

Water Safety New Zealand Incorporated

2025 Constitution

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Part 1 – DEFINITIONS AND INTERPRETATION

1 Definitions and Interpretation

- 1.1 **Definitions:** In this Constitution, unless the context otherwise requires, the words and phrases used have the following meanings:

Act means the Incorporated Societies Act 2022 or any Act which replaces it (including amendments to it from time to time), and the Regulations.

Annual General Meeting or **AGM** means a meeting of the Members of Water Safety NZ held once per year in accordance with this Constitution, which, among other things, will receive and consider reports on Water Safety NZ's activities and finances.

Applicant means a person applying for membership under Rule 11.

Board means Water Safety NZ's governing body.

Board Appointments Panel means the panel described in Rule 25.

Board Meeting means a meeting of the Board.

Board Member means a member of the Board, including the Chair.

Chair means the Board Member appointed as Chair of Water Safety NZ under Rule 18.5 and who provides leadership for Water Safety NZ.

Chief Executive Officer (CEO) means the person in the highest-ranking management position in Water Safety NZ appointed under Rule 27.

Casual Vacancy means a vacancy which arises on the Board when a Board Member does not serve their full term of office.

Co-opted Board Members means any person appointed as a Board Member under Rule 18.3.

Complaint means where either a Member, an Officer, or Water Safety NZ starts a procedure for resolving a Dispute in accordance with this Constitution.

Complainant means a Member or Officer or Water Safety NZ who makes a Complaint in accordance with the Dispute Resolution Procedure described in Rules 48 to 55.

Constitution means the rules in this document.

Contact Person means a person holding the position of contact person for Water Safety NZ being the person the Registrar of Incorporated Societies can contact when needed.

Core Board Member means the Board Member appointed under Rule 19.

Core Member means a Member described in Rule 9.

Day means any day of the week and is not limited to working days, unless otherwise specified. Where an action is required to be done within a specified time (such as 30 Days) this means clear days, so it is calculated by excluding the date of the Notice (or other relevant action) and the date of the meeting (or other relevant action).

Decision Maker means the person or committee appointed to decide on remedies under the Dispute Resolution Procedure in Rules 48 to 55.

Delegate means a person appointed to represent a Member at a General Meeting.

Dispute has the meaning set out in section 38 of the Act.

General Meeting means either an Annual General Meeting or a Special General Meeting of the Members of Water Safety NZ.

General Board Member means the Board Member appointed under Rule 19.

General Member means a Member described in Rule 10.

Honoraria means any payments received by a Board Member for services provided by the Board Member to the Board that:

- a. are paid at a rate that is less than the market rate for providing the services; and
- b. are amounts for which, in the normal course, no payment is fixed for the services provided.

Independent Board Member means the Board Member appointed under Rule 19.

Intellectual Property means all rights or goodwill in copyright, names, trademarks (or signs), service marks, devices, logos, designs, patents, processes, programmes and confidential information relating to Water Safety NZ.

Interested Member means a Member who is interested in a Matter for any of the reasons set out in section 62 of the Act, being where that Member:

- (or the spouse, civil union partner, de facto partner, child, parent, grandparent, grandchild, sibling, nephew, niece, uncle, aunt, or first cousin of that Member) may obtain a financial benefit from the Matter;
- may have a financial interest in a person to whom the Matter relates;
- is a partner, director, Officer, Board Member, or trustee of a person who may have a financial interest in a person to whom the Matter relates; or
- is interested in the Matter for any other reason specified in this Constitution, provided that a Member will not be deemed to be interested in a Matter where:
 - the Member receives an indemnity, insurance cover, remuneration, or other benefits authorised under the Act;
 - the Member's interest is the same or substantially the same as the benefit or interest of all or most other Members of Water Safety NZ due to the membership of those Members; or
 - if the Member's interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the Member in carrying out their responsibilities under the Act or this Constitution.

Interests Register means the register of interests of Officers, kept under this Constitution and as required by section 73 of the Act.

Judicial Committee means a committee appointed by the Board comprised of no fewer than three (3) persons with experience in disciplinary matters and/or relevant subject-matter expertise, provided that:

- where Water Safety NZ is not a party to a Complaint, one (1) or more Board Members may be appointed to the Judicial Board; and
- where Water Safety NZ is a party to a Complaint, the Judicial Board must be independent of the Board.

Matter means:

- Water Safety NZ's performance of its activities or exercise of its powers; or
- an arrangement, agreement, or contract (a transaction) made or entered into, or proposed to be entered into, by Water Safety NZ.

Member means an entity that has consented to become a Member of Water Safety NZ and has been properly admitted to Water Safety NZ and has not ceased to be a Member of Water Safety NZ.

Notice to Members includes any Notice given by email, post, courier, or by other electronic means of communication with a Member or Group of Members.

Officer means a natural person who is:

- a member of the Board; or
- occupying a position in Water Safety NZ that allows them to exercise significant influence over the management or administration of Water Safety NZ, including any employee.

Ordinary Resolution means a resolution passed by a majority of votes properly cast.

Policies means any policies, regulations or codes of conduct of Water Safety NZ in place at the date of this Constitution or made under Rule 26.4.

Purposes means the purposes of Water Safety NZ described under Rule 6.

Proxy means a person who is a Delegate and who has been appointed to act as an agent for another Member at a General Meeting and to exercise that Member's vote(s) on their behalf.

Register of Members means the register of Members kept under this Constitution by Water Safety NZ as required by section 79 of the Act.

Registrar means the Registrar of Incorporated Societies appointed in accordance with the Act.

Regulations means any regulations made under the Act, including the Incorporated Societies Regulations 2023.

Respondent means a Member or Officer of Water Safety NZ who is the subject of a complaint made in accordance with the Dispute Resolution Procedure described in Rules 48 to 55.

Rule means a rule of this Constitution.

Special General Meeting or **SGM** means a meeting of the Members, other than an Annual General Meeting, called for a specific purpose or purposes.

Special Resolution means a resolution passed by two-thirds of the votes properly cast.

Water Safety NZ means Water Safety New Zealand Incorporated.

Working Day means a day which is not a Saturday, Sunday or public holiday in New Zealand.

Written Notice means a Notice in writing and delivered by email or post to the last known address of the individual or entity to whom it is directed. Notices given by email will be deemed to be received if they have not been returned as undeliverable within one (1) Working Day, and Notices given by post will be deemed to be received five (5) Working Days after they are sent.

1.2 **Construction:** In this Constitution:

1.2.1 a gender includes all other genders;

1.2.2 the singular includes the plural and vice-versa;

- 1.2.3 any reference to legislation includes any regulation, order-in-council, or other instrument issued or made under that legislation, and any modification or re-enactment of that legislation, or any legislation enacted in substitution of that legislation;
- 1.2.4 any agreement includes that agreement as modified, supplemented, innovated, or substituted from time to time;
- 1.2.5 a reference to persons includes bodies corporate;
- 1.2.6 a reference to a person includes the legal personal representatives, successors, and permitted assigns of that person;
- 1.2.7 expressions referring to writing include references to words visibly represented, copied, or reproduced, including by email; and
- 1.2.8 headings and the contents page are for reference only and are to be ignored in construing this Constitution.

Part 2 – DETAILS OF WATER SAFETY NEW ZEALAND

2 Name

- 2.1 **Name:** The name of the Society is Water Safety New Zealand Incorporated (in this Constitution referred to as 'Water Safety NZ').
- 2.2 **Māori name:** The Māori name of Water Safety NZ is Haumaru Wai ki Aotearoa.

3 Charitable Status

- 3.1 **Charitable Status:** Water Safety NZ is registered as a charitable entity under the Charities Act 2005.

4 Registered Office

- 4.1 **Registered Office:** The registered office of Water Safety NZ is at such place in New Zealand as the Board from time to time decides.
- 4.2 **Change of Registered Office:** The Board must notify changes to the registered office to the Registrar at least five (5) Working Days before the change of address for the registered office is due to take effect.

5 Contact Person

- 5.1 **Contact Persons:** The Board will appoint at least one (1) but no more than three (3) Contact Person(s) whom the Registrar can contact when needed.
- 5.2 **Requirements:** Each Contact Person must be:
 - 5.2.1 a representative of a Member or an employee of Water Safety NZ;
 - 5.2.2 at least 18 years of age; and
 - 5.2.3 ordinarily resident in New Zealand.

