

# ***Constitution of New Zealand Food & Grocery Council Incorporated***

Adopted at the Annual General Meeting held on 30 May 2024

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# Constitution of New Zealand Food & Grocery Council Incorporated

## 1. Name

The name of this Society is New Zealand Food & Grocery Council Incorporated.

## 2. Defined terms and interpretation

### 2.1 Defined terms

In this Constitution, unless the context otherwise requires:

**Act** means the Incorporated Societies Act 2022 and includes any regulations made in accordance with it.

**AGM or Annual General Meeting** means an annual general meeting of Members.

**Annual Financial Statements** means the annual financial statements of the Society prepared in accordance with the Act.

**Approved Signatories** means no less than two signatories from the Board, one of whom must be either the Chairperson or the Deputy Chairperson.

**Associate Member** means a person accepted as a Member on the basis of meeting the criteria set out in clause 6.3(b).

**Balance Date** means 31 March in each calendar year.

**Board** means the Board of the Society as set out in clause 9.

**Board Member** means a member of the Board.

**Bylaws** means any bylaws made by the Board in accordance with clause 21.

**Chairperson** means the person elected as chairperson of the Society from time to time in accordance with clause 10.3.

**Chief Executive** means the person appointed by the Board in accordance with clause 10.1.

**Constitution** means this constitution, as may be amended from time to time in accordance with clause 20.1.

**Contact Person** means the person appointed by the Board as the contact person for the Society in accordance with clause 14.6.

**Corporate Member** means a corporate member as provided in clause 6.7.

**Deputy Chairperson** means the person elected as deputy chairperson of the Society from time to time in accordance with clause 10.6.

**Financial Year** means the 12-month period commencing on 1 April in each year and ending on 31 March in the subsequent year, or such other period as the Board may determine.

**First Board Meeting** has the meaning given to it in clause 10.3.

**Full Member** means a person accepted as a Member on the basis of meeting the criteria set out in clause 6.3(a).

**General Meeting** means the AGM or any SGM.

**GICA** means the Grocery Industry Competition Act 2003.

**Groceries** has the meaning given to it in the GICA.

**Incorporated Societies Register** means the register of incorporated societies established under the Act.

**Industry** means New Zealand's food and beverage industry, including the manufacturing, processing and supply of food, beverage and Groceries and the brand ownership of these products.

**Member** means a Full Member and/or an Associate Member.

**Members Register** means the register of Members to be kept in accordance with clause 6.9.

**Purposes** means the purposes of the Society as provided in clause 3.

**Registrar** means the Registrar of Incorporated Societies under the Act.

**Retailer** means an entity which sells finished goods to consumers, including, but not limited to supermarkets, general merchandise stores, restaurants and non-store retailers (such as through mail order or online shopping services) and their distribution networks.

**Society** means New Zealand Food & Grocery Council Incorporated (incorporation number 307276).

**SGM** or **Special General Meeting** means all general meetings of Members other than an AGM.

**Wholesaler** means an entity which purchases finished goods from the Industry and sells finished goods to Retailers.

**Working Day** means a day other than a Saturday, Sunday or public holiday in Wellington.

## 2.2 Interpretation

In this Constitution, unless the context otherwise requires:

- (a) the headings appear as a matter of convenience and are not to affect the construction of this Constitution;
- (b) in the absence of an express indication to the contrary, references to clauses are to clauses of this Constitution;
- (c) a reference to any statute, statutory regulation or other statutory instrument includes the statute, statutory regulation or instrument as from time to time amended or re-enacted or substituted;
- (d) the singular includes the plural and vice versa and one gender includes the other genders;
- (e) another grammatical form of a defined word or expression has a corresponding meaning;
- (f) the words "written" and "writing" include facsimile and electronic communications and any other means of communication resulting in permanent visible reproduction;

- (g) the word “person” includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality;
- (h) the words “day” and “days” mean calendar days;
- (i) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, or similar expressions; and
- (j) words or expressions defined in the Act have the same meaning where they are used in this Constitution.

### 3. Purposes of the Society

The Purposes of the Society are to represent New Zealand’s Industry, by:

- (a) fostering the environment for a dynamic, competitive, responsible and profitable Industry in New Zealand that meets the needs of New Zealand and international consumers, including by:
  - (i) promoting higher levels of competitiveness and efficiency;
  - (ii) championing fair relationships between Retailers and the Industry;
  - (iii) encouraging confidence and trust in the Industry;
  - (iv) encouraging an environmentally sustainable and socially responsible Industry;
  - (v) encouraging stakeholders in the Industry to be ‘good citizens’; and
  - (vi) supporting the well-being, growth, and development of individuals who work in the Industry.
- (b) promoting and safeguarding the welfare of the Industry, and taking any action to benefit or protect its New Zealand and international interests;
- (c) supporting, informing, and championing the environmental, sustainability and social initiatives of the Industry;
- (d) monitoring, and advocating in relation to, government and other authorities’ regulation and policies that impact the Industry, including (but not limited to) its relationship with other industries, consumers and with the environment;
- (e) being the voice of the Industry, in New Zealand and internationally, including by:
  - (i) representing and promoting the Industry externally;
  - (ii) clarifying and resolving overall Industry objectives and policy issues within the Industry; and
  - (iii) negotiating on behalf of the Industry, or a narrower class of Members and/or suppliers;
- (f) promoting education regarding the Industry, including by:
  - (i) supporting and assisting research and experimentation;
  - (ii) producing and distributing materials and disseminating information;

