



To: All Auckland clubs
 All regions
 Ross Butler, Acting Chairman SNZ
 Mike Byrne, CEO SNZ

From: Brian Palmer, Executive Officer ASA

Date: 8 September 2011

Re: ASA Remits for SNZ AGM (Remits 3 – 9)

The ASA wishes to provide further detail with regard to remits it has submitted for consideration at the forthcoming SNZ AGM. While there has been some formal explanation surrounding these remits when they were submitted there has subsequently been comment made variously by the CEO of Swimming New Zealand specifically, and by the Board of SNZ generally.

We believe that it is appropriate for the ASA to explain the background to each remit and the reasons why we believe that they are worthy of regional support. For the sake of consistency we will refer to each remit under the number added by SNZ and the title reference which we made to each remit when they were submitted. This document should be read in conjunction with the original remits as distributed by SNZ. We have referred to these remits by number, as provided by SNZ in their 'Summary of Remits' document.

Remit 3 Alteration of Rules As submitted by ASA	
ASA Proposal to AGM	<p>It is recommended that a new Rule 19.5 be added.</p> <p>The Proposed Rule 19.5 should read:</p> <p>19.5 Once an alteration to a rule of the constitution of SNZ is approved, this alteration shall within one week of its approval be lodged by SNZ for registration by the Register of Incorporated Societies.</p>
SNZ Response	<p>The Board doesn't see a need to do this. SNZ currently complies with all Incorporated Societies requirements. The Incorporated Societies Act requires that changes be registered it doesn't stipulate a time requirement. One week is not practical – "as soon as reasonably practicable" would be a compromise position.</p>
ASA Reply	<p>Following the 2010 AGM Swimming Auckland in conjunction with other regions sought and obtained legal advice on amongst other matters, the subject of registering the business of the AGM which involves changes to the Constitution and the point at which that business has its effect. We have had occasion this year to enquire again of our lawyers surrounding this subject and have had the legal position detailed very clearly to us. The legal advice we have received confirms the following:</p> <ol style="list-style-type: none"> 1. It is the obligation of the Board of an Incorporated Society to register the business of an AGM in a timely manner. 2. Changes made to the constitution at an AGM/SGM do not have any legal effect until such time as they are registered with the Registrar of Incorporated Societies and have been published by the Registrar to the web-site of the Registrar. <p>The ASA carefully considered the business which was effected at the 2010 AGM, and the ensuing SGM. The legal opinion which we received confirmed that the only matter associated with the business of the 2010 AGM which was 'unlawful' was the refusal of the SNZ Board to register the duly established business of the AGM in a timely manner. It was clear from the action surrounding the 2010 AGM that the SNZ Board for their own reasons determined that the lawfully enacted business of</p>

the AGM was not to their satisfaction and they in turn refused to register it. This position was not satisfactory in 2010 and would not be satisfactory were it to occur again in the future.

The CEO of SNZ states "*SNZ currently complies with all Incorporated Societies requirements.*" The fact is, in 2010 SNZ did not comply with the requirements of the Incorporated Societies Act and did not meet their obligation to register the business of an AGM. We do not wish to see this position repeated under any circumstance, hence on the basis of experience, the need to establish a constitutional obligation on SNZ to register the wishes of the AGM, whatever that may be.

By way of further comment the CEO suggests that a requirement to register within 7 days "*... is not practical.*" With an organisation as well staffed as SNZ the requirements to accomplish this are simply not onerous at all. The process of lodgment to the Registrar is completed online and takes no more than a few minutes once approval has been granted. The SNZ Board meets immediately following an AGM anyway and there is no reason why lodgment cannot be completed on the day following an AGM, if the will is there to so. Approval of the registration is out of the hands of SNZ but will follow in due course following the timely lodgment of updates.

As we have studied past practice at SNZ AGMs we do note that there have been previous occasions where a specific aspect of the remit included a provision that the remit should have immediate effect from the AGM. While such an approach may seem and feel sensible, it is not lawful, and if applied would leave the Board open to challenge for acting 'ultra-vires' as it is the obligation of the Board to function under the Constitution as it is registered. Changes are not effective until such time as they are published on the website of the Registrar.

