

## Analysis of key changes to our Constitution

March 2019

Our Constitution sets the rules by which we operate. It determines such things as who may be a member, who may make decisions and how they do so, who has authority to do the things necessary to run the Association and call meetings of the Board and of our Members.

We're proposing rescinding our current constitution and adoption of a new constitution from the 30 June 2019 for the following reasons:

- Some of our current rules are no longer legally valid
- The Incorporated Societies Act 1908 is to be amended this year and a number of our current rules will not meet the amended act's requirements
- Some of our rules should not be included in the constitution as they are matters better addressed in policies and procedures
- Some of our rules do not represent what is considered as accepted 'best practice'
- The Board wants to 'future proof' the Constitution for subsequent boards

The following is an outline of key proposed changes:

NKA Current Constitution	NKA Proposed Constitution	Commentary
<b>Association Objectives</b> <ul style="list-style-type: none"><li>• Refers to Association being established to 'provide, promote and further education in all its forms' and operate free kindergartens.</li></ul>	<b>Association Objectives</b> <ul style="list-style-type: none"><li>• Includes new terms: early childhood education and early childhood learning centres</li><li>• Includes lobbying Government function</li></ul>	<b>Association Objectives</b> <ul style="list-style-type: none"><li>• Reflects the change in early childhood terminology</li><li>• New clause re lobbying function added</li></ul>
<b>Membership</b> <ul style="list-style-type: none"><li>• We have Parent, Board &amp; Life Members</li><li>• All parents at kindergarten or on waiting list are 'deemed' to be Parent members</li><li>• Parent members cease membership when they no longer have a child at kindergarten or on a waiting list, or resign</li><li>• Life members may resign</li></ul>	<b>Membership</b> <ul style="list-style-type: none"><li>• We will have Ordinary, Voting, Life and Board members</li><li>• Ordinary members must apply to become members &amp; their application approved by the Board</li><li>• Ordinary members can include people other than parents with a child at kindergarten or on the waiting list</li><li>• Life members have the same rights &amp; privileges as Ordinary members but are not required to pay an annual subscription</li><li>• Life membership is awarded by Voting</li></ul>	<b>Membership</b> <ul style="list-style-type: none"><li>• These changes are being introduced to meet legal requirements</li><li>• Members must make an informed &amp; conscious decision to become a member, or to cease membership, therefore new processes for starting/ending membership will be introduced</li><li>• The Board determines who may be accepted as a Member</li><li>• People who can become members is widened to include people who are not parents of a child at kindergarten</li></ul>

	<p>members, with the consent of the prospective Life Member</p> <ul style="list-style-type: none"> <li>• Each kindergarten community &amp; the Board appoint one Voting member who can vote on their behalf at General and Special meetings (must be an Ordinary or Board member to be appointed as a Voting Member).</li> <li>• Members have obligations placed on them to promote the interests &amp; purposes of the Association &amp; not bring it into disrepute</li> <li>• Ordinary members end membership by resigning, or lose membership by becoming non financial contributors 6 months after payment due, or by being removed under a concerns and complaints process</li> <li>• Board membership ceases when they are no longer on the board, they resign or miss 3 board meetings without board approval, or are removed from the Board due to the outcome of a concern or complaint process</li> <li>• All Members cease to be members upon death</li> <li>• A member may be required to pay a subscription and/or a levy (except for Life Members)</li> <li>• General Manager must keep an up to date register of all members &amp; their contact information</li> <li>• On reasonable notice a Member may have access to certain information about themselves</li> </ul>	<ul style="list-style-type: none"> <li>• Series of member classes is introduced (Ordinary, Voting, Life, Board)</li> <li>• Annual membership subscription fee for Ordinary Members will be requested (\$10 per annum – except for Life Members)</li> <li>• If subscription fee is a barrier to membership – retain ability to discuss options</li> <li>• Ordinary members must make a conscious decision to end membership but can remain members even if they no longer have children attending kindergarten</li> </ul>
--	--	--