- (iii) providing guidance to Members; and
- (iv) conducting or participating in training courses, seminars, symposia, lectures, conferences and other activities;
- (g) developing and/or adopting policies, procedures, standards and codes of practice for the benefit of the Industry;
- (h) co-operating with other organisations having similar purposes; and
- (i) doing all such other things as ancillary to, or in furtherance of, the Purposes described above.

## 4. Registered office

### 4.1 Registered office

As at the date of this Constitution, the registered office of the Society is 99 Customhouse Quay, Wellington, 6012, New Zealand.

### 4.2 Change of Registered office

The Board may determine to move the registered office of the Society from time to time. The Chief Executive must inform the Registrar of this change within the time frame required by the Act.

## 5. Capacity and powers

The Society shall have the capacity and the rights, powers and privileges conferred by the Act, including all powers necessary for, or ancillary or incidental to, fulfilling its Purposes.

## 6. Membership of the Society

### 6.1 Eligibility

Subject to clauses 6.2 to 6.6, a person is eligible to seek Membership of the Society if they:

- (a) support the Purposes;
- (b) meet the criteria to become a Full Member or an Associate Member (as set out in clause 6.3); and
- (c) consent in writing to become a Member.

### 6.2 Ineligibility

A person is ineligible to seek Membership of the Society if they:

- (a) are a regulated grocery retailer (as defined in the GICA); or
- (b) derive the majority of their revenue from acting as a Wholesaler or Retailer of food, beverages or Groceries.

### 6.3 Classes of Membership

Persons who are not ineligible under clause 6.2 may seek Membership either as a Full Member or an Associate Member under the following criteria:

- (a) Full Members are persons that are:



- (i) directly engaged in the manufacturing or processing of food, beverages or Groceries in New Zealand or elsewhere; or
  - (ii) owners or distributors of brands within the Industry; or
  - (iii) a holding company of any such bodies corporate.
- (b) Associate Members are persons that are:
- (i) affiliated with or involved in the Industry; and
  - (ii) do not meet the criteria of a Full Member.

The Board may, having regard to the criteria above, determine to reclassify any Member at its sole discretion. Such reclassification will commence from the start of the next Financial Year following such determination.

#### **6.4 Application**

All applications for Membership must be signed by the applicant and tendered to the Chief Executive in writing and on the Society's current Membership application form, which can be amended by the Board from time to time, together with any required Membership fee or subscription. Applicants will be advised in writing of the outcome of their application.

#### **6.5 Acceptance**

The Board may, in their sole discretion, determine whether to accept or reject any application and the class of Membership granted.

#### **6.6 Decision final**

Decisions of the Board in relation to Membership are final and cannot be challenged or appealed. Applicants are, however, permitted to re-apply from time to time.

#### **6.7 Corporate Members**

Where a Member is a body corporate (**Corporate Member**):

- (a) that Corporate Member must appoint for administrative purposes one natural person (by name or position) as its representative (**Member Contact**) and provide the name and contact details of that Member Contact (and any future changes to the name and contact details) to the Chief Executive for entry into the Members Register;
- (b) that Corporate Member may remove and replace its Member Contact from time to time by written notice to the Chief Executive;
- (c) all correspondence and notices from the Society to the Corporate Member will be sent to the Member Contact on behalf of that Corporate Member; and
- (d) any notice, signature, consent or other approval given by the Member Contact will be deemed to be binding on the Corporate Member.

#### **6.8 Membership entitlements not transferable**

A right, privilege or obligation, which a person has by reason of being a Member is not capable of being transferred or assigned to another person and terminates on cessation of that person's Membership.

## **6.9 Members Register**

- (a) The Chief Executive must keep a register of Members recording the following for each Member:
  - (i) Name.
  - (ii) Member Contact details
  - (iii) Postal address and email address.
  - (iv) Telephone number.
  - (v) The date the person became a Member.
  - (vi) The date the person ceased to be a Member.
- (b) If a Member's name, address details or telephone number changes, then the Member must give the Chief Executive the updated information. The Chief Executive must then update the Members Register as soon as practicable.

## **6.10 Access to Members Register**

- (a) A Board Member may access the Members Register if access is necessary for the performance of the Board Member's functions or the exercise of the Board Member's powers.
- (b) A Member may make a request to the Chief Executive for access to the Members Register. The Chief Executive will provide access to the extent that Members have consented to access being granted to information about themselves on the Members Register.