- 5.3 **Registrar Notification:** Each Contact Person's name and contact details must be provided to the Registrar in accordance with the Act.
- 5.4 **Contact Update:** Any change in that Contact Person or that person's name or contact details must be advised to the Registrar within twenty (20) Working Days of that change occurring, or Water Safety NZ becoming aware of the change.

Part 3 - PURPOSES AND POWERS

6 Purposes

- 6.1 **Charitable Purpose:** Water Safety NZ is established and maintained exclusively for the charitable purpose of benefitting the community by collaborating, promoting, and enabling water safety in Aotearoa New Zealand. Any income, benefit or advantage must be used to advance the charitable purposes of Water Safety NZ.
- 6.2 **Further Activities:** To facilitate the charitable purpose, Water Safety NZ's key activities are to:
- 6.2.1 maintain New Zealand's official record of drownings and water-related injury;
 - 6.2.2 research, investigate and analyse to understand trends and interpret the broad impact of water safety interventions;
 - 6.2.3 provide advice, recommendations and support to improve water safety;
 - 6.2.4 provide credible, effective advocacy that supports water safety;
 - 6.2.5 effectively coordinate, communicate and facilitate quality water safety education and awareness;
 - 6.2.6 develop and maintain collaborative relationships within the water safety sector;
 - 6.2.7 seek financial support to enhance the ability to deliver, promote, and facilitate water safety in New Zealand; and
 - 6.2.8 do anything conducive or incidental to the attainment of the above purposes.

7 Powers

- 7.1 **Powers:** Water Safety NZ has full capacity, rights, powers and privileges to carry on or undertake any activity, do any act, or enter into any transaction, subject to this Constitution, the Act, any other legislation, and the general law.

Part 4 - MEMBERSHIP

8 Minimum Number of Members

- 8.1 **Minimum number of Members:** Water Safety NZ must maintain a minimum of 10 Members, as required by the Act.
- 8.2 **Membership Categories:** The Members of Water Safety NZ are:

8.2.1 Core Members as described in Rule 9; and

8.2.2 General Members as described in Rule 10.

9 Core Members:

9.1 **Core Member Requirements:** Core Members are entities that have:

9.1.1 a core interest in water safety;

9.1.2 a national scope;

9.1.3 significant size and influence in the water safety sector; and

9.1.4 proven performance in the promotion of water safety.

9.2 **Current Core Members:** The following entities are Core Members as of the date of adoption of this Constitution:

9.2.1 Royal New Zealand Coastguard Incorporated;

9.2.2 Surf Life Saving New Zealand Manatōpū Incorporated; and

9.2.3 Swimming New Zealand Incorporated.

10 General Members

10.1 **General Member Requirements:** Any national or regional association, organisation or committee, including public entities, whether incorporated or otherwise, that can demonstrate an active, defined and prominent water safety role in the New Zealand water safety sector is eligible to apply to become a General Member. However,

no organisation which is an associate of any Member is eligible to apply for or become a General Member in their own right unless they are in themselves a national body whether incorporated or not.

11 Becoming a Member

11.1 **Application:** An Applicant to become a Member must:

11.1.1 complete an application for membership as prescribed by the Board with sufficient detail to establish their credentials for the membership category they wish to attain; and

11.1.2 confirm commitment to the Purposes of Water Safety NZ as part of their application.

11.2 **General Member Approval:** All applications to become General Members are decided by the Board, which has complete discretion in deciding whether or not to allow the Applicant to become a General Member. An Applicant becomes a Member when their application has been accepted, and they have satisfied any other preconditions. The Board must advise the Applicant of its decision but is not required to give the reasons if the application is denied.

11.3 **Core Member Approval:** Any change to the Core Members as set out in Rule 9.2 must only be made by amending this Constitution at a General Meeting as in Rule 56. The Board must review the application against the Core Member criteria in Rule 9.1 and make a recommendation to the General Meeting on whether or not the Applicant is suitable as a Core Member.

12 Consent to Becoming a Member:

- 12.1 **Member Consent:** Every Applicant for Membership must consent in writing to becoming a Member, and applying to become a Member as set out in Rule 11 is deemed to constitute such consent. The signed written consent of every Member to become a Water Safety NZ Member must be retained in Water Safety NZ's membership records.

13 Members' Rights and Obligations

- 13.1 **Rights and Obligations:** Members acknowledge and agree that:

- 13.1.1 they are bound by, and must comply with this Constitution, and any Policies and procedures of Water Safety NZ, and any determination, resolution or decision which may be made or passed by the Board;
- 13.1.2 they are subject to the jurisdiction of Water Safety NZ;
- 13.1.3 they are entitled to all rights and entitlements granted by this Constitution or as determined by the Board, provided they meet all the Member requirements set out in this Constitution and the Policies or as otherwise set by the Board, including payment of any membership or other fees within the required time period;
- 13.1.4 they are only entitled to exercise the rights of membership (including attending and voting at General Meetings, accessing or using Water Safety NZ's premises, facilities, equipment and other property, and participating in Water Safety NZ activities) if all membership and any other fees have been paid to Water Safety NZ by their respective due dates, but no Member is liable for an obligation of Water Safety NZ by reason only of being a Member;
- 13.1.5 the Board may decide what access or use Members may have of or to any premises, facilities, equipment or other property owned, occupied, or otherwise used by Water Safety NZ, and to participate in Water Safety NZ activities, including any conditions of and fees for such access, use or involvement;
- 13.1.6 membership does not confer on any Member any right, title, or interest (legal or equitable) in the property of Water Safety NZ;
- 13.1.7 every Member must provide Water Safety NZ in writing with that Member's name and contact details (namely physical or email address and a telephone number) and promptly advise Water Safety NZ in writing of any changes to those details;
- 13.1.8 they will promote the interests and Purposes of Water Safety NZ and must not do anything to bring Water Safety NZ into disrepute; and
- 13.1.9 they will be liable for all reasonable costs incurred by Water Safety NZ in relation to recovery of fees, and any other sums owed to Water Safety NZ by the Member, and/or reasonably necessary for Water Safety NZ to enforce its legal rights under this Rule in respect of that Member.

14 Membership Fees

- 14.1 **Setting Fees:** The Board may determine the fees (if any) payable by Members, including:
- 14.1.1 the annual subscription fee and any other fee(s);
 - 14.1.2 the due date for the fee(s);
 - 14.1.3 the manner of payment of fee(s); and

- 14.1.4 any discounts for prompt payment or reasonable penalties for late payment.
- 14.2 **Different Fees:** Different levels of membership fees and other fees may be determined for different types of Members.
- 14.3 **Consequences of Non-Payment:** Any Member failing to pay the annual subscription or other fee(s) three (3) months after the date fixed for payment may be suspended from membership and (without being released from the obligation of payment) will not be entitled to participate in any Water Safety NZ activity or to access or use Water Safety NZ's premises, facilities, equipment and other property until all the arrears are paid.
- 14.4 **Termination:** If such arrears are not paid within 120 Days of the due date for payment of the subscription, any other fees or levy, the Board may terminate the Member's membership (without being required to give prior Notice to that Member).
- 15 Ceasing to be a Member**
- 15.1 **Ceasing to be a Member:** A Member ceases to be a Member:
- 15.1.1 by giving Notice to the Board of their resignation. A resignation is effective when it is received by the Board, or at a later time specified in the Notice;
- 15.1.2 if a body corporate, on liquidation;
- 15.1.3 on termination of a Member's membership following a Dispute resolution process under this Constitution;
- 15.1.4 where Water Safety NZ has been unable to establish contact with a Member for a period of at least ninety (90) Days. The Board must give the Member seven (7) Days' Notice of the intention to terminate the Member's membership; or
- 15.1.5 by resolution of the Board where the Member has failed to pay a subscription or other amount due to Water Safety NZ as set out in Rule 14.
- 16 Obligations Once Membership Has Ceased**
- 16.1 **Obligations Once Membership Has Ceased:** A Member who has ceased to be a Member under this Constitution:
- 16.1.1 remains liable to pay all fees and levies owing to Water Safety NZ at the time of termination, unless waived by the Board;
- 16.1.2 must cease to hold themselves out as a Member of Water Safety NZ;
- 16.1.3 must return all property to Water Safety NZ if required;
- 16.1.4 must not use any property (including Intellectual Property) of Water Safety NZ;
- 16.1.5 ceases to be entitled to any of the rights of a Member; and
- 16.1.6 forfeits all claims upon Water Safety NZ.
- 17 Becoming a Member Again**
- 17.1 **Re-admission Process:** Any former Member may apply for re-admission in the manner prescribed for new Applicants in accordance with Rule 11.

