

**CONSTITUTION OF  
SWIMMING NEW ZEALAND  
INCORPORATED**

Adopted July 2012

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# CONSTITUTION OF SWIMMING NEW ZEALAND INCORPORATED

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## Section One: Core Provisions

### 1. Name

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- 1.1 The name of the organisation is Swimming New Zealand Incorporated (**SNZ**).

### 2. Definitions and Interpretation

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- 2.1 In this constitution:

**AGM** means annual general meeting;

**Amount** means any fee, subscription, levy, fine or similar monetary imposition;

**Appointed Board member** is defined in rule 12;

**Appointment Panel or AP** means the panel in rule 11 which selects persons eligible for the Board;

**Aquatics NZ** means Aquatics New Zealand Incorporated (1753175);

**Board** means the board of SNZ;

**CEO** means the chief executive officer of SNZ;

**Chair** means chairperson of the Board;

**Competition Zone** means a competition zone created by SNZ under this constitution;

**Database** means SNZ's database of Members;

**Elected Board member** is defined in rule 12;

**Elite HP Swimmer** means a swimmer participating in an elite HP training programme approved by SNZ;

**FINA** means the Federation Internationale de Natation, the world governing body of swimming;

**Financial Year** means the financial year of SNZ;

**GM** means a general meeting;

**HP** means high performance;

**KPIs** means key performance indicators;

**Learn to Swim Swimmers** are persons undergoing instruction about how to swim who are not eligible to compete in national, regional or inter-club competitions which are on the national or Regional competitive calendar;

**Life Member** means a person awarded at any time life membership of SNZ or a Regional Association and **SNZ Life Member** and **Regional Association Life Member** shall have the corresponding meaning (Life Member definition specifically excludes Club Life Members);

**Member** means a member of SNZ in rule 6.1;

**Member Club** is defined in rule 9;

**Objects** means the objects of SNZ;

**Ordinary Resolution** means a resolution requiring a majority of the votes cast;

**President** means the president of SNZ;

**Previous Constitution** means the SNZ constitution which was in place immediately prior to adoption of this constitution;

**Region** means a geographic area within New Zealand determined to be a SNZ region by Regional Associations under this constitution;

**Regional Association** is defined in rule 8;

**SCTNZ** means Swim Coaches and Teachers of New Zealand Incorporated (223367) also known as NZSCTA;

**SGM** means a special general meeting;

**Special Resolution** means a resolution requiring a two thirds majority of the votes cast;

**Sport** means the sport of competitive swimming;

**Sports Tribunal** means the Sports Tribunal of New Zealand;

**Strategic Plan** means SNZ's strategic plan for swimming approved by the Board;

**Voting Representative** means the individual notified by a Regional Association to SNZ as the person authorised to exercise the votes of a Regional Association at a GM and in the election of Elected Board members; and

2.2 In this constitution:

- a. the singular includes the plural and vice versa;
- b. any reference to any Act, regulation, by-law, policy, deed, charter, procedure or document includes any amendment to it and any replacement passed in substitution for it;
- c. references to a person includes incorporated bodies and unincorporated groups;
- d. headings are for reference only and do not assist interpretation;
- e. derivatives of any term defined in this constitution have a corresponding meaning; and
- f. any approval, decision, requirement or action by SNZ or the Board may be undertaken by the Board or by such person to whom the Board has given authority.

### **3. Status**

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3.1 SNZ is:

- a. an incorporated society established under the Incorporated Societies Act 1908;
- b. the controlling body in New Zealand for competitive swimming;
- c. a member of Aquatics NZ and must observe the rules and decisions of Aquatics NZ; and
- d. bound by and must observe the rules and decisions of FINA.

## 4. Objects

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- 4.1 The primary Object of SNZ is to support the growth and performance of the sport of competitive and recreational swimming, from entry level swimmers to elite High Performance athletes.
- 4.2 To support its primary Object, SNZ has the further Objects to work with Regional Associations and Member Clubs and others to:
- a. encourage people to choose to participate in the sport of competitive and recreational swimming;
  - b. identify and co-ordinate competitive talent at all levels (from within and outside of the competitive sport);
  - c. develop and provide oversight of competitions and pathways from regional, to national, through to international level;
  - d. provide coaching innovation and research and coach training, education and development;
  - e. ensure training, education and development of athletes, team managers, officials and volunteers;
  - f. develop intellectual property in respect of new competitive “products” including products to draw participants into competitive swimming;
  - g. set policies and standards for the Sport;
  - h. oversee the implementation of the Strategic Plan;
  - i. maintain a strong interest in, and input into, policy associated with “Learn to Swim” and swim safe educational activities;
  - j. be the organisation that represents competitive swimming in and for New Zealand; and
  - k. fulfil its obligations to Drug Free Sport New Zealand in relation to doping controls and prohibited substances.
  - l. To promote the safety and cleanliness of swimming pools and waterways in which our Members swim.
- 4.3 The Objects of SNZ are exclusively charitable and include the promotion of amateur sport for the pursuit of physical fitness and other purposes beneficial to the community and including the training, education and development of all those involved in the Sport. To the extent that any of the Objects are found to be non-charitable they are ancillary and secondary to the charitable Objects. Rules 4.1 and 4.2 are subject to this rule.