# **7. Termination of Membership**

## **7.1 Notice of resignation**

Members shall advise the Society by notice in writing to the Chief Executive or the Chairperson if they wish to resign from their Membership, with such resignation to be effective at the date such notice is received by the Chief Executive or the Chairperson (unless a later date is specified in such notice).

## **7.2 Termination by Board**

After due inquiry by the Board, and subject to compliance with clause 19 if applicable, and having given the Member the right to be heard (either in person or in writing, at the Board's sole discretion), the Board may, by written notice, stating the reasons for arriving at their decision (which may include a Member ceasing to meet any eligibility criteria in clause 6.1, becoming ineligible for Membership pursuant to clause 6.2, or becoming insolvent), invite any Member to resign, within a specified time, for failure to comply with the Constitution or any of the other duties as a Member. If the Member does not so resign, then such Member's Membership may be terminated by a majority resolution of the Board approving the termination. Unless otherwise specified in such resolution, termination is effective as of the date of the resolution.

# **8. Subscriptions and Levies**

## **8.1 Annual subscription**

The annual subscription to the Society shall be such amount as the Board shall from time to time determine and shall be payable in advance. The Board may differentiate between the fees payable by Full Members and Associate Members.

## **8.2 Period**

The subscription of each Member shall be for one year and shall be due and payable (on a pro-rata basis where applicable) on the date of joining and thereafter on the 1st day of April each year or such other date as the Board may determine.

## **8.3 Levies**

The Board may impose a levy from time to time to meet any extraordinary or unusual expenses. [The Board must:

- (a) give the Members reasonable notice of its intention to impose a levy; and
- (b) ensure that any imposed levy does not exceed the amount reasonably anticipated to meet the extraordinary or unusual expense.]

## **8.4 Unfinancial Member**

A Member will be deemed 'unfinancial' if the annual subscription or any levy is not paid within three months of falling due. Subject to clause 16.4, the Board may determine, either generally for all unfinancial Members or for any specific unfinancial Member(s) that such Member is not entitled to receive or participate in any benefit(s) otherwise available to Members during the period they remain unfinancial.

## **8.5 Lapse of Membership**

Membership shall lapse if the annual subscription or levy is not paid within six months of the due date.

## **8.6 No refunds**

A person who ceases to be Member prior to the end of any Financial Year will not be entitled to any refund of subscriptions, levies, or other fees paid to the Society.

# **9. The Board**

## **9.1 Governance of the Society**

The general business of the Society shall be governed by a Board.

## **9.2 Powers**

The Board may exercise all powers of the Society as are not, by the Act or the Constitution, required to be exercised by the Society at a meeting of Members.

## **9.3 Functions**

The Board's functions are to manage, direct or supervise the operation and affairs of the Society, including:

- (a) appointing a Chief Executive;
- (b) carrying out the Purposes, and using money or other assets to do that;
- (c) controlling and managing the Society's financial affairs, including meeting the Board's record keeping and reporting obligations under the Act;
- (d) delegating powers and duties of the Board, where necessary or desirable, including to the Chief Executive;

- (e) deciding the time and location of meetings;
- (f) setting the agenda for meetings; and
- (g) setting Membership subscriptions and other fees.

#### **9.4 Duties**

Each Board Member shall owe duties to the Society as provided in the Act or otherwise required by law, including:

- (a) to act in good faith and in the best interests of the Society;
- (b) to exercise powers for a proper purpose;
- (c) to comply with the Act and this Constitution;
- (d) to exercise reasonable care and diligence;
- (e) not to conduct (or agree to conduct) the activities of the Society in a way that is likely to create a substantial risk of serious loss to its creditors; and
- (f) not to incur an obligation unless the Board Member believes on reasonable grounds the obligation will be met.

#### **9.5 Composition**

- (a) The Board shall comprise of no fewer than six and no more than nine persons, who are not disqualified by any relevant legislation from being a Board Member and who are senior executives of their respective companies.
- (b) The Board must be made up of Members (or representatives of bodies corporate that are Members). The Board shall not comprise of more than two associate members at any time. No more than one person employed by any Member shall be eligible for membership of the Board at any one time.
- (c) In addition to clause 9.5(a), the outgoing Chairperson shall have the right of membership ex-officio for a period of one-year and will be a non-voting Board Member.

#### **9.6 Electing the Board**

Board Members shall be elected at the AGM.

#### **9.7 Nomination**

- (a) No person (other than a retiring Board Member) may be elected as a Board Member at the AGM unless that person has been nominated in writing to the Chief Executive by two Members who will be entitled to attend and vote at the AGM, and that nominated person has given their written consent to such nomination.
- (b) The Chief Executive must call for nominations for any vacancies on the Board in such a timeframe as to allow for the nominating and publishing of Nominations to the Membership no later than two Working Days in advance of the AGM.
- (c) If nominations received do not exceed the relevant vacancies for General Members, the persons so nominated shall be declared elected at the AGM.

