

**CONSTITUTION OF COMET
SWIMMING CLUB SWIMMING
CLUB**

INCORPORATED

May 2019

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CONSTITUTION OF COMET SWIMMING CLUB INCORPORATED

Section One: Core Provisions

1. Name

- 1.1 The name of the organisation is Comet Swimming Club Incorporated

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 Comet Swimming Club Incorporated;

Chair means chairperson of the Board;

Club means Comet Swimming Club Incorporated;

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;

Elite HP Swimmer means a swimmer participating in an elite HP training programme endorsed by Swimming NZ;

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

Financial Year means the financial year of Comet Swimming Club Incorporated;

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;

Learn to Swim Swimmers are persons undergoing instruction about how to swim who do not compete in sanctioned events;

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

Member means a member of Comet Swimming Club Incorporated;

Member Club is a swimming club which is a member of a Regional Association **and** Swimming NZ;

Objects mean the objects of Comet Swimming Club Incorporated;

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;

Comet Swimming Club Incorporated Associate is defined in Clause 6.3; and

Comet Swimming Club Incorporated Life Member means a person awarded life membership of Comet Swimming Club Incorporated.

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 Comet Swimming Club Incorporated or the Board may be undertaken by the Board or by such person to whom the Board has given authority.

3. Status

3.1 Comet Swimming Club Incorporated is:

- a. an incorporated society established under the Incorporated Societies Act 1908;
- b. bound by, and must observe the rules and decisions of FINA; and
- c. bound by, and must observe the rules and decisions of Swimming NZ.
- d. bound by, and must observe the rules and decisions of the Regional Association in which it is located.

4. Objects

- 4.1 The primary Object of Comet Swimming Club Incorporated is to support the growth and performance of the sport of competitive swimming in its Region, from entry level club competitive swimmers to Elite HP swimmers.
- 4.2 To support its primary Object, Comet Swimming Club Incorporated has the further Objects to work with Swimming NZ, its Regional Association, and other Member Clubs within the Region and others to:
- a. be a member of Swimming NZ;
 - b. assist and support the operation of Swimming NZ in its Region;
 - c. to raise awareness of and interest in competitive swimming within the wider community;
 - d. have sound governance structures, processes and policies;
 - e. adopt prudent risk and asset management policies;
 - f. be financially viable and financially independent of Swimming NZ;
 - g. fulfil its obligations to Drug Free Sport New Zealand in relation to doping controls and banned substances; and
 - h. maintain a strong interest in Learn to Swim and swim safe educational activities.

5. Powers and Obligations

- 5.1 Comet Swimming Club Incorporated 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 Comet Swimming Club Incorporated in, through or with them;
 - d. produce, create, licence, use and protect intellectual property;
 - e. determine who are its Members and Comet Swimming Club Incorporated Associates and their entitlements, and withdraw, suspend, terminate or restrict membership and other benefits;
 - f. designate a Voting Representative to represent it at a Regional Association GM and to exercise Comet Swimming Club Incorporated's voting rights as provided in the Swimming NZ constitution;
 - g. elect Comet Swimming Club Incorporated Life Members and award service and honours awards
 - h. make, alter, rescind and enforce rules, policies, plans, charters and procedures to effect the Objects, or for the governance and operation of Comet Swimming Club Incorporated;
 - i. determine, implement and enforce disciplinary, disputes and appeal procedures including making decisions, conducting hearings and imposing sanctions and penalties;

- j. engage and dismiss employees and contractors;
- k. delegate powers of Comet Swimming Club Incorporated 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;
- l. contract, engage or make any arrangements with any person to fulfil the Objects;
- m. 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;
- n. produce, publish and distribute any communications, newsletters or publications;
- o. do any other acts or things which it determines are incidental to or conducive to the attainment of the Objects; and
- p. merge with, consolidate and/or transfer assets and liabilities to another Member Club.