## 5. Powers

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- 5.1 SNZ has full powers, jurisdiction and authority and (except as restricted by this constitution), may do all and any things to carry out its Objects, including:
- a. acquire or receive the benefit of any property and deal with property in any way (including borrow, invest, lend and give or obtain security);
  - b. determine, raise, levy and receive money by any method and from any source;
  - c. establish, acquire or have interests in incorporated entities, trusts or other entities and utilise the assets of SNZ in, through or with them;
  - d. produce, create, licence, use and protect intellectual property;
  - e. determine who are its Members and others involved in SNZ and their entitlements, and

- withdraw, suspend, terminate or restrict membership and other benefits;
- f. determine the methods and structures to deliver national, regional and local benefits;
- g. make, alter, rescind and enforce rules, policies, plans (including the Strategic Plan), charters and procedures to effect the Objects, or for the governance and operation of SNZ;
- h. determine, implement and enforce disciplinary, disputes and appeal procedures including making decisions, conducting hearings and imposing sanctions and penalties;
- i. engage and dismiss employees and contractors;
- j. delegate powers of SNZ to any person, committee or sub-committees (the composition of which is not limited to Members) and for that purpose to establish, fund and set the terms of reference and structure;
- k. contract, engage or make any arrangements with any person to fulfil the Objects;
- l. be a member of or affiliate to and/or be associated in any way with any person which has objects which are similar in whole or in part to the Objects in New Zealand and/or internationally;
- m. produce, publish and distribute any communications, newsletters or publications; and
- n. do any other acts or things which SNZ determines are incidental to or conducive to the attainment of the Objects.
- o. To own and operate commercial ventures which further the Objectives.

## **Section Two: Members**

### **6. Members and Database**

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- 6.1 The Members of SNZ are:
- a. swimmers who are members of a Member Club or Region and who are eligible to compete in national, regional or inter-club competitions which are on the annual national or Regional competitive calendar.
  - b. Elite HP Swimmers, coaches of Member Clubs or coaches of Elite HP Swimmers, who are members of a Member Club or a Regional Association;
  - c. Regionally or nationally qualified inspectors of turns, judges of stroke, starters and referees, who in each case are members of a Member Club or a Regional Association;
  - d. Life Members, being SNZ Life Members or Regional Association Life Members (excludes Club Life Members);
  - e. members of a Member Club who are not included within any of Clauses 6.1a,b,c or d;
  - f. SCTNZ;
  - g. Regional Associations as set out in rule 8; and
  - h. Member Clubs as set out in rule 9.
- 6.2 All Members in the categories in rules 6.1a, b and c must pay all Amounts due to SNZ before they can participate in the events described in rule 6.1a.
- 6.3 A person seeking Membership must:
- a. complete and submit an application as required by SNZ; and

- b. satisfy all criteria in these rules to be a Member; and
  - c. be subject to approval as a Member by SNZ which may be declined by SNZ in its sole discretion on any reasonable ground;
- .
- 6.4 Life Membership of SNZ may be awarded to a person who has made an outstanding contribution to SNZ. Nominations for Life Membership of SNZ may be made by any Regional Association or Member Club and must be made and then assessed in accordance with any policy adopted by the Board. The award of Life Membership of SNZ must be by unanimous decision of the Board and if approved is announced at the AGM or other appropriate forum as determined by the Board. A SNZ Life Member is not required to pay any annual Amount.
- 6.5 A swimmer may be a Member in one or more categories but may not be a current Member of more than one Member Club or a Member of more than one Regional Association.
- 6.6 Membership under rule 6.1 a b c or e shall also confer membership of the Regional Association to which the Member Club of that Member is affiliated.
- 6.7 SNZ must determine actual Membership at least annually including whether a person continues to satisfy the requirements to be a Member and any transfer issues and any dispute about Membership.
- 6.8 SNZ must maintain the Database of Members and:
- a. which as a minimum must include each Member's full name, postal address, email address, Membership category, Member Club (if any) and Regional Association and identify whether any Amount due is paid and whether they have been or are subject to any rule 7.3 penalty;
  - b. may use information on the Database to further its Objects, and for administrative, communication, funding and sponsorship purposes;
  - c. may communicate directly with any person on the Database.

## **7. Rights and Obligations of Members**

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- 7.1 A Member is bound by this constitution and:
- a. by all rules, policies, charters, procedures and decisions of SNZ and where applicable those of FINA, their Member Club and/or Regional Association;
  - b. must pay all Amounts imposed on them by their Member Club, Regional Association and SNZ;
  - c. must advise SNZ promptly of their Database details and any changes to them.
- 7.2 A Member ceases to be a Member:
- a. by written agreement with, or written resignation delivered to, SNZ;
  - b. if not an individual, by liquidation or dissolution;
  - c. upon expulsion from Membership;
  - d. if no longer eligible to be a Member under rule 6.
- 7.3 A Member disobeying any rule or failing to give effect to any decision of SNZ, FINA, or the Sports Tribunal, or having done anything else (for example, being convicted of a criminal offence which the Board considers is relevant to SNZ) which the Board considers brings or may bring the Sport into

disrepute and/or creates exposure to risk for any Members or SNZ or, in the case of a Regional Association or Member Club, failing to enforce any sanction or give effect to any decision imposed by SNZ, is liable to:

- a. suspension for a period; and/or
- b. expulsion;

as the Board in its sole discretion imposes.

