

# Constitution of Packaging Council of New Zealand Incorporated

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**BANNISTER  
& VON  
DADELSZEN**

**LAWYERS**

# CONSTITUTION OF PACKAGING COUNCIL OF NEW ZEALAND INCORPORATED

**NOTE:** Words or phrases in italics are defined in Rule 3.0.

## 1.0 Name of Society

- 1.1 The name of the society is Packaging Council of New Zealand Incorporated (the "*Council*").
- 1.2 The *Council* was incorporated on 13 August 1992 under the Incorporated Societies Act 1908.

## 2.0 Purposes of Council

- 2.1 The primary purposes of the *Council* are to:
  - (a) Promote and encourage throughout New Zealand the whole-of-life of packaging materials,
  - (b) As elements of the whole-of-life management of packaging materials to:
    - (i) Highlight the benefits arising from the adoption and use of appropriate packaging, and
    - (ii) Promote and encourage the minimisation of adverse effects on the environment from the manufacture, packaging, supply, distribution, handling, sale, re-use, and recycling of, packaging, , and
  - (c) Represent and promote the interests of *Members* of the *Council*.
- 2.2 The tikanga or culture of the *Council* is associated with the primary purposes of the Council, and this constitution shall be interpreted in light of those principles.
- 2.3 The Council must not operate for the purpose of, or with the effect of:
  - (a) Any *Member* of the *Council* deriving any personal monetary gain from membership of the *Council*, other than as may be permitted by law, or
  - (b) Returning all or part of the surplus generated by its operations to *Members*, in money or in kind, or
  - (c) Conferring any kind of ownership in the *Council's* assets on *Members*, but the *Council* would not operate for the monetary gain of *Members* in breach of the *Statute* simply if the *Council*:
    - (i) Trades on its own behalf,
    - (ii) Provides a *Member* with payments that are incidental to the purposes of the *Council*, and that *Member* is a body corporate or trust that is prevented by its constitutional documents or deed from acting for the monetary gain of members of that body corporate or trust,
    - (iii) Reimburses a *Member* for reasonable expenses legitimately incurred on behalf of the *Council* or while pursuing the *Council's* purposes,
    - (iv) It provides benefits to the public some of whom may be *Members* or their families,
    - (v) Provides a *Member* with salary, wages or other payment for services to the *Council*, so long as such payment is at arm's length and in accordance with normal commercial terms and does not include any profit share, percentage of revenue or other reward linked to gains made by the *Council*, or
    - (vi) Provides a *Member* with incidental benefits such as prizes or discounts on products or services, provided that the purpose of the provision is in accordance with the purposes of the *Council*.
- 2.4 Despite Rules 2.1 - 2.3:

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- (a) The *Council* shall not be required to advance all of its primary purposes all of the time, but
  - (b) Otherwise this constitution shall be read and interpreted subject to the provisions of Rule 2.1.
- 2.5 Subject to Rules 2.1 - 2.3, the *Council* shall have power:
- (a) To make bylaws or regulations under Rule 17.12 to advance or achieve any of the above purposes,
  - (b) To establish codes of conduct applicable to *Members* under Rule 17.12, and
  - (c) To do any act or thing related or contributing to advancing or attaining any of the above purposes.

### 3.0 Interpretation

- 3.1 In this constitution, unless the context otherwise requires the following words and phrases have the following meanings:
- (a) "*Associated Person*" means a person who is a spouse, partner, parent, child, close personal friend, business associate (partner, director, officer, board member, or trustee of a person), employer or employee of a *Member*,
  - (b) "*Board*" means the *Council's* governing body referred to in Rule 12.1,
  - (c) "*Board member*" includes the *Council's* President, Vice Presidents, *Executive Director*, and other *Board members* elected under Rule 12.2 or appointed under Rules 12.4 or 17.5,
  - (d) "*complaint*" means an allegation that the conduct or behaviour of any *Member(s)* has/have fallen short of expected standards of conduct for *Council Members*, and the *complaint* may allege:
    - (i) A breach or failure to observe a specific *Council* rule, by-law or policy, and/or
    - (ii) Other misconduct likely to cause distress, embarrassment or concern to other *Members* or tend to damage the reputation of the *Council*,
 BUT the *Council* is not concerned with *Members'* conduct outside of or away from *Council* activities, unless there is some identifiable connection with the *Council*, or the reputation of the *Council* may be affected, or both,
  - (e) "*Council*" is the society referred to in Rule 1.1,
  - (f) "*Entitled Member*" means a *Member* entitled to exercise membership rights under Rule 5.7(b) but not any Honorary *Member*,
  - (g) "*grievance*" means a formal concern raised in writing by a *Member* with the President about a significant matter which the *Member* considers is affecting the *Member* in a significant (not trivial or incidental) way, and the effect on the *Member* or other affected *Members* may not necessarily include financial losses or costs to the *Members*, but a *Member* raising a grievance should be able to point to a significant negative effect on that *Member*, or on other *Members* in similar circumstances, or on all *Members*,
  - (h) "*Member*" is a *Member* but not an Honorary *Member*,
  - (i) "*remote ballot*" is a ballot held in accordance with the procedures set out in Rule 11.3, and
  - (j) "*Statute*" means the Incorporated Societies Act 1908 or any statute passed in substitution of the same, including amendments to it from time to time, and
  - (k) "*working days*" means complete days excluding weekend and public holidays (but not Provincial anniversary days) the first and last named days (for instance, excluding the date a notice of meeting is posted or transmitted and the date of the meeting).