Remit 4 Powers and Accountability of the Board

As submitted by ASA

ASA Proposal to AGM

The current Rule 11 reads as follows:

Rule 11 Powers of the Board

11.1 The Board shall exercise all of the powers of SNZ as set out in Rule 4 other than those required to be exercised in general meetings

11.2 In particular the Board shall have the power:

- (a) To sanction any regional association, club or member in accordance with the rules relating to sanctions.
- (b) To delegate any of its powers or functions to the CEO, or to any other person or committee it sees fit to appoint. Committee powers and responsibilities shall be set out in their terms of reference.
- (c) To act as an Appeals Body as set out in these Rules.
- (d) To interpret any SNZ rule or regulations or any definition contained therein and such definition shall be final.

It is proposed that the current rule be amended and added to as follows:

Rule 11 Powers and Accountability of the Board

11.1 The Board shall exercise all of the powers of SNZ as set out in Rule 4 other than those required to be exercised in general meetings.

11.2 In particular the Board shall have the power:

- (a) To sanction any regional association, club or member in accordance with the rules relating to sanctions.
- (b) To delegate any of its powers or functions to the CEO, or to any other person or committee it sees fit to appoint. Committee powers and

	<p>responsibilities shall be set out in their terms of reference.</p> <p>(c) To act as an Appeals Body as set out in these Rules.</p> <p>(d) To interpret any SNZ rule or regulation or any definition contained therein and such definition shall be final.</p> <p>11.3 The Board shall be required to provide an interim report to the Regional Associations, NZSCTA and the Life Members not later than 31 March each year. This report shall include SNZ’s financial statements (unaudited) and progress against the SNZ Strategic Plan. If required by requisition of 50 per cent or more of the regions, SNZ Board may be requested to supply in the interim report other information which may be detailed from time to time in the aforementioned requisition.</p>
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SNZ Response	The Board is happy for SNZ to provide unaudited 6 monthly financials and a report of delivery against strategy. Other (unspecified) reporting requests are likely to be too onerous and too costly to for SNZ to be compelled to produce.
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ASA Reply	<p>Very careful consideration was directed toward the drafting of this remit. Swimming Auckland does not believe that it is appropriate to impose unreasonable demands on SNZ for further information but acknowledges that as stakeholders each region can reasonably expect to have made available interim financial and tracking data to measure progress against plan and budget at the mid-year point. We are confident that this is information which is supplied directly to the board and it would seem from the CEO’s comments as though there is not going to be an issue for SNZ to supply this information as detailed. Swimming Auckland cannot envisage what other information may be sought at some time in the future but does consider that there should be a reasonable threshold to be met before other unspecified detail is supplied. This is the reason why this remit provides for a request for more information to be supported by at least 50% of the regions. This is the same threshold required for the requisition of an SGM and not an easy one to be met which will ensure that any future request will come in response to serious concern rather than a simple and frivolous request.</p> <p>How important is this remit? Swimming Auckland considers that some of the issues of distrust which are clearly evident between SNZ and its stakeholders could have been alleviated with a greater level of transparency and open communication between SNZ and its stakeholders. Reporting such as is being requested provides opportunity for SNZ to genuinely respect the role of the regions as effective stakeholders and owners of the sport on behalf of their members. This level of reporting is not onerous and will do much to ensure that the Board of Swimming New Zealand responds to its regional stakeholders in a genuine spirit of accountability. It is our opinion that this will only be helpful and will contribute to better governance and understanding.</p>
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Remit 5 Length of Service of Appointed SNZ Directors
As submitted by ASA

