



Constitution of
Water Safety New Zealand Incorporated



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CONSTITUTION OF WATER SAFETY NEW ZEALAND INCORPORATED

PART I – OBJECTS

1. NAME

The name shall be **WATER SAFETY NEW ZEALAND INCORPORATED**, hereinafter referred to as "*Water Safety NZ*".

2. PURPOSE

To promote, enable and enhance education in water safety for the benefit of the community of peoples in Aotearoa New Zealand.

3. OBJECT

3.1 Primary Objective003A

To prevent injury and drowning through water safety education.

3.2 Ancillary Objectives:

Without detracting or limiting from the Primary Objective to:

- (a) Be recognised as the leader for research, investigation, analysis and allocation of resources for water safety education and awareness purpose to the community.
- (b) Be the recognised leader in the effective advocacy for water safety education and awareness.
- (c) Be a leader in the co-ordination, communication and provision of quality water safety education and awareness.
- (d) Develop and maintain collaborative relationships to enhance the development, delivery and experience of water safety education and awareness.
- (e) Be the leading water safety education knowledge base.
- (f) Increase the effective pool of resources available for water safety education and awareness.
- (g) Communicate water safety education and awareness to the community.

- (h) Raise funds and seek financial and other support to enhance the ability to deliver and promote water safety in New Zealand.
- (i) To be involved in any other activities related to water safety.

PART II – MEMBERSHIP

4. MEMBERSHIP

- 4.1 Water Safety NZ is a voluntary association of Members of various categories combined to advance the purpose and object of Water Safety NZ.
- 4.2 The categories of Membership of Water Safety NZ are:
 - (a) Full Members as described in clause 5;
 - (b) Associate Members as described in clause 6;
- 4.3 Government agencies are eligible to apply to become Full Members or Associate Members.
- 4.4 Any applicant for Membership must confirm commitment to the object and purpose of Water Safety NZ.
- 4.5 No member / associate / affiliate of any Member of Water Safety NZ is eligible to apply for or become a member of Water Safety NZ in their own right unless they are in themselves a national body whether incorporated or otherwise.

5. FULL MEMBERS

- 5.1 Any national association, national organisation, national committee, including public entities whether incorporated or otherwise, who can demonstrate an active national coverage, with a defined and prominent water safety educational role is eligible to apply to become a Full Member. The national association, organisation, committee or body must be a recognised national representative body who takes an active leading role in water safety education within their sector.
- 5.2 The Board has the exclusive power to admit or to determine membership of this class.

6. ASSOCIATE MEMBERS

- 6.1 Associate membership is available for organisations that have an interest in water safety. Associate Members shall have such privileges and obligations of membership to Water Safety NZ as may be determined by Water Safety NZ from time to time.
- 6.2 The Board has the exclusive power to admit or to determine membership of this class.

7. MEMBERS RIGHTS & OBLIGATIONS

- 7.1 Full Members shall have all privileges, rights and obligations of Membership of Water Safety NZ as are contained in this Constitution, and any Rules and Regulations made pursuant to the Constitution. Full Members have voting rights at general meetings of Water Safety NZ in accordance with the voting provisions of the Constitution and any Rules and Regulations made under it.
- 7.2 Associate Members shall have such privileges, rights and obligations of membership with Water Safety NZ as are set out in this Constitution and in any Rules and Regulations made under the Constitution. Associate Members have no voting right at general or special meetings.
- 7.3 This Constitution and any Rules and Regulations made under the Constitution constitute a contract between each of the Members and Water Safety NZ. The Members agree to be bound by this Constitution and any Rules and Regulations made under the Constitution. Members agree to comply with and observe any determinations, resolutions or policies which may be made or passed by the Board from time to time.
- 7.4 Members of Water Safety NZ acknowledge and agree that this Constitution and any Rules and Regulations made under this Constitution are necessary and reasonable for the promotion of the object and purpose of Water Safety NZ.

8. APPLICATION FOR MEMBERSHIP

- 8.1 To become a Full Member or Associate Member of Water Safety NZ, the applicant must deliver to the Board a written request for membership supported by sufficient detail to establish its credentials for the membership category it wishes to attain.
- 8.2 Applicants for membership shall be advised of the outcome of their application and, if successful, shall become members of the appropriate membership class from the date of acceptance by the Board. There shall be no right of appeal to the Board or otherwise in respect of any application which the Board declines.

9. RESIGNATION

- 9.1 Any Member wishing to resign from Water Safety NZ may do so upon giving written notice to the Executive Director of Water Safety NZ at the office of Water Safety NZ. Resignation shall be without prejudice to any matters outstanding between the resigning member and Water Safety NZ that existed or were in progress prior to the resignation being given and received.
- 9.2 If a Member resigns from its membership of Water Safety NZ the written approval of the Board is to be obtained, which shall not be unreasonably withheld, and shall be on such additional terms (if any) as may be set out in that written approval.

