

**CONSTITUTION OF SWIMZONE
RACING INCORPORATED**

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CONSTITUTION OF SWIMMING SWIMZONE RACING INCORPORATED

Section One: Core Provisions

1. Name

- 1.1 The name of the organisation is SwimZone Racing Incorporated (SwimZone).

2. Definitions and Interpretation

- 2.1 In this constitution:

AGM means annual general meeting;

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

Board means the board of SwimZone;

Chair means chairperson of the Board;

Club means SwimZone;

Coach representative means any coach employed by SwimZone Wellington Limited or any other provider of coaching services to SwimZone members and approved by the board.

Competition Zone means a zone comprising Regional Associations participating in the formation and support of a team to compete in inter-Zonal swimming competitions;

Database means Swimming NZ's database of Members;

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

Financial Year means the financial year SwimZone;

GM means a general meeting;

Governance Role means membership of a Board or Management Committee responsible for the governance of Swimming NZ or a Member Club.-

HP means high performance;

Interested Persons are persons who do not come within any of Clauses 6.1c i, ii, iii, iv or v, including, but not limited to: non-competitive swimmers; learn to swim swimmers; and social members;

KPIs mean key performance indicators;

Swimming NZ Life Member means a person awarded life membership of Swimming NZ;

Member means a financial member of SwimZone and their parents and/or legal guardians;

Objects mean the objects of SwimZone;

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

President means the president of Swimming NZ;

Region means a geographic area within New Zealand determined to be a Swimming NZ region by Regional Associations;

Regional Association is a regional swimming association which is a member of Swimming NZ;

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;

Swimming NZ means Swimming New Zealand Incorporated (215320);

Swimming NZ Regulations include any rules, regulations, by-laws or policies adopted by **Swimming NZ** for controlling the conduct of competitive swimming in New Zealand and the behaviour of competitive swimmers;

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 SwimZone or the Board may be undertaken by the Board or by such person to whom the Board has given authority.

3. **Status**

3.1 SwimZone is an incorporated society established under the Incorporated Societies Act 1908 and shall be a member of Swimming NZ and abide by the rules and regulations of Swimming NZ

4. **Objects**

4.1 The Object of SwimZone is to

(a) support the growth and performance of the sport of competitive swimming from entry level club competitive swimmers to Elite swimmers.

4.2 To support its primary Object, SwimZone has the further Objects to work with Swimming NZ, its Regional Association, and other Member Clubs within the Region and others to:

- a. to raise awareness of and interest in competitive swimming within the wider community;
- b. have sound governance structures, processes and policies;
- c. be financially viable and financially independent of Swimming NZ;

5. Powers and Obligations

- 5.1 SwimZone 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. determine, raise, levy and receive money by any method and from any source;
 - b. establish, acquire or have interests in incorporated entities, trusts or other entities and utilise the assets of SwimZone in, through or with them;
 - c. produce, create, licence, use and protect intellectual property;
 - d. determine who are its Members and SwimZone Associates and their entitlements, and withdraw, suspend, terminate or restrict membership and other benefits;
 - e. designate a Voting Representative to represent it at a Regional Association GM and to exercise SwimZone's voting rights as provided in the Swimming NZ constitution;
 - f. elect SwimZone Life Members and award service and honours awards
 - g. make, alter, rescind and enforce rules, policies, plans, charters and procedures to effect the Objects, or for the governance and operation of SwimZone;
 - 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 SwimZone 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;

Section Two: Membership

6. Membership

- 6.1 Members must pay all Amounts due to SwimZone and Swimming NZ before being eligible to participate in any Swimzone and/or Swimming nZ sanctioned events

7. Rights and Obligations of Members

- 7.1 A Member is bound by this constitution and:
- a. by all rules, policies, charters, procedures and decisions of SwimZone and where applicable those of Swimming NZ and FINA;
 - b. must pay all Amounts imposed on them by SwimZone and Swimming NZ;
- 7.2 A Member ceases to be a member of SwimZone:
- a. by written agreement with, or written resignation delivered to, SwimZone;
 - b. upon expulsion from membership;
 - c. if no longer eligible to be a Member pursuant to this constitution or any rules set down by the Swimzone Board from time to time.

- 7.3 A Member disobeying any rule or failing to give effect to any decision of Swimzone, Swimming NZ, 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 SwimZone) which the Board considers brings or may bring the Sport or SwimZone into disrepute and/or creates exposure to risk for SwimZone or if a Member fails to comply with any sanction imposed by Swimming NZ or SwimZone, or the Sports Tribunal is liable to:
- a. suspension for a period; and/or
 - b. expulsion;
- or such other sanction as the Board may in its sole discretion impose.
- 7.4 A Member may only be a member of one Member Club at a time.
- 7.5 Any Member under suspension, or awaiting a hearing for an offence capable of having a period of suspension imposed, is ineligible for transfer from or to another club.