- 17.2 **Disciplinary Re-admission:** But if a former Member's membership was terminated following a disciplinary or Dispute resolution process, the Applicant may be re-admitted only by a Special Resolution passed at a General Meeting on the recommendation of the Board. The decision of that General Meeting is final and there is no right of appeal.

Part 5 – GOVERNANCE

18 Board Composition

- 18.1 **Board Composition:** The Board consists of between six (6) and eight (8) Officers, including the following Officers:
- 18.1.1 one (1) person nominated from each Core Member under Rule 19.2 and whose appointment is ratified at the AGM under Rule 20.6 (Core Board Member);
 - 18.1.2 two (2) persons nominated by General Members under Rule 19.3 and whose appointments are ratified at the AGM under Rule 20.6 (General Board Member); and
 - 18.1.3 not less than one (1) and no more than three (3) independent persons as under Rule 19.4 and whose appointments are ratified at the AGM under Rule 20.6 (Independent Board Member).
- 18.2 **Membership of Officers:** This Constitution expressly provides for the majority of the Board to be made up of Officers who are not Members or representatives of bodies corporate that are Members.
- 18.3 **Co-opted Board Members:**
- 18.3.1 **Board Appointment:** The Board may co-opt up to two (2) further people as Board Members as and when the Board considers it desirable.
 - 18.3.2 **Co-opted Member Rights:** Unless otherwise specified by the Board, any person co-opted as a Board Member has full speaking and voting rights as an Officer of Water Safety NZ.
 - 18.3.3 **Co-opted Member Term:** A Co-opted Board Member's term of office expires at the conclusion of the Annual General Meeting following their appointment.
- 18.4 **Ineligibility of Employees or Contractors:** A person is not eligible for appointment, election, or to remain in office as a Board Member if they hold, or continue to hold, a position as an employee of, or contractor to, Water Safety NZ.
- 18.5 **Chair:**
- 18.5.1 At its first meeting following an AGM, the Board must elect a Chair. The role of the Chair is to chair Board Meetings.
 - 18.5.2 If the Chair is unavailable for any reason, then the Board must appoint another Board Member to undertake the Chair's role during the period of unavailability.

19 Nominations and Applications for Board Member Positions

- 19.1 **Nominations:** Nominations and applications for Board Member positions that are to be vacated must be in the prescribed form and received by the CEO by the date set by the Board, and if no date is set, at least sixty (60) Days before the AGM. The CEO must forward

all nominations and applications for Board Member positions to the Board Appointments Panel.

- 19.2 **Core Board Member Nominations:** Nominations for any Core Board Member positions that are to be vacated due to the expiry of their term of office, must be made by their relevant Core Members.
- 19.3 **General Board Member Nominations:** Nominations for General Board Member positions that are to be vacated due to the expiry of their term of office may be made by any General Member.
- 19.4 **Independent Board Member Applications:** Applications for Independent Board Member positions that are to be vacated due to the expiry of their term of office may be made by any person.

20 Appointment and Ratification of Board Members

- 20.1 The Board Appointments Panel must undertake its responsibilities under Rule 25.6.
- 20.2 At least thirty (30) Days prior to the AGM, the Board Appointments Panel must notify the CEO of their decision to recommend the appointment of the following Board Members for ratification at the AGM:
 - 20.2.1 any Core Board Members nominated by their relevant Core Member for a vacant Core Board Member position;
 - 20.2.2 the General Board Member nominee(s) whom the Board Appointments Panel considers would best suit the vacant General Board Member position(s), if any; and
 - 20.2.3 the Independent Board Member applicant(s) whom the Board Appointments Panel considers would best suit as an Independent Board Member(s), if any.
- 20.3 **Refusal to Recommend:** In the event the Board Appointments Panel refuse to recommend:
 - 20.3.1 any Core Board Member nominee; or
 - 20.3.2 any General Board Member nominee where there are less than two (2) recommended General Member Board nominees remaining, then

Notice of such refusal (together with reasons for such refusal) must be given immediately to the nominating Member who then has seven (7) Days to submit a replacement nominee to the CEO.
- 20.4 **Replacement Nominee:** The Board Appointments Panel must review and recommend or otherwise any replacement nominee submitted under Rule 20.3 within seven (7) Days of receipt of the replacement nominee.
- 20.5 **Replacement Refused:**
 - 20.5.1 If the replacement Core Board Member nominee is refused by the Board Appointments Panel in Rule 20.4, the Board Appointments Panel and the Core Member must meet as soon as practically possible to discuss the refusal and potential candidates with a view to the Board Appointments Panel approving a mutually agreeable nominee.
 - 20.5.2 If the replacement General Board Member nominee is refused by the Board Appointments Panel in Rule 20.4, the Board may fill the Board position under Rule 24 Filling Vacancies.

- 20.6 **Ratification of Board Members:** The Board Members recommended by the Board Appointments Panel under Rule 20.2 are ratified by the Delegates entitled to vote at a General Meeting.

21 Term

- 21.1 **Officer Tenure:** The term of office for all Officers elected or appointed to the Board is up to three (3) years, expiring at the end of the Annual General Meeting in the year corresponding with the last year of each Officer's term of office.
- 21.2 **Allocation of Term:** The allocation of the term for each Officer is determined by the Board Appointments Panel.
- 21.3 **Schedule of Rotation:** The Board Appointments Panel must consider rotating the allocated terms so that at each AGM no more than half the Board Members will vacate their office at the expiry of their term, except that:
- 21.3.1 those Board Members who were in office at the commencement of this Rule will remain in office for the term for which they were appointed or elected, and they must vacate their office at the expiry of that term; and
- 21.3.2 in the event that the rotation of Board Members in this Rule cannot be applied due to the application of Rule 21.3.1, or due to casual vacancies not being filled, the Board Appointments Panel may extend or reduce the term of office of any Board Member by such period as is necessary (but not greater than 12 months) to return to a schedule of rotation in accordance with this Rule.
- 21.4 **Limit on Term:** All Officers may be re-elected to the Board provided that no Board Member can serve more than:
- 21.4.1 six (6) years as a Board Member; or
- 21.4.2 if Chair of the Board, no more than nine (9) years, provided they serve no more than six (6) years as Chair.

22 Removal of Officers

- 22.1 **Removal of Officers:** The Members in a Special General Meeting called for this purpose may, by Special Resolution, remove any Board Member before the expiration of their term of office as follows:
- 22.1.1 upon Water Safety NZ receiving a request for a Special General Meeting for the purpose of removing a Board Member, or the Board as a whole, Water Safety NZ must send the Notice of the Special General Meeting to the Board Member concerned, or the Board (as the case may be), in addition to the Members of Water Safety NZ; and
- 22.1.2 before voting on the resolution to remove a Board Member or the Board as a whole, the Board Member, or the Board as a whole (as the case may be) affected by the proposed resolution must be given the opportunity before, and at, the Special General Meeting to make submissions in writing and/or verbally to the persons entitled to be present at the General Meeting about the proposed resolution.

23 Ceasing to Hold Office

- 23.1 **Cessation Circumstances:** A Board Member ceases to hold office on and from the date when the Board Member:

- 23.1.1 dies, or in the opinion of the majority of the Board, becomes so incapacitated that they are effectively incapable of performing the duties of a Board Member;
 - 23.1.2 resigns (by Written Notice to the Board);
 - 23.1.3 if a Core Board Member, is removed by the Core Member who nominated them;
 - 23.1.4 is absent from two (2) consecutive Board Meetings without prior approval from the Board or without reasonable explanation;
 - 23.1.5 the Board passes a vote of no confidence in the Board Member;
 - 23.1.6 is disqualified from being an Officer under the Act or the Charities Act 2005; or
 - 23.1.7 is removed from office as set out in Rule 22.
- 23.2 **Resignation Obligations:** Each Board Member must within twenty (20) Days of submitting a resignation or ceasing to hold office, deliver to the Board all books, papers and other property of Water Safety NZ held by such former Board Member.

24 Vacancies

- 24.1 **Filling Vacancies:** Where there is a Casual Vacancy on the Board, other than for a Core Board Member, the remaining Board Members may appoint a person of their choice to fill the vacancy, or the Board may leave the vacancy unfilled until the next Annual General Meeting.
- 24.2 **Core Board Member Vacancy:** A Core Member must nominate a replacement for their Board Member position.
- 24.3 **Approval by Board Appointments Panel:** All Board Members appointed by the Board to fill vacancies must be reviewed and approved by the Board Appointments Panel.
- 24.4 **Term Expiration:** The term of office for a person appointed as a Board Member to fill a vacancy under this Rule expires at the conclusion of the Annual General Meeting following their appointment, or of any Special General Meeting called to fill the vacancy.

