COMMITTEE MEMBERS**

### **13.1 Nomination for Management committee**

Nominations for elected positions shall be called for 14 days prior to the AGM. When calling for nominations, details of the necessary qualifications and job descriptions for the positions shall also be provided where practicable. Qualifications and job descriptions shall be determined by the management committee from time to time.

### **13.2 Form of Nomination**

Nominations must be:

- (a) on the prescribed form (if any) provided for that purpose;
- (b) signed by two individual members;
- (c) certified by the nominees (who must be individual members) expressing their willingness to accept the position for which they are nominated;
- (d) OR, agreed to in the minutes of the Management Committee Meeting prior to the AGM.

### 13.3 Elections

- (a) If the number of nominations received is equal to the number of vacancies to be filled or if there are insufficient nominations received to fill all vacancies on the committee, then those nominated shall be declared elected only if approved by the majority of members entitled to vote.
- (b) If there are insufficient nominations received to fill all vacancies on the committee, or if a person is not approved by the majority of members under **clause 13.3(a)**, the positions will be deemed vacant until filled by the management committee.
- (c) If the number of nominations exceeds the number of vacancies to be filled, voting shall take place.
- (d) Voting shall be conducted in such a manner and by such a method as determined by the committee from time to time.

### 13.4 Term of Appointment for Elected Committee members

Committee members elected under **clause 13** shall be elected for a term of two years. Subject to provisions in this constitution relating to early retirement or removal of committee members, elected committee members shall remain in office from the conclusion of the AGM at which the election occurred until the conclusion of the second AGM following.

## 14. MEETINGS OF THE MANAGEMENT COMMITTEE

### 14.1 Management committee to Meet

The management committee shall meet as often as is deemed necessary in every calendar year for the dispatch of business (and shall be at least as often as is required under the Act). Subject to this constitution, it may adjourn and otherwise regulate its meetings as it thinks fit. A committee member may at any time convene a meeting of the management committee within reasonable time.

### 14.2 Decisions of Management Committee

Subject to this constitution, questions arising at any meeting of the management committee shall be decided by a majority of votes and a determination of a majority of committee members shall for all purposes be deemed a determination of the management committee. All committee members shall have one vote on any question. Where voting is equal, the chairperson may exercise a casting vote. If the chairperson does not exercise a casting vote, the motion will be lost.

### 14.3 Quorum

At meetings of the management committee the number of management committee members whose presence is required to constitute a quorum is a majority.

### 14.4 Notice of Management Committee Meetings

Unless all committee members agree to hold a meeting at a shorter notice (which agreement shall be sufficiently evidenced by their apology or presence) not less than fourteen days' written notice of the meeting of the management committee shall be given to each member. The agenda shall be forwarded to each member no less than four days prior to the meeting.

**14.5 Chairperson**

The management committee shall appoint a chairperson from among its number. The chairperson shall be the nominal head of the club and will act as chair of any management committee meeting or general meeting at which he is present. If the chairperson is not present, or is unwilling or unable to preside at a management committee meeting, the remaining committee members shall appoint another committee member to preside as chair for that meeting only.

**14.6 Conflict of Interest**

A management committee member shall declare their interest in any contractual, selection, disciplinary, or financial matter in which a conflict of interest arises or may arise. They shall, unless otherwise determined by the management committee, absent themselves from discussions of such matters and shall not be entitled to vote in respect of such matters.

- (a) All disclosed interests must also be disclosed to each AGM in accordance with the Act.

**15. DELEGATIONS****15.1 Management Committee May Delegate Functions**

The management committee may, by instrument in writing, create, establish or appoint special committees, individual officers and consultants to carry out specific duties and functions.

It will determine what powers these committees are given. In exercising its power under this clause, the management committee must take into account broad stakeholder involvement.

**15.2 Delegated Function Exercised in Accordance with Terms**

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

**16. COMMON SEAL**

- (a) The club shall have a seal upon which its corporate name shall appear in legible characters.
- (b) The seal shall not be used without the express authorisation of the management committee. Every use of the seal shall be recorded in the club's minute book. Two committee members must witness every use of the seal.

**17. ANNUAL GENERAL MEETING**

- (a) The club's AGM shall be held in accordance with the Act and this constitution. It should be held on a date and at a venue determined by the management committee.
- (b) All general meetings other than the AGM shall be special general meetings and shall be held in accordance with this constitution.
- (c) Minutes of the previous Annual General Meeting.
- (d) Business arising from the minutes.
- (e) Reports of the President and Treasurer.