## **8. Regions and Regional Associations**

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- 8.1 The Objects are supported and implemented regionally through Regions each operated by a Regional Association.
- 8.2 Regional Associations may set the geographic boundaries of their Regions and may change them by agreement with bordering Regional Associations provided that:
  - a. such boundaries may not overlap; and
  - b. all of New Zealand must have Regional coverage; and
  - c. in setting the boundaries Regional Associations must always act in the best interests of the Sport; and
  - d. they must review the boundaries once a year to ensure optimal configuration of them; and
  - e. any changes to the boundaries must be notified to SNZ and are subject to the approval of SNZ.
- 8.3 A Regional Association is an entity governing a Region which:
  - a. is incorporated;
  - b. adopts the form of Regional Association constitution approved by SNZ;
  - c. includes Member Clubs amongst its members;
  - d. has on its governing board at least two persons with governance experience, either appointed by an appointment panel as specified in the regional association's constitution or elected by its Member Clubs;
  - e. conducts its activities in compliance with its regional constitution and this constitution;
  - f. operates within its Region except to the extent that SNZ otherwise approves (for example one Regional Association providing services to assist another Regional Association);
  - g. is self-funding and financially independent of SNZ; and
  - h. is approved as a Member by SNZ.
- 8.3A Any Regional Association approved as a Member by SNZ under rule 8.3. h. between 31 July 2012 and the 2018 AGM shall be deemed a Member of SNZ between those dates irrespective of whether it complied with Rule 8.3.d.
- 8.4 The objects of a Regional Association must include:
  - a. maintaining its membership of SNZ;
  - b. assisting and supporting the operation of Member Clubs in its Region;
  - c. assisting and supporting the operation of SNZ in its Region;



- d. coordinating and running Competition Zone and Regional competitive swimming in accordance with SNZ's standards;
- e. supporting the development of Member Clubs and the relevant training, education and development of athletes, officials, coaches, team managers and volunteers in the Sport;
- f. working with SNZ to support and deliver the Strategic Plan including:
  - i. facilitating the delivery of programmes to support Member Clubs to attract members and deliver competitive swimming;
  - ii. minimising as much as practical the administrative complexity of competitive swimming;
  - iii. enabling the Sport to build swimmer capacity;
  - iv. complying with the policies and standards determined by SNZ.

8.5 Each Regional Association must:

- a. support and work with the Board and executive of SNZ to build a culture of trust, collaboration and discipline for the Sport;
- b. act consistently with the Strategic Plan, policies and standards determined by SNZ;
- c. have, and provide to SNZ, a strategic plan identifying its role in growing the Sport and supporting the Strategic Plan;
- d. work with SNZ and other Regional Associations for the benefit of the Sport;
- e. play an active part in securing funding for the Sport and comply with the Sport funding strategy;
- f. cooperate with SNZ and the other Regional Associations in respect of the Competition Zones and the development of competition pathways to Competition Zone competitions;
- g. work collectively with other Regional Associations sharing its Competition Zone, to run Competition Zone competitions and comply with rule 10.4;
- h. organise and run competitive swimming in and for its Region;
- i. pay any Amount (including annual Amount based on number of Members) imposed on it by SNZ;
- j. abide by all rules, lawful requests or directions made by SNZ;
- k. provide accurate data on a timely basis as required by SNZ and if it has not done so the Board may suspend its voting rights.

8.6 A Regional Association:

- a. is represented at a GM by its Voting Representative;
- b. has and may exercise the voting rights in rule 17;
- c. may participate in the nomination and election of two Appointment Panel members and the election of Elected Board members and the President;
- d. may impose Regional Amounts on the Members in its Region;

## **9. Member Clubs**

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- 9.1 A Member Club is a club operating within a Region which:
- a. attracts, develops and retains members by growing and helping its members and by delivering swimming experiences;
  - b. satisfies all minimum defined criteria set by SNZ and/or by its Regional Association including participation in the Database and either;
    - i. if first affiliated prior to 1 July 2014, has and maintains such affiliation in subsequent years without interruption; or
    - ii. if first affiliated on or after 1 July 2014, or has re-affiliated after one or more years without affiliation, has and maintains a minimum of 15 members that qualify as Members of SNZ under rule 6.1 a, b, c or d; or
    - iii. has been granted an exemption from the requirement in rule 9.1 b ii by the SNZ Board after it has considered any likely impact on other Member Clubs;
  - c. has rules providing for:
    - i. membership of the Regional Association in the Region in which it is located and of which it is a member;
    - ii. observance of the rules of its Regional Association and SNZ;
    - iii. payment of Amounts (including annual Amounts based on number of Members) imposed by SNZ and its Regional Association;
    - iv. collection and provision of up to date details of club members for its own records and as required for the Database;
    - v. in the event of its being wound up, all surplus assets of the Member Club after providing for the payment of its liabilities and expenses, to be transferred to and become the property of SNZ unless those assets are specified in the Member Club's constitution to become vested in a local or regional swimming organisation on a winding up;
  - d. is self-funding and financially independent of Regional Associations and SNZ;
  - e. is approved as a Member Club by the Regional Association in the Region in which the club is located; and
  - f. acts consistently with the Strategic Plan, policies and standards determined by SNZ and the Regional Association of which it is a member.
- 9.2 A Member Club must work with SNZ and its Regional Association for the benefit of competitive swimming and may at its option participate in and run swimming and other watersport activities in addition to competitive swimming.
- 9.3 A Member Club is responsible for:
- a. ensuring all Database information is provided as required by SNZ;
  - b. collection of, and payment to, SNZ of any Amounts imposed;
  - c. collection of, and payment to, its Regional Associations of any Amounts imposed;

- d. collection of any Amounts imposed by the Member Club; and
- e. playing its part in securing funding for the Sport and complying with the Sport funding strategy.