ASA Proposal to AGM	<p>That Rule 10.1 (b) be amended as detailed below:</p> <p>Current Rule:</p> <p>The elected Directors may appoint up to two appointed Directors on the basis of specific knowledge or skills, for a term no longer than two years. Upon expiry of that term the Board if it thinks fit may reappoint such Directors for a further term.</p> <p>Proposed Rule:</p> <p>The elected Directors may appoint up to two appointed Directors on the basis of specific knowledge or skills, for a term no longer than two years. Upon expiry of that term the Board, if it thinks fit, may reappoint such Directors for a maximum of one further term.</p>
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SNZ Response	A balanced Board is vital to the best practice governance principals of SNZ. Appointed directors provide the opportunity to add skills that may not be present in the elected directors. With fixed terms as proposed, good people may be lost to swimming. As a compromise the Board proposes that after two terms the AGM needs to approve any re-appointment.
ASA Reply	<p>Swimming Auckland considers that the greatest value intended from the appointment of Directors by the Board is the objectivity which accrues from the independence of those board members. Over time that benefit is dissipated as those appointed to office become more and more vested with the decisions and direction being made by the Board of which they are part. Over time the very objectivity which they bring by virtue of their independence is compromised.</p> <p>It is our opinion that should an appointed director feel that they still have something to offer at the conclusion of their second term that there is nothing to prevent them joining a member club and placing themselves for election by the membership for one of the elected positions. In this way it then becomes the stakeholders themselves who can determine the candidates' suitability to contribute longer term from the position of an experienced and no longer independent, but openly elected status.</p> <p>Contrary to the suggestion that good people maybe lost to swimming, this remit if adopted will ensure that good people who have contributed well are fully integrated into our very welcoming community as club and regional members. It will also ensure that fresh perspectives are contributed by appointed members and that there is a continuing flow of vitality to the governance process.</p>
Remit 6 Setting Fees payable to the Regional Associations As submitted by ASA	
ASA Proposal to AGM	<p>That Rule 4.1 (b) and Rule 9.1 be amended, and new Rule 9.9 as detailed below:</p> <p>Current Rule 4.1(b):</p> <p>To prescribe fees payable by Members to SNZ and Regional Associations. To purchase, sell, lease, exchange or otherwise deal with property (whether personal or real).</p> <p>Current Rule 9.1:</p> <p>Prior to 30 June in each year, SNZ shall fix the membership fees payable by every club and every competitive swimmer to both SNZ and each Regional Association, and promptly notify all clubs of the respective amount of such fees payable.</p> <p>Proposed Rule 4.1(b):</p> <p>To prescribe fees payable by Members to SNZ. To purchase, sell, lease, exchange or otherwise deal with property (whether personal or real).</p> <p>Proposed Rule 9.1:</p> <p>Prior to 30 June in each year, SNZ shall fix the membership fees payable by every club and every competitive swimmer to SNZ, and promptly notify all regions and clubs of the respective amount of such fees payable.</p> <p>New Rule 9.9:</p> <p>The Regional Associations may introduce a regional registration fee for classes of member other than competitive swimmers which shall not exceed \$30.00 including GST per member.</p>
SNZ Response	As part of the "One Team" change project, SNZ proposes a review of the membership fees model which would see all members paying a fee to SNZ. At present 75% of members do not pay a fee yet 100% get counted for voting.

	<p>SNZ is the national organisation and must be able to set its fees nationally and consistently. Setting regional fees regionally is currently possible. This is a matter for each region's AGM and constitution which it will need to justify for its membership.</p> <p>SNZ opinion is that any proposed changes to the membership fees model should be considered once the "One Team" project future is determined.</p>
<p>ASA Reply</p>	<p>This remit is not about Project Vanguard, nor the new 'One Team' mantra that has been adopted as its replacement. Nor is it about the national organisation being able to set their own fees, as that capacity already exists.</p> <p>According to the records of SNZ's AGMs the right of a region to charge a fee for categories of member other than competitive swimmers was removed by way of a remit proposed by the SNZ Board in 2006. As a result, clubs are in a position to make membership charges of all members, SNZ is able to levy a special membership charge if it so desires, but a region's capacity to function and meet its obligations to all members is limited solely to a charge for competitive members.</p> <p>Over the years Auckland's focus has been directed toward strengthening its competitive membership base. We do not anticipate that focus changing in consequence of this remit. We are however aware that many of our colleagues from smaller regions are severely restrained by this policy and find their ability to provide greater levels of service limited by the restriction toward who can be charged for membership. This restriction does not recognise that even non-competitive swimmers require service and support from a regional function on occasions and each region should have the capacity to recover costs for that membership if they wish.</p> <p>The CEO suggests that setting fees regionally is currently possible. The ASA and others of its regional colleagues are not aware that this is the case and believe that the specific business conducted in 2006 was intended and resulted in regions being unable to make any charge for membership to any class of member other than competitive.</p> <p>It is our opinion (an opinion which matches that of the CEO) that a region should be accountable to its membership and the market forces within its region as to what it charges for a category of member other than competitive. This capacity should be subject to an upper limit imposed by agreement amongst all regions and set at each year's AGM.</p> <p>We would like to thank the CEO of SNZ for disclosing the intention of SNZ to apply a new fees model for all membership categories under their proposed 'One Team' model as this intention has only ever previously been presumed by regional delegates. We are grateful that this intention has now been confirmed and verified by the CEO, a matter which we are sure will be taken into account at a future stage when it comes time to provide consent to progress further.</p>
<p>Remit 7 Length of Service of Elected Directors As submitted by ASA</p>	
<p>ASA Proposal to AGM</p>	<p>The Current Rule 10.4 provides:</p> <p>At each AGM of SNZ the two longest serving elected Directors shall retire but shall be eligible for re-election. If the longest serving directors number more than two, all with equal length of service, the two to retire shall be decided by straw poll.</p> <p>It is recommended that a new rule, Rule 10.5 be added as follows:</p> <p>Proposed Rule 10.5</p> <p>In addition to Rule 10.4, no Director, elected or appointed, shall be permitted to serve longer than eight consecutive years. In the event that a serving director's eighth anniversary falls between AGMs, they may continue to serve until the following AGM where upon they must retire. For the avoidance of doubt, Rule 10.5</p>

