

CONSTITUTION OF PHOENIX AQUATICS

INCORPORATED

October 2018

Amended June 2021

- 14.3/14.4 Alteration to Clauses
- 16.4 Liquidation and Merger

Section One: Core Provisions	1
1. Name and Club Colours	1
2. Definitions and Interpretation	1
3. Status	2
4. Objects	3
5. Powers and Obligations	3
Section Two: Phoenix Aquatics Incorporated Membership and Database	5
6. Phoenix Aquatics Incorporated Membership and Database	5
7. Rights and Obligations of Members	5
Section Three: Governance	7
8a Committee Composition	7
9. Committee Procedure	8
Section Four: Meetings, Elections and Voting	10
10. General Meetings	10
11. Notices for General Meetings	11
12. Elections and Voting	11
Section Five: Other	12
13. Finance	12
14. Alteration to Clauses	12
15. Disputes/Appeals	12
16. Liquidation and Merger	13
17. Prohibition of Personal Benefit	13
18. Limitation of Liability and Indemnity	13
19. Savings	13

CONSTITUTION OF Phoenix Aquatics Incorporated

Section One: Core Provisions

1. Name and Club Colours

- 1.1 The name of the organisation is Phoenix Aquatics Incorporated.
- 1.2 The Club Colours shall be Royal Blue, Red and White

2. Definitions and Interpretation

- 2.1 In this constitution:

AGM means annual general meeting;

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

Committee means the Committee of Phoenix Aquatics Incorporated

Chair means chairperson of the Committee;

Club means Phoenix Aquatics Incorporated;

Database means Swimming NZ's database of Members;

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

Facilities Plan means the plan, or part of the **Whole of Sport Plan**, dealing with the provision of the facilities necessary and desirable to support training and competition for competitive swimming in New Zealand;

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

Financial Year means the financial year of Phoenix Aquatics Incorporated;

GM means a general meeting;

HP means high performance;

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

KPIs mean key performance indicators;

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

Life Member means a person awarded life membership of Swimming Auckland and/or Swimming NZ;

Member means a member of Phoenix Aquatics Incorporated;

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

Objects mean the objects of Phoenix Aquatics Incorporated;

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

President means the president of Phoenix Aquatics.

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

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

SGM means a special general meeting;

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

Sport means the sport of competitive swimming;

Sports Tribunal means the Sports Tribunal of New Zealand;

Swimming NZ means Swimming New Zealand Incorporated

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

Swimming Auckland means Auckland Swimming Association Incorporated

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

Whole of Sport Plan means Swimming NZ's Whole of Sport Plan;

Phoenix Aquatics Incorporated Associate is defined in Clause 6.3; and

Phoenix Aquatics Incorporated Life Member means a person awarded life membership of Phoenix Aquatics Incorporated.

2.2 In this constitution:

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

3. **Status**

3.1 Phoenix Aquatics Incorporated is:

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

4. Objects

- 4.1 The primary Object of Phoenix Aquatics Incorporated is to support the growth and performance of the sport of competitive swimming in its Region, from entry level club competitive swimmers to Elite HP swimmers.
- 4.2 To support its primary Object, Phoenix Aquatics Incorporated has the further Objects to work with Swimming NZ, its Regional Association, and other Member Clubs within the Region and others to:
- a. be a member of Swimming NZ;
 - b. assist and support the operation of Swimming NZ in its Region;
 - c. support and deliver the Whole of Sport Plan in its Region including:
 - i. working with Member Clubs within the Region to develop and implement Swimming NZ's facilities plan;
 - ii. facilitating the delivery of programmes to attract members and deliver competitive swimming;
 - iii. minimising as much as practical the administrative complexity of competitive swimming;
 - iv. enabling the Sport to build swimmer capability;
 - v. complying with the policies and standards set by Swimming NZ, Swimming Auckland; and
 - d. to raise awareness of and interest in competitive swimming within the wider community;
 - e. have sound governance structures, processes and policies;
 - f. adopt prudent risk and asset management policies;
 - g. be financially viable and financially independent of Swimming NZ;
 - h. fulfil its obligations to Drug Free Sport New Zealand in relation to doping controls and banned substances; and
 - i. maintain a strong interest in Learn to Swim and swim safe educational activities.
 - j. Develop the knowledge, experience and education of teachers and coaches working in the programme.
 - k. To operate in conjunction with and use facilities managed by NZL Swim Limited.