25 Board Appointments Panel

- 25.1 **Establishment:** The Board must establish a Board Appointments Panel as required for the purposes set out in this Constitution. The Board must request the Members to submit the name of their appointee under Rule 25.2.
- 25.2 **Composition:** The Board Appointments Panel must comprise the following four (4) persons:
 - 25.2.1 the Chair of the Board, or if the Chair is not eligible or willing to serve on the Board Appointments Panel or is seeking reappointment or re-election to the Board, then another Board Member who is eligible to serve on the Board Appointments Panel and is not seeking re-appointment or re-election to the Board as determined by the Board, unless the circumstances in Rule 25.5 arise, in which case Rule 25.5 will apply;
 - 25.2.2 one (1) nominee who is an independent professional experienced in governance, and the functions and appointment processes of directors in New Zealand, as determined by the Board, unless the circumstances in Rule 25.5 arise, in which case Rule 25.5 will apply;
 - 25.2.3 one (1) person appointed by the Core Members by consensus, but failing that by majority vote in a process approved by the Board; and

- 25.2.4 one (1) person appointed by the General Members in a process approved by the Board.
- 25.3 **Convenor:** The convenor of the Board Appointments Panel is the person specified in Rule 25.2.2.
- 25.4 **Eligibility:** No person will be eligible to be a member of the Board Appointments Panel, or to remain on the Board Appointments Panel, if:
- 25.4.1 they are an employee or contractor to Water Safety NZ;
- 25.4.2 they are a Board Member, other than the Chair as set out in Rule 25.2.1, unless such Board Member is retiring from their position as a Board Member prior to the commencement of the term of the new Board Members being considered by the Board Appointments Panel;
- 25.4.3 any of the circumstances listed in Rule 30 have occurred, or occur to that person, as if every reference to a Board Member in that Rule is to a person seeking to be a member of the Board Appointments Panel; or
- 25.4.4 they seek to become a Board Member while a Board Appointments Panel member.
- 25.5 **Board Unable to Appoint:** If the Board as a whole has been removed, resigns en masse or does not have a quorum and is therefore unable to appoint the persons described in Rule 25.2, those persons must be replaced with persons who are independent of Water Safety NZ and are appointed by Delegates at a Special General Meeting called for that purpose.
- 25.6 **Board Matrix:** The Board must prepare annually a skill and competency matrix for evaluation of prospective Board Members by the Board Appointments Panel. The matrix must be kept current taking into account the needs and strategic direction of Water Safety NZ.
- 25.7 **Responsibilities:** The Board Appointments Panel is independent of the Board and, is responsible for:
- 25.7.1 reviewing all nominees for Board membership against the matrix prepared by the Board under Rule 25.6, including undertaking such enquiries and holding interviews and meetings as it sees fit;
- 25.7.2 recommending the appointment of Board Member(s) for ratification at the AGM;
- 25.7.3 ratifying any replacement Board Member nominated by the Board to fill a vacancy under Rule 24; and
- 25.7.4 determining the term of office for each Board Member taking into account the schedule of rotations under Rule 21.3.
- 25.8 **Term of Office:** Board Appointments Panel Members remain in office for the period necessary to fulfil their responsibilities in relation to each vacancy of a Board Member for which the Board Appointments Panel was established.
- 25.9 **Process:** Unless otherwise set out in this Constitution, the Board Appointments Panel may decide its own process.
- 25.10 **Quorum:** The quorum for a meeting of the Board Appointments Panel is three (3) Panel Members.
- 25.11 **Decisions:** Any decision of the Board Appointments Panel regarding the appointment or ratification of Board Members must be made by a majority vote.

- 25.12 **Conflicts and Confidentiality:** All information received by the Board Appointments Panel and its discussions must be kept confidential except to the extent required by law. Board Appointments Panel Members must notify the convenor of any potential conflict of interest in considering any candidate. If the convenor considers it appropriate to do so, they may require that Board Appointments Panel Member to vacate their position. If the convenor considers they may have a potential conflict of interest, they must notify the other Board Appointments Panel Members and the Board. If the Board considers it appropriate to do so, it may require that convenor to vacate their position.
- 25.13 **Removal:** The Board may remove any Board Appointments Panel Member if the Board considers, in its sole discretion, that Board Appointments Panel Member has a conflict of interest which has not been satisfactorily resolved to the satisfaction of the Board; or there are circumstances which may give rise to a question of actual or apparent bias in the Board Appointments Panel's composition and/or process. Before removing any Board Appointments Panel Member, the Board must:
- 25.13.1 notify the Board Appointments Panel Member of its proposal to remove them; and
- 25.13.2 give the Board Appointments Panel Member and the other Board Appointments Panel Members the opportunity to make submissions on the proposed removal and the opportunity to be heard.
- 25.14 **Vacancy:** Any vacancy in the Board Appointments Panel will be replaced by the person or organisation that appointed the Panel Member for which the vacancy arises.

26 Functions and Powers of the Board

- 26.1 **Management of Water Safety NZ:** The Board must manage, direct or supervise the operation and affairs of Water Safety NZ, in accordance with the Act, the Regulations, and this Constitution.
- 26.2 **Powers and Limitations:** The Board has all the powers necessary for managing, and for directing and supervising the management of, the operation and affairs of Water Safety NZ, subject to such modifications, exceptions, or limitations as are contained in the Act or in this Constitution.
- 26.3 **Appointment of Sub-Committees:** The Board may appoint sub-committees consisting of such persons (whether or not Members of Water Safety NZ) and for such purposes as it sees fit.
- 26.4 **Implementation and Amendment of Policies:**
- 26.4.1 the Board may make and amend Policies for the conduct and control of Water Safety NZ activities. All such Policies must be consistent with this Constitution, the Act, the Regulations, or any other legislation;
- 26.4.2 all Policies are binding on Water Safety NZ and the Members;
- 26.4.3 all Policies and regulations of Water Safety NZ which were in force immediately prior to this Constitution will continue in force, until such time as they are revoked or otherwise altered by the Board; and
- 26.4.4 if any of those Policies are inconsistent with this Constitution (whether in whole or in part), the Board will determine the matter as it sees fit, to the extent of any such inconsistency.

27 Chief Executive Officer

- 27.1 **Role:** The Board may employ a Chief Executive Officer (CEO) on such terms and conditions as the Board may determine. The CEO is under the direction of the Board and is responsible for the day-to-day management of the affairs of Water Safety NZ under this Constitution and the Policies and within any delegated authority from the Board.
- 27.2 **Attendance at Board Meetings:** The CEO may attend Board Meetings as and when required by the Board but has no voting rights.

28 Board Meetings Procedure

- 28.1 **Frequency:** Board Meetings may be called at any time by the Chair or two (2) Board Members but generally the Board will meet at regular intervals agreed by the Board.
- 28.2 **Procedure:** Other than as prescribed by the Act or this Constitution, the Board may regulate its proceedings as it thinks fit.
- 28.3 **Notice:** The person convening the Board Meeting must give all Board Members at least five (5) Days' Notice of Board Meetings, but in cases of urgency a shorter period of Notice will suffice.
- 28.4 **Quorum:** The quorum for Board Meetings is at least one half of Board Members.
- 28.5 **Form:** A meeting of the Board may be held by a quorum of the Board Members:
- 28.5.1 meeting together at the place, date and time appointed for the meeting; or
 - 28.5.2 participating in the meeting by means of audio, audio and visual, or electronic communication by which all Board Members can simultaneously hear each other throughout the meeting; or
 - 28.5.3 by a combination of methods described in Rules 28.5.1 and 28.5.2.
- 28.6 **Voting:** Each Board Member has one (1) vote at Board Meetings except the Chair who will have a casting vote in the event of a deadlock. Voting is by voice, or upon the request of any Board Member, by a show of hands or by a ballot. Proxy and postal voting are not permitted. Voting by electronic means is permitted.
- 28.7 **Resolutions:** A resolution of the Board is passed at any meeting of the Board if a majority of the votes cast on it are in favour of the resolution.
- 28.8 **Resolution in Writing:** The Board may make a decision by resolution in lieu of a meeting conducted by a written ballot by email, electronic voting system, or post, provided that:
- 28.8.1 the proposed resolution is sent to every Board Member; and
 - 28.8.2 a majority of the Board Members sign or consent to the resolution; and
 - 28.8.3 a copy of any such resolution is entered in the minutes of the Board Meetings.
- 28.9 **Minutes:** The Board must ensure that minutes of a Board Meeting are recorded and that a copy of the minutes is forwarded to all Board Members as soon as practicable after a Board Meeting.
- 28.10 **Expenses:** The Board may, by majority vote, reimburse its Board Members for their actual and reasonable expenses incurred in the conduct of the business of Water Safety NZ. Before doing so the Board must establish a policy to be applied to any question of reimbursement and the payment of the Honoraria.