## Section Three: Competition Zones

### 10. Competition Zones

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- 10.1 SNZ shall divide New Zealand into Competition Zones for competitive swimming as a competition structure not a governance structure.
- 10.2 The purpose of the Competition Zones is to facilitate competitive swimming by:
  - a. allowing Regional Associations to run Competition Zone competitions including annual long course and annual short course Competition Zone championships;
  - b. allowing selection of different tiers of swimmers from Competition Zones for camps and trips;
  - c. allowing the SNZ elite HP programme to utilise domestic competition outside of national age group competitions and open nationals to provide a higher level of training and opportunities for Members;
  - d. providing a more attractive proposition for sponsors;
  - e. bringing together Regional Associations to compete as one larger group, thus forming a HP competition pathway for Members;
  - f. making domestic swimming in New Zealand more attractive to international competitors.
- 10.3 SNZ:
  - a. may at any time amend the Competition Zones by increasing or decreasing the number of, and/or the boundaries of, the Competition Zones;
  - b. shall ensure that Competition Zone boundaries do not overlap and that all of New Zealand is included;
  - c. may not designate a Competition Zone unless it contains a suitable 50 metre and 25 metre competition pool;
  - d. shall designate the Competition Zone in which a Regional Association shall participate, after consultation with the Regional Association;
  - e. may change a Regional Association's designated Competition Zone at any time if required to fulfil its Objects;
  - f. has the final decision on Competition Zone competition framework, rules and standards including which age groups are included in competition.
- 10.4 Regional Associations:
  - a. must work with the other Regional Associations from the same Competition Zone and with SNZ to establish a committee structure to formulate and deliver KPIs for Competition Zone competitions;
  - b. participating in each Competition Zone, must work collectively on a self-determining basis to arrange and deliver Competition Zone competitions, of which there must be at least one each year, in accordance with SNZ requirements and the KPIs for the Competition Zone;

- c. must report as required by SNZ in respect of its KPIs, after Competition Zone competitions in its Competition Zone;
- d. may use the annual Competition Zone championship competition to decide their champions or may hold their own regional championship outside the Competition Zone competition.

## **Section Four: Governance**

### **11. Appointment Panel**

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- 11.1 Following establishment of an AP by the Board under rule 11.4 the role of the AP is to:
- a. oversee the process for Appointed Board members and Elected Board members;
  - b. call for and vet applicants for membership of the Board;
  - c. determine from the applicants those to be put forward for election as Elected Board members; and
  - d. appoint Appointed Board members;
  - e. decide, subject to rule 12 the term of office for Board members.
- 11.2 The AP comprises five members:
- a. two persons, one of whom will chair the AP, who must both be experienced in governance relevant to a sporting organisation, and who both must be appointed by the Institute of Directors in New Zealand (Inc) or by Sport NZ or other organisation recognised for its experience in governance in each case as decided by the Board;
  - b. the Chair of SNZ, or if the Chair is standing for election or appointment to the Board, the Board's nominee chosen from other members of the Board; and
  - c. two persons from within the Sport elected under rule 11.4 by the Regional Associations.
- 11.3 A person standing for election or appointment to the Board is not eligible to be a member of the AP.
- 11.4 The Board shall ensure the members of the AP are appointed or elected as needed to perform the AP role and shall:
- a. provide to the chosen appointing organisation in rule 11.2a a list of the expected competencies for the persons to be appointed; and
  - b. allow each Regional Association to nominate up to two persons eligible for election to the AP; and
  - c. allow each Regional Association to vote by email or electronic voting, in accordance with SNZ requirements, to elect two persons from the list of eligible candidates. In this process a Regional Association has the number of votes as determined in rule 17 and is not required to vote through its Voting Representative. The successful candidates are the two who receive the highest number of votes. In a tie a further vote by email is held to choose between those tied. Any issue or dispute in relation to this rule 11.4c is decided by the AP or where the AP is not yet established then by the three persons in rule 11.2a and b, and in each case the decision is final.
- 11.5 The AP disbands after it has undertaken its role and a new AP is established as needed. AP members may be re-appointed, but, apart from a member of the AP appointed in accordance with rule 11.2 b, only if all candidates recommended by the AP of which they were a member were elected to the Board.

## **12. Board Composition and Appointment Panel Process**

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- 12.1 The Board comprises six persons who are not required to be Members:
- a. three Elected Board members elected by the Regional Associations; and
  - b. three Appointed Board members appointed by the AP.
- 12.2 The following persons are not eligible to be a Board member:
- a. an employee of SNZ;
  - b. a person who has any role in the governance of a Regional Association or Member Club;
  - c. a person who holds any other role in the Sport which creates a conflict of interest; and
  - d. a person who is not approved by the AP, subject to rule 12.11 (casual vacancies); and
- provided that the AP, whose decision under this rule is final, may confer eligibility if the applicant undertakes to and does resign from the conflicting role on or before becoming a Board member.
- 12.3 The AP identifies applicants through an advertising and search process and by any other means it decides. Applicants must agree to be considered for the Board and to undergo such police, insolvency and reference checks as may be required by the AP. The AP undertakes an initial review and prepares a shortlist of applicants who are then interviewed by the AP.
- 12.4 AP decisions must be supported by not less than four of the AP members. The AP may determine its own process for assessment but it must consider any applicant's:
- a. prior governance experience and competence;
  - b. knowledge of and experience of competitive swimming or other sport;
  - c. knowledge of community based programmes and work with central and local government agencies and commercial sponsors;
  - d. occupational skills, abilities and experience;
  - e. awareness of conflicts of interest to be managed and minimised;
  - f. knowledge and ability in relevant sectors for example in commerce, finance, marketing, communications, information technology, relationship management and business; and
  - g. overall capability to fill areas of Board competency and to add value to SNZ.
- 12.5 The process for election of Elected Board members is:
- a. the number of applicants selected by the AP to be put forward for election ("candidates") must not exceed the number of vacancies;
  - b. Regional Associations vote through their Voting Representatives to elect from the candidates and on the basis of their votes as determined in rule 17;
  - c. the AP oversees the election by email or electronic voting or at a SGM if required under rule 12.11b;