Section Three: Governance

8. Board Composition

- 8.1 The Board comprises no less than five persons and no more than eight persons.
- 8.2 For expediency, if the board for any reason has less than five persons it may continue to operate for up to three months until the outstanding positions are filled.
- 8.3 One Board Member may be a coach representative.
- 8.4 Other than the Coaches representative, the board positions that shall be voted on by members at each AGM shall be shall:
- a. Chair
 - b. Secretary
 - c. Treasurer
 - d. Race secretary
 - e. Meet coordinator
- 8.5 Appointment of remaining Board Members
- a. The balance of the Board members are appointed by the elected board members.
- 8.6 Notwithstanding anything else in this Constitution, each Member is entitled to one vote for the election of each elected Board member and no member shall be voted on or appointed to more than one position at the same time.
- 8.7 At least 21 days prior to the AGM, the Board shall give written notice to Members calling for nominations for elections to the Board in accordance with CI 8.4 a.
- 8.8 Each Member:
- a. may nominate in writing one candidate for election to the Board for each vacant position on the Board.; and

- b. must provide to the Board the written consent of any candidate to their nomination; and
- c. may provide to the Board such further information as it thinks fit in support of its candidate(s).

8.9 In relation to the term of office of a Board member:

- a. A term of office is one year
- b. A Board member may serve more than one term;
- c. No member may serve on the board if their partner (whether married, civil union or de facto) is on the board;
- d. except where a term of office otherwise ends it expires at the conclusion of the next AGM.

8.10 The Chair shall chair all Board meetings at which he or she is present and in the Chair's absence a Chair shall be appointed by the board members present at a board meeting.

8.11 A Board member is deemed to have vacated the Board upon any one or more of the following occurring:

- 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; and
- f. being absent for three consecutive meetings of the Board without reasonable notice to the board.

8.12 Casual vacancies are dealt with as follows:

- a. the Board may fill casual vacancies on the Board;
- b. the term of any appointments due to casual vacancies is until the conclusion of the next AGM;
- c. any person appointed to fill a casual vacancy may later stand for election to the Board.

9. Board Procedure

9.1 The governance of SwimZone and the exercise of all powers of SwimZone (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.

9.2 The role and responsibility of the Board is to act in the best interests of SwimZone and to provide good governance to SwimZone.

9.3 The quorum for a Board meeting is four Board members and a board member or members shall count for the purposes of a quorum if they attend by way of teleconference, video conference, skype or any other digital medium.

- 9.4 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 may be recorded in a Board charter and/or code of conduct.
- 9.5 The Board may establish an awards committee with functions, processes and protocols as determined by the Board.

Section Four: Meetings, Elections and Voting

10. General Meetings

- 10.1 A GM of SwimZone is either an AGM or a SGM. Subject to Clauses 10.4 f and g all Members may be present at a GM which shall be held at such location, date, and time, or in the case of Clauses 10.4 f and g by such process, as determined by the Board.
- 10.2 The AGM must be held once every year, no later than four months after the end of the Financial Year to:
- a. consider the Board's annual report;
 - b. consider the annual financial report;
 - c. consider the statement of accounts;
 - d. elect Board members in accordance with Clause 8;
 - e. consider any other business that is notified as an item of business under Clause 10.3.
- 10.3 An item of business must be considered at an AGM if notified to SwimZone by the Board or by not less than one third of Members within seven days of notice of an AGM being given.
- 10.4 A SGM:
- a. may be called by the Board at any time;
 - b. must be called by the Board within 21 days of SwimZone receiving a written request setting out the reasons for the SGM from not less than one third of the total number of Members of the Club;
 - c. can only consider the items of business for which the SGM has been called;
 - d. can only pass a resolution by Special Resolution;
 - e. Special Resolutions bind the Board to comply with such resolution;
 - f. if determined to be appropriate by the Board, may be held electronically or by teleconference with post, email or electronic voting; and
 - g. 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 Clause does not apply to a SGM requisitioned by not less than half of the Members of the Club.
- 10.5 A quorum for a GM is 20 financial Members including proxies. If a quorum is not achieved within half an hour, the GM is adjourned to another day, time and place to be notified to all persons who are to be given notice under Clause 11. The Members present at a re-convened GM are deemed to constitute a valid quorum.

- 10.6 GMs are chaired by the Chair of the Board and in his or her absence by a Board Member elected by Members present at the GM. Matters not provided for that occur at or in relation to a GM are decided by such chairperson.
- 10.7 All Members at a GM must comply with any Board policy relating to speaking at a GM.
- 10.8 Minutes must be kept of each GM.
- 10.9 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.

11. Notices for General Meetings

- 11.1 Notices and other documents referred to in this Clause in relation to a GM must be given by SwimZone to all Members and may be given to any other persons as determined by the Board.
- 11.2 Notice of the date, time and place of a GM must be given by SwimZone not less than 30 days prior to the date of the GM.
- 11.3 Notice of the agenda and the documents relating to items of business for the GM must be given by SwimZone not less than 14 days prior to the date of the GM.
- 11.4 Any notice to be given by SwimZone in relation to a GM or any other matter under this constitution may be given by any method (for example but not limited to post, email, or notification on a website or public notice in a local newspaper) as determined by the Board.