Part 6 – OFFICERS

29 Qualifications of Officers

29.1 **Qualifications:** Every Officer must be a natural person who:

29.1.1 has consented in writing to be an Officer of Water Safety NZ; and

29.1.2 certifies that they are not disqualified from being elected or appointed or otherwise holding office as an Officer of Water Safety NZ.

30 Officer Eligibility

30.1 **Disqualification:** The following persons are disqualified from being elected, appointed or holding office as a Board Member by this Constitution under section 47(3) of the Act or section 36B of the Charities Act 2005:

30.1.1 a person who is under 16 years of age;

30.1.2 a person who is an undischarged bankrupt;

30.1.3 a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, the Financial Markets Conduct Act 2013, or the Takeovers Act 1993, or any other similar legislation;

30.1.4 a person who is disqualified from being a member of the governing body of a charitable entity under section 36B of the Charities Amendment Act 2023;

30.1.5 a person who has been convicted of any of the following, and has been sentenced for the offence, within the last seven (7) years:

(a) an offence under subpart 6 of Part 4 of the Act;

(b) a crime involving dishonesty (within the meaning of section 2(1) of the Crimes Act 1961);

(c) an offence under section 143B of the Tax Administration Act 1994;

(d) an offence under section 22(2) of the Act;

(e) an offence, in a country other than New Zealand, that is substantially similar to an offence specified in Rule 30.1.5 (a) to (d); or

(f) a money laundering offence or an offence relating to the financing of terrorism, whether in New Zealand or elsewhere,

30.1.6 a person subject to:

(a) a banning order under subpart 7 of Part 4 of the Act;

(b) an order under section 108 of the Credit Contracts and Consumer Finance Act 2003;

(c) a forfeiture order under the Criminal Proceeds (Recovery) Act 2009; or

- (d) a property order made under the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act.

30.1.7 a person who is subject to an order that is substantially similar to an order referred to in Rule 30.1.6 under a law of a country, State, or territory outside New Zealand that is a country, State, or territory prescribed by the Regulations.

31 Officer's Duties

31.1 **Officer Duties:** At all times each Officer must:

- 31.1.1 act in good faith and in the best interests of Water Safety NZ;
- 31.1.2 exercise their powers for proper purposes;
- 31.1.3 not act, or agree to Water Safety NZ acting, in a manner that contravenes the Act or this Constitution;
- 31.1.4 not agree to, nor cause or allow, the activities of Water Safety NZ to be carried on in a manner likely to create a substantial risk of serious loss to Water Safety NZ or Water Safety NZ's creditors;
- 31.1.5 not agree to Water Safety NZ incurring any obligations unless the Officer believes at that time on reasonable grounds that Water Safety NZ will be able to perform the obligation when it is required to do so; and
- 31.1.6 exercise the care, diligence and skill that a reasonable person with the same responsibilities would exercise in the same circumstances taking into account, but without limitation:
 - (a) the nature of Water Safety NZ; and
 - (b) the nature of the decision, and
 - (c) the position of the Officer and the nature of the responsibilities undertaken by the Officer.

31.2 **Duties Owed to Water Safety NZ:** Board Members may hold office in a Member organisation during their tenure as Board Members, except that the duties set out in Rule 31.1 are owed to Water Safety NZ and take precedence over any other role.

32 Conflicts of Interest

32.1 **Interested Officer:** An Officer who is an Interested Member in respect of any Matter being considered by Water Safety NZ, must disclose to the Board details of the nature and extent of the interest (including any monetary value of the interest if it can be quantified) as soon as practicable after the Officer becomes aware that they are interested in the Matter.

32.2 **Interests Register:** The Board must maintain an up-to-date register of the interests disclosed by Officers.

32.3 **Obligations:** An Interested Officer:

- 32.3.1 must not vote or take part in the decision of the Board relating to the Matter unless all Board Members who are not interested in the Matter consent; and

32.3.2 must not sign any document relating to the entry into a transaction or the initiation of the Matter unless all Board Members who are not interested in the Matter consent; but

32.3.3 may take part in any discussion of the Board relating to the Matter and be present at the time of the decision of the Board (unless the Board decides otherwise).

however:

32.3.4 an Officer who is prevented from voting on a Matter under this rule may still be counted for the purpose of determining whether there is a quorum at any meeting at which the Matter is considered; and

32.3.5 where 50 per cent or more of the Officers are prevented from voting on a Matter because they are interested in that Matter, a Special General Meeting must be called to consider and determine the Matter.

33 Use of Information and Advice

33.1 **Reliance:** An Officer, when exercising powers or performing duties as an Officer, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:

33.1.1 an employee of Water Safety NZ whom the Officer believes on reasonable grounds to be reliable and competent in relation to the Matters concerned;

33.1.2 a professional adviser or expert in relation to Matters that the Officer believes on reasonable grounds to be within the person's professional or expert competence; or

33.1.3 any other Board Member, or sub-committee of Board Members upon which the Officer did not serve, in relation to Matters within the Board Member's or sub-committee's designated authority.

33.2 **Limitation on Reliance:** However, Rule 33.1 applies to an Officer only if they:

33.2.1 act in good faith; and

33.2.2 make proper inquiry where the need for inquiry is indicated by the circumstances; and

33.2.3 have no knowledge that the reliance is unwarranted.

Part 7 - GENERAL MEETINGS

34 Annual General Meeting

34.1 **AGM:** Water Safety NZ must hold an AGM once a year at the time, date, place, and/or the manner as the Board decides, but not more than 6 months after the balance date of Water Safety NZ and not more than 15 months after the previous AGM.

34.2 **Notice:** The Board must give all Members at least ninety (90) Days' Notice of the Annual General Meeting. The Notice must set out:

34.2.1 the date, time, place, and manner for the Annual General Meeting;

- 34.2.2 closing date(s) for nominations for any elections, proposed motions, and other items of business to be submitted to Water Safety NZ; and
- 34.2.3 the date and time by which notification of the Delegate, Proxy forms and postal and electronic votes must be received.
- 34.3 **Business:** The business of an Annual General Meeting is to:
 - 34.3.1 confirm the minutes of the last Annual General Meeting and any Special General Meeting(s) held since the last Annual General Meeting;
 - 34.3.2 adopt the annual report on the operations and affairs of Water Safety NZ during the most recently completed accounting period;
 - 34.3.3 adopt the Board's report on the finances of Water Safety NZ, and the audited annual financial statements for that period;
 - 34.3.4 receive a report of any disclosures of conflicts of interest made by Officers during that period (including a summary of the Matters, or categories of Matters, to which those disclosures relate);
 - 34.3.5 if required, ratify Core Board Members recommended for appointment by the Board Appointments Panel;
 - 34.3.6 if required, ratify General Board Members recommended for appointment by the Board Appointments Panel;
 - 34.3.7 if required, ratify Independent Board Members recommended for appointment by the Board Appointments Panel;
 - 34.3.8 the approval of any Honoraria for the Board;
 - 34.3.9 consider any motion(s) or other items of business of which prior Notice has been given to Members with Notice of the Meeting; and
 - 34.3.10 consider any general business raised from the floor if agreed by a Special Resolution of the Members present at the Meeting.
- 35 **Special General Meeting**
 - 35.1 **SGM:** Any other General Meeting of the Members is a Special General Meeting (SGM).
 - 35.2 **Calling of SGM:** Special General Meetings may be called at any time by the Board by resolution.
 - 35.3 **SGM on Member Request:** The Board must call a Special General Meeting if it receives a written request signed by at least one-third of General Members or two (2) Core Members.
 - 35.4 **Business of SGM:** Any resolution or written request must state the business that the Special General Meeting is to deal with.
 - 35.5 **Notice:** The Board must give all Members at least twenty-one (21) Days' Written Notice of any Special General Meeting unless the Board, in its discretion, decides that the nature of the SGM business is of such urgency that a shorter period of Notice is given to Members. The Notice must set out the:
 - 35.5.1 date, time, place and/or the manner for the Special General Meeting; and

35.5.2 proposed motion(s) that have been properly submitted for consideration.