- d. to be elected a candidate must receive at least 50% of the votes cast;
  - e. once the election process is completed, the AP notifies SNZ and announces the result.
- 12.6 After the process in rule 12.5 is completed, the appointment process for Appointed Board members is undertaken:
- a. the AP selects the Appointed Board members from its shortlist but excluding candidates under rule 12.5a who were not elected;
  - b. the number of persons selected by the AP must not exceed the number of vacancies; and
  - c. the AP notifies SNZ of the appointments; and
  - d. the Appointed Board members are announced by the AP prior to or at the GM.
- 12.7 The AP may decide not to select the number of candidates required to fill the available vacancies provided that if the processes in rules 12.5 and 12.6 do not result in sufficient Board members who, with any continuing Board members, can provide a quorum for a Board meeting, the AP must repeat its process until it does provide a quorum for the Board. Any remaining vacancies for Appointed Board member and Elected Board member after a quorum is provided are dealt with as casual vacancies in rule 12.11.
- 12.8 In relation to the term of office of a Board member and the AP's allocation of such terms:
- a. one term is for a maximum of three years;
  - b. a Board member may not serve more than three terms or nine years in total on the Board;
  - c. all terms of office served prior to the 2012 AGM count as one term of office;
  - d. at least one Elected Board member and one Appointed Board member must retire each year. The persons to retire shall be those whose term is expiring and if there are insufficient retirees then the persons to retire are determined voluntarily and failing that as determined by the AP;
  - e. a Board member may stand again for the Board but is subject to this rule 12.8;
  - f. except where a term of office otherwise ends it expires at the conclusion of the relevant AGM;
  - g. a term is able to be varied by the AP after considering relevant factors such as Board continuity, rotation, vacancies arising and the best interests of SNZ but this is still subject to rule 12.8b; and
  - h. in exceptional circumstances in the best interests of SNZ as determined by the AP (for example, to extend a term for a Board member who has a key role with FINA where cessation of the Board position may forfeit the FINA role) rule 12.8b does not apply.
- 12.9 A Board member is deemed to have vacated the Board upon:
- a. being adjudicated bankrupt;
  - b. being declared of unsound mind or being the subject of a property order under the Protection of Personal and Property Rights Act 1988;
  - c. resigning or retiring or their term of appointment expiring;
  - d. being convicted of a criminal offence or being sentenced to imprisonment;
  - e. dying; or

- f. a motion for removal being approved under rule 12.10 (removal of Board member).

12.10 The process for removal of a Board member and the consequences of removal are:

- a. where a Board member has in the opinion of the other Board members failed to comply properly with their responsibilities as a Board member (by way of example but not limited to: bad behaviour, breach of Board confidentiality, lack of preparation for or attendance at Board meetings, failure to disclose a conflict of interest), that Board member may be removed from the Board if, by majority the other Board members vote in favour of a motion for removal of the Board member from the Board;
- b. a person so removed may subsequently apply to be a Board member;
- c. where a person is removed under rule 12.10a, the Board members who voted in favour of that removal must stand down from the Board at the conclusion of the next AGM or at any SGM under rule 12.11 (whichever occurs first);
- d. a Board member removed under rule 12.10a or stood down under rule 12.10c is not eligible for the Board unless they are again approved in the AP process. A person stood down under rule 12.10c is not approved unless the AP is satisfied both with the justification of that person's decision to vote for removal of the Board member and that the person remains a suitable candidate. If elected or appointed that commences a new Board term.

12.11 Casual vacancies are dealt with as follows:

- a. the Board may fill casual vacancies on the Board (including those arising because insufficient candidates are elected or appointed under rules 12.5 or 12.6);
- b. if the Board has insufficient members to form a quorum the remaining Board members can fill casual vacancies under rule 12.11a to enable the Board to operate but must immediately call a SGM to appoint and/or elect new Board members. The AP process in rules 11 and 12 is followed except that if the AP determines that there is insufficient time before the SGM to complete the AP applicant assessment process and/or the voting on Elected Board members by email or electronic voting, then the voting is undertaken at the SGM and appointment of Appointed Board members by the AP is completed not later than 21 days after the SGM;
- c. the requirement under rule 12.11b to call a SGM does not apply if the lack of a quorum for Board meetings occurs in the period between 30 June and the next AGM;
- d. the term of any appointments due to casual vacancies in rule 12.11b is until the conclusion of the SGM but in the case of rule 12.11c is until the conclusion of the next AGM;
- e. appointments due to casual vacancies will count as one term as a Board member;
- f. any person appointed to fill a casual vacancy may later stand for election or appointment to the Board but is subject to the AP process;
- g. a person who fills a casual vacancy cannot fill a casual vacancy again; and
- h. a person who has unsuccessfully contested an election to the Board cannot fill a casual vacancy.