10. EXPULSION & SUSPENSION

- 10.1 A member may be expelled from Water Safety NZ if they are deemed to have conducted their affairs or acted in a manner detrimental to the purpose or object of this Constitution or any other clause or sub clause of the Constitution of Water Safety NZ or any Rules and Regulations made under the Constitution.
- 10.2 Full and Associate Membership is limited to active participants. Non-attendance by Full and Associate Membership to Water Safety NZ meetings without apology may result in notification being sent to the member asking if they wish to continue their membership of Water Safety NZ. After two consecutive unattended meetings without adequate apology, the Board may expel the member in accordance with clause 10.1 and may suspend the member pending a decision on expulsion.
- 10.3 For the avoidance of doubt, and for the purposes of this clause 10, the principles of natural justice require the Board to:
- (a) advise the member concerned of the pending action;
 - (b) advise the member concerned of any supporting material relating to expulsion or suspension;
 - (c) afford the member concerned an opportunity to be heard in person or by a representative or in writing (at the member's election) if the member desires, before a decision on suspension is taken.

The members of the Board considering whether or not to expel or suspend the member are obliged to approach the question free from bias and without any presumption for or against expulsion or suspension in any particular case. No Board Member with a conflict of interest in relation to the issue may participate in the discussion or the determination of the question of whether or not to expel or suspend any member.

11. FEES

- 11.1 Members shall pay such annual or other fees and levies as may be approved and prescribed from time to time by a resolution of a general meeting of Water Safety NZ, such resolution to be passed by a simple majority of those Full Members present and voting at the meeting.
- 11.2 Different fees may be fixed for different classes of membership provided.

12. REGISTER OF MEMBERS

- 12.1 Water Safety NZ, through its Executive Director or otherwise, shall keep and maintain a register of Members by class of Member and, where appropriate, Delegates for Members

who are corporate bodies. The Members' register shall contain the full name, address, other contact details and class of Membership of the Member, as well as similar details of Members' Delegates.

- 12.2 All Members and their Delegates shall provide written notice of any change to the details recorded in the register pursuant to clause 12.1 to Water Safety NZ within 30 days of such change occurring or becoming aware of such change.
- 12.3 Water Safety NZ and its Members shall, in collecting and using any personal information for the register or otherwise, seek the consent of the individuals concerned wherever appropriate, and at all times comply with the provisions of the Privacy Act 1993 or any legislation passed in amendment or substitution for that.

13. REPRESENTATION OF MEMBERS AT MEETINGS

13.1 Delegates

- (a) Each Member shall be entitled to appoint one Delegate to represent the member at any meeting of Water Safety NZ. Any Delegate of any Full Member must hold a current active executive or board or committee position of the Member they represent. The appointment of Delegates is to be in writing and presented to the Executive Director at least forty two (42) days before the Annual General Meeting. Delegates may be changed during the year by notice in writing.
- (b) If any Delegate appointed in accordance with the preceding sub clause is unable to attend any meeting of Water Safety NZ, the member shall have the right to appoint an alternate Delegate. Such alternate Delegate must hold a similar position as specified in the preceding sub clause and shall be able to attend such meeting as if he or she were originally appointed by the member provided that the substitute Delegate may be required to produce to Water Safety NZ at the meeting written notice signed by the member of his or her appointment as an alternate Delegate for that meeting.
- (c) Delegates of Full Members may vote on behalf of the member they represent at any meeting of Water Safety NZ.

PART III – POWERS

14. POWERS

- 14.1 In pursuance of its purpose and object, Water Safety NZ has the power to:

- (a) determine, implement and enforce disciplinary and other regulatory procedures for its members and their respective members including imposing sanctions and suspension of membership;
- (b) be a member, affiliate to, and/or be associated in any other way with any organisation which has objects which are similar in whole or in part with the Objects of Water Safety NZ and/or internationally;
- (c) establish a Board;
- (d) do all or any other acts or things which further the Objects of Water Safety NZ.