35.6 **No Additional Business:** A Special General Meeting must only consider and deal with the business specified in the Board's resolution or the written request by Members for the Meeting.

35.7 **Process:** The Rules in this Constitution relating to the procedure to be followed at General Meetings also apply to a Special General Meeting.

36 Notice of Meetings

36.1 **Notice of Meeting:** A Notice will be addressed to the Member at the contact address or email address notified to Water Safety NZ and recorded in Water Safety NZ's Register of Members. The General Meeting and its business will not be invalidated simply because one (1) or more Members do not receive the Notice of the General Meeting.

37 Agenda

37.1 **Agenda:** An agenda must be sent to all Members no later than fourteen (14) Days before the date of any General Meeting. The agenda must include:

37.1.1 the date, time, location and/or manner of the General Meeting;

37.1.2 notice of any motions received;

37.1.3 any information provided by a Member or the Board in support of the motions; and

37.1.4 for an Annual General Meeting, the documents and information set out in Rule 34.3.

38 General Meeting Procedure

38.1 **Attendance:** Persons entitled to attend and speak at a General Meeting are:

38.1.1 Delegates of Core Members and General Members;

38.1.2 Board Members; and

38.1.3 any other persons invited by the Board.

38.2 **Delegates:** Each Member may appoint a Delegate to represent it at General Meetings at its own cost.

38.2.1 any Delegate must hold a current active executive or board or committee position of the Member they represent;

38.2.2 no Board Member may act as a Delegate;

38.2.3 the names of the Delegates must be notified to the CEO at least seven (7) Days before the General Meeting;

38.2.4 if any Delegate is unable to attend any General Meeting, the Member may appoint an alternate Delegate. Such alternate Delegate must hold a similar position as specified in Rule 38.2.1; and

38.2.5 a Member may cast its vote by means other than through its Delegate as specified in Rule 41.

38.3 **Voting:** Only Delegates of Core Members and Delegates of General Members are entitled to vote at a General Meeting.

38.4 **Quorum:** No General Meeting may be held unless a quorum of Delegates of at least two-thirds of Core Members and one-half of General Members, including Members present by casting votes by Proxy or postal or electronic means, attends throughout the meeting. If a quorum is not present within thirty (30) minutes of a scheduled start time for a General Meeting, the meeting:

38.4.1 if an AGM, is adjourned to a day, time and place determined by the chair of the AGM. If no quorum is achieved at the further AGM, the Delegates present, in person or through audio, audio visual link or other electronic communication, 15 minutes after the scheduled start time of that further AGM, are deemed to constitute a valid quorum; or

38.4.2 if an SGM, the SGM is cancelled.

38.5 **Form:** A General Meeting may be held by a quorum of the Delegates:

38.5.1 meeting together at the place, date and time appointed for the meeting;

38.5.2 participating in the meeting by means of audio, audio and visual, or electronic communication by which all Delegates can simultaneously hear each other throughout the meeting; or

38.5.3 by a combination of methods described in Rules 38.5.1 and 38.5.2.

38.6 **Minutes:** Water Safety NZ must keep minutes of all General Meetings and make them available on request to any Member.

38.7 **Chair:** All General Meetings are chaired by the Board Chair. If the Board Chair is unavailable, the Board may appoint another Board Member to chair the meeting. Any person chairing a General Meeting has, in the event of a tied vote, a casting vote.

38.8 **Omissions and Irregularities:** A General Meeting and its business will not be invalidated by an irregularity, error or omission in Notices, the agenda, and relevant papers of the General Meeting or the omission to give Notice within the required time frame to all Members, or any other error in the organisation of the General Meeting. These issues can be waived if:

38.8.1 the Chair in their discretion determines that it is still appropriate for the General Meeting to proceed despite the irregularity, error or omission; and

38.8.2 a motion to proceed is put to the General Meeting and is passed by Special Resolution.

39 Motions

39.1 **Board Motions:** The Board may propose motions for Water Safety NZ to vote on ('Board Motions'), which must be notified to Members with the Notice of the General Meeting.

39.2 **Member Motions:** Any Member may request that a motion be voted on ('Member's Motion') at a General Meeting, by giving Notice to the Board at least twenty-eight (28) Days before that meeting. The Member may also provide information in support of the motion.

40 Adjournment:

- 40.1 **Adjournment:** If necessary, the person chairing a General Meeting can adjourn the meeting to another time and place, with the Members' consent. At any adjourned meeting, only the unfinished business from the original meeting can be transacted.
- 41 Voting**
- 41.1 **Resolutions:** Unless otherwise required by this Constitution, all questions will be decided by an Ordinary Resolution of those voting at a General Meeting.
- 41.2 **Method of Voting:** Voting at a General Meeting is by voices or by show of hands as determined by the Chair unless a secret ballot is required under this Constitution or on demand of the Chair or by any Delegate. Elections of the General Board Members must be by secret ballot.
- 41.3 **Secret Ballot:** If a secret ballot is called, two (2) scrutineers must be appointed by the Chair to count the votes.
- 41.4 **Proxy Voting:** Proxy voting is permitted at a General Meeting. The following general principles apply:
- 41.4.1 any person who is entitled to be present and vote at a General Meeting may hold one (1) or more proxies;
- 41.4.2 notice of the Proxy signed by the Member must be received by the Chair at least 24 hours prior to the start of the General Meeting;
- 41.4.3 a Proxy is regarded as present for the purposes of a quorum; and
- 41.4.4 the form of the Proxy is:
- I [insert name] of [insert address] being a Member of [insert organisation name] appoint [insert name of Proxy] as my Proxy to speak [and vote] for me at the General Meeting to be held on [insert date] and at any adjournment of that General Meeting.*
- 41.5 **Postal or Electronic Voting:** Voting by postal or electronic means is permitted in the manner prescribed by the Board. Postal or electronic votes are regarded as present for the purposes of a quorum.
- 41.6 **Resolution in Lieu of Meeting:** A resolution in writing signed or consented to by email or other electronic means by a 75% majority of Members is valid as if it had been passed at a General Meeting, provided the requirements under sections 89-92 of the Act are complied with. Any resolution may consist of several documents in the same form each signed by one (1) or more Members.

Part 8 - RECORDS

42 Register of Members

- 42.1 **Register of Members:** Water Safety NZ must keep an up-to-date Register of Members containing each Member's:
- 42.1.1 name and contact details;
- 42.1.2 membership category; and

- 42.1.3 date on which they became a Member (if there is no record of the date they joined, this date will be recorded as 'Unknown').
- 42.2 **Member Information:** Every current Member must provide Water Safety NZ with that Member's details in 42.1 and promptly advise Water Safety NZ of any change in the Member's contact details.
- 42.3 **Retention of Register of Members:** Water Safety NZ must also keep a record of the name of each entity who ceased to be a Member within the previous seven (7) years, and the date on which they ceased to be a Member.
- 43 Access to Information for Members**
- 43.1 **Privacy:** The collection, use, storage, and disclosure of any personal information in relation to the Register of Members must comply with the Privacy Act 2020. Any Member's entry on the Register of Members must be available for inspection by that Member and Board Members upon reasonable request and in compliance with the Privacy Act 2020.
- 43.2 **Access to Information:** A Member may at any time make a written request to Water Safety NZ for information held by Water Safety NZ. The request must specify the information sought in sufficient detail to enable the information to be identified. Water Safety NZ must, within a reasonable time after receiving a request:
- 43.2.1 provide the information;
 - 43.2.2 agree to provide the information within a specified period;
 - 43.2.3 agree to provide the information within a specified period if the Member pays a reasonable charge to Water Safety NZ (which must be specified and explained) to meet the cost of providing the information; or
 - 43.2.4 refuse to provide the information, specifying the reasons for the refusal.
- 43.3 **Refusal to Provide Information:** Without limiting the reasons for which Water Safety NZ may refuse to provide the information, Water Safety NZ may refuse to provide the information if:
- 43.3.1 withholding the information is necessary to protect the privacy of natural persons, including that of deceased natural persons;
 - 43.3.2 the disclosure of the information would, or would be likely to, prejudice the commercial position of Water Safety NZ or of any of its Members;
 - 43.3.3 the disclosure of the information would, or would be likely to, prejudice the financial or commercial position of any other person, whether or not that person supplied the information to Water Safety NZ;
 - 43.3.4 the information is not relevant to the operation or affairs of Water Safety NZ;
 - 43.3.5 withholding the information is necessary to maintain legal professional privilege;
 - 43.3.6 the disclosure of the information would, or would be likely to, breach an enactment;
 - 43.3.7 the burden to Water Safety NZ in responding to the request is substantially disproportionate to any benefit that the Member (or any other person) will or may receive from the disclosure of the information;
 - 43.3.8 the request for the information is frivolous or vexatious; or