## 13. **Board Procedure**

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- 13.1 The governance of SNZ and the exercise of all powers of SNZ (except where restricted by this constitution) are delegated without further restriction, to be undertaken by the Board. Such powers may also be delegated by the Board to persons as it determines.
- 13.2 The role and responsibility of the Board is to act in the best interests of SNZ and to provide good governance to SNZ including through the following:
- a. establishing a Strategic Plan which is to include:
    - i. clear aspirational targets for the growth of the Sport including growth at Member Club level;
    - ii. a multiyear facilities strategy for the Sport to support its growth and competitiveness;
    - iii. a coach development strategy to support coach numbers, pathways and calibre and innovation in coaching, including supporting and working closely with SCTNZ;
    - iv. a multiyear HP strategy which is supportive of innovation and performance;
    - v. a key stakeholder relationship management strategy including with other organisations involved with swimming;
    - vi. a multiyear funding strategy;
    - vii. a commitment to transparency and collaboration with the Sport on all matters;
    - viii. a commitment to effective long term planning on behalf of the Sport and with the Sport;
    - ix. a commitment to the implementation of and adherence to critical policies, processes and practices including selection and discipline procedures;
    - x. a commitment to working with and respecting key stakeholders within and external to the Sport;
    - xi. a commitment to a culture of 'playing the ball, not the person' in the implementation of all activity;
  - b. monitoring and reviewing performance against the Strategic Plan;
  - c. monitoring and reviewing performance against the annual business plan and budget;
  - d. addressing the ongoing viability and sustainability of SNZ;
  - e. monitoring regulatory compliance for SNZ;
  - f. establishing, reviewing, and monitoring policies to guide and govern SNZ;
  - g. fostering interaction and communication across and within SNZ, Regional Associations and Member Clubs;
  - h. appointing, monitoring and reviewing the performance of the CEO;
  - i. adopting and communicating a continual best practice performance culture;



- j. preparing annual KPIs and being accountable to Members for achievement of them; and
  - k. preparing an annual report and procuring an annual audited statement of accounts.
- 13.3 The Board must annually following the AGM elect from among the Board Members:
- a. the Chair being the person that the Board considers to be the best person to fill that role;
  - b. the deputy Chair who is to undertake the role of the Chair in the absence of the Chair.
- 13.4 The quorum for a Board meeting is four Board members.
- 13.5 The President receives all Board papers, may attend any Board meeting, and may speak at any Board meeting but has no voting rights.
- 13.6 The Board determines its own rules for any matters not specified in this constitution, including for conduct, operation and meetings of the Board, such rules to be recorded in a Board charter and code of conduct which shall include:
- a. there must be at least five Board meetings each year;
  - b. Board meetings may be held in person or by teleconference or by other means by which those participating may hear each other simultaneously;
  - c. a resolution signed by all Board members is as effective as if passed at a meeting;
  - d. a Board meeting may be called by the Chair or by written request of four Board members;
  - e. decisions are by Ordinary Resolution (unless otherwise required by this constitution) by voice, or if requested by the Chair by show of hands, and if requested by any Board member, by secret ballot;
  - f. each Board member has one vote and in a tie the Chair has an additional casting vote;
  - g. the Board must ensure minutes are kept of all Board meetings;
  - h. any additional roles and expectations that SNZ has of a Board member;
  - i. the Board must at periods of not more than three years review all SNZ policies;
  - j. an annual performance review of the Board; and
  - k. a requirement that all new Board members sign the Board charter and code of conduct in front of their Board colleagues and the President as a symbol of their commitment to act at all times in the best interests of SNZ.
- 13.7 The Board is required to establish and maintain a member protection policy and code of conduct for the Sport in accordance with best practice and which is binding on all Members.
- 13.8 The Board must establish an awards committee with functions, processes and protocols as determined by the Board.
- 13.9 The Board must procure the independent assessment (required in the second quarter of 2014), of the Board's progress against the implementation of the review recommendations as required by recommendation 20 of the June 2012 Report of the Independent Working Group for the Review of SNZ.

## **14. President**

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- 14.1 The President:
- a. represents SNZ at official occasions, attends swimming meets, is chair of GMs, assumes leadership or mediation roles as appropriate in times of need and performs such other functions as set out in any Board policy;
  - b. is the sole nomination by the Board for consideration for election by Regional Associations at the AGM, but prior to making the nomination the Board must consult with Life Members to be reasonably assured that the nominee has a deep involvement with the Sport, has the respect of a significant number of Members and is capable of providing leadership in the best interests of the Sport in times of need;
  - c. must be approved by a Special Resolution at an AGM to become President unless filling a casual vacancy;
  - d. cannot serve more than three consecutive terms of one year each as President;
  - e. commences office at the conclusion of the AGM at which he or she is announced to be elected to office;
  - f. must be and remain a Member during their term;
  - g. subject to rule 13.5 (right to receive Board papers and attend and speak at Board meetings), must not hold any governance role in the Sport; and
  - h. must adhere to the same standards and behaviours required of Board members.
- 14.2 The President is deemed to have vacated office in the same circumstances as apply to Board members under rule 12.9, except that rule 12.9f does not apply.
- 14.3 Any casual vacancy in the position of President which occurs either between AGMs or is not filled at the AGM because the Board's nomination was not approved at the AGM, may be filled by the Board appointing a replacement (who must not be a person who has ever been nominated for President by the Board and not approved at an AGM) after consulting with Life Members but the Board is not required to fill the vacancy. Any replacement retires at the next AGM but such replacement term counts as one term of office.