- (d) If there are insufficient nominations for the Board, oral nominations may be received from the floor at the AGM, provided that no person shall be elected who has not consented to being nominated.

## **9.8 Term**

- (a) Subject to clause 9.9, Board Members shall be elected for a term of two years expiring at the end of the relevant AGM. Upon expiration of their term, Board Members shall be eligible for re-election in accordance with clause 9.6 subject to a maximum of three consecutive terms of two years.
- (b) For the avoidance of doubt, the maximum consecutive term restriction in clause 9.8(a) shall not come into effect for a given Board Member until the commencement of their first term following the adoption of this Constitution.

## **9.9 Resignation**

- (a) Board Members shall advise the Chairperson or the Chief Executive by notice in writing if they wish to resign from the Board, with such resignation to be effective at the date such notice is received by the Chairperson or the Chief Executive (or such later date as specified in such notice).
- (b) A Board Member who fails or neglects to attend any properly advised meeting of the Board for three consecutive meetings without apology shall be deemed to have resigned from the Board. However, a Board Member may request a leave of absence and, on such leave being granted, shall be excused attendance at meetings of the Board for such time as the Board may determine.
- (c) A Board Member is deemed to have resigned if they:
  - (i) die or become incapable of controlling their affairs (as determined by the majority of the other Board Members); or
  - (ii) cease to be Member.

## **9.10 Removal**

Any Board Member, may be removed either by a majority resolution of the Board or by a majority resolution of the Members passed at either an AGM or an SGM.

## **9.11 Casual vacancy and co-option**

Where a Board Member resigns from office before the end of their term, is removed from office in accordance with clause 9.10, or otherwise ceases to be a Board Member, then the Board Members may, subject to clause 9.5 by majority resolution co-opt another Member (or representative of a body corporate that is a Member) to hold the vacated position. Such co-opted person shall be deemed to retire at the conclusion of the next AGM but will be eligible for election at that AGM. The Board may only include a maximum of two co-opted Members.

## **9.12 Continuance of existing Members**

The persons who are Board Members as at the date of adoption of the Constitution, shall be deemed to be the Board Members under this Constitution until the expiry of their current term.

## 10. Officers of the Society

### 10.1 Chief Executive

The Chief Executive will be appointed by the Board on terms and conditions it sees fit. The Chief Executive role will include the functional roles of secretary and treasurer.

### 10.2 Duties of the Chief Executive

The Chief Executive shall carry out any acts, matters, or things that may be required by the Chief Executive's employment agreement as well as any other duties and delegations from the Board.

### 10.3 Chairperson

The Board will elect the Chairperson from amongst themselves annually at the first meeting of the Board following each AGM (**First Board Meeting**).

### 10.4 Duties of Chairperson

The Chairperson shall:

- (a) preside over AGMs and SGMs and meetings of the Board;
- (b) provide an annual report on the operations of the Society to present to the Members at the AGM outlining the Society's activities since the previous AGM;
- (c) ensure the affairs of the Society are properly conducted; and
- (d) comply with this Constitution and the Bylaws.

### 10.5 Casting Vote

The Chairperson will have a deliberative and/or a casting vote on any issue on any matter put to the Board for resolution.

### 10.6 Deputy Chairperson

The Board will elect the Deputy Chairperson from among themselves annually at the First Board Meeting.

### 10.7 Duties of Deputy Chairperson

The Deputy Chairperson shall:

- (a) assume the powers and duties of the Chairperson in the case of the Chairperson's absence, resignation, incapacity, or removal until a new Chairperson is elected or the existing Chairperson can resume their duties;
- (b) take on any projects or responsibilities assigned to them by the Chairperson or the Board; and
- (c) comply with this Constitution and the Bylaws.

## 11. Meetings of the Board

### 11.1 Number and manner of meetings

There shall be no fewer than four meetings of the Board annually, at such time and place as it determines. Additional special meetings must be called by the Chief Executive upon a request in

writing to the Chief Executive by any Board Member. Meetings may be held in person or by teleconference or by audio visual or electronic communications or other means determined by the Board.

### **11.2 Notice of special meetings**

10 Working Days' notice of a special meeting of the Board must be given and must include an agenda stating the reason for the meeting and specifying the place, date and time at which the meeting is to be held.

### **11.3 Quorum**

A quorum of the Board shall be four Board Members. Voting decisions of the Board will be passed by a simple majority, subject to clause 10.5.

### **11.4 Resolution in writing**

A resolution in writing signed, or consented to by email or other electronic means, by all Board Members entitled to vote at a meeting of the Board is valid and effectual as if it had been passed at a meeting of the Board properly convened and held. Any such resolution may consist of:

- (a) several documents in similar form each signed by one or more Board Members; or
- (b) several emails in similar form each sent or transmitted by a separate Board Member.