5. Powers and Obligations

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

- f. designate a Voting Representative to represent it at a Regional Association GM and to exercise Phoenix Aquatics Incorporated's voting rights as provided in the Swimming NZ constitution;
- g. elect Phoenix Aquatics Incorporated Life Members and award service and honours awards
- h. make, alter, rescind and enforce rules, policies, plans, charters and procedures to affect the Objects, or for the governance and operation of Phoenix Aquatics Incorporated;
- i. determine, implement and enforce disciplinary, disputes and appeal procedures including making decisions, conducting hearings and imposing sanctions and penalties;
- j. engage and dismiss employees and contractors;
- k. delegate powers of Phoenix Aquatics Incorporated to any person, committee or sub-committees (the composition of which is not limited to Members) and for that purpose to establish, fund and set the terms of reference and structure;
- l. contract, engage or make any arrangements with any person to fulfil the Objects;
- m. be a member of or affiliate to and/or be associated in any way with any person which has objects which are similar in whole or in part to the Objects in New Zealand and/or internationally;
- n. produce, publish and distribute any communications, newsletters or publications;
- o. do any other acts or things which it determines are incidental to or conducive to the attainment of the Objects; and
- p. merge with, consolidate and/or transfer assets and liabilities to another Member Club.

5.2 Phoenix Aquatics Incorporated shall:

- a. support and work with the Committee of its Regional Association to build a culture of trust, collaboration and discipline for the Sport;
- b. act consistently with the Whole of Sport Plan, policies, standards and KPIs set by Swimming NZ and Swimming Auckland
- c. produce regularly and provide to its Regional Association, a strategic plan identifying its role in growing the Sport and supporting the Whole of Sport Plan;
- d. work with Swimming NZ, its Regional Association, and other Member Clubs for the benefit of the Sport;
- e. pay any Amount owed by it to Swimming NZ and its Regional Association;
- f. abide by all rules, regulations, lawful requests or directions made by Swimming NZ and Swimming Auckland including any Swimming NZ Member Protection Policy or Code of Conduct; and
- g. provide accurate data on a timely basis for its Regional Association as required by Swimming NZ for the Database or otherwise.

Section Two: Phoenix Aquatics Incorporated Membership and Database

6. Phoenix Aquatics Incorporated Membership and Database

- 6.1 A Member is a person who is:
- a. is a member of Swimming NZ and Swimming Auckland;
 - b. is approved by Phoenix Aquatics Incorporated as a member of Phoenix Aquatics Incorporated;
 - c. is a:
 - i. swimmer who competes in a Swimming NZ Member Club or Region (or higher) event sanctioned by Swimming NZ or a Regional Association and which is on the annual national, inter-Zonal or Regional competitive calendar (this category includes Elite HP Swimmers and excludes “Learn to Swim” swimmers); and/or
 - ii. coach of the Clubs or coaches of Elite HP Swimmers; and/or
 - iii. Regionally or higher qualified inspectors of turns officials and nationally or higher qualified time keepers; and/or
 - iv. Phoenix Aquatics Incorporated Life Members; and/or
 - v. interested persons who do not come within any of Clauses 6.1c i, ii, iii, iv or v, including, but not limited to: non-competitive swimmers; learn to swim swimmers; and social members.
- 6.2 Members must pay all Amounts due to Phoenix Aquatics Incorporated, Swimming Auckland and Swimming NZ before being eligible to participate in the events described in Clause 6.1c.i.
- 6.3 A person seeking membership of Phoenix Aquatics Incorporated must:
- a. complete and submit an application as required by Phoenix Aquatics Incorporated;
 - b. satisfy all criteria in the Phoenix Aquatics constitution and in these clauses to be a Member; and
 - c. will be subject to approval as a member by Phoenix Aquatics Incorporated.