- 3.2 In this constitution, unless the context otherwise requires:
- (a) Any word or phrase identifying a person extends to and includes the executors, administrators, successors and assigns of that person,
  - (b) The singular number includes the plural and *vice versa* and words indicating one gender include the other genders,
  - (c) Reference to any Act extends to and includes any statutory or other modification or re-enactment thereof and any other like provision for the time being in force in New Zealand, and
  - (d) The headings of the Rules in this constitution will not affect the interpretation given to it.

#### 4.0 Council Powers

- 4.1 Subject to Rule 2.0, in addition to its statutory powers, the *Council*:
- (a) May use its funds to pay the costs and expenses to advance or carry out its purposes, and to employ such people as may be appropriate,
  - (b) May invest in any investment in which a trustee might invest, and
  - (c) Shall have power to borrow or raise money by debenture, bonds, mortgage and other means with or without security, and such borrowing powers may be exercised by the *Board*.
- 4.2 No *Member* or any *Associated Person* shall participate in or materially influence any decision made by the *Council* relating to the payment to or on behalf of that *Member* or *Associated Person* of any income, benefit or advantage whatsoever.
- 4.3 Despite any other provision in this constitution, *Board members*, and its sub-committees:
- (a) May be offered such honoraria as may be approved by resolution of a General Meeting, and
  - (b) Shall be entitled to be reimbursed by the *Council* for any reasonable actual expenses incurred by them on behalf of the *Council* as approved by resolution of the *Board*.
- 4.4 The *Council* may indemnify *Members* and employees who act in good faith in seeking to advance the *Council's* activities, and to take insurance for the purposes of that indemnity.

#### 5.0 Membership

- 5.1 The *Council* shall maintain the minimum number of members required by the *Statute*.
- 5.2 The classes of membership and the method by which *Members* are admitted to different classes of membership are as follows:
- (a) **Member** An *Member* is an individual or organisation (incorporated or unincorporated) admitted to membership under Rule 5.3 and who or which has not ceased to be a *Member* under any other Rule, but does not include a *Honorary Member*.
  - (b) **Honorary Member** An *Honorary Member* is a person honoured for services to the *Council* or in an associated field elected as an *Honorary Member* by resolution of a General Meeting passed by a two-thirds majority of those present and voting. An *Honorary Member* has no membership rights, privileges or duties.
- The Life Member class of membership that existed prior to adoption of this Constitution is terminated and former Life Members have no rights associated with that former status.
- 5.3 **Admission of Members:**
- (a) Membership applicants must support the primary purposes of the Council set out in Rule 2.1.

- (b) Every *Member* must expressly consent to becoming a *Member*, and an applicant for membership as a *Member* shall complete any application form (which may include such membership criteria as the *Board* may prescribe from time to time) provided by the *Board* and supply such information as may be required by the *Board*.
  - (c) Membership applications shall be considered by the *Board* which may interview an applicant or representatives of an applicant organisation (incorporated or unincorporated).
  - (d) The *Board* shall have a discretion whether or not to admit a membership applicant, and shall advise the applicant of its decision (but shall not be required to provide reasons for that decision).
- 5.4 Readmission of former Members:**
- (a) Any former *Member* may apply for re-admission in the manner prescribed for new applicants, and may be re-admitted only by resolution of the *Board*.
  - (b) However, if a former *Member's* membership was terminated under Rule 7.3 the applicant may be re-admitted only by a General Meeting on the recommendation of the *Board*.
- 5.5** The *Executive Director* shall:
- (a) Keep a Membership Register of *Members* and *Honorary Members* recording their names, postal and email addresses, phone number, occupations, the dates each *Member* became a *Member*, and whether or not the *Member* is financial under Rule 5.7(b), and
  - (b) On reasonable notice and at reasonable times:
    - (i) Make available for inspection by *Entitled Members* copies of this constitution and of any *Council* regulations, bylaws or policies, and copies shall be provided (at a reasonable cost) to any *Entitled Member* on request,
    - (ii) Permit *Entitled Members* to access the Membership Register,
    - (iii) Permit *Entitled Members* to inspect the Register of Disclosures referred to in Rule 17.8(b), and
    - (iv) Provide *Entitled Members* with access to the Financial Reports presented to the last Annual General Meeting and the minutes of previous Annual General Meetings.
- 5.6** Every *Entitled Member* shall advise the *Executive Director* of any change of name, postal and email address, and phone number.
- 5.7 Membership obligations and rights:**
- (a) All *Members* (including *Board members* and *Honorary Members*) shall promote the interests and purposes of the *Council* and shall do nothing to bring the *Council* into disrepute.
  - (b) A *Member* is only entitled to exercise the rights of membership (including attending and voting at General Meetings, accessing or using the *Council's* premises, facilities, equipment and other property) if all subscriptions and any other fees have been paid by due date (see Rule 6.3), but no *Member* is liable for an obligation of the *Council* by reason only of being a *Member*.
  - (c) Any *Member* that is an organisation (incorporated or unincorporated) admitted to membership under Rule 5.3 shall provide the *Executive Director* with the name and contact details of the person who is the organisation's authorised representative (and Rule 5.6 shall apply to those details), and if the organisation is an *Entitled Member* that person shall be deemed to be the organisation's proxy for the purposes of Rule 10.8 and shall be eligible to be elected to the *Board*.