PART IV – BOARD & OFFICERS

15. THE BOARD

- 15.1 There shall be a Board of Water Safety NZ to be known henceforth as “the Board”.
- 15.2 The role of the Board is to provide governance oversight of Water Safety NZ to ensure that Water Safety NZ promotes, and to the extent possible, attains the purpose and object of Water Safety NZ.
- 15.3 The Board shall at all times recognise and respect its governance role as being distinct from the management of Water Safety NZ and act in the interests of Water Safety NZ and, to the extent comparable with that primary duty, in the interests of the community, at all times. The governance procedures are to be specified in the Water Safety NZ Rules and Regulations Manual.
- 15.4 The Board’s function and role is to:
- (a) develop and monitor the strategic direction of Water Safety NZ;
 - (b) approve and review annual and monthly financial budgets, statements of performance and position;
 - (c) formulate and monitor leader initiatives;
 - (d) monitor and review the general performance of Water Safety NZ;
 - (e) appoint the Executive Director of Water Safety NZ, review his/her performance, fix and review his/her remuneration and terms of employment, and discipline/dismiss the Executive Director;
 - (f) form and disband such committees as the Board considers necessary from time to time, and appoint, replace, remove and amend persons or terms of reference in respect of its committees;

- (g) appoint an independent Project Review Team to deliver to the New Zealand Lottery Grants Board, on an annual or other agreed basis, a co-ordinated and consolidated funding application for water safety education throughout New Zealand; and
- (h) do such other things as may appear to the Board necessary and desirable to carry out its function, and further the purpose and object of Water Safety NZ and, in particular, to exercise the powers set out in clause 15.10.

15.5 *Board Membership*

- (a) The Board shall comprise:
 - (i) six elected persons (see clause 15.5(c)) from whom a Chairperson shall be elected (see clause 15.5(d));
 - (ii) up to two Members appointed by the Board (see clause 15.5(e); and
 - (iii) the Executive Director (ex officio) who is a non-voting Member.
- (b) No Employee or Contractor of Water Safety NZ or its Members shall be eligible to be a Board Member.
- (c) The Elected Board Members (comprising six persons referred to in clause 15.5(a) above) shall be elected by a majority of Delegates entitled to vote at an Annual General Meeting in accordance with this Constitution. Elected Members shall hold office for a term of three years.

At the expiration of their term, elected members shall be eligible for re-election. To ensure both continuity and rotation, two of the six elected members (not including the chairperson) from the Annual General Meeting in 2009 shall retire (but be eligible for re-election) at the Annual General Meeting 2010. A further two members from the Annual General Meeting in 2009 shall retire (but be eligible for re-election) at the Annual General Meeting 2011 with the remaining two members elected at the Annual General Meeting in 2009 (including the chairman) holding office until 2012 when their three-year appointments expire. Thereafter, the elected members of the Board will retire respectively at the expiration of their three-year terms.

- (d) The Elected Board Members shall elect one of their Members to be Chairperson of the Board following their election at the Annual General Meeting pursuant to the preceding clause. If the Chairperson is unable to carry out his/her duties due to absence, illness, death or for any other reason there is a vacancy, the Board may appoint or elect another of their Members to be Chairperson. Subject to the foregoing, a Chairperson selected by the elected Members of the Board holds office until the next Annual General Meeting of Water Safety NZ.

- (e) The Elected Members of the Board may appoint or co-opt, for such period and for such purposes as they may consider appropriate, up to two additional persons who shall thereafter become Board Members. These additional Members shall hold office subject to the terms of their appointment but, in any event, shall hold office only up to the next Annual General Meeting of Water Safety NZ.
- (f) Nominations for elected Board Members may be made by any Member in the prescribed form and must be received by the Executive Director at the registered office of Water Safety NZ at least forty two (42) days before the Annual General Meeting.

15.6 Board Members shall:

- (a) act only in the interest and further the purpose and object of Water Safety NZ;
- (b) attend Board meetings and meetings of Water Safety NZ;
- (c) be positive and enthusiastic contributors to Water Safety NZ; and
- (d) undertake such reasonable responsibilities for the Board and/or Water Safety NZ as required from time to time.

15.7 Board Members may hold office as Board Members and also hold office in a Member organisation during their tenure as Board Members except that at all times when acting as a Board Member their duty to Water Safety NZ takes precedence over any other role and subject in all things to compliance with Water Safety NZ's conflict of interest protocols, specified in clause 27.

15.8 All Board Members have the right to attend, speak and vote at all Board meetings with the exception of the Executive Director who has no voting rights, subject to the conflict of interest provisions specified in clause 27.

15.9 *Vacancies on the Board*

- (a) Subject to clause 15.9(b), any vacancy on the Board of an Elected or appointed Member, which occurs during the Board Member's term of office, may be filled by the Board.
- (b) The term of office for a person appointed as a Board Member to fill a vacancy under the preceding clause shall expire at the conclusion of the Annual General Meeting following their appointment. Thereafter, the vacancy shall be determined in accordance with this Constitution.