7. Rights and Obligations of Members

- 7.1 A Member is bound by this constitution and:
- a. by all rules, policies, charters, procedures and decisions of Phoenix Aquatics Incorporated and where applicable those of Swimming Auckland, Swimming NZ and FINA;
 - b. must pay all Amounts imposed on them by Phoenix Aquatics Incorporated, Swimming Auckland and Swimming NZ;
- 7.2 A Member ceases to be a member of Phoenix Aquatics Incorporated:
- a. by written agreement with, or written resignation delivered to, Phoenix Aquatics Incorporated;
 - b. upon expulsion from membership;
 - c. if no longer eligible to be a Member under Clause 6.
- 7.3 A Member disobeying any rule or failing to give effect to any decision of Phoenix Aquatics Incorporated, Swimming Auckland, Swimming NZ, FINA, or the Sports Tribunal, or having done anything else (for example, being convicted of a criminal offence which the Committee considers is relevant to Phoenix Aquatics Incorporated) which the Committee considers brings or may bring the Sport or Phoenix Aquatics Incorporated into disrepute and/or creates exposure to risk for Phoenix Aquatics Incorporated or if a Member fails to comply

with any sanction imposed by Swimming NZ, Swimming Auckland or Phoenix Aquatics Incorporated, or the Sports Tribunal is liable to:

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

or such other sanction as the Committee may in its sole discretion impose

- 7.4 A Member may only be a member of one Member Club at a time.
- 7.5 Any transfer of membership of a Member between Member Clubs shall be effective once approved on the database by the two Member Clubs involved and Swimming Auckland
- 7.6 Any Member under suspension or awaiting a hearing for an offence capable of having a period of suspension imposed, is ineligible for transfer.

Section Three: Governance

8. The Management Group

8.1 The Management group shall comprise of the following three Members:

- a. Director of Coaching NZL Swim
- b. President – Phoenix Aquatics
- c. Club Administrator

8.2 In addition to any specific provisions outlined in this Constitution the Management group will determine the strategic direction of the Club in order to attain the previously stated objects including (but not limited to):

- a. Determining participation at swim meets;
- b. Allocation of Club funds;
- c. Club representation at meetings to affiliated bodies;
- d. Setting financial budgets:

8.3 The Management group will meet as often as its members deem necessary to fulfil the necessary functions.

8.4 The Director of Coaching of NZL Swim shall be the Head Coach of Phoenix Aquatics

8.5 A Management group member shall cease upon;

- a. Death
- b. Resignation
- c. Mental incapacity

8a Committee Composition

8a.1 The Committee comprises no less than 5 persons and no more than 6 persons.

The following persons are not eligible to be a Committee member:

- a. an employee of a Member Club, a Regional Association or Swimming NZ; and
- b. a person who is a member of the Committee of Swimming NZ, a Regional Association or another Member club.
- c. a person who has a criminal conviction
- d. a person who has been permanently trespassed from a swimming facility

8a.2 Either

- a. all Committee members are elected by Members at an AGM; or
- b. Three Committee members are elected by Members at an AGM and the balance of the Committee members are co-opted by the Three elected Committee members

8a.3 Notwithstanding anything else in this Constitution, each Member is entitled to one vote for the election of each elected Committee member. At least 21 days prior to the AGM, the Committee shall give written notice to its Members calling for nominations from Members for Committee members.

8a.4 Each Member:

- a. may nominate in writing one candidate for election to the Committee for each vacant position on the Committee.; and
- b. must provide to the Committee the written consent of any candidate to their nomination; and
- c. may provide to the Committee such further information as it thinks fit in support of its candidate(s); and

- d. if choosing to nominate a candidate for election to the Committee, the nomination must comply with the requirements in Clause 8a.4 a-c above at least seven days prior to the AGM.

8a.5 In relation to the term of office of a Committee member:

- a. A term of office is for a maximum of three years;
- b. a Committee member may not serve more than three consecutive terms of office on the Committee;
- c. a Committee member may stand again for the Committee but is subject to this Clause 8a.5b;
- d. except where a term of office otherwise ends it expires at the conclusion of the next AGM.

8a.6 At the first Committee meeting after the AGM, the Committee shall elect a Chair and a deputy Chair of the Committee. The Chair shall chair all Committee meetings at which he or she is present and in the Chair's absence the deputy Chair shall take that role. A Committee member is deemed to have vacated the Committee upon any one or more of the following occurring:

- a. being adjudicated bankrupt;
- b. being declared of unsound mind or being the subject of a property order under the Protection of Personal and Property Rights Act 1988;
- c. resigning or retiring or their term of appointment expiring;
- d. being convicted of a criminal offence or being sentenced to imprisonment;
- e. dying; and
- f. being absent for three consecutive meetings of the Committee without being granted leave of absence by the Committee;

8a.7 Casual vacancies are dealt with as follows:

- a. the Committee may fill casual vacancies on the Committee;
- b. the term of any appointments due to casual vacancies is until the conclusion of the next AGM;
- c. appointments due to casual vacancies will not count as a term served as a Committee member for the purpose of 8a.5b;
- d. any person appointed to fill a casual vacancy may later stand for election to the Committee.