- 5.8** Other than as permitted under Rules 5.5(b) and 17.8(b), or by resolution of the *Board*, a *Member* is not entitled to inspect or copy the minutes of *Board* or *Board* sub-committee meetings or the *Council's* records, but is entitled to access information the *Council* holds about that *Member* (but not about other *Members*).
- 5.9** The *Board* may decide what access or use *Members* may have of or to premises, facilities, equipment or other property owned, occupied or otherwise used by the *Council*, including any conditions of and fees for such access or use.
- 5.10** **Members' conflicts of interest:**
- (a) An *Member* shall be considered to have a conflict of interest if the *Member*:
- (i) Has any commercial or financial interest in an issue, or
  - (ii) Has a close personal or business relationship with any person or entity who or which may have any commercial or financial interest in an issue, or but excluding the following:
    - (iii) General interests that have resulted in the *Member* becoming a *Member* of the *Council*,
    - (iv) Remote or insignificant interests of a nature that could not reasonably be regarded as likely to influence the *Member*, and
    - (v) An interest that the *Member* has in common with other *Members* as a result of membership of the *Society*.
- (b) Where any such conflict of interest has been disclosed:
- (i) That *Member* must disclose the conflict of interest to the *President*,
  - (ii) That *Member* must not vote at any General Meeting on the issue, but that *Member* can be present at the time of the decision and can contribute to the discussion leading to the decision, but the *President* may, where the *President* considers it appropriate, exclude that *Member* from any further discussion or involvement with the matter, but
  - (iii) The *Member* who or which is prevented from voting on a matter because that *Member* has an interest in it may continue to be counted as part of the quorum of the General Meeting, and
  - (iv) Where 50 per cent or more of those forming the General Meeting's quorum are prevented from voting on the matter because they have disclosed a conflict of interest, the General Meeting may deal with the issue.

## **6.0 Subscriptions and levies**

- 6.1** The annual subscription and any other fees for *Members* for the then current financial year shall be set by resolution of the *Board* and the resolution may also:
- (a) Set the annual subscription and any other fees in such a manner as to differentiate between *Members* (for instance, by reference to turnover, type of business, area of operations, or otherwise), and
  - (b) Provide that payment may be made by periodic instalments.
- 6.2** The *Board* or a General Meeting may by resolution impose a levy or levies on *Members* (except *Honorary Members*) in any financial year up to a maximum totalling 50% of the annual subscription for that year for *Member*.
- 6.3** Any *Member* failing to pay the annual subscription (including any periodic payment), any levy, or any capitation fees, within three calendar months of the date the same was set shall be considered as unfinancial and shall (without being released from the obligation of

payment of outstanding subscriptions, levies or fees accrued at that time) have no membership rights and shall not be entitled to participate in any *Council* activity until all the arrears are paid. If such arrears are not paid within six months of the date the subscription or levy became due or such later date as the *Board* may determine the *Member's* membership shall be deemed to have been terminated.

## **7.0 Member Resignations, Grievances, Disputes, Complaints, and Discipline**

- 7.1** Any *Member* may resign from that *Member's* class of membership by not less than a calendar month's prior written notice to the *Executive Director*, and each such resignation shall take effect on the date stated in the notice of resignation, and Rule 7.4 shall apply.
- 7.2** The *Board* may declare that a *Member* is no longer a *Member* (from the date of that declaration or such date as may be specified) if that *Member* ceases to be qualified to be a *Member* or is convicted of any offence for which a convicted person may be imprisoned, is declared bankrupt, makes a composition with creditors, enters the no asset procedure under the Insolvency Act 2006, or (if a body corporate) is wound up or placed in receivership or liquidation.
- 7.3** All disputes (including *Member* grievances, and complaints and disciplinary action against *Members*) shall be dealt with in accordance with the *Statute* and the procedures set out in the Schedule to this constitution.
- 7.4** A *Member* who resigns or whose membership is terminated under this constitution:
- (a)** Remains liable to pay all subscriptions, levies and other fees accrued until formal resignation, and any costs ordered to be paid in respect of any *grievance* or *complaint*,
  - (b)** Shall cease to hold himself or herself out as a *Member* of the *Council*, and
  - (c)** Shall return to the *Council* on written request all material provided to *Members* by the *Council* (including any membership certificate, badges, handbooks and manuals).