- 43.3.9 the request seeks information about a Dispute or Complaint which is or has been the subject of the procedures for resolving such matters under this Constitution and the Act.
- 43.4 **Charges for Information:** If Water Safety NZ requires the Member to pay a charge for the information, the Member may withdraw the request, and must be treated as having done so unless, within ten (10) Days after receiving notification of the charge, the Member informs Water Safety NZ:
- 43.4.1 that the Member will pay the charge; or
- 43.4.2 that the Member considers the charge to be unreasonable.
- 43.5 **IPP 6 not Limited:** Nothing in this rule limits Information Privacy Principle 6 of the Privacy Act 2020 relating to access to personal information.

Part 9 - FINANCES

44 Control and Management

- 44.1 **Control and Management of Finances:** The funds and other assets of Water Safety NZ must be:
- 44.1.1 controlled, invested and disposed of by the Board, subject to this Constitution; and
- 44.1.2 devoted solely to the promotion of the Purposes of Water Safety NZ.
- 44.2 **Accounting Records:** The Board must ensure that accounting records are always kept that:
- 44.2.1 correctly record the transactions of Water Safety NZ;
- 44.2.2 allow Water Safety NZ to produce financial statements that comply with the requirements of the Act; and
- 44.2.3 would enable the financial statements to be readily and properly audited (if required under any legislation or this Constitution).
- 44.3 **Accounting System:** The Board must establish and maintain a satisfactory system of control of Water Safety NZ's accounting records.
- 44.4 **Retention of Records:** The accounting records must be kept in written form or in a form or manner that is easily accessible and convertible into written form. The accounting records must be kept for the current accounting period and for the last seven (7) completed accounting periods of Water Safety NZ.
- ### 45 Balance Date
- 45.1 **Balance Date:** The balance date of Water Safety NZ is 30 June of each year or on the date the Board decides. Water Safety NZ must file financial statements with the Registrar within six (6) months of the Balance Date.

46 Audit

- 46.1 **Audit of Financial Statements:** Water Safety NZ's financial statements must be audited by a qualified auditor appointed by the Board at the Board Meeting immediately following the Annual General Meeting.

47 Payments to Members

- 47.1 **No Personal Benefit:** The monies and other assets of Water Safety NZ must not be used for personal or individual benefit of any Member or Officer, except in the circumstances described in section 24 of the Act.

- 47.2 **Permitted Benefits:** Nothing in Rule 47.1 prevents payment in good faith of, or to, any Member, Officer or employee for any of the following, provided that such payment does not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction:

- 47.2.1 any services actually rendered to Water Safety NZ, whether as an employee or otherwise; or
- 47.2.2 goods supplied to Water Safety NZ in the ordinary and usual course of operation; or
- 47.2.3 interest on money borrowed from any Member or Board Member; or
- 47.2.4 rent for premises demised or let by any Member or Board Member to Water Safety NZ; or
- 47.2.5 reimbursement of any actual and reasonable out-of-pocket expenses incurred by a Member or Board Member on behalf of Water Safety NZ for any other reason,

and provided that no Officer or Member is allowed to influence any such decision made by Water Safety NZ in respect of payments or transactions between it and them, their direct family or any associated entity.

- 47.3 **Honoraria:** Nothing in Rule 47.1 prevents a Board Member from receiving such reasonable Honoraria as may be determined by Ordinary Resolution of a General Meeting following the recommendation of the Board.

Part 10 -DISPUTE RESOLUTION PROCEDURES

48 How a Complaint is Made

- 48.1 **Notice of Complaint:** A Member or an Officer (the 'Complainant') may make a Complaint by giving to the Board a Notice in writing that:
- 48.1.1 states that the Complainant is starting a procedure for resolving a Dispute in accordance with Water Safety NZ's Constitution;
 - 48.1.2 sets out the allegation to which the Dispute relates and whom the allegation is against; and
 - 48.1.3 sets out any other information reasonably required by Water Safety NZ.

- 48.2 **Water Safety NZ can Initiate a Complaint:** Water Safety NZ may make a Complaint involving an allegation against a Member or an Officer (the 'Respondent') by giving to the Respondent a Notice in writing that:
- 48.2.1 states that Water Safety NZ is starting a procedure for resolving a Dispute in accordance with Water Safety NZ's Constitution; and
 - 48.2.2 sets out the allegation to which the Dispute relates.
- 48.3 **Respondent Information:** The information given to the Respondent under Rule 48.1 or 48.2 must be enough to ensure that a Respondent is fairly advised of the allegation concerning them, with sufficient details given to enable them to prepare a response.
- 49 Complainant's Right to be Heard**
- 49.1 **Right to be Heard:** A Complainant has a right to be heard before the Complaint is resolved or any outcome is determined.
- 49.2 **Officer May Exercise Right of Water Safety NZ:** If Water Safety NZ makes a Complaint an Officer may exercise the right to be heard on behalf of Water Safety NZ.
- 49.3 **Method of Hearing:** Without limiting the manner in which the Complainant may be given the right to be heard, they must be taken to have been given the right if:
- 49.3.1 they have a reasonable opportunity to be heard in writing or at an oral hearing (if one is held);
 - 49.3.2 an oral hearing is held if the Decision Maker considers that an oral hearing is needed to ensure an adequate hearing;
 - 49.3.3 an oral hearing (if any) is held before the Decision Maker; and
 - 49.3.4 the Complainant's written or verbal statement or submissions (if any) are considered by the Decision Maker.
- 50 Respondent's Right to be Heard**
- 50.1 **Application:** This Rule applies if a Complaint involves an allegation that a Member, an Officer, or Water Safety NZ (the 'Respondent'):
- 50.1.1 has engaged in misconduct;
 - 50.1.2 has breached, or is likely to breach, a duty under Water Safety NZ's Constitution, Policies, code of conduct, or the Act; or
 - 50.1.3 has damaged the rights or interests of a Member or the rights or interests of Members generally.
- 50.2 **Right to be Heard:** The Respondent has a right to be heard before the Complaint is resolved or any outcome is determined.
- 50.3 **Officer May Exercise Right of Water Safety NZ:** If the Respondent is Water Safety NZ, an Officer may exercise the right to be heard on behalf of Water Safety NZ.
- 50.4 **Method of Hearing:** Without limiting the manner in which a Respondent may be given a right to be heard, a Respondent must be taken to have been given the right if:

- 50.4.1 the Respondent is fairly advised of all allegations concerning the Respondent, with sufficient details and time given to enable the Respondent to prepare a response;
- 50.4.2 the Respondent has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held);
- 50.4.3 an oral hearing is held if the Decision Maker considers that an oral hearing is needed to ensure an adequate hearing;
- 50.4.4 an oral hearing (if any) is held before the Decision Maker; and
- 50.4.5 the Respondent's written statement or submissions (if any) are considered by the Decision Maker.

51 Investigating and Determining Dispute

- 51.1 **Investigation:** Water Safety NZ must, as soon as is reasonably practicable after receiving or becoming aware of a Complaint made in accordance with the Constitution, ensure that the Dispute is investigated and determined.
- 51.2 **Fair Process:** Disputes must be dealt with under the Constitution in a fair, efficient, and effective manner and in accordance with the provisions of the Act.
- 51.3 **Cooperation:** All Members (including the Board) must cooperate to resolve Disputes efficiently, fairly, and with minimum disruption to Water Safety NZ's activities.