9. Committee Procedure

9.1 The governance of Phoenix Aquatics Incorporated and the exercise of all powers of Phoenix Aquatics Incorporated (except where restricted by this constitution) are delegated without further restriction, to be undertaken by the Committee. Such powers may also be delegated by the Committee to persons as it determines.

9.2 The role and responsibility of the Committee is to act in the best interests of Phoenix Aquatics Incorporated and to provide good governance to Phoenix Aquatics Incorporated including through the following:

- a. The Committee shall (in addition to general administration) be responsible for implementing the Management group's strategic plan and the managing of swim meets, training camps, time trials, club sessions, fundraising, payment of accounts and all financial reporting and such other matters as determined by the Management group.
- b. procuring the implementation of the Whole of Sport Plan in the Phoenix Aquatics Incorporated Region.
- c. monitoring and reviewing performance against the Whole of Sport Plan;
- d. monitoring and reviewing performance against the annual business plan and budget;

- e. addressing the ongoing viability and sustainability of Phoenix Aquatics Incorporated;
- f. monitoring regulatory compliance for Phoenix Aquatics Incorporated;
- g. establishing, reviewing, and monitoring policies to guide and govern Phoenix Aquatics Incorporated;
- h. fostering interaction and communication across and within Phoenix Aquatics Incorporated, Regional Associations and Member Clubs Phoenix Aquatics
- i. adopting and communicating a continual best practice performance culture;
- j. preparing an annual report and procuring an annual statement of accounts.

9.3 The quorum for a Committee meeting is four Committee members.

9.4 The Committee determines its own rules for any matters not specified in this constitution, including for conduct, operation and meetings of the Committee. Such rules should be recorded in a Committee charter and code of conduct which shall include:

- a. there must be at least five Committee meetings each year;
- b. Committee meetings may be held in person or by teleconference or by other means by which those participating may hear each other simultaneously;
- c. a resolution signed by all Committee members is as effective as if passed at a meeting;
- d. a Committee meeting may be called by the Chair or by written request of three Committee members;
- e. decisions are by Ordinary Resolution (unless otherwise required by this constitution) by voice, or if requested by the Chair by show of hands, and, if requested by any Committee member, by secret ballot;
- f. each Committee member has one vote and in a tie the Chair has an additional casting vote;
- g. the Committee must ensure minutes are kept of all Committee meetings;
- h. any additional roles and expectations that Phoenix Aquatics Incorporated has of a Committee member;
- i. the Committee must at periods of not more than three years review all Phoenix Aquatics Incorporated policies;
- j. an annual performance review of the Committee; and
- k. a requirement that all new Committee members sign the Committee charter and code of conduct in front of their Committee colleagues as a symbol of their commitment to act at all times in the best interests of Phoenix Aquatics Incorporated.

9.5 The Committee is required to implement the SNZ Member Protection Policy which is binding on all Members.

9.6 The Committee may establish an awards committee with functions, processes and protocols as determined by the Committee.

Section Four: Meetings, Elections and Voting

10. General Meetings

- 10.1 A GM of Phoenix Aquatics Incorporated is either an AGM or a SGM. Subject to Clauses 10.4 f and g all Members may be present at a GM which shall be held at such location, date, and time, or in the case of Clauses 10.4 f and g by such process, as determined by the Committee.
- 10.2 The AGM must be held once every year, no later than four months after the end of the Financial Year to:
- a. consider the Committee's annual report;
 - b. consider the annual financial report;
 - c. consider the statement of accounts;
 - d. elect Committee members in accordance with Clause 8;
 - e. consider any other business that is notified as an item of business under Clause 10.3.
- 10.3 An item of business must be considered at an AGM if notified to Phoenix Aquatics Incorporated by the Committee or by not less than one third of Members within seven days of notice of an AGM being given.
- 10.4 A SGM:
- a. may be called by the Committee at any time;
 - b. must be called by the Committee within 21 days of Phoenix Aquatics Incorporated receiving a written request setting out the reasons for the SGM from not less than one third of the total number of Members of the Club;
 - c. can only consider the items of business for which the SGM has been called;
 - d. can only pass a resolution by Special Resolution;
 - e. Special Resolutions bind the Committee to comply with such resolution;
 - f. if determined to be appropriate by the Committee, may be held electronically or by teleconference with post, email or electronic voting; and
 - g. if the Committee determines that a SGM is undesirable because of content, time and/or expense, the Committee may conduct the business of the SGM entirely by post, email or electronic voting but this Clause does not apply to a SGM requisitioned by not less than half of the Members of the Club.
- 10.5 A quorum for a GM is formed if the Members present hold in total not less than one third of the total votes as determined in Clause 12.1 or, if post, email or electronic voting applies, at least one third of the total votes are cast. If a quorum is not achieved within half an hour, or where post, email or electronic voting applies, less than one third of the total votes are cast, the GM fails for lack of a quorum, but the GM is adjourned to another day, time and place to be notified to all persons who are to be given notice under Clause 11. The Members present at a re-convened GM are deemed to constitute a valid quorum.
- 10.6 GMs are chaired by the Chair of the Committee and in his or her absence by a Committee Member elected by Members present at the GM. Matters not provided for that occur at or in relation to a GM are decided by such chairperson.
- 10.7 All Members at a GM must comply with any Committee policy relating to speaking at a GM.
- 10.8 Minutes must be kept of each GM.