## **12. Subcommittees**

### **12.1 Appointment**

The Board may appoint subcommittees consisting of such persons (whether or not Members) and for such purposes as it thinks fit.

### **12.2 Procedure**

Unless otherwise resolved by the Board:

- (a) meetings of a subcommittee may be held in person or by teleconference or by audio or electronic communications or other means by which those participating may hear each other simultaneously;
- (b) the quorum of every subcommittee is a majority the members of the subcommittee;
- (c) the subcommittee shall have power to co-opt additional members to the extent the subcommittee resolves that it is necessary to fulfil the applicable purpose of the subcommittee's formation;
- (d) no subcommittee shall have the authority to commit the Society to any obligation or financial expenditure without express written authority from the Board; and
- (e) no subcommittee may delegate any of its powers or responsibilities.

### **12.3 Resolution in writing**

A resolution in writing, signed or consented to by email or other electronic means by all members of the subcommittee entitled to vote at a meeting of the subcommittee, shall be valid and effectual as if it had been passed at a meeting of the subcommittee properly convened and held. Any such resolution may consist of:

- (a) several documents in similar form each signed by one or more members of the subcommittee; or
- (b) several emails in similar form each sent or transmitted by a separate member of the subcommittee.

## 13. Conflicts of interest

### 13.1 Interested Party

Any officer of the Society, which includes a Board Member, (**Interested Party**) who has, or suspects they may have, a conflict of interest with any matter concerning the Society (whether financial or non-financial, actual, potential or perceived) (**Interest**) must, as soon as practicable after they become aware of their Interest in the matter, disclose in writing the nature and extent of their Interest to the Chief Executive and Chairperson and, unless otherwise advised in writing by the Chief Executive:

- (a) must not be present at, or participate in, any discussion or meeting where the matter is discussed or a decision concerning the matter is made (**Conflicted Discussions**);
- (b) must not vote on any decision on that matter or sign any document relating to the entry into a transaction in connection with the matter or otherwise take steps to advance the matter (**Conflicted Matter**);
- (c) must continue to maintain strict confidentiality of all Board related communications and discussions; and
- (d) must otherwise comply with the conflict of interest policy of the Society.

This clause modifies section 64 of the Act.

### 13.2 Assessment and determination

Where an Interested Party has disclosed an Interest in a matter, the Chief Executive and the Chairperson must assess the nature and extent of the Interest and make a determination for the purposes of clause 13.3. Provided that:

- (a) if the Chairperson also has an Interest in the matter, the Chief Executive and the Vice Chairperson will make the assessment and determination; or
- (b) if the Vice Chairperson also has an Interest in the matter, the Chief Executive and any other Board Member who does not have any Interest (as selected by the Chief Executive) will make the assessment and determination.

### 13.3 Voting and participation

As a result of the assessment undertaken pursuant to clause 13.2, the Chief Executive and the other person making the determination may jointly recommend to the Board:

- (a) that the Interested Party be permitted to participate in the Conflicted Discussions. If the Board agrees, the Interested Party may be present at, and participate in, Conflicted Discussions; and/or
- (b) that the Interested Party be permitted to vote on the Conflicted Matter. If all non-Interested Board Members agree, the Interested Party may vote on, sign any document relating to, or otherwise take steps to advance, the Conflicted Matter.

This clause modifies section 64 of the Act.



#### **13.4 Part of quorum**

An Interested Party who is prevented from voting on a matter because he or she has an Interest in that matter may continue to be counted as part of the quorum.

#### **13.5 No requirement to notify**

The Board is not obligated to notify Members of a failure to comply with sections 63 or 64 of the Act.

#### **13.6 Register of disclosures**

The Chief Executive will maintain a register of disclosures made by officers of the Society of Interests in matters that are being considered by or affect the Society. The Board must present a summary at each AGM of the nature and extent of any disclosures recorded during the year (such summary does not need to disclose the identity of the Interested Party nor the details of the interest disclosed). The register of disclosures will not be open to inspection by Members or any other person.

### **14. Control and management of finances, auditor, annual return and Contact Person**

#### **14.1 Use of and control over Society's funds**

- (a) The funds of the Society must be used to further its Purposes as the Board decides.
- (b) Any payment made by the Society must be made or approved by the Approved Signatories.

#### **14.2 Accounting records**

The Board must ensure that at all times accounting records are kept in accordance with and as required by the Act.

#### **14.3 Financial reporting**

The Board shall ensure that annual financial statements are prepared and registered in accordance with the Act and all other regulatory requirements.

#### **14.4 Auditor**

The Annual Financial Statements of the Society shall be audited. The initial auditor shall be appointed by the Board. Thereafter, the auditor shall be appointed, and their remuneration approved, by the Members at each AGM.