12. Elections and Voting

- 12.1 Members entitled to vote at a GM recorded on the Database for that SwimZone 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 is ineligible to vote if any Amount due by them to SwimZone or any Regional Association or Swimming NZ 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. voting rights are suspended if so determined by the Board under Clause 7.3.
- 12.2 At GMs:
- a. a Member who is over the age of 18 and who is present is entitled to vote;
 - b. For the purposes of voting only one member of a swimmers family may vote for each matter before the GM. For the purpose of clarification, if a swimmer is under 18, one of their parents or legal guardian may vote. If a swimmer is 18, only the swimmer may vote.
 - c. proxy votes are permitted in the form as notified by the board from time to time;
 - d. voting is by voices or by show of hands as determined by the chairperson of the GM, except the Board may determine that a GM may be held electronically or by teleconference

with post, email or electronic voting. Any matter may be by a secret ballot if it is called for by a Member Club or by the chairperson of the GM;

- e. motions are passed by Ordinary Resolution unless required by this constitution to be passed by Special Resolution.

12.3 All of the votes held by a Member Club must be voted together (i.e. the total number of votes cannot be split).

12.4 Life Members, SwimZone and Associates do not have individual voting rights at GMs.

Section Five: Other

13. Finance

13.1 The Board must ensure that proper financial records are kept and it has appropriate policies for management of SwimZone finances.

13.2 SwimZone funds may be invested in such manner as determined by the Board.

14. Common Seal

14.1 SwimZone 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.

15. Alteration to Clauses

15.1 Subject to Clause 15.2 and subject to the prior written consent of SwimZone, this constitution may be changed by Special Resolution at a GM for which such change has been notified in accordance with Clause 10.

15.2 No change to the prohibition of personal benefit or the liquidation clause can be approved if it would have the effect of causing SwimZone to cease to retain its preferential tax status as a society for the promotion of amateur sport or as a charity under the Charities Act (if applicable).

16. Disputes/Appeals

16.1 The Board must adopt a policy to require adherence by Members to processes that it considers will enable the fair, efficient and timely resolution of:

- a. disputes that arise with or between Members or involving SwimZone Members, involving an important activity or responsibility of SwimZone and which the Board considers in its discretion is of such importance or is causing such a level of disruption to Members or to the activities of SwimZone that it must be addressed; and
- b. appeals by a Member against a decision of SwimZone involving suspension, expulsion, penalty or other material detriment to the club member or may decide (but is not required to) that such matters be referred to Swimming NZ or another body such as the Sports Tribunal (subject to the parties' consent if required).

16.2 The Board may request the President or any other person to act as a mediator in disputes involving Members.

- 16.3 The Board may, in its discretion decide to allow a right to appeal disciplinary and selection decisions of the Board to Swimming NZ or another body such as the Sports Tribunal (subject to the parties' consent if required).
- 16.4 In relation to doping, SwimZone and its Members shall abide by and be subject to the doping provisions set out in the constitution of Swimming NZ.

17. Liquidation and Merger

- 17.1 SwimZone may be voluntarily liquidated if, at a GM a Special Resolution is passed requiring SwimZone 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.
- 17.2 If, upon the liquidation of SwimZone, there remains after the satisfaction of all SwimZone debts and liabilities any property whatsoever, the property shall be given to an organisation or organisations (selected by the Members exercising the voting entitlement set out in Clause 12.1) having objects similar to the Objects.
- 17.3 Subject to the written approval of Swimming NZ and satisfaction of all SwimZone debts and liabilities, SwimZone may in accordance with a Special Resolution at a GM called for that purpose merge with another Member Club having objects similar to the Objects.

18. Prohibition of Personal Benefit

- 18.1 All income, benefit or advantage must be applied to the Objects.
- 18.2 No Board member shall participate in or materially influence any decision made by SwimZone in respect of the payment to or on behalf of that Member or Board member of any income, benefit or advantage whatsoever.
- 18.3 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.
- 18.4 The provision and effect of this Clause must not be removed from this constitution and must be included and implied into any document replacing this constitution.

19. Limitation of Liability and Indemnity

- 19.1 No current or former member of the Board has any liability to SwimZone or the Members or any SwimZone Associate for any act or omission in their capacity as a member of the Board 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.
- 19.2 Each current or former member of the Board is indemnified by and out of the assets of SwimZone against:
- a. any liability arising out of any act or omission in their capacity as a member of the Board 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.
- 19.3 This Clause is intended to be enforceable by each current or former member of the Board.

20. Savings

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

21. Transition

- 21.1 This Clause 21 enables transition of SwimZone from the requirements of its previous constitution to this constitution. If any part of this Clause 21 is inconsistent with any other Clause then Clause 21 applies and to the extent of the inconsistency the other Clause in this constitution does not.
- 21.2 All Board Members, under the Previous Constitution shall hold office under this constitution until the end of the next AGM unless the Board Member retires or vacates his or her position earlier. At the next AGM after the adoption of the Constitution the number of Board to retire shall be the number necessary to reduce the size of the Board to between six and eight persons. The Board Members retiring may be determined by agreement among all the Board members and, failing agreement, shall be determined by lot.
- 21.3 Swimzone Life Members on the date of adoption of this constitution shall continue as SwimZone Life Members under this constitution.
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