- 10.9 Any irregularity, error or omission in notices, agendas and papers for the GM or omission to give notices within a timeframe or omission to give notice to all persons entitled to receive notice, and any other error in the organisation of the GM does not invalidate nor prevent the GM from proceeding provided that:
- a. the chairperson in his or her discretion determines that it is still appropriate for the GM to proceed despite the irregularity, error or omission; and
 - b. a motion to proceed is put to the GM and such motion is passed by Special Resolution.

11. Notices for General Meetings

- 11.1 Notices and other documents referred to in this Clause in relation to a GM must be given by Phoenix Aquatics Incorporated to all Members and may be given to any other persons as determined by the Committee.
- 11.2 Notice of the date, time and place (or process in the case of Clause 10.4 g and h) of a GM must be given by Phoenix Aquatics Incorporated not less than 21 days prior to the date of the GM.
- 11.3 Notice of the agenda and the documents relating to items of business for the GM must be given by Phoenix Aquatics Incorporated not less than 14 days prior to the date of the GM.
- 11.4 Any notice to be given by Phoenix Aquatics Incorporated in relation to a GM may be given by any method (for example but not limited to post, email, or notification on a website) as determined by the Committee.

12. Elections and Voting

- 12.1 Members entitled to vote at a GM are those members recorded on the Database for Phoenix Aquatics Incorporated on the last day of the Financial Year immediately preceding the date on which the vote is to be exercised, provided that:
- a. a Member is ineligible to vote if any Amount due by them to Phoenix Aquatics Incorporated or any Regional Association or Swimming NZ for the Financial Year referred to above is not paid fourteen or more days before the date on which the vote is to be exercised;
 - b. voting rights are suspended if so determined by the Committee under Clause 7.3.
- 12.2 At GMs:
- a. Members over eighteen years of age are entitled to vote and stand for office. Younger members have a voting right but may not themselves exercise it. Instead their parent or guardian may exercise their vote by proxy. A proxy has only one vote per membership or family membership. A proxy member is qualified for election to the Committee.
 - b. voting is by voices or by show of hands as determined by the chairperson of the GM, except the Committee may determine that a GM may be held electronically or by teleconference with post, email or electronic voting. Any matter may be by a secret ballot if it is called for by a Member or by the chairperson of the GM;
 - c. motions are passed by Ordinary Resolution unless required by this constitution to be passed by Special Resolution.
- 12.3 Life Members of Phoenix Aquatics Incorporated have individual voting rights at GMs.

Section Five: Other

13. Finance

- 13.1 The Committee must ensure that proper financial records are kept, and it has appropriate policies for management of Phoenix Aquatics Incorporated finances.
- 13.2 Phoenix Aquatics Incorporated's funds may be invested in such manner as determined by the Management Committee.

14. Alteration to Clauses

- 14.1 Subject to Clause 14.2 and subject to the prior written consent of Swimming Auckland, this constitution may be changed by Special Resolution at a GM for which such change has been notified in accordance with Clause 10.
- 14.2 No change to the prohibition of personal benefit or the liquidation clause can be approved if it would have the effect of causing Swimming Auckland to cease to retain its preferential tax status as a society for the promotion of amateur sport or as a charity under the Charities Act (if applicable).
- 14.3 No addition to or alteration of the objects, personal benefit clause or the winding up clause shall be made which affect its preferential tax status. The provisions and effect of this clause shall not be removed from this document and shall be included and implied into any document replacing this document.
- 14.4 The Committee shall provide a common seal for the Society and may from time to time replace it with a new one. The Secretary shall have custody of the common seal, which shall only be used by the authority of the Committee and shall only be affixed to any document pursuant to a resolution of the Board. Every document to which the common seal is affixed shall be signed by the President and countersigned by the Secretary or a member of the Committee.