#### **14.5 Annual return**

The Board shall ensure that an annual return is given to the Registrar for registration within 6 months of the Society's Balance Date and otherwise contains the prescribed information in accordance with the Act.

#### **14.6 Contact person**

- (a) In accordance with the Act, the Board shall from time to time appoint a person to the position of Contact Person and ensure that the Society has a Contact Person at all times.
- (b) The office of Contact Person may be held separately or in conjunction with any other office in the Society or by any Board Member.
- (c) The Contact Person shall be the person whom the Registrar can contact when needed.

## 15. Information

### 15.1 Request for information

A Member may at any time make a written request to the Society for information held by the Society, (including the Annual Financial Statements or the minutes presented at the most recent AGM). Such request must specify the information sought in sufficient detail to enable it to be identified. The Society must, within a reasonable time after receiving the request, provide, agree to provide, or refuse to provide, the information requested in accordance with the Act.

### 15.2 Fee

The Board may, at their sole discretion, request the Member to pay a reasonable charge to the Society to cover the cost of providing the Member with the information.

## 16. General Meetings

### 16.1 Attendance

A General Meeting may be held by a meeting of Members together at the time and place appointed by the Board or by means of audio, audio and visual, electronic or any other form of communication permitted by the Board. A Member participating in a General Meeting by any of these methods shall be deemed to be present and in attendance.

### 16.2 Notice of General Meetings

The Board will give at least 10 Working Days' notice to Members informing them of the date, time and place of a General Meeting and the business to be conducted including an agenda. A General Meeting or related procedure undertaken in accordance with this Constitution shall not be invalidated only by an accidental omission or irregularity of form (including, but not limited to, the form of any notice or the non-receipt by any person of that notice).

### 16.3 Quorum

No business shall be conducted at a General Meeting unless a quorum is present. A quorum is no fewer than 20 Members who are entitled to vote at the meeting and who are present. If within half an hour of the time appointed for the meeting a quorum is not present the meeting shall be adjourned to the same day the following week at the same time and place, and if at such adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the Members present shall be a quorum.

### 16.4 Entitlement to vote

All Members shall be entitled to attend and vote at a General Meeting unless they are "unfinancial" in accordance with clause 8.4.

### 16.5 Casting of votes

Votes may be cast by the Member themselves (including by electronic means if permitted by the Board) or by a signed proxy in favour of some individual entitled to be present at the meeting and received by the Chief Executive not less than 48 hours before the commencement of the General Meeting. No other proxy voting shall be permitted.

### 16.6 Voting

Resolutions put to the vote at a General Meeting shall be decided by voice in the first instance or, if following such vote by voice at least three Members present request, by show of hands (or in each case the equivalent electronic process where permitted by the Board), of those Members eligible to vote. Each Member shall have one vote (and the Chairperson of the meeting shall have a casting

vote). Except where otherwise provided in the Constitution, a simple majority shall pass a resolution. A poll may be demanded by the Chairperson of the meeting or at least three Members present and, if so, shall be taken in such a manner as the Chairperson directs.

#### **16.7 Written resolutions**

A resolution in writing signed, or consented to by email or other electronic means, by a 75% majority of Members entitled to vote is valid and effectual as if it had been passed at a General Meeting properly convened and held. Any such resolution may consist of:

- (a) several documents in similar form each signed by one or more Members; or
- (b) several emails in similar form each sent or transmitted by a separate Member.

#### **16.8 Postponement**

A General Meeting may be postponed or adjourned at the discretion of the Chairperson of the meeting (or by an ordinary resolution passed by Members to that effect). Notice of the resumed meeting shall be given in accordance with this Constitution. Upon the resumption, no new business shall be transacted.

#### **16.9 Minutes**

The Chief Executive must ensure that minutes are taken of all General Meetings.

### **17. Annual General Meetings**

#### **17.1 Timing**

Subject to the Act, the Annual General Meeting shall be held as soon as is practical but no later than six months after each Balance Date, and not more than fifteen months after the last AGM at such time, place, date and time as the Board shall determine.

#### **17.2 Business**

The business of the AGM shall include:

- (a) receiving the minutes of the previous AGM and of any SGM held since the last AGM;
- (b) the election of the Board;
- (c) the consideration of the annual report of the Board on the operation and affairs of the Society during the preceding Financial Year, which shall be presented by the Chairperson;
- (d) the consideration and approval of the Annual Financial Statements for the preceding Financial Year, which shall be presented by the Chief Executive;
- (e) notice by the Chief Executive of disclosures, or types of disclosures, of interest made in the preceding Financial Year in accordance with clause 13 (including a brief summary of the matters or types of matters, to which those disclosures relate);
- (f) the appointment of the auditor as provided in clause 14.4;
- (g) deciding on any resolution which may be duly submitted to the meeting which is either put forward by the Board or of which notice in writing has been lodged by any Member with the Chief Executive not less than 10 Working Days before the date of the meeting; and
- (h) any other business or matter which the Board decides to bring before the Members.