15.10 *Board Powers*

In carrying out its function and role as set out in this Constitution, the Board shall have the powers (on behalf of Water Safety NZ and in Water Safety NZs name) in pursuance of its purpose and object to:

- (a) purchase, lease, hire or otherwise acquire and hold real and personal property rights and privileges;
- (b) control and raise money, including to borrow, invest or advance monies and to secure the payment of such by way of mortgage or charge over all or part of any of its real and personal property;
- (c) sell, lease, mortgage, charge or otherwise dispose of any property of Water Safety NZ, and to grant such rights and privileges of such property as it considers appropriate;
- (d) determine, raise and receive money by subscriptions, fees, levies, donations, government funding or otherwise;
- (e) determine regulations, policies and procedures for the governance, management and operations of Water Safety NZ;
- (f) employ, determine the terms and conditions of employment, for the Executive Director of the organisation (by whatever name such person may be titled);
- (g) employ, determine and terminate staff, and engage the services of personnel and organisations to work for and with Water Safety NZ;
- (h) engage, determine and terminate the services of personnel and organisations to advise Water Safety NZ;
- (i) contract, engage or otherwise make arrangements with any person or organisation to fulfil the Objects of Water Safety NZ;
- (j) establish purchase or otherwise acquire all or any part of the property, assets and liabilities of any one or more companies, institutions, incorporated societies or organisations whose activities or objects are similar to those of Water Safety NZ, or where such purchase or acquisition will further the Objects of Water Safety NZ;
- (k) delegate, in writing, any of its powers in clause 15.10 generally or on specific terms to any employee or committee or person/persons;
- (l) at its sole discretion, have the power to admit to all classes of Membership;
- (m) appoint and administer the Judicial Committee.

15.11 *Meetings of the Board*

- (a) The Board shall meet at such places and times, and in such manner, as it shall be determined.
- (b) The Chairperson of the Board shall chair Board meetings, or in his/her absence, the Chairperson shall be any other Board Member as determined by the Board.
- (c) A resolution in writing, signed or assented to by facsimile or other form of visible electronic communication by all the Board Members shall be as valid and effectual as if it had been passed at a meeting of Board Members. Any such resolution may consist of several documents in like form each signed or assented to by one or more Board Members.
- (d) A meeting of the Board may be held where one or more of the Board Members is not physically present at the meeting, provided that:
 - (i) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously whether by means of telephone or other form of communication;
 - (ii) notice of the meeting is given to all the Board Members in accordance with the procedures agreed by the Board;
 - (iii) if a failure in communications prevents subclause (i) from being satisfied and such failure results in quorum not being met, the meeting shall be suspended until condition (i) is satisfied again. If such condition is not satisfied within 15 minutes from the interruption of the meeting, the meeting shall be deemed to have terminated or adjourned.
- (e) A Board Member who is absent from two consecutive Board Meetings, without prior approval of the Board or without reasonable explanation, shall be deemed to have resigned from the Board.

15.12 *Voting at Board Meetings*

- (a) Each Board Member shall have one vote at Board Meetings with the exception of the Executive Director who has no voting rights. Except where otherwise required in this Constitution, all decisions and resolutions of the Board shall be determined by a simple majority of Board Members.
- (b) Voting may be verbal, by show of hands, or secret ballot (if requested by any Board Member).
- (c) The Chairperson shall have a deliberative and casting vote.

15.13 *Quorum for Board Meetings:* There shall be no less than four (4) Board Members present at a Board Meeting to constitute a quorum. A quorum is constituted by voting members only.

15.14 *Removal of Board Member*

- (a) The Members in a Special General Meeting called for this purpose may, by resolution passed by a simple majority, remove any Elected or Appointed Board Member before the expiration of their term of office.
- (b) Where the removed Board Member was an Appointed Board Member, the Board may appoint another person in their place to hold office until the expiration of the term of the Board Member which s/he is replacing. Where that removed Board Member was an Elected Board Member, the vacancy shall be filled in accordance with clause 15.5(c).
- (c) Upon the Executive Director receiving a request for a Special General Meeting for the purposes of removing a Board Member, s/he shall send notice to the Board Member concerned, in addition to the Board and the Members.
- (d) Following notification under the preceding clause and before voting on the resolution to remove a Board Member, the Board Member affected by the proposed resolution shall be given the opportunity prior to and at the Special General Meeting to make submissions in writing and/or verbally to the Board, and the Members about the proposed resolution.

15.15 *Removal or Resignation of all Elected and Appointed Board Members*

- (a) In the event of the removal, or the resignation of all Elected and Appointed Board Members, the Executive Director shall call a Special General Meeting to elect a replacement Board.
- (b) Such a Board shall stay in office until the conclusion of the first Annual General Meeting following its election.

15.16 *Removal of Board Members by the Board*

- (a) If the Board determines by not less than a two-thirds majority of Board Members that an Elected or Additional Board Member has failed to, or is unable to make a worthwhile contribution to the Board as determined by the Board under the expectations of Board Members, then such Board Member shall, upon the passing of such resolution by the Board, be removed from his or her Board position.
- (b) The provisions for replacement of Board Members in clause 15.9 shall then apply.