15. Disputes/Appeals

- 15.1 The Committee must adopt a policy to require adherence by Members to processes that it considers will enable the fair, efficient and timely resolution of:
- a. disputes that arise with or between Members Phoenix Aquatics, involving an important activity or responsibility of Phoenix Aquatics Incorporated and which the Committee considers in its discretion is of such importance or is causing such a level of disruption to Members or to the activities of Phoenix Aquatics Incorporated that it must be addressed; and
 - b. appeals by a Member against a decision of Phoenix Aquatics Incorporated involving suspension, expulsion, penalty or other material detriment to the club member or may decide (but is not required to) that such matters be referred to Swimming Auckland, Swimming NZ or another body such as the Sports Tribunal (subject to the parties' consent if required).
- 15.2 The Committee may request the President or any other person to act as a mediator in disputes involving Members.
- 15.3 The Committee may, in its discretion decide to allow a right to appeal disciplinary and selection decisions of the Committee to Swimming Auckland, Swimming NZ or another body such as the Sports Tribunal (subject to the parties' consent if required).
- 15.4 In relation to doping, Phoenix Aquatics Incorporated and its Members shall abide by and be subject to the doping provisions set out in the constitution of Swimming Auckland and Swimming NZ.

16. Liquidation and Merger

- 16.1 Phoenix Aquatics Incorporated may be voluntarily liquidated if, at a GM a Special Resolution is passed requiring Phoenix Aquatics Incorporated to be liquidated and the resolution is confirmed by a further Special Resolution passed at a subsequent GM called for that purpose and held not earlier than 30 days and not later than 60 days after the date on which the original resolution was passed.
- 16.2 If, upon the liquidation of Phoenix Aquatics Incorporated, there remains after the satisfaction of all Phoenix Aquatics Incorporated debts and liabilities any property whatsoever, the property shall be given to Swimming Auckland.
- 16.3 Subject to the written approval of Swimming Auckland and satisfaction of all Phoenix Aquatics Incorporated debts and liabilities, Phoenix Aquatics Incorporated may in accordance with a Special Resolution at a GM called for that purpose merge with another Member Club having objects similar to the Objects.
- 16.4 In no event shall any surplus, assets, or funds of the Club be divided among the Members of the club, nor shall the members of the Club have any beneficial interest in them.

17. Prohibition of Personal Benefit

- 17.1 All income, benefit or advantage must be applied to the Objects.
- 17.2 No Member or Committee member or any person associated with a Member or Committee member shall participate in or materially influence any decision made by Phoenix Aquatics Incorporated in respect of the payment to or on behalf of that Member or Committee member or associated person of any income, benefit or advantage whatsoever.
- 17.3 Any payments made must be for goods or services that advance the Objects and must be reasonable and relative to payments that would be made between unrelated parties.
- 17.4 The provision and effect of this Clause must not be removed from this constitution and must be included and implied into any document replacing this constitution.

18. Limitation of Liability and Indemnity

- 18.1 No current or former member of the Committee has any liability to Phoenix Aquatics Incorporated or the Members or any Phoenix Aquatics Incorporated Associate for any act or omission in their capacity as a member of the Committee except in the case of their own fraud, dishonesty, breach of fiduciary duty or the commission of any act known by them to be a breach of duties owed by them at law.
- 18.2 Each current or former member of the Committee is indemnified by and out of the assets of Phoenix Aquatics Incorporated against:
- a. any liability arising out of any act or omission in their capacity as a member of the Committee excluding criminal liability arising out of their fraud, dishonesty, breach of fiduciary duty or the commission of any act known by them to be a breach of duties owed by them at law; and
 - b. costs incurred by them in any proceeding relating to such liability.
- 18.3 This Clause is intended to be enforceable by each current or former member of the Committee.

19. Savings

- 19.1 If any matter arises in relation to Phoenix Aquatics Incorporated that is not provided for in this constitution, the matter shall be dealt with as required by the Management Group and / or the Club Committee