5.2 Comet Swimming Club Incorporated shall:

- a. support and work with the Board of its Regional Association to build a culture of trust, collaboration and discipline for the Sport;
- b. work with Swimming NZ, its Regional Association, and other Member Clubs for the benefit of the Sport;
- c. play an active role in securing funding for the Sport;
- d. cooperate with Swimming NZ, its Regional Association and other Member Clubs in respect of inter-Zonal competitions and the development of competition pathways to inter-Zonal competitions;
- e. work collectively with other Member Clubs in its Competition Zone, to support the development and running of inter-Zonal competitions;
- f. pay any Amount owed by it to Swimming NZ and its Regional Association;
- g. abide by all rules, regulations, lawful requests or directions made by Swimming NZ including any Swimming NZ Member Protection Policy or Code of Conduct; and
- h. provide accurate data on a timely basis for it, its Regional Association as required by Swimming NZ for the Database or otherwise.

Section Two: Members, Comet Swimming Club Incorporated Associates and Database

6. Members, Comet Swimming Club Incorporated Associates and Database

6.1 A Member is a person who:

- a. is approved by Comet Swimming Club Incorporated as a member of Comet Swimming Club Incorporated;

- b. is a:
 - i. swimmer who competes in a Swimming NZ Member Club or Region (or higher) event sanctioned by Swimming NZ or a Regional Association and which is on the annual national, inter-Zonal or Regional competitive calendar (this category includes Elite HP Swimmers and excludes “Learn to Swim” swimmers); and/or
 - ii. coach of the Clubs or coaches of Elite HP Swimmers; and/or
 - iii. Regionally or higher qualified technical officials and/or
 - iv. Comet Swimming Club Incorporated Life Members; and/or
 - v. interested persons who do not come within any of Clauses 6.1b i, ii, iii or iv, including, but not limited to: non-competitive swimmers; learn to swim swimmers; and social members.

6.2 Members must pay all Amounts due to Comet Swimming Club Incorporated and Swimming NZ before being eligible to participate in the events described in Clause 6.1b.i.

6.3 Comet Swimming Club Incorporated Associates are any person described in Clause 6.1b.ii, iii, iv or v or any Elite HP Swimmer who:

- a. is not a member of a Member Club; and
- b. has designated Comet Swimming Club Incorporated as the swimming club to which they are aligned; and
- c. is a member of Swimming NZ.

6.4 If a Comet Swimming Club Incorporated Associate becomes a member of a Member Club or of a swimming club which is a member of a Regional Association other than Comet Swimming Club Incorporated, they are no longer a Comet Swimming Club Incorporated Associate.

6.5 Comet Swimming Club Incorporated Associates must pay Amounts levied by Swimming NZ or by Comet Swimming Club Incorporated.

6.6 Comet Swimming Club Incorporated must determine actual membership at least annually including whether a swimming club or Comet Swimming Club Incorporated Associate continues to satisfy the requirements to be a Member or a Comet Swimming Club Incorporated Associate.

6.7 Comet Swimming Club Incorporated must collect and provide to Swimming NZ up to date details of its Members and Comet Swimming Club Incorporated Associates as required by the Swimming NZ constitution for the Database.

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 Comet Swimming Club Incorporated and where applicable those of Swimming NZ and FINA;
- b. must pay all Amounts imposed on them by Comet Swimming Club Incorporated and Swimming NZ;

- 7.2 A Member ceases to be a member of Comet Swimming Club Incorporated:
- a. by written agreement with, or written resignation delivered to, Comet Swimming Club Incorporated;
 - b. upon expulsion from membership;
 - c. if no longer eligible to be a Member under Clause 6.
- 7.3 A Member disobeying any rule or failing to give effect to any decision of Comet Swimming Club Incorporated, 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 Comet Swimming Club Incorporated) which the Board considers brings or may bring the Sport or Comet Swimming Club Incorporated into disrepute and/or creates exposure to risk for Comet Swimming Club Incorporated or if a Member fails to comply with any sanction imposed by Swimming NZ or Comet Swimming Club Incorporated, 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 transfer of membership of a Member between Member Clubs shall be effective once approved in writing by the two Member Clubs involved.
- 7.6 Any Member under suspension, or awaiting a hearing for an offence capable of having a period of suspension imposed, is ineligible for transfer.

Section Three: Governance

8. Board Composition

- 8.1 The Board comprises no less than six persons and no more than ten persons.
- 8.2 The following persons are not eligible to be a Board member:
- a. an employee of a Member Club, a Regional Association or Swimming NZ; and
 - b. a person who is a member of the board of Swimming NZ, or a Regional Association.
- 8.3 All Board members are elected by Members at an AGM;
- 8.4 Notwithstanding anything else in this Constitution, each Member is entitled to one vote for the election of each elected Board member.
- 8.5 At least 14 days prior to the AGM, the Board shall give written notice to Members calling for nominations for Board members.
- 8.6 In relation to the term of office of a Board member:
- a. A term of office is for one year;
 - b. except where a term of office otherwise ends it expires at the conclusion of the next AGM.