## 18. Special General Meetings

- (a) The Board may, whenever it thinks necessary or desirable, or shall within 10 Working Days of receiving the written request of at least 10 Members to the Chief Executive, give notice of an SGM.
- (b) No business other than that stated in the notice of SGM shall be transacted or considered at the meeting.

## 19. Dispute resolution procedures

### 19.1 How a complaint is made

- (a) A Member or a Board Member may make a complaint by giving to the Board (or the complaints subcommittee) a notice in writing that:
  - (i) states that the Member or a Board Member is starting a procedure for resolving a dispute in accordance with this Constitution; and
  - (ii) sets out the allegation to which the dispute relates and whom the allegation is against; and
  - (iii) sets out any other information reasonably required by the Society.
- (b) The Society may make a complaint involving an allegation against a Member or a Board Member by giving to the Member or the Board Member a notice in writing that:
  - (i) states that the Society is starting a procedure for resolving a dispute in accordance with this Constitution; and
  - (ii) sets out the allegation to which the dispute relates.
- (c) The information given under clauses 19.1(a) and 19.1(b) must be enough to ensure that a person against whom an allegation is made is fairly advised of the allegation concerning them, with sufficient details given to enable them to prepare a response.

### 19.2 Person who makes complaint has a right to be heard

- (a) A Member or a Board Member who makes a complaint has a right to be heard before the complaint is resolved or any outcome is determined.
- (b) If the Society makes a complaint:
  - (i) the Society has a right to be heard before the complaint is resolved or any outcome is determined; and
  - (ii) a Board Member may exercise that right on behalf of the Society.
- (c) Without limiting the manner in which the Member, Board Member, or Society may be given the right to be heard, they must be taken to have been given the right if:
  - (i) they have a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
  - (ii) an oral hearing is held if the Board considers that an oral hearing is needed to ensure an adequate hearing; and
  - (iii) an oral hearing (if any) is held before the Board or other decision maker; and

- (iv) the Member's, Board Member's, or Society's written statement or submissions (if any) are considered by the Board or other decision maker.

### **19.3 Person who is subject of complaint has right to be heard**

- (a) This clause applies if a complaint involves an allegation that a Member, a Board Member, or the Society (**respondent**):
  - (i) has engaged in misconduct; or
  - (ii) has breached, or is likely to breach, a duty under this Constitution or any Bylaws or the Act; or
  - (iii) has damaged the rights or interests of a Member or the rights or interests of Members generally.
- (b) The respondent has a right to be heard before the complaint is resolved or any outcome is determined.
- (c) If the respondent is the Society, a Board Member may exercise the right on behalf of the Society.
- (d) 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:
  - (i) 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; and
  - (ii) the respondent has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
  - (iii) an oral hearing is held if the Board considers that an oral hearing is needed to ensure an adequate hearing; and
  - (iv) an oral hearing (if any) is held before the Board or other decision maker; and
  - (v) the respondent's written statement or submissions (if any) are considered by the decision maker.

### **19.4 Investigating and determining complaint or grievance**

The Board must, as soon as is reasonably practicable after receiving or becoming aware of a complaint made in accordance with this Constitution, ensure that the dispute is investigated and determined in a fair, efficient and effective manner.

### **19.5 Executive Board may decide not to progress complaint**

Despite clause 19.4, the Board may decide not to proceed further with a complaint if the Board determines that:

- (a) the complaint is trivial; or
- (b) the complaint does not appear to disclose or involve any allegation of the following kind:
  - (i) that a Member or a Board Member has engaged in material misconduct or
  - (ii) that a Member, a Board Member, or the Society has materially breached, or is likely to materially breach, a duty under this Constitution [or any Bylaws] or the Act; or

- (iii) that a Member's rights or interests or Members' rights or interests generally have been materially damaged;
- (c) the complaint appears to be without foundation or there is no apparent evidence to support it; or
- (d) the person who makes the complaint has an insignificant interest in the matter; or
- (e) the conduct, incident, event, or issue giving rise to the complaint has already been investigated and dealt with under this Constitution; or
- (f) there has been undue delay in making the complaint.

## **19.6 Board may refer complaint**

The Board may refer a complaint to:

- (a) a subcommittee or an external person to investigate and report;
- (b) a subcommittee, an arbitral tribunal, or an external person to investigate and make a decision; or
- (c) any form of consensual alternative dispute resolution practice (subject to the written consent of all parties to the complaint).

## **19.7 Decision makers**

A person may not act as a decision maker in relation to a complaint or grievance if two or more Board Members or a complaints subcommittee consider that there are reasonable grounds to believe that the person may not be:

- (a) impartial; or
- (b) able to consider the matter without a predetermined view.