52 Water Safety NZ May Decide Not to Proceed Further

- 52.1 **Water Safety NZ May Decide Not to Proceed:** Despite Rule 51, Water Safety NZ may decide not to proceed further with a Complaint if:
 - 52.1.1 the Complaint is considered to be trivial;
 - 52.1.2 the Complaint does not appear to disclose or involve any allegation of the following kind:
 - (a) that a Member or an Officer has engaged in material misconduct;
 - (b) that a Member, an Officer, or Water Safety NZ has materially breached, or is likely to materially breach, a duty under Water Safety NZ's Constitution or Policies or the Act;
 - (c) that a Member's rights or interests or Members' rights or interests generally have been materially damaged;
 - 52.1.3 the Complaint appears to be without foundation or there is no apparent evidence to support it;
 - 52.1.4 the person who makes the Complaint has an insignificant interest in the matter;
 - 52.1.5 the conduct, incident, event, or issue giving rise to the Complaint has already been investigated and dealt with under the Constitution; or
 - 52.1.6 there has been an undue delay in making the Complaint.

53 Water Safety NZ May Refer Complaint

- 53.1 **Referral of Complaint:** Water Safety NZ may refer a Complaint to:

- 53.1.1 a sub-committee, a Judicial Committee, or an external person or organisation to investigate and report; or
- 53.1.2 a sub-committee, a Judicial Committee, an arbitral tribunal, or an external person or organisation to investigate and make a decision.
- 53.2 **Referral to Dispute Resolution Service:** Water Safety NZ may, with the consent of all parties to a Complaint, refer the Complaint to any type of consensual dispute resolution (for example, mediation, facilitation, or a tikanga-based practice).
- 53.3 **No Limitation on Referral to Authorities:** For the avoidance of doubt, this Rule 53 will not limit Water Safety NZ's discretion to refer any matter to any appropriate regulatory authority or in the case of suspected criminal activity arising in relation to any Complaint, to the Police.
- 53.4 **Remedies:** The Decision Maker may:
- 53.4.1 order the Complainant (if a Member) or the Member complained against, to meet any of Water Safety NZ's reasonable costs in dealing with the Complaint; and
- 53.4.2 make such directions as the Decision Maker thinks appropriate (with which Water Safety NZ and Members will comply), including upholding a Complaint, and
- (a) reprimanding the Member; and/or
- (b) suspending the Member from membership for a specified period; and/or
- (c) terminating the Member's membership.
- 53.5 **Procedure:** Before any decision under Rule 53.4 is made the Member concerned:
- 53.5.1 must be given fourteen (14) Days' Written Notice by the Decision Maker of the proposed resolution to impose a sanction; and
- 53.5.2 have the right to be present, make submissions, and be heard at the meeting in which the proposed sanction is to be determined.
- 54 Decision Makers**
- 54.1 **Impartiality of Decision Maker:** A person may not act as a Decision Maker in relation to a Complaint if two (2) or more Board Members or a Complaints sub-committee (if appointed) consider that there are reasonable grounds to believe that the person may not be:
- 54.1.1 impartial; or
- 54.1.2 able to consider the matter without a predetermined view.
- 55 Suspension of a Member**
- 55.1 If a Member is the subject of a Complaint, and the Board believes it is in the best interests of Water Safety NZ to do so, the Board may suspend the Member until final determination of the matter under the Dispute resolution process applicable to the matter. Before imposing any such suspension, the Member must be given Notice of the suspension.
- 55.2 Unless otherwise determined by the Board, while a Member is suspended, the Member is:
- 55.2.1 not entitled to attend, speak or vote at a General Meeting; and
- 55.2.2 not entitled to any other rights or entitlements as a Member,

until such time as the alleged breach is resolved or determined.

Part 11 – ALTERATIONS TO THE CONSTITUTION

56 Amending this Constitution

- 56.1 **Special Resolution:** Subject to Rule 56.2, this Constitution may only be altered, added to, or repealed by a Special Resolution at a General Meeting in accordance with this Constitution.
- 56.2 **Notice:** Notice of an intention to alter this Constitution must be given by the Board or any Member no later than twenty-eight (28) Days prior to a General Meeting.
- 56.3 **Limitation of Amendments:** No alteration, addition to or revision of this Constitution will be approved if it affects the not-for-profit purposes, personal benefit prohibition, its charitable status under the Charities Act 2005, or the winding up Rules of Water Safety NZ. This Rule must not be removed from this Constitution and must be included in any alteration, addition to, or revision of this Constitution.
- 56.4 **Minor/Technical Amendments:** Any minor or technical amendments may be notified to Members as outlined in section 31 of the Act.
- 56.5 **Notification to Registrar:** When an amendment is approved by a General Meeting it must be notified to the Registrar of Incorporated Societies in the form and manner specified in the Act for registration and will take effect from the date of registration.
- 56.6 **Notification to Charities Services:** If Water Safety NZ is registered as a charity under the Charities Act 2005, the amendment must also be notified to Charities Services as required by section 40 of that Act.

Part 12 - LIQUIDATION AND REMOVAL FROM THE REGISTER

57 Voluntary Liquidation

- 57.1 **Voluntary Liquidation:** Water Safety NZ may be voluntarily liquidated if:
- 57.1.1 a Special Resolution is passed at a General Meeting to appoint a liquidator; and
- 57.1.2 such resolution is confirmed by Special Resolution in a subsequent General Meeting called for that purpose and held no later than thirty (30) Days after the date on which the resolution to be confirmed was passed.
- 57.2 **Notice of Liquidation Proposal:** The Board must give twenty-eight (28) Days Written Notice to all Members of the proposed resolution to put Water Safety NZ into liquidation.
- 57.3 **Notice of Meeting:** The Board must also give Written Notice to all Members of the General Meeting at which any such proposed resolution is to be considered. The Notice must include all information as required by section 228(4) of the Act.

58 Liquidation or Removal in Accordance with the Act

- 58.1 **Liquidation:** Water Safety NZ may also be put into liquidation or removed from the Register of Incorporated Societies in accordance with the provisions of Part 5 of the Act.

59 Surplus Assets

- 59.1 **Surplus Assets:** If Water Safety NZ is liquidated or removed from the Register of Incorporated Societies and there are surplus assets after settling all debts and liabilities, these assets must not be paid or distributed among Water Safety NZ's Members. Instead, they must be given or transferred to some other not-for-profit entity or entities in New Zealand having purposes similar to the Purposes of Water Safety NZ and used to further a charitable purpose or purposes as defined in section 5(1) of the Charities Act 2005.
- 59.2 **General Meeting:** The organisation or body in Rule 59.1 must be determined by Members in a General Meeting to be held with sufficient Notice to satisfy the requirements of section 228 of the Act.
- 59.3 **Meeting Following Liquidation:** If a General Meeting for the purposes of Rule 59.2 cannot be held before liquidation or removal from the Register of Incorporated Societies, Water Safety NZ must apply to the Registrar in accordance with section 217 of the Act to be treated as being still in existence for the purposes of passing a resolution for disposal of surplus assets.
- 59.4 **Registrar May Decide:** If the Members are unable to reach agreement on the body or bodies to which surplus assets will be distributed, or Water Safety NZ is otherwise unable to pass a resolution specifying the body or bodies, the surplus assets will be distributed in a manner determined by the Registrar, having regard for the purposes of Water Safety NZ and other relevant matters provided for in this Constitution.

Part 13 – OTHER

60 Indemnity

- 60.1 **Indemnity:** Water Safety NZ will indemnify all current and former Board Members, Officers, employees and agents in respect of:
- 60.1.1 liability to any person other than Water Safety NZ for any act or omission in their capacity as a Board Member or employee; and
 - 60.1.2 costs (including legal costs) incurred by the Board Member or employee in defending or settling any claim or proceeding relating to any such liability.
- 60.2 **Scope of indemnity:** The indemnity set out in Rule 60 does not extend to:
- 60.2.1 criminal liability; or
 - 60.2.2 a liability that arises out of a failure to act in good faith and in the best interests of Water Safety NZ when acting in capacity as a Board Member or employee.
- 60.3 **Insurance:** Water Safety NZ may obtain any appropriate insurance cover in respect of the indemnity provision in Rule 60.

61 Matters Not Provided For

- 61.1 If any matter arises that, in the opinion of the Board, is not provided for in this Constitution or any Policies, or if any Dispute arises out of the interpretation of this Constitution or the Policies, the matter or Dispute will be determined by the Board, whose decision will be final and binding.

- 61.2 Any Dispute or matter which the Board considers in its discretion is not a Complaint or disciplinary matter may be referred by the Board for resolution by the following process:
- 61.2.1 by the parties acting in good faith to seek an agreement;
 - 61.2.2 failing agreement in Rule 61.2.1, by a party or the parties appointing an independent third person to mediate between them; or
 - 61.2.3 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.