- (f) General business of which due notice shall have been given (including amendments to the constitution).
- (g) Nomination of Patron, Vice Patron and Auditor.
- (h) Quorum – A quorum for Annual General meetings shall consist of 12 financial members.

## **18. PROCEEDINGS AT ALL MEETINGS.**

### **18.1 Adjournment of Meetings.**

- (a) If within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall be adjourned until the same day in the next week at the same time and place or to a date, time or place determined by the chairperson. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the meeting will lapse.
- (b) The chairperson may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place. No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (d) Except as provided in **clause 0(c)** it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

### **18.2 Voting Procedure**

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

- (i) the chairperson
- (j) a simple majority of members.

### **18.3 Recording of Determinations**

Unless a poll is demanded, the chairperson's declaration shall be conclusive evidence of the result of a resolution decided by a show of hands. The declaration does not need to record the number of votes in favour of or against the resolution; the result of the resolution must be recorded in the club's book of proceedings.

### **18.4 Where Poll Demanded**

If a poll is duly demanded it shall be taken in such a manner and either at once or after an interval or adjournment or otherwise as the chairperson directs. The result of the poll shall be the resolution of the meeting.

### **18.5 Members Entitled to Vote**

Each life member and individual member over 16 years of age shall be entitled to one vote at general meetings. No other member shall be entitled to vote but shall, subject to this constitution, have and be entitled to exercise those rights.

**18.6 Chairperson May Exercise Casting Vote**

Where voting at general meetings is equal, the chairperson may exercise a casting vote. If the chairperson does not exercise a casting vote the motion will be lost.

**18.7 Proxy Voting**

Proxy voting shall not be permitted at all general meetings.

**19. GRIEVANCE PROCEDURE**

- (a) The grievance procedure set out in this rule applies to disputes under these rules between a member and:
  - (i) another member
  - (ii) the club.
- (b) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within fourteen days after the dispute comes to the attention of all parties.
- (c) The management committee may prescribe additional grievance procedures in regulations consistent with this **clause 19**.

**20. RECORDS AND ACCOUNTS**

**20.1 Records**

The club shall establish and maintain proper records and minutes concerning all of its transactions, business, meetings and dealings. It shall produce these as appropriate at each management committee or general meeting.

**20.2 Records Kept in Accordance with the Act**

Proper accounting and other records shall be kept in accordance with the Act. The club shall retain such records for seven years after the completion of the transactions or operations to which they relate.

**20.3 Management Committee to Submit Accounts**

The management committee shall submit the club's statements of account to the members at the AGM in accordance with this constitution and the Act.

**20.4 Finance**

The funds of the club shall be devoted to the payment of all current expenditure and the net surplus (if any) or any part thereof may be devoted to any other purposes connected with the objects of the club at the discretion of the Management Committee.

No payment shall be made or debt incurred against the club beyond Two hundred Dollars (\$200.00) without the authority of the Management Committee. Quotations (where possible) shall be obtained in all matters involving expenditure of seven hundred and fifty Dollars (\$750.00) or upwards. All moneys shall be banked as soon as reasonably convenient after the receipt thereof. All payments shall be made by cheques drawn upon the club's cheque account, bank debit card or Bpay, and such cheques shall be signed and countersigned by any two Management Committee members as nominated by the Management Committee. Bank debit cards shall be held by authorised persons as nominated by the Management Committee. The same signatories apply to any other savings/investment accounts.

Savings/Investment and cheque accounts shall be opened and kept in the name of the “Holmesdale Memorial Tennis Club Incorporated.”

**20.5 Accounts Conclusive**

The statements of account, when approved or adopted by an AGM, shall be conclusive except when errors have been discovered within three months after such approval or adoption.

**21. AUDITOR – FOR PRESCRIBED ASSOCIATIONS**

- (a) A properly qualified auditor or auditors shall be nominated by the club in a general meeting. The auditor’s duties shall be regulated in accordance with the Act. If no relevant provisions exist under the Act the duties shall be regulated in accordance with the *Corporations Act 2001 (Cth.)* and generally accepted principles and/or any applicable code of conduct. The auditor may be removed by the club in a general meeting.
- (b) The accounts of the club shall be examined and the correctness of the profit and loss accounts and balance sheets ascertained by an auditor or auditors at the conclusion of each financial year.