	will apply retrospectively to Directors currently in office at the time of this rule's adoption.
SNZ Response	This is unnecessary as all directors have to stand down under the rotational policy. If the grassroots truly feel a need for change they will not re-elect a particular director.
ASA Reply	<p>With respect to the CEO of Swimming New Zealand and his opinion on this subject there are very clearly established precedents both in sport and higher level democratic structures to limit terms of service. There are also very sound reasons why this principle is applied.</p> <p>The fundamental aspect which concerns members in Swimming Auckland is that board members are placed in office to represent the interests of those who elect them. When they are elected at the outset it is generally a reflection of the confidence and esteem in which they are held by those who elect them. That confidence and esteem generally arises out of a sense by those voting that a candidate understands and reflects their aspirations. Over time the very nature of governance ensures that long-standing members become progressively more detached from the aspirations of those whom they represent. It is our view that there is value in ensuring that after extended periods of continuous service, members return to their 'constituency' and re-engage for a period. After a break for the purpose of reconnecting if there is still service which that member wishes to offer then they may place themselves for re-election during the next electoral round.</p> <p>This principle has well established precedents in corporate governance, the governance of other sports, and also in national and international politics. Perhaps the most well known and high profile example is that of the President of the United States who may only stand for two terms of office before mandatory retirement. It is our opinion that this remit if adopted will provide for greater levels of accountability and would note that it does not presently affect any current candidate for future office at this year's AGM. As there is no current candidate or member who would be affected by this principle this would seem to be an opportune occasion to introduce the principle given that it cannot be interpreted in any way as being a personal affront to any currently serving member who would be affected.</p>
Remit 8 Alteration of SNZ Regulations As submitted by ASA	
ASA Proposal for AGM	<p>It is recommended that a new Rule 19.6 be added.</p> <p>The Proposed Rule 19.6 should read:</p> <p>Proposed Rule 19.6</p> <p>19.6 The CEO can initiate and shall process requests from stakeholders to alter the SNZ Regulations.</p> <p>The CEO's role in this process shall be to ensure that a formal process assessment is adhered to for proposed alterations to the regulations and to assist in achieving the objectives of the regulations which are to protect the integrity of the National Events and Awards, support the pathways for swimmer development and duly consider the impact of change on affected stakeholders and to ensure the regulations provide a suitable framework for the general management of national swimming competitions.</p> <p>Any proposed regulation amendments, deletions or additions, shall be circulated to all Regional Associations for consultation and shall include appropriate supporting information outlining the rationale for change and an impact assessment. Such supporting information shall include a background paper on each proposed change outlining the costs and benefits of the proposed alteration,</p>