16. EXECUTIVE DIRECTOR

16.1 There shall be an Executive Director of Water Safety NZ, appointed by the Board.

PART V – GENERAL MEETINGS

17. GENERAL MEETINGS

- 17.1 A General Meeting is the forum which represents the Members of Water Safety NZ.
- 17.2 A General Meeting shall be a meeting of the Members as determined by these clauses.
- 17.3 A quorum for General Meetings of Water Safety NZ shall consist of not less than two thirds of the Full Members of Water Safety NZ.
- 17.4 The Members shall meet by way of a General Meeting at least once annually which shall be at the Annual General Meeting. They may also meet at any other time in a Special General Meeting called under this Constitution. All references to a General Meeting in this Constitution include an Annual General Meeting or a Special General Meeting.
- 17.5 The Chairperson of a General Meeting shall be the Chairperson of the Board or, in the absence of the Chairperson, Delegates can nominate and appoint a Chairperson from persons present and entitled to vote at the meeting.
- 17.6 For the purposes of speaking and voting at General Meetings, Members not being natural persons do so through their Delegates in accordance with this Constitution.
- 17.7 Board Members are expected to attend General Meetings and are entitled to speak but have no right to vote unless the Board Member is a Delegate.
- 17.8 *Powers of General Meeting:* The Members through their Delegates in a General Meeting shall act in accordance with the objects and for the mutual and collective benefit of Water Safety NZ, the Members, and water safety generally. Except as otherwise specifically provided for in this Constitution, the Members in a General Meeting shall have power to:
- (a) provide views and give input into the major strategic directions of Water Safety NZ;
 - (b) alter this Constitution;
 - (c) review Water Safety NZ's performance;
 - (d) elect the Elected Board Members;
 - (e) remove Board Members, other than the Executive Director;
 - (f) consider and vote on items notified on the meeting agenda; and

- (g) vote (pursuant to clause 17.17) on whether a General Meeting should proceed despite any irregularity, error or omission or failure to comply with clause 17.9, and/or clause 17.10, 17.11, 17.12, 17.13.

17.9 *Annual General Meeting*

- (a) The Annual General Meeting of Water Safety NZ shall be held no later than four months from the end of each financial year and at such place as the Board may determine from time to time.
- (b) All General Meetings other than the Annual General Meeting shall be Special General Meetings.

17.10 *Notice of Annual General Meeting*

- (a) Not less than ninety (90) days' written notice shall be given by the Executive Director to the Board and Members of:
 - (i) the date and place for the Annual General Meeting;
 - (ii) the closing date for nominations of elections and items of business to be submitted.
- (b) Members shall display, publish or otherwise distribute the notice of meeting to ensure that as many of their individual members as is possible are made aware of the Annual General Meeting.

17.11 *Nominations and agenda items:* Not less than forty two (42) days before the date set for the Annual General Meeting, agenda items (including any proposed alterations to this Constitution) and nominations must be received in writing by the Executive Director from Members and the Board.

17.12 *Agenda and business to be discussed at an Annual General Meeting*

- (a) The business to be discussed at the Annual General Meetings includes:
 - (i) minutes of the previous Annual General Meeting;
 - (ii) receiving the Annual Report of Water Safety NZ. Such report to include comment as to progress against the predetermined medium to long term strategy of Water Safety NZ;
 - (iii) receiving the audited financial statements of Water Safety NZ;
 - (iv) where appropriate, electing Board Members;

- (v) a review and confirmation of the medium to long term strategy of Water Safety NZ at least once every third year commencing from the Annual General Meeting immediately following the adoption of this amended Constitution;
- (b) An agenda containing the business to be discussed at an Annual General Meeting shall be forwarded to the Board and Members no later than twenty one (21) days before the date of the meeting.

17.13 *Special General Meetings:* A Special General Meeting of Water Safety NZ may be convened at any time on written requisition to the Executive Director signed by not less than one third of Full Members or the majority of the Board. A Special General Meeting must be held within twenty eight (28) days of notice being received. Twenty one (21) clear days' written notice of such Special General Meeting shall be given by the Executive Director to Members, and such notice shall specify the general nature of any business to be transacted.

17.14 No meeting shall be invalidated solely by virtue of the fact that any Member or Delegate has not received the requisite formal notice.

17.15 The persons entitled to be present at General Meetings of Water Safety NZ are:

- (a) Delegates of Member Organisations;
- (b) Members of the Board.