## **8.0 Annual General Meetings**

- 8.1** The Annual General Meeting (which only *Entitled Members* and *Honorary Members* are entitled to attend) shall be held no later than 31 July in each year (and not more than 15 months after the previous Annual General Meeting) at a time and place fixed by the *Board*.
- 8.2** The agenda and business of the Annual General Meeting shall include:
- (a)** Minutes of the previous General Meeting(s),
  - (b)** Annual Report of the *Board*,
  - (c)** Financial Reports for the most recent financial year,
  - (d)** Optional appointment of a member of the New Zealand Society of Accountants who is not a *Member* to conduct a financial review or audit of the annual accounts of the *Council*,
  - (e)** A summary of the nature and extent of any disclosures made by *Board members* of financial interest in matters being considered by or affecting the *Council*, recorded since the previous Annual General Meeting (see Rule 17.8),
  - (f)** Election of the *Board* in accordance with Rule 12.0,
  - (g)** Motions of which notice has been given under Rule 8.3, and
  - (h)** General business.
- 8.3** Any *Entitled Member* wishing to give notice of any motion for consideration at the Annual General Meeting shall forward written notice of the same to the *Executive Director* not less than seven (7) *working days* before the date of the Meeting. The *Board* may consider all

such notices of motion and may notify *Entitled Members* of its recommendations in respect of such notices of motion in accordance with Rule 10.2.

## **9.0 Special General Meetings**

- 9.1** Special General Meetings (which only *Entitled Members* and *Honorary Members* are entitled to attend) may be called by:
- (a)** The *Board*, or
  - (b)** Within a calendar month of written requisition to the *Executive Director* signed by not less than a quarter of the *Entitled Members*.
- 9.2** A Special General Meeting shall only consider and deal with the business specified in the *Board's* resolution or the written requisition calling the Meeting.

## **10.0 Calling and Notice of, and Procedure at, General Meetings**

- 10.1** At least fourteen (14) *working days* before any General Meeting the *Executive Director* shall, in accordance with Rule 10.3, send to all *Entitled Members* notice of the time and place for the General Meeting and the business to be conducted at it.
- 10.2** In the case of Annual General Meetings the *Executive Director* shall, at least 48 hours before the commencement of each Annual General Meeting and in accordance with Rule 10.3, send all *Entitled Members* copies of the Annual Report, Financial Reports of the most recent financial year, a list of and information about nominees under Rule 12.2, and notice of any motions and the *Board's* recommendations in respect of such notices of motion, and the failure for any reason of any *Member* to receive such notice or information shall not invalidate the meeting or its proceedings.
- 10.3** Notices to *Members* may be given by post, email, or notified posting on the *Council's* website, and if sent by post, email, or notified website posting shall be deemed to have been received the day after being sent.
- 10.4** General Meetings may be held at two or more venues using any technology that gives each *Entitled Member* a reasonable opportunity to participate at the sole discretion of the President.
- 10.5** Annual General Meetings may be attended by all *Entitled Members* and *Honorary Members*, but only *Entitled Members* are entitled to speak and vote.
- 10.6** Special General Meetings may be attended only by *Entitled Members*.
- 10.7** If within half an hour after the time appointed for a General Meeting to commence the quorum required under Rule 10.9 is not present the meeting shall stand adjourned for seven days to the same time and place(s), and if at such adjourned meeting the required quorum under Rule 10.9 is not present those present in person or by proxy shall be deemed to be a sufficient quorum.
- 10.8** An *Entitled Member* shall be entitled to vote by a signed original written proxy (an email or copy being acceptable) in favour of another *Entitled Member* present at the meeting and received by or handed to the *Executive Director* no less than 24 hours before the commencement of the General Meeting, and no other proxy voting shall be permitted.
- 10.9** The quorum for General Meetings is 20 *Entitled Members* present in person or by proxy when the meeting is called to order and present throughout the meeting, and any decisions made when a quorum is not present are invalid.
- 10.10** Every General Meeting shall be chaired by:
- (a)** The President, or



- (b) In the President's absence, by a Vice President (if more than one is present, by agreement or by drawing lots), or in the absence of all of them by some other *Board member* elected for the purpose by the meeting, or
  - (c) By some independent person appointed by resolution of the *Board*, or
  - (d) Failing the election or appointment of a chairperson under the foregoing provisions, by a person elected for the purpose by the meeting,
- and any such chairperson shall have a deliberative and casting vote.

**10.11** The *Council* by resolution of a General Meeting may adopt a guide to or rules of meeting procedure for General Meetings and *Board* meetings, and in the absence of such a resolution all General Meetings and *Board* meetings shall be conducted in accordance with standard New Zealand meeting procedure.