	<p>and if appropriate reference to any requirements by FINA along with FINA’s background notes for such requirements.</p> <p>Consideration and approval of any alteration to the SNZ Regulations shall abide by the following procedure:</p> <ul style="list-style-type: none"> (i) Any proposed regulation change with required supporting information and assessments as outlined above and any implementation details of the proposed change shall be sent by the CEO to the SNZ Board, all Regional Associations, and NZSCAT for their feedback/submission; any such submission is to be received by the CEO within 28 days from the date the submitter was fully and directly notified of the proposed change by SNZ. (ii) All submissions from the above consultation process together with the CEO’s recommendation and evaluation of submissions received shall be presented to the Board of SNZ for their information. (iii) Any recommendation by the CEO for a proposed regulation change to become operative shall be approved by more than 50% of those entitled to vote. Voting will be way of a postal ballot and will be in accordance with voting rights as would apply at an annual general meeting or special general meeting. Such a postal ballot shall include at least 20 days notice in writing of the recommendation to be voted upon before the ballot closes; voting in a postal ballot shall also be conducted in accordance with Rules 18.10 and 18.11 of the SNZ Constitution. (iv) A postal ballot of Regional Associations is not required for an alteration to any regulation where that alteration is directly required by FINA; such alteration shall not then be varied by SNZ unless this variance is in accordance with the consultation process outlined in this rule, being Rule 19.6. (v) In addition to the above, alterations to SNZ Regulations shall not occur more than three times in any one calendar year. (vi) Once an alteration to a regulation is approved, it shall become immediately operative.
<p>SNZ Response</p>	<p>Regulations are an operational issue and it should be unnecessary to have this process in the constitution. SNZ already follows a process of consultation with relevant stakeholders for the introduction of regulation changes. The proposed process would be cumbersome and impede SNZ from making timely regulation changes.</p>
<p>ASA Reply</p>	<p>SNZ periodically makes changes to SNZ Regulations. When changed regulations have a significant impact on regions, clubs whom they represent, and individual members. Regulations are not currently bound by Constitution and there is no constitutionally mandated process under which Regulations are changed. Many regional associations, in recognition of the relative importance of Regulations, have incorporated within their own Constitutions defined process’ to ensure that correct and appropriate consideration is given before Regulations are changed.</p> <p>Swimming Auckland is aware of ongoing discontent amongst various of our regional colleagues that Regulations which have significant impact on their athletes and operations are changed without following a due process and frequently without due weighting apparently been given to consultation process’.</p> <p>Swimming Auckland is aware that there is currently a SNZ policy surrounding the changing of regulations but notes that the procedure documented in the SNZ Board Policy documents has been applied inconsistently. In as much as consultation is embarked upon, the consultation process frequently falls short of established protocols for consultation as established by common law of New Zealand.</p> <p>It is Swimming Auckland’s opinion that we will all be better served through having a clearly established and mandated process by which Regulation changes can be</p>

	<p>effected. It is our opinion that for a matter to be of sufficient importance as to be included within the SNZ Regulations that there must be a clearly defined process under which changes can be made.</p> <p>Swimming Auckland is reluctant and cautious about establishing a set of conditions which are too extreme or which prevents the timely ability to enact needful changes. It is for this reason that we suggest in this remit that the process of changing regulations be possible three times in any calendar year and that it should be ultimately approved by a postal ballot of the voting stakeholders. The threshold for change is suggested as being by way of a simple majority to ensure that members remain satisfied that their concerns have been addressed in the consultation process but that there is also accountability as it relates to the changes which are affected.</p> <p>It is our opinion that regulation changes have an effect which is in most cases are greater than simple matters of operation and which have impacts that are far reaching in terms of how the sport is delivered on a day to day, week to week basis throughout the whole country. Most regions will expect to ensure that SNZ Rules are applied in their own meets and so to suggest that changes to Regulations are simple matters of operation is a matter of opinion that diminishes the real impact on the functioning of the sport. It is for this reason that it is our opinion that it is very appropriate that regional stakeholders, in their capacity as the voting stakeholders and ultimate stewards of the sport, should have a final electoral say as it relates to implementation of regulatory changes other than those which are mandated by FINA.</p>
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Remit 9 Time period by SNZ to circulate remits before AGM
As submitted by ASA

ASA Proposal for AGM	<p>That Rule 14.5 be amended, as detailed below:</p> <p>Current Rule 14.5:</p> <p>All Directors, clubs, regional associations and NZSCTA shall receive copies of the annual report and balance sheet of SNZ and the agenda for the annual general meeting at least 14 days prior to the annual general meeting.</p> <p>Proposed Rule 14.5:</p> <p>All Directors, clubs, regional associations and NZSCTA shall receive copies of the annual report and balance sheet of SNZ and the agenda for the annual general meeting at least 28 days prior to the annual general meeting.</p>
SNZ Response	<p>SNZ can circulate remits and director nominations with 28 days notice, however the annual report would be difficult. We agree that it would be good to provide more time so that regions have more opportunity to consult with their members. Options are to exclude annual report (leave as 14 days) or to move the AGM date to no later than 20 October.</p>
ASA Reply	<p>Swimming Auckland is acutely aware of the challenges associated with regional decision making in compressed time frames. In any year there is no more important task a region has than to vote on the business of the AGM for our national body. It is our opinion that the information upon which those decisions need to be made should be provided with a greater time window than the present 14 days. This will allow regional boards and committees sufficient time to conduct whatever consultation they normally enact with their stakeholders. This in turn will result in a greater sense of engagement being possible with non-voting stakeholders such as clubs and individuals members prior to the AGM. It seems that this objective is very similar to one which SNZ is currently pursuing in circulating all information to clubs when they see it fit to do so. It is our opinion that the ability of a regional association to enter into timely dialogue with its own stakeholders is a vital part of the democratic process and that ability is impeded at present through the untimely supply of information.</p>