17.16 *Voting at the General Meetings*

- (a) The only persons who shall be entitled to a vote on any matter of business at a General Meeting of Water Safety NZ shall be Delegates of Full Members entitled to vote at such meeting or meetings in accordance with the provisions in this Constitution.
- (b) All voting on any question or matter of business at a meeting shall be done by voice vote or a show of hands provided that any voting Members may demand a poll which shall be immediately taken in a manner determined by the Chairperson. In the case of any equality of votes, the Chairperson of the meeting shall have a casting vote and shall (if a delegate) also have a deliberative vote. Except where otherwise specifically provided, where there is a requirement for a particular number of percentage of votes, the number of the percentage shall be calculated on the basis of the number of valid votes recorded and not on the number of Delegates present or eligible to vote.
- (c) All elections shall be carried out by written secret ballot. All voting papers shall be collected and counted by two (2) scrutineers to be appointed by the meeting who shall report the result of the election to the Chairperson.

- (d) For written notices of motion, remits, recommendations and motions before the meeting the decision shall be reached by voice vote or a show of hands. The Chairperson shall read the motion before the vote and shall declare the motion either accepted or rejected after he or she has called for such vote. A show of hands or a written secret ballot can be called for by any voting Delegate.

17.17 *Irregularity, error or omission:* Any irregularity, error or omission in notices, agendas and relevant papers for General Meetings, or the omission to give notice within the required timeframe, or the omission to give notice to Members to whom notice is required to be given and any other error in the organisation of a General Meeting shall not invalidate the General Meeting nor prevent the General Meeting from considering the business of the meeting provided that:

- (a) the Chairperson in his or her discretion determines that it is still appropriate for the meeting to proceed despite the irregularity, error or omission; and
- (b) a motion to proceed is put to the meeting and a majority of votes cast is obtained in favour of the motion to proceed.

PART VI – FINANCIAL MATTERS

18. FINANCIAL YEAR

18.1 The financial year of Water Safety NZ shall commence on 1 July and end on 30 June in the next year, and may be altered from time to time by the Board.

19. ANNUAL REPORT

19.1 The Board shall prepare an annual report for presentation to the Annual General Meeting, which contains:

- (a) the audited annual financial statements as required under the Act; and
- (b) an annual report of the year's activities,

(Collectively known as “the Annual Report”).

19.2 The annual financial statement shall be audited by an auditor who shall be a practising chartered accountant. The auditor shall be appointed by the Board.

20. APPLICATION OF INCOME

20.1 The income and property of Water Safety NZ shall be applied solely towards the promotion of the purpose and object of Water Safety NZ.

20.2 Except as provided in this Constitution:

- (a) no portion of the income or property of Water Safety NZ shall be paid or transferred, directly or indirectly by way of dividend, bonus, benefit or otherwise to any Member, Board Member, officer or employee; and
- (b) no remuneration or other benefit in money or money's worth shall be paid or given by Water Safety NZ to any Member, Board Member, officer or employee.

20.3 Nothing in clause 20.2 shall prevent payment in good faith of or to any Member, Board Member, officer or employee for:

- (a) any services actually rendered to Water Safety NZ, whether as an employee or otherwise;
- (b) goods supplied to Water Safety NZ in the ordinary and usual course of operation;
- (c) interest on money borrowed from a Member, Board Member or officer;
- (d) fair market rent for premises let by any Member, Board Member or officer to Water Safety NZ; or
- (e) reimbursement of any actual and reasonable out-of-pocket expenses incurred by a Member, Board Member or officer on behalf of Water Safety NZ for any other reason and authorised by Board policy,

provided that any such payment shall not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction.

21. COMMON SEAL

21.1 Water Safety NZ shall continue to have a common seal.

21.2 The common seal shall be kept in the custody of the Executive Director or such other person as appointed by the Board. The common seal should only be used as directed by the Board, and if affixed to documents, this shall, only occur in the presence of and accompanied by the signature of the Chairperson and the Executive Director or, in the event that one of those persons is unavailable, then by the remaining person and another Board Member.

PART VII – DISCIPLINE OF MEMBERS

22. JUDICIAL COMMITTEE

22.1 Judicial Committee

- (a) The Board may commence investigatory or disciplinary proceedings (“Proceedings”) against a Member “Defendant” by referring any matter described in clause 22 to the Judicial Committee in the manner set out in this Constitution and the Rules and Regulations of Water Safety NZ.
- (b) The Judicial Committee shall consist of not less than three (3) persons appointed annually by the Board. The Board shall appoint a Chairperson from one of the members appointed to the Judicial Committee. No Board Member is eligible to sit on the Judicial Committee.
- (c) Any referral to the Judicial Committee shall be made and determined in accordance with the Constitution and the Rules and Regulations of Water Safety NZ.
- (d) The Judicial Committee shall conduct its proceedings as set out in this Constitution and the Rules and Regulations of Water Safety NZ.
- (e) Apart from any rights that exist in general law, there is no right of appeal from the findings of the Judicial Committee.
- (f) The Judicial Committee shall be bound by the rules of natural justice. The provisions of clause 10.3 apply to the Judicial Committee as if references to the Board were to the Judicial Committee.