## **11.0 Voting at General Meetings**

- 11.1** An *Entitled Member* is entitled to exercise one vote on any motion at a General Meeting or by *remote ballot*, and voting at a General Meeting shall be by voices or by show of hands or, on demand of the chairperson or of three or more *Entitled Members* present in person or by proxy, by secret ballot.
- 11.2** Unless otherwise required by this constitution, all questions shall be decided by a simple majority of those present in person or by proxy and voting at a General Meeting.
- 11.3** In respect of *remote ballots* held under this constitution:
- (a) Only *Entitled Members* may vote in any *remote ballot* notified to them by post, email, or notified posting on the *Council's* website,
  - (b) The resolution to hold a *remote ballot* shall set a closing date and time for ballots to be received by the *Executive Director*, but the closing date shall be no earlier than 15 *working days* after the date ballot papers are notified to *Entitled Members*,
  - (c) In respect of any motion to amend this constitution by *remote ballot*, the motion shall be accompanied by reasons and recommendations from the *Board*, and such motion must be passed by a two-thirds majority of those voting,
  - (d) Voting in a *remote ballot* may be by ballots (identifying and signed by the *Entitled Member* voting) returned to the *Executive Director* by email, mail, delivery, or through website voting,
  - (e) The *Executive Director* shall declare the result of the *remote ballot*, and
  - (f) The result of any *remote ballot* shall be as effective and binding on *Members* as a resolution passed at a General Meeting.
- 11.4** A resolution passed by the required majority at any General Meeting or by *remote ballot* binds all *Members*, irrespective of whether or not they were present at the General Meeting when the resolution was adopted and whether or not they voted.

## **12.0 Election of Board**

- 12.1** A *Board* consisting of fourteen persons, including:
- (a) A President,
  - (b) Up to two Vice Presidents,
  - (c) *Executive Director* (who shall have speaking but no voting rights), and
  - (d) Ten other *Board members*
- shall be elected annually, and they (together with the Immediate Past President in the year following that person's last year as President) shall be the *Council's Board* and hold office under Rule 17.1.

- 12.2** The election of *Board members* shall be conducted as follows:
- (a)** Nominees under Rule 12.1(a), (b) and (c) must be *Entitled Members* who are not prevented from serving on the *Committee* under Rule 17.9.
  - (b)** Any written nominations accompanied by the written consent of the nominee may be received by the *Executive Director* before the Annual General Meeting and further nominations may be received from the floor at the Annual General Meeting.
  - (c)** Votes shall be cast in such manner as the chairperson of the Annual General Meeting shall determine.
  - (d)** Only *Entitled Members* may vote in elections in person or by proxy, and votes shall be cast in such manner as the chairperson of the Annual General Meeting shall determine.
  - (e)** Two *Entitled Members* (who are not nominees) designated by the chairperson of the Annual General Meeting shall act as scrutineers for the counting of the votes and destruction of any voting papers.
  - (f)** In the event of any vote being tied the tie shall be resolved by lot.
- 12.3** No President shall serve for more than three consecutive years as President.
- 12.4** If a vacancy in the position of any *Board member* (excluding the Immediate Past President) occurs between Annual General Meetings (whether under Rule 17.9 or by death, resignation, removal or retirement) that vacancy shall be filled by resolution of the *Board*.
- 12.5** The *Executive Director* shall be the *Council's* officer whom the Registrar of Incorporated Societies can contact when needed, and must be at least 18 years of age, and must at all times be resident in New Zealand and not disqualified under the *Statute* or under Rule 17.9 from holding that office, and any change in that officer or that person's name or contact details shall be advised to the Registrar of Incorporated Societies within 20 working days after that change has occurred or after the *Council* first became aware of the change.

### **13.0 President**

- 13.1** The President shall, in addition to all other duties described in this constitution, generally oversee and direct the affairs and business of the *Council* and act as spokesperson for the *Council* when that is deemed to be more appropriate than having the *Executive Director* do so.

### **14.0 Vice Presidents**

- 14.1** The Vice Presidents shall assist the President and, in the absence of the President, a Vice President (as determined by the Board, or in the absence of such determination, by the Vice Presidents agreeing or drawing lots) shall undertake all duties and have all the powers of the President.

### **15.0 Administration, Records, and Registered Office**

- 15.1** The *Executive Director* shall manage the day-to-day business of the *Council* and (subject to Rule 13.1) act as spokesperson for the *Council*.
- 15.2** The *Executive Director* shall record the minutes of all General Meetings and *Board* meetings, and, in the absence of proof to the contrary, all such minutes when confirmed by the next such meeting and signed by the chairperson of that meeting shall be:
- (a)** Confirmation that that meeting was duly called, and
  - (b)** Accepted as a true and correct record of what occurred at that meeting.

- 15.3** The *Executive Director* shall:
- (a)** Maintain the Membership Register as required by Rule 5.5(a),
  - (b)** Hold the *Council's* records, documents, and books (and paper records may be digitally recorded and stored),
  - (c)** Maintain the Register of Disclosures referred to in Rule 17.8(b),
  - (d)** Lodge with Registrar of Incorporated Societies annual return as required by the *Statute*,
  - (e)** Deal with and answer correspondence, and
  - (f)** Perform such other duties as directed by the *Board*.
- 15.4** The *Board* shall have the power in its discretion to suspend or remove the *Executive Director* from office to the extent provided for under Employment Law.
- 15.5** The Registered Office of the *Council* shall be at such place as the *Board* from time to time determines.