## **Section Five: Meetings, Elections and Voting**

### **15. General Meetings**

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- 15.1 A GM of SNZ is either an AGM or a SGM. Subject to rules 15.4g and h all Members are eligible to attend a GM which shall be held at such location, date, and time, or in the case of rules 15.4g or h by such process as determined by the Board.
- 15.2 The AGM must be held once every year, no later than three months after the end of the Financial Year to consider:
- a. the Board's annual report;
  - b. the CEO's annual report, including an annual financial report;
  - c. the audited statement of accounts;
  - d. announcement of any new Elected Board members and Appointed Board members;
  - e. election of the President;

- f. appointment of the auditor;
  - g. any other business that is notified as an item of business under rule 15.3.
- 15.3 An item of business must be considered at an AGM if notified to SNZ by the Board or by not less than one third of Regional Associations within seven days of notice of an AGM being given.
- 15.4 A SGM:
- a. may be called by the Board at any time;
  - b. must be called by the Board within 21 days of SNZ receiving a written request setting out the reasons for the SGM from Regional Associations holding not less than one third of the total number of votes held by Regional Associations as determined in rule 17.1;
  - c. can only be convened on a matter of major importance to justify a SGM. Whether a matter is of major importance is, for rule 15.4a, determined by the Board, and is, for rule 15.4b determined by those Regional Associations requesting the SGM after consulting with the President and the Board;
  - d. can only consider the items of business for which the SGM has been called;
  - e. can only pass a resolution by Special Resolution;
  - f. Special Resolution binds the Board to comply with such resolution;
  - g. if determined to be appropriate by the Board, may be held electronically or by teleconference with post, email or electronic voting; and
  - h. if the Board determines that a SGM is undesirable because of content, time and/or expense the Board may conduct the business of the SGM entirely by post, email or electronic voting but this rule does not apply to a SGM requisitioned by not less than half of the number of Regional Associations.
- 15.5 A quorum for a GM is formed if the Voting Representatives present hold in total not less than 50% of the total votes as determined in rule 17.1 or, if post, email or electronic voting applies, at least 50% of the total votes are cast. If a quorum is not achieved within half an hour, or where post, email or electronic voting applies, less than 50% of the total votes are cast, then a SGM fails for lack of quorum but the AGM is adjourned to another day, time and place to be notified to all persons who are to be given notice under rule 16. The Voting Representatives present at a re-convened AGM are deemed to constitute a valid quorum.
- 15.6 GMs are chaired by the President or if absent, by a Board Member then elected by the Regional Associations. Matters not provided for that occur at or in relation to a GM are decided by such chairperson.
- 15.7 All Members may attend and speak at a GM but must comply with any Board policy relating to speaking at a GM.
- 15.8 Minutes must be kept of each GM.
- 15.9 Any irregularity, error or omission in notices, agendas and papers for the GM or omission to give notices within a timeframe or omission to give notice to all persons entitled to receive notice, and any other error in the organisation of the GM does not invalidate nor prevent the GM from proceeding provided that:
- a. the chairperson in his or her discretion determines that it is still appropriate for the GM to proceed despite the irregularity, error or omission; and
  - b. a motion to proceed is put to the GM and such motion is passed by Special Resolution.

- 15.10 Any change to the Constitution or the name of SNZ shall not come into effect unless and until they are approved by the Bureau of **FINA**.

## **16. Notices for General Meetings**

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- 16.1 Notices and other documents referred to in this rule in relation to a GM must be given by SNZ to all Members, and may be given to any other persons as determined by the Board.
- 16.2 Notice of the date, time and place (or process in the case of rule 15.4g or h) of a GM must be given by SNZ not less than 30 days prior to the date of the GM.
- 16.3 Notice of the agenda and the documents relating to items of business for the GM must be given by SNZ not less than 14 days prior to the date of the GM.
- 16.4 Any notice to be given by SNZ in relation to a GM may be given by any method (for example but not limited to post, email, or notification on a website) as determined by the Board.

## **17. Elections and Voting**

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- 17.1 The number of votes held by a Regional Association is equal to the number of Members in rule 6.1a, b, c and d recorded on the Database for that Regional Association on the last day of the Financial Year immediately preceding the date on which the vote is to be exercised, provided that:
- a. a Member described in rule 6.1a, b or c is not counted in the number of votes held by their Regional Association if any Amount due from them for the Financial Year referred to above is not paid fourteen or more days before the date on which the vote is to be exercised;
  - b. if a Member is a Member in more than one of the categories in rule 6.1a, b, c or d, they shall only be counted once in the number of votes held by their Regional Association;
  - c. a Member who does not satisfy the requirement of rule 6.6 is not counted; and
  - d. voting rights are suspended if so determined by the Board under rule 8.5 k.
- 17.2 At GMs:
- a. a Regional Association's Voting Representative who is present is entitled to vote;
  - b. proxy votes are not permitted;
  - c. voting is by voices or by show of hands as determined by the chairperson of the GM, except in the case of rules 15.4g and h where post, email or electronic voting applies. Any matter including election of President may be by a secret ballot if it is called for by a Regional Association or by the chairperson of the GM;
  - d. motions are passed by Ordinary Resolution unless required by this constitution to be passed by Special Resolution.
- 17.3 All of the votes held by a Regional Association must be voted together (ie. the total number of votes cannot be split).