22.2 Matters which may be referred to Judicial Committee.

Without limiting the Board’s powers under clause 15.10, the following matters may be referred for investigation and determination by the Judicial Committee at the sole discretion of the Board:

An allegation that a Full or Associate Member has:

- (a) Breached, failed, refused or neglected to comply with a provision of this Constitution, the Regulations, any other policy, resolution or determination of a General Meeting;
or
- (b) Acted in a manner unbecoming of a Member or prejudicial to the Objects and interests of Water Safety NZ; or
- (c) Brought Water Safety NZ into disrepute.

And any such Member (“Defendant”) will be subject to the jurisdiction, procedures, penalties and mechanisms of Water Safety NZ set out in this Constitution and the Rules and Regulations of Water Safety NZ.

22.3 In any case where the Judicial Committee upholds any complaint pursuant to this clause 22, the Judicial Committee may, in the name of and on behalf of Water Safety NZ,

- (a) expel the Member; or
- (b) suspend the Member’s membership, in whole or in part and on such terms and for such period as seems to the Committee appropriate; or
- (c) resolve the complaint in such other, lesser way (including admonition, censure, requiring an apology, or requiring an undertaking to cease from doing something) as may (in the opinion of the Committee) best advance the purpose, objects and interests of Water Safety NZ,

PROVIDED however, before reaching any final determination, the Judicial Committee shall first

- (a) provide the Member with its provisional conclusions as to the complaint and any outcome, in writing, with reasons; and
- (b) provide the Member with an opportunity to comment thereon; and
- (c) consider any such feedback.

PART VIII – MISCELLANEOUS

23. ALTERATION TO THE CONSTITUTION

23.1 Subject to clause 25.2 this Constitution may only be amended, added to or repealed by resolution of a two-thirds majority vote of those entitled to vote at a General Meeting.

23.2 Notice of an intention to alter this Constitution must be given by a Member, a Board Member or the Executive Director no later than forty two (42) days prior to the General Meeting at which the alterations are to be considered.

24. REGULATIONS

24.1 The Board may determine, revoke and amend such Rules and Regulations as it considers necessary or desirable. Such Rules and Regulations must be consistent with the Object and Purpose of this Constitution and any directives given by General Meeting.

24.2 All Rules and Regulations shall be binding on Water Safety NZ and its Members.

24.3 All Rules and Regulations and any amendments to them shall be advised to all Members in writing or electronically as approved by the Board.

24.4 Water Safety NZ Policies which, prior to the commencement of this Constitution, were in force shall (unless otherwise revoked) be deemed to continue in force as Rules until revoked or otherwise altered by the Board, provided that, to the extent of any inconsistency between Water Safety NZ's existing Policies/Rules and this Constitution, this Constitution shall prevail.

25. LIQUIDATION

25.1 Water Safety NZ may voluntarily be put into liquidation if:

- (a) a two-thirds majority vote of those present and entitled to vote at a General Meeting passes a resolution appointing a liquidator; and
- (b) such resolution is confirmed in a subsequent Special General Meeting, called for that purpose, and held not later than thirty (30) working days after the date on which the resolution was passed.

25.2 No alteration may be made to this Constitution which adversely affects the charitable status of Water Safety NZ, nor which interferes with its charitable purpose or object, nor which affects its ability to register with the Charities Commission, or remain so registered, nor to maintain exempt tax status. No alteration to clauses 2, 3, 23, or this clause 25 shall have effect unless approved by the Inland Revenue Department or the Charities Commission or such other body regulating charities in New Zealand for the time being. This clause shall not be removed and shall be included in any Constitution replacing this Constitution.

25.3 Upon appointment of a liquidator, the relevant provisions of the Act shall apply to the liquidation of Water Safety NZ.

25.4 Any surplus assets after payment of all costs, debts and liabilities shall, subject to any trust effecting the same, be disposed of by distributing, giving or transferring them to some body or bodies in New Zealand having objects similar to the object of Water Safety NZ.

25.5 The body or bodies referred to in the preceding clause must prohibit the distribution of its or their income and property among its or their members to at least the same or greater an extent as is imposed under this Constitution. The body or bodies shall not be carried on for profit and shall have an approved tax exemption/charitable registration.

25.6 The body or bodies in clauses 25 and 28.1 shall be determined by the Members in a General Meeting at or before the time of liquidation. If the Members are unable to decide, the body or bodies shall be determined by the liquidator.