## **16.0 Financial Procedures**

- 16.1** The *Executive Director* shall:
- (a)** Keep such books of account as may be necessary to provide a true record of the *Council's* financial position,
  - (b)** Report on the *Council's* financial position to each *Board* meeting,
  - (c)** Present Financial Reports of the most recent financial year (in such format as may be required by law) to the Annual General Meeting, and
  - (d)** File copies of those Financial Reports with the Registrar of Incorporated Societies as required by the *Statute*.
- 16.2** The *Board* shall maintain bank accounts in the name of the *Council*, and all cheques and withdrawal forms shall be signed and electronic banking systems operated by any two of the *Executive Director* and one other person designated by the *Board*.
- 16.3** All money received on account of the *Council* shall be banked within seven *working days* of receipt.
- 16.4** All accounts paid or for payment:
- (a)** Under \$1,000 may be paid on the authority of the *Executive Director*, and
  - (b)** Over \$1,000 shall be submitted to the *President* for approval of payment.
- 16.5** The *Council's* financial year shall commence on 1 April of each year and end on 31 March in the following year.
- 16.6** The *Board* shall have the power in its discretion to suspend or remove the *Executive Director* from office to the extent provided for under Employment Law.
- 16.7** The Annual General Meeting each year may appoint a member of the New Zealand Society of Accountants who is not a *Member* to conduct a financial review or audit of the annual accounts of the *Council*, and if any such person is unable to act the *Board* shall appoint a replacement.

## **17.0 Governance, Functions and Powers of Board**

- 17.1** From the end of each Annual General Meeting until the end of the next, the *Council* shall be governed by the *Board*, which shall be accountable to the *Members* for the advancement of the *Council's* purposes and the implementation of resolutions approved by any General Meeting.

- 17.2** Subject to this constitution and any resolution of any General Meeting the *Board* may:
- (a)** Exercise all the *Council's* powers, other than those required by the *Statute* or by this constitution to be exercised by the *Council* in General Meeting, and
  - (b)** Enter into contracts on behalf of the *Council* or to delegate such power to a sub-committee, *Board member*, employee or other person.
- 17.3** The *Board* shall meet as required and at least once every three months at such times and places and in such manner (including by audio or video conference) as it may determine and otherwise where and as convened by the President..
- 17.4** All *Board* meetings shall be chaired by the President or in the President's absence by a Vice President (if more than one is present, by agreement or by drawing lots), or in the absence of all of them by some other *Board member* elected for the purpose by the meeting, or in the absence of all of them by some other *Board member* elected for the purpose by the meeting, and any such chairperson shall have a deliberative and casting vote.
- 17.5** The *Board* may co-opt up to two persons to the *Board* for a specific purpose, or for a limited period, or generally until the next Annual General Meeting, and any person so co-opted shall have all the obligations, rights and privileges of a *Board Member*.
- 17.6** The quorum for *Board* meetings is seven *Board members*. Only *Board members* elected under Rule 12.2, appointed under Rule 12.4, or co-opted under Rule 17.5 who are present in person or by audio or video link at a *Board* meeting shall be counted in the quorum and entitled to vote.
- 17.7** Following any complaint about a *Board member* that person may be removed from the *Board* by a resolution of the *Board* or of a General Meeting (in either case, passed by a two-thirds majority of those present and voting, and after following the processes similar to those prescribed in paragraphs (f) and (h) of the Disputes Procedure Schedule.
- 17.8 Financial interests of Board members:**
- (a)** A *Board member* shall be considered to have a financial interest in a matter if he or she:
    - (vi)** May derive a financial benefit from the matter, or
    - (vii)** Is the spouse, partner, child, or parent of a person who may derive a financial benefit from the matter, or
    - (viii)** May have a financial interest in an entity to which the matter relates; or
    - (ix)** Is a partner, director, officer, board member, or trustee of a person who may have a financial interest in an entity to which the matter relates,
 but excluding the following interests:
    - (x)** Remote or insignificant interests of a nature that could not reasonably be regarded as likely to influence the *Board member* when carrying out his or her responsibilities, and
    - (xi)** An interest that the *Board member* has in common with other Members as a result of membership of the *Council*.
  - (b)** The *Executive Director* shall maintain a Register of Disclosures made by *Board members* of financial interest in matters that are being considered by or affect the *Council* (see also Rules 5.5(b)(iii) and 8.2(e)).
  - (c)** Where any such financial interest in a matter has been disclosed:
    - (v)** That *Board member* must not vote in any decision on the matter, but that person can be present at the time of the decision and can contribute to the discussion leading to the decision, but