## Section Six: Other

### 18. Finance

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- 18.1 The Financial Year is 1 July to 30 June unless otherwise determined by the Board.
- 18.2 The Board must ensure that proper financial records are kept, the annual statements of account are audited; and it has appropriate policies for management of SNZ finances.
- 18.3 SNZ's funds may be invested in such manner as determined by the Board.
- 18.4 At each AGM an independent and suitably qualified member of the Chartered Accountants Australia and New Zealand must be appointed as auditor.

### 19. Common Seal

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- 19.1 SNZ must have a common seal. The Board determines when and by whom the common seal may be used and where it is to be kept.

### 20. Alteration to Rules

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- 20.1 Subject to rule **Error! Reference source not found.** this constitution can only be changed by Special Resolution at a GM for which such change has been notified in accordance with rule 15.
- 20.2 No addition to or alteration of the objects, personal benefit clause or the winding up clause shall be made which affect the tax-exempt status. The provisions and effect of this clause shall not be removed from this document and shall be included and implied into any document replacing this document. The prohibition on distribution to Members does not apply to Members who are Regional Associations.

### 21. Disputes/Appeals

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- 21.1 The Board may adopt (but is not required to) a policy to require adherence by Members to processes that it considers will assist with fair, efficient and timely:
- a. resolution of disputes between Members involving any activity or responsibility of SNZ which the Board considers is of such importance or is causing such a level of disruption to Members or to the activities of SNZ that it must be addressed; and/or
  - b. decisions on appeals by a Member against a decision of any Regional Association or Member Club involving suspension, expulsion, penalty or other material detriment to the Member or may decide (but is not required to) that such matters are referred to another body such as the Sports Tribunal (subject to the parties' consent if required).
- 21.2 The Board may request the President or any other person to act as a mediator in disputes involving Members.
- 21.3 The Board may, in its sole discretion decide to allow a right to appeal disciplinary decisions of the Board to another body such as the Sports Tribunal (subject to the applicable Members' consent if required).
- 21.4 In relation to doping:
- a. subject to rule 20.4b, the rules of SNZ for anti-doping are the FINA Doping Control Rules and the Sports Anti-Doping Rules made by Drug Free Sport New Zealand. Every Member agrees as a condition of Membership to observe, be subject to and be bound by such rules as if set out here in full;

- b. nothing in the Sports Anti-Doping Rules is intended to replace or supersede any applicable rule of FINA which may apply with respect to anti-doping matters, provided the FINA rule is consistent with the World Anti-Doping Code;
- c. to the extent of any inconsistency between the Sports Anti-Doping Rules and any rule of SNZ, the Sports Anti-Doping Rules apply;
- d. it is a requirement of all activities organised, held, convened or authorised by SNZ or any of its Members regardless of whether the participant is a Member that all participants must agree to comply with the Sports Anti-Doping Rules as a condition of participation.

## **22. Sports Tribunal**

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- 22.1 SNZ recognises the Sports Tribunal may be the appropriate forum to resolve certain sports-related disputes as set out in the rules of the Sports Tribunal. The Board may decide in its discretion on a case by case basis that a sports related dispute to which SNZ is a party is agreed to be referred to the Sports Tribunal.
- 22.2 Decisions and awards of the Sports Tribunal are binding on SNZ and its Members.

## **23. Liquidation**

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- 23.1 SNZ may be voluntarily liquidated if, at a GM a Special Resolution is passed requiring SNZ to be liquidated and the resolution is confirmed by a further Special Resolution passed at a subsequent GM called for that purpose and held not earlier than 30 days and not later than 60 days after the date on which the original resolution was passed.
- 23.2 If upon winding up or dissolution of the organisation there remains after the satisfaction of all its debts and liabilities any property whatsoever the same shall not be paid or distributed among the members of the organisation but shall be given or transferred to some other organisation or body with similar objects to the first organisation or for some other charitable purpose, within New Zealand.

## **24. Prohibition of Personal Benefit**

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- 24.1 All income, benefit or advantage must be applied to the Objects.
- 24.2 No Member or Board member or any person associated with a Member or Board member shall participate in or materially influence any decision made by SNZ in respect of the payment to or on behalf of that Member or Board member or associated person of any income, benefit or advantage whatsoever.
- 24.3 Any payments made must be for goods or services that advance the Objects and must be reasonable and relative to payments that would be made between unrelated parties.
- 24.4 The provision and effect of this rule must not be removed from this constitution and must be included and implied into any document replacing this constitution.

## **25. Limitation of Liability and Indemnity**

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- 25.1 No current or former member of the Board or the AP has any liability to SNZ or the Members for any act or omission in their capacity as a member of the Board or AP except in the case of their own fraud, dishonesty, breach of fiduciary duty or the commission of any act known by them to be a breach of duties owed by them at law.
- 25.2 Each current or former member of the Board or the AP is indemnified by and out of the assets of

SNZ against:

- a. any liability arising out of any act or omission in their capacity as a member of the Board or the AP excluding criminal liability arising out of their fraud, dishonesty, breach of fiduciary duty or the commission of any act known by them to be a breach of duties owed by them at law; and
- b. costs incurred by them in any proceeding relating to such liability.

25.3 This rule is intended to be enforceable by each current or former member of the Board or the AP.

## **26. Savings**

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26.1 If any matter arises in relation to SNZ that is not provided for in this constitution, the matter shall be dealt with as required by the Board.