26. INDEMNITY

26.1 Water Safety NZ shall indemnify its Board Members, former Board Members, officers, former officers, employees and former employees and agents against all damages and costs (including legal costs) for which any such Board Member, former Board Member, officer, former officer, employee and former employee and agent may be or become liable to any third party as a result of any act or omission, except wilful misconduct:

- (a) in the case of a Board Member, former Board Member, officer, former officer, performed or made whilst acting on behalf of and with the authority, express or implied, of the Board; and
- (b) in the case of an employee or former employee or agent performed or made in the course of and within the scope of their employment or agency by Water Safety NZ.

26.2 The Board may effect contracts of insurance in relation to this indemnity to the extent lawfully permitted.

27. CONFLICTS OF INTEREST

27.1 All members are bound by the following provisions of this clause. “*Interest*” includes financial, personal or professional interests which could directly or indirectly compromise independence or integrity, or impartiality. Family, friendship and financial relationships are obvious examples of where conflicts of interest are likely to arise. Where a reasonable bystander could reasonably perceive a conflict of interest, then that perception of apparent conflict is sufficient to also impugn actions or decisions, and so it is essential to avoid not only actual conflicts of interest but also to avoid potential conflicts of interest. If conflict of interest occurs, disclosure and stepping aside from both the deliberation and decision-making processes are required.

28. WINDING UP

28.1 In the event of the winding up of Water Safety NZ (which shall be carried out in accordance with all legislative requirements) a meeting of Water Safety NZ shall be called for the purpose of disposing of the property of Water Safety NZ which may be donated as directed by such meeting to any charitable educational association or society in New Zealand having objects not opposed to those of Water Safety NZ. No part of the funds of Water Safety NZ shall be used or shall be available to be used for the private pecuniary profit of any member thereof.

29. INTERPRETATION AND MATTERS NOT PROVIDED FOR

29.1 If a dispute arises out of the interpretation of this Constitution or the Rules or Regulations, or any matter arises which is not provided for in this Constitution or the Rules and

Regulations, then such dispute or matter shall be referred in writing to the Board whose decision shall be final and binding. The provisions of clause 10.3 apply to the Board when acting pursuant to clause 29.

- 29.2 Any dispute or matter which the Board is not a complaint or disciplinary matter may be referred by the Board for resolution by the following process:
- (a) by the parties acting in good faith to seek an agreement; or
 - (b) failing agreement in (a), by a party or the parties appointing an independent third person to mediate between them; or
 - (c) failing agreement at such mediation, by arbitration under the Arbitration Act 1996, by giving written notice of such arbitration by a party to the other party and (if not a party) the Board. Such arbitration shall be heard and determined by a single arbitrator to be appointed by the President of the New Zealand Law Society. The procedure for the arbitration shall be determined by the arbitrator. The decision of the arbitrator shall be final and binding.

30. DATE OF COMMENCEMENT OF THE CONSTITUTION

- 30.1 The Constitution (as amended) shall take effect thirty (30) days after it is registered by the Companies Office.

31. DEFINITIONS

The words and phrases used in this Constitution shall mean as follows:

“Act” means the Incorporated Societies Act 1908 and its amendments.

“Annual Report” means the report described under clause 19.

“Annual General Meeting” means the General Meeting held annually as described in clause 17.9.

“Appointed Board Member” means a person appointed as a Board Member under clause 15.5(e).

“Board” means the Board as defined in clause 15.

“Board Members” means the Elected Board Members and the Appointed Board Members elected and appointed, respectively, under clause 15.5.

“Clause” means a clause of this Constitution.

“Contractor” means an individual or body corporate/partnership/society or association that contracts to provide services to Water Safety NZ or members of Water Safety NZ but does not include any employee of any such contractor.

“Defendant” means the Member against whom an allegation is made or an appeal is brought under clause 22.1.

“Delegate” means a person elected to be a representative at a General Meeting under clause 13.

“Employee” means an individual who has an employment agreement with Water Safety NZ or one of its Members.

“Elected Board Member” means a person elected as a Board Member under clause 15.5.

“Executive Director” means the Executive Director/Chief Executive Officer of Water Safety NZ for the time being appointed under clause 16.

“General Meeting” means the Annual General Meeting or a Special General Meeting of Water Safety NZ held under clause 17.

“Intellectual Property” means all rights or goodwill in copyright, business names, names, trade marks (or signs), logos, designs, patents or service marks relating to Water Safety NZ or any event, activity or programme of or conducted, promoted or administered by Water Safety NZ.

“Judicial Committee” means a committee of the Board as set out in clause 22.

“Members” means the Members of Water Safety NZ as described in clause 4, 5 and 6.

“Membership Fee” means any fee or fees payable to Water Safety NZ under clause 11.

“Objects” means the objects of Water Safety NZ described under clause 3.

“Register” means the register of Members specified in clause 12 and includes the register of Delegates.

“Regulations” means the regulations determined under clause 24.

“Water Safety NZ” means Water Safety New Zealand Incorporated.