- (vi) The *Board* may, where it considers it appropriate, exclude that person from any further discussion or involvement with the matter, but
  - (vii) The person who is prevented from voting on a matter because he or she has a financial interest in it may continue to be counted as part of the quorum of the *Board*, and
  - (viii) Where 50 per cent or more of those forming the *Board's* quorum are prevented from voting on the matter because they have disclosed a financial interest, then the remaining *Board members* must call a Special General Meeting to determine the matter.
- 17.9** No *Member* may stand for office on the *Board*, and any person who is on the *Board* shall cease to be a *Board member*, if that person:
- (a) Is or becomes an undischarged bankrupt, or
  - (b) Is prohibited from being an officer of an incorporated society under the *Statute*, or
  - (c) Is prohibited from being a director or taking part in the management of an incorporated or unincorporated body under the Companies Act 1993, the Securities Act 1978, the Securities Markets Act 1988, or the Takeovers Act 1993,
  - (d) Is subject to a property order made under the Protection of Personal and Property Rights Act 1988, or
  - (e) Is suffering from a mental disorder within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992, or
  - (f) Is convicted of any offence for which a convicted person may be imprisoned, or
  - (g) Is not or ceases to be an *Entitled Member*.
- 17.10** The *Board* may appoint sub-committees consisting of such persons (whether or not *Members* of the *Council*) and for such purposes as it thinks fit. Unless otherwise resolved by the *Board*:
- (a) The quorum of every sub-committee is half the members of the sub-committee,
  - (b) No sub-committee shall have power to co-opt additional members,
  - (c) A sub-committee must not commit the *Council* to any financial expenditure without express authority of the *Board*, and
  - (d) A sub-committee must not further delegate any of its powers.
- 17.11** The *Board* and any sub-committee may act by resolution approved in the course of an audio or video conference call or through a written ballot conducted by email, electronic voting system, or mail.
- 17.12** The *Board* from time to time may make and amend bylaws, regulations, policies for the conduct and control of *Council* activities and codes of conduct applicable to *Members*, but no such bylaws, regulations, policies or codes of conduct applicable to *Members* shall be inconsistent with this constitution.
- 17.13** Other than as prescribed by the *Statute* or this constitution (including Rule 10.11), the *Board* may regulate its proceedings as it thinks fit.
- 17.14** Subject to the *Statute*, this constitution and the resolutions of General Meetings, the decisions of the *Board* on the interpretation of this constitution and all matters dealt with by it in accordance with this constitution and on matters not provided for in this constitution shall be final and binding on all *Members*.
- 17.15** Each *Board member* shall within 14 *working days* of submitting a resignation or ceasing to hold office on written request deliver to the *Executive Director* all books, papers and other property of the *Council* possessed by such former *Board member*.
- 17.16** The *Board* may employ any person or company to administer or manage the affairs of the *Council*.
- 17.17** When exercising their powers and performing their functions *Board members* must

individually and collectively:

- (a) Act in good faith and in the best interests of the *Council*, and use their powers for a proper purpose,
- (b) Comply with the *Statute* and with this constitution, except where the constitution contravenes the *Statute*,
- (c) Exercise the degree of care and diligence that a reasonable person with the same responsibilities within the *Council* would exercise in the circumstances applying at the time,
- (d) Not allow the activities of the *Council* to be carried on recklessly or in a manner that is likely to create a substantial risk of serious loss to the *Council's* creditors, or
- (e) Not allow the *Council* to incur obligations that they do not reasonably believe will be fulfilled, and must comply with the duties required of them under the *Statute*.

**17.18 Indemnity for Board:**

- (a) No *Board member* shall be liable for the acts or defaults of any other *Board member* or any consequential loss caused by such acts or defaults, unless caused by their own wilful default or by their own wilful acquiescence.
- (b) The *Board* and each *Board member* shall be indemnified by the *Council* for all liabilities and costs incurred by them in the proper performance of their functions and duties, other than as a result of their own wilful default or by their own wilful acquiescence.

**17.19** The *Board* may in its absolute discretion recognise an organisation or group, which is not a *Member*, sharing an interest in the *Council's* purposes ("Industry Partner"), and may document the form of the relationship with each Industry Partner.

**18.0 Council Contracts and Execution of Documents**

**18.1** The *Council* shall have a Common Seal which shall be retained by the *Executive Director*.

**18.2** Documents shall be executed for the *Council* pursuant to a resolution of the *Board*:

- (a) By affixing the Common Seal witnessed any two of the President, a Vice President or some other *Board member*, or
- (b) Where the document is not required by law to be executed under common seal, by any two of the President, a Vice President or some other *Board member* signing on behalf of the *Council*.

**19.0 Alteration to and Interpretation of this Constitution**

**19.1** This constitution may be amended or replaced in accordance with Rule 19.4, provided that no amendment may be made which would:

- (a) Alter any provision in this constitution precluding *Members* from obtaining any personal benefit or profit from their membership, or
- (b) Conflict with the provisions of the *Statute*, or

**19.2** Any proposed motion to amend or replace this constitution:

- (a) May be proposed by the *Board*, or
- (b) Shall be signed by at least five (5) *Entitled Members* and given in writing to the *Executive Director* at least five (5) *working days* before the General Meeting at which the motion is to be considered,

and accompanied by a written explanation of the reasons for the proposal, and the *Board* shall decide whether to submit any such proposal to a General Meeting or to hold a *remote ballot* in accordance with the procedures set out in Rule 11.3.

- 19.3** Unless the proposed motion is to be voted upon by *remote ballot*, the *Executive Director* shall in accordance with Rules 10.1 and 10.3 notify all *Entitled Members* of the proposed motion and of the General Meeting at which any such proposal is to be considered, of the reasons for the proposal, and of any recommendations from the *Board* in respect such notice of motion.
- 19.4** Any resolution to amend or replace this constitution must be passed by a two-thirds majority of all *Entitled Members*:
- (a)** Present in person or by proxy and voting, or
  - (b)** Voting by *remote ballot* in accordance with the procedures set out in Rule 11.3.
- 19.5** Every alteration to this constitution shall be promptly registered with the Registrar of Incorporated Societies as required by the *Statute*.