**22. APPLICATION OF INCOME**

**22.1** The income and property of the club shall be applied solely towards the promotion of the objects.

**22.2** Except as prescribed in this constitution or the Act:

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

**22.3** Payment in good faith of or to any member can be made for:

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

Nothing in clause 22.3 preclude such payments provided they do not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm’s length in a similar transaction.

**23. WINDING UP**

- (a) Subject to this constitution the club may be wound up in accordance with the Act.
- (b) The liability of the members of the club is limited.

- (c) Every member undertakes to contribute to the assets of the club in the event of it being wound up while a member, or within one year after ceasing to be a member, for payment of the debts and liabilities of the club contracted before the time at which they ceased to be a member and towards the costs, charges and expenses of winding up the club, such an amount not exceeding one dollar (\$1.00).

## **24. DISTRIBUTION OF PROPERTY ON WINDING UP**

If upon winding up or dissolution of the club there remains, after satisfaction of all its debts and liabilities, any assets or property, they shall not be paid to or distributed among the members. Instead, the assets or property shall be given or transferred to another organisation(s) that has objects similar to those of the club. The organisation(s) must prohibit the distribution of its income and property among its members to an extent at least as great as that imposed on the club by this constitution. The organisation(s) is to be determined by the members in a general meeting at or before the time of dissolution. If this does not occur, the decision is to be made by a judge of the Supreme Court of South Australia or other court as may have or acquire jurisdiction in the matter.

## **25. ALTERATION OF CONSTITUTION**

This constitution shall not be altered except by special resolution.

## **26. REGULATIONS**

### **26.1 Management Committee to Formulate Regulations**

The management committee may formulate, issue, adopt, interpret and amend regulations for the proper advancement, management and administration of the club, the advancement of the purposes of the club and tennis in the local area. Such regulations must be consistent with the constitution and any policy directives of the management committee.

### **26.2 Regulations Binding**

All regulations are binding on the club and all members.

### **26.3 Regulations Deemed Applicable**

All clauses, rules, by-laws and regulations of the club in force at the date of the approval of this constitution (as long as such clauses, rules/by-laws and regulations are not inconsistent with or have been replaced by, this constitution) shall be deemed to be regulations and shall continue to apply.

## **27. STATUS AND COMPLIANCE OF CLUB**

### **27.1 Recognition of Club**

The club is a member of the regional and/or state bodies for tennis and is recognised by those bodies as the entity responsible for the delivery of tennis in the local area and is subject to compliance with this constitution. The regional and/or state bodies' constitutions shall continue to be so recognised and shall administer tennis in the local area in accordance with the objects.

### **27.2 Constitution of the Club**

This constitution will clearly reflect the objects of the region and state bodies for tennis and will conform to the constitutions of those bodies, subject always to the Act.

**27.3 Region and SSO**

The club may not resign, disaffiliate or otherwise seek to withdraw from its regional and/or state body without approval by special resolution.

**28. NOTICE**

- (a) Notices may be given by the club to any person entitled under this constitution to receive any notice. The notice can be sent by pre-paid post or facsimile transmission or, where available, by electronic mail to the member's registered address or facsimile number or electronic mail address. In the case of a delegate, the notice can be sent to the last recorded address, facsimile number or electronic mail address.
- (b) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting the notice. Service of the notice is deemed to have been effected three days after posting.
- (c) Where a notice is sent by facsimile transmission, service of the notice shall be deemed to be effected upon receipt of a confirmation report confirming the facsimile was sent to/or received at the facsimile number to which it was sent.
- (d) Where a notice is sent by electronic mail, service of the notice shall be deemed to be effected the next business day after it was sent.

**29. INDEMNITY**

- (a) Every management committee member and employee of the club will be indemnified out of the property and assets of the club against any liability incurred by them in their capacity as a committee member or employee in defending any proceedings, civil or criminal, in which judgement is given in their favour or in which they are acquitted or connected with any application in relation to any such proceedings in which relief is granted by the Court.
- (b) The club shall indemnify its management committee members and employees against all damages and losses (including legal costs) for which any such management committee member or employee may be or become liable to any third party in consequence of any act or omission, except wilful misconduct:
  - (i) in the case of a management committee member, performed or made while acting on behalf of and with the authority, express or implied, of the club
  - (ii) in the case of an employee, performed or made in the course of, and within the scope of, their employment by the club.

**30. AUTHORITY TO TRADE**

The club is authorised to trade in accordance with the Act.