# **20. Constitution**

## **20.1 Amendment**

- (a) Subject to clauses 20.1 (b) and (c) below and the Act, the Constitution may only be amended by a resolution passed by a 75% or greater majority of Members present and entitled to vote and voting at an AGM or SGM (including proxy and electronic votes, where permitted by the Board) and where at least 10 Working Days' notice has been given specifying the proposed amendment. If any such resolution is passed, then the Chief Executive shall file, or cause to be filed, the amendment with the Registrar in accordance with the Act.
- (b) Minor or technical amendments to the Constitution may be made by the Board in accordance with and subject to the Act, and written notice of any such amendment must be sent to every Member within 10 days after the date of the Board resolving to make the amendment.
- (c) No amendment to, or revocation or replacement of, clauses 3 (purposes), 24 (no financial gain) or 25 (liquidation of removal from Register) may be made without the approval of the Inland Revenue Department.

## **20.2 Interpretation**

Any doubt or difficulty arising as to the interpretation of the Constitution shall be determined by the Board whose decision shall be final, but subject to review by any Court of competent jurisdiction.

### **20.3 Inspection**

A copy of the Constitution shall be available for inspection at the registered office of the Society by any Member at any time during ordinary business hours.

## **21. Bylaws**

The Board may from time-to-time make, alter or rescind Bylaws for the general management of the Society so long as these are not inconsistent with this Constitution, the Act or to the provisions of law. All such Bylaws shall be binding on Members and Board Members. A copy of the Bylaws for the time being, shall be available for inspection at the registered office of the Society by any Member during ordinary business hours.

## **22. Notices**

A notice may be given by the Society to any Member either personally or by sending it to the Member at the address supplied by the Member (including by email or other electronic communication).

## **23. Indemnity and insurance**

### **23.1 Indemnity for liability**

The Society shall indemnify each Board Member and its employees in respect of:

- (a) liability to any person other than the Society for any act or omission in their capacity as a Board Member or employee, not being criminal liability or a liability that arises out of a failure to act in good faith and in what the Board Member believes is the best interests of the Society when acting in the capacity as a Board Member or employee; and
- (b) costs incurred by that Board Member or employee in defending or settling any claim or proceeding relating to any such liability.

### **23.2 Indemnity for costs**

The Society shall indemnify each Board Member and its employees for any costs incurred by any of them in defending or settling any proceeding:

- (a) that relates to the liability for any act or omission in their capacity as a Board Member or employee of the Society, not being criminal liability or a liability that arises out of a failure to act in good faith and in what the Board Member believes is the best interests of the Society when acting in the capacity as a Board Member or employee; and
- (b) in which judgment is given in their favour, or in which they are acquitted, or is discontinued.

### **23.3 Insurance**

The Society shall, with the prior approval of the Board, effect insurance for each Board Member and its employees in respect of:

- (a) liability, not being criminal liability, for any act or omission in their capacity as a Board Member or employee;
- (b) costs incurred by that Board Member or employee in defending or settling any claim or proceeding relating to any such liability; and
- (c) costs incurred by that Board Member or employee in defending any criminal proceedings:

- (i) that have been bought against the Board Member or employee in relation to any act or omission in their capacity as a Board Member or employee; and
- (ii) in which they are acquitted.

Board Members who vote in favour of authorising insurance under clause 23.3 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Society.

## 24. No financial gain

Without limiting section 24 of the Act, no financial gain shall be made from the Society by any of its Members, except that:

- (a) any Member may receive full reimbursement for reasonable expenses legitimately incurred by that Member in connection with the affairs of the Society;
- (b) the Society may pay reasonable and proper remuneration to any Board Member or employee of the Society in return for services actually rendered to the Society;
- (c) any Member may be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by the Member or by any firm or entity of which the Member is a member, employee or associate in connection with the affairs of the Society; and
- (d) any Member may retain any remuneration properly payable to that Member by any company or undertaking with which the Society may be in any way concerned or involved for which that Member has acted in any capacity whatever, notwithstanding that that Member's connection with that company or undertaking is in any way attributable to that Member's connection with the Society.

## 25. Liquidation and removal from Register

### 25.1 Decision to liquidate or remove from Register

At an AGM or SGM (where, for the purposes of and subject to section 228 of the Act, notice is given in accordance with clause 16.2) the Members may, by resolution passed by 75% or greater majority of those present and entitled to vote (including votes cast by electronic means where permitted by the Board), resolve to liquidate the Society or to remove it from the Incorporated Societies Register, and that decision shall be effective from the date of that resolution (or such later date specified in that resolution).

### 25.2 Liquidator

A resolution to liquidate the Society may also include the appointment of a liquidator to conduct the liquidation.

### 25.3 Distribution of surplus assets

In the event of the liquidation of the Society or its removal from the Incorporated Societies Register, any surplus funds and/or property after settlement of all liabilities shall be distributed to a not-for-profit entity or entities having the advancement of the Purposes amongst their objectives, as approved by majority vote at an AGM or SGM where, for the purposes of section 228 of the Act, notice is given in accordance with clause 16.2).