## **20.0 Winding-up**

- 20.1** The *Council* may be wound up under the provisions of the *Statute*.
- 20.2** In accordance with Rules 10.1 and 10.3 the *Executive Director* shall notify all *Entitled Members* of the proposed motion to wind up the *Council* and of the General Meeting at which any such proposal is to be considered, of the reasons for the proposal, and of any recommendations from the *Board* in respect such notice of motion.
- 20.3** Any resolution to wind up the *Council* must be passed by a two-thirds majority of all *Entitled Members* present and voting.
- 20.4** If the *Council* is wound up, the surplus assets after payment of all debts, costs and liabilities shall be disposed of for such charitable purposes in New Zealand as may be determined in accordance with the *Statute* or resolution to wind up, but no distribution shall be made to any *Member*.

### **SCHEDULE – DISPUTES PROCEDURES**

The procedures under this Schedule are designed to enable and facilitate the fair, prompt and efficient resolution of *grievances* and *complaints*. All *Members* (including the *Board*) are obliged to comply with this Rule to resolve *grievances* and *complaints*, and to cooperate to resolve disputes efficiently, fairly, and with minimum disruption to the *Council's* activities.

- (a)** Any *grievance* by a *Member*, and any *complaint* by anyone, is to be lodged in writing by the complainant with the *Executive Director*, but if the *grievance* or *complaint* directly relates to the *Executive Director* the *grievance* or *complaint* shall be lodged with the President.
- (b)** The complainant raising a *grievance* or *complaint* and the *Council* must consider and discuss whether a *grievance* or *complaint* may best be resolved through informal discussions, mediation or arbitration. Where mediation or arbitration is agreed on, the parties will sign a suitable mediation or arbitration agreement.
- (c)** Rather than investigate and deal with any *grievance* or *complaint* itself, the *Board* may:
  - (i)** Appoint a sub-committee to deal with the same, or
  - (ii)** Refer the same to an external arbitrator, arbitral tribunal, or external visitor (or referee), so long as minimum standards of natural justice consistent with those specified in the *Statute* are satisfied,
 and the *Board* or any such sub-committee or person considering any grievance or complaint is referred to in the balance of this Rule as the “decision-maker.”
- (d)** The decision-maker shall:

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- (i) Consider whether to investigate and deal with the *grievance* or *complaint*, and
  - (ii) May decline to do so (for instance, if the decision-maker is satisfied that the complainant has insufficient interest in the matter or otherwise lacks standing to raise it; the matter is trivial or does not appear to disclose material misconduct or material; the matter raised appears to be without foundation or there is no apparent evidence to support it; some damage to *Members'* interests may arise; or the conduct, incident, event or issue has already been investigated and dealt with by the *Council*).
- (e) Where the decision-maker decides to investigate and deal with a *grievance*, the following steps shall be taken:
- (i) The complainant and the *Member* or the *Council* complained against must be advised of all details of the *grievance*,
  - (ii) The *Member* or the *Council* which is the subject of the *grievance* must be given an adequate time to prepare a response,
  - (iii) The complainant and the *Member* or the *Council* which is the subject of the *grievance* must be given an adequate opportunity to be heard, either in writing or at an oral hearing if the decision-maker considers that an oral hearing is required, and
  - (iv) Any oral hearing shall be held by the decision-maker, and/or any written statement or submissions shall be considered by the decision-maker.
- (f) Where the decision-maker decides to investigate and deal with a *complaint*, the following steps shall be taken:
- (i) The complainant and the *Member* complained against must be supplied with a copy of the *grievance* concerning the *Member*,
  - (ii) The *Member* or the *Council* complained against must be given an adequate time to prepare a response,
  - (iii) The *Member* or the *Council* complained against must be given an adequate opportunity to be heard, either in writing or at an oral hearing if the decision-maker considers that an oral hearing is required , and
  - (iv) Any oral hearing shall be held by the decision-maker, and/or any written statement or submissions shall be considered by the decision-maker.
- (g) A *Member* may not make a decision or participate as a decision-maker regarding a *grievance* or *complaint* if two or more *Board members* or the decision-maker considers that there are reasonable grounds to infer that the person may not approach the *grievance* or *complaint* impartially or without a predetermined view (and such a decision must be made taking into account the context of the *Council* and the particular case, and may include consideration of facts known by the other *Members* about the decision-maker so long as the decision is reasonably based on evidence that proves or disproves an inference that the decision-maker might not act impartially).
- (h) The decision-maker may:
- (i) Dismiss a *grievance* or *complaint*, or
  - (ii) Uphold a *grievance* and make such directions as the decision-maker thinks appropriate (with which the *Council* and *Members* shall comply),
  - (iii) Uphold a *complaint* and:



- Reprimand or admonish the *Member* complained against, and/or
  - Suspend the *Member* complained against from membership for a specified period, or
  - Terminate the membership of the *Member* complained against, and
- (iv) Order the complainant (if a *Member*) or the *Member* complained against to meet any of the *Council's* reasonable costs in dealing with a *complaint*.