- 8.7 At the first Board meeting after the AGM, the Board shall elect a Chair, a deputy Chair, Secretary and Treasurer. The Chair shall chair all Board meetings at which he or she is present and in the Chair's absence the deputy Chair shall take that role.
- 8.8 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 being granted leave of absence by the Board;
- 8.9 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 Comet Swimming Club Incorporated and the exercise of all powers of Comet Swimming Club Incorporated (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 Comet Swimming Club Incorporated and to provide good governance to Comet Swimming Club Incorporated including through the following:
- a. addressing the ongoing viability and sustainability of Comet Swimming Club Incorporated;
 - b. monitoring regulatory compliance for Comet Swimming Club Incorporated;
 - c. establishing, reviewing, and monitoring policies to guide and govern Comet Swimming Club Incorporated;
 - d. fostering interaction and communication across and within Comet Swimming Club Incorporated, Regional Associations and Members and with Comet Swimming Club Incorporated Associates;
 - e. adopting and communicating a continual best practice performance culture;
 - f. preparing an annual report and procuring an annual statement of accounts.
- 9.3 The quorum for a Board meeting is five Board members.

- 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 should 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 are to be attended in person;
 - 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 three 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 Comet Swimming Club Incorporated has of a Board member;
 - i. the Board must at periods of not more than three years review all Comet Swimming Club Incorporated policies; and
- 9.5 The Board may establish sub-committees with functions, processes and protocols as determined by the Board.

Section Four: Meetings, Elections and Voting

10. General Meetings

- 10.1 A GM of Comet Swimming Club Incorporated 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 Comet Swimming Club Incorporated 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 Comet Swimming Club Incorporated 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 formed if the Members present hold not less than 10 votes as determined in Clause 12.1 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, the GM fails for lack of quorum but 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 Comet Swimming Club Incorporated 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 (or process in the case of Clause 10.4 g and h) of a GM must be given by Comet Swimming Club Incorporated not less than 14 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 Comet Swimming Club Incorporated not less than 7 days prior to the date of the GM.
- 11.4 Any notice to be given by Comet Swimming Club Incorporated 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.

12. Elections and Voting

- 12.1 Members entitled to vote at a GM recorded on the Database for that Comet Swimming Club Incorporated 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 Comet Swimming Club Incorporated or any Regional Association or Swimming NZ for the Financial Year referred are more than 6 months overdue when 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 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 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 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.
- 12.3 Life Members, Comet Swimming Club Incorporated 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 Comet Swimming Club Incorporated finances.
- 13.2 Comet Swimming Club Incorporated's funds may be invested in such manner as determined by the Board.

14. Common Seal

- 14.1 Comet Swimming Club Incorporated 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 Comet Swimming Club, 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 Comet Swimming Club Incorporated 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 Comet Swimming Club Incorporated Members, involving an important activity or responsibility of Comet Swimming Club Incorporated 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 Comet Swimming Club Incorporated that it must be addressed; and
 - b. appeals by a Member against a decision of Comet Swimming Club Incorporated 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, Comet Swimming Club Incorporated 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 Comet Swimming Club Incorporated may be voluntarily liquidated if, at a GM a Special Resolution is passed requiring Comet Swimming Club Incorporated 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 Comet Swimming Club Incorporated, there remains after the satisfaction of all Comet Swimming Club Incorporated 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 Comet Swimming Club Incorporated debts and liabilities, Comet Swimming Club Incorporated 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 Member or Board member or any person associated with a Member or Board member shall participate in or materially influence any decision made by Comet Swimming Club Incorporated 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.
- 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 Comet Swimming Club Incorporated or the Members or any Comet Swimming Club Incorporated 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 Comet Swimming Club Incorporated 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 Comet Swimming Club Incorporated 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 Comet Swimming Club Incorporated 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 ten 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 Comet Swimming Club Incorporated Life Members on the date of adoption of this constitution shall continue as Comet Swimming Club Incorporated Life Members under this constitution.
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