<b>Election of Board members</b> <ul style="list-style-type: none"> <li>• A Board member is elected for a two year term and may stand for unlimited number of further terms</li> <li>• Employee elected Board Member is nominated by one employee</li> </ul>	<b>Election of Board members</b> <ul style="list-style-type: none"> <li>• A Board member term is two years and can stand for re election for an additional two terms, up to a maximum of 6 years continuous service</li> <li>• Employee elected Board member is nominated by 2 other employees.</li> <li>• The election of the employee elected Board member occurs at least 48 hours before an AGM</li> </ul>	<b>Election of Board members</b> <ul style="list-style-type: none"> <li>• Board members can be on the Board for no more than 6 years in total.</li> <li>• The employee elected nominee must be nominated by 2 other employees</li> </ul>
<b>Board membership termination</b> Board membership can be ended by: <ul style="list-style-type: none"> <li>• By giving 2 months written notice, missing 3 consecutive meetings or removal by Board</li> <li>• If past or present conduct endangers the character, good order or welfare of Association that person is dealt with under our policies</li> </ul>	<b>Board membership termination</b> <ul style="list-style-type: none"> <li>• Automatically ends after 6 continuous years</li> <li>• Certain circumstances will cause Board membership to end, such as becoming an undischarged bankrupt or becoming disqualified from being an officer of a charitable entity</li> <li>• Process for dealing with grievances, discipline etc may result in membership removal</li> </ul>	<b>Board membership termination</b> <ul style="list-style-type: none"> <li>• Limits the amount of time a person can be on the Board</li> <li>• Adds additional clarification about how/when Board membership may be terminated</li> </ul>
<b>Board Meetings</b> <ul style="list-style-type: none"> <li>• Silent as to who can convene a meeting.</li> <li>• Board members, Ex officio members, Parent &amp; Life Members &amp; employees have a right to attend Board meetings.</li> <li>• Board can invite other persons to attend &amp; speak at meetings.</li> <li>• Board members &amp; Ex officio members have speaking rights at Board meetings, anyone else only by leave of the Board</li> <li>• Requires agenda to be sent to be sent to kindergartens at least 3 days before meetings</li> </ul>	<b>Board Meetings</b> <ul style="list-style-type: none"> <li>• President or General Manager convenes meetings</li> <li>• Any persons other than Board members attend by invite of the Board</li> <li>• Does not require agenda to be sent to kindergartens</li> </ul>	<b>Board Meetings</b> <ul style="list-style-type: none"> <li>• Not considered best practice to distribute agenda, Board minutes &amp; reports into public arena</li> <li>• Board still needs to communicate key decisions and information arising from discussions at Board meetings &amp; will have a process for doing this</li> <li>• Board intends to invite people to sections of their meetings where their input is sought</li> <li>• Conduit for communication between the Board, parents and employees is the General Manager</li> </ul>

<p><b>General Meetings</b></p> <ul style="list-style-type: none"> <li>• AGM held during month of April</li> <li>• 2 advertisements in public newspaper</li> <li>• 14 days notice of date of meeting to be given</li> <li>• At the meeting may consider other business by permission of majority of Voting members present &amp; the Chair</li> </ul>	<p><b>General Meetings</b></p> <ul style="list-style-type: none"> <li>• AGM must be held before 30 June</li> <li>• One advertisement in local paper</li> <li>• At least 14 days before AGM must send copy of annual report, financial statements, nominee information, notice of motions to be made &amp; Board recommendation regarding those motions to all Voting members by post or email</li> <li>• Voting members may give notice of any motion for consideration, must do so at least 7 days before AGM, by notifying General Manager</li> <li>• Board is able to make a recommendation regarding a Voting member motion</li> <li>• Agenda includes new items- appointment of auditor, a summary of the nature &amp; extent of Board disclosures, set annual subscription &amp; any other fees for different classes of membership</li> </ul>	<p><b>General Meetings</b></p> <ul style="list-style-type: none"> <li>• Change of the date AGM must be held by &amp; number of newspaper insertions</li> <li>• Advance issuing of reports &amp; motions to Voting members at least 14 clear days before the meeting</li> <li>• Voting members may give notice of a motion, to which the Board may make a recommendation</li> <li>• New agenda items are being added to AGM's</li> </ul>
<p><b>Special Meetings</b></p> <ul style="list-style-type: none"> <li>• Referred to as Extraordinary meetings in current constitution</li> <li>• Within 30 days of a request by 10 or more members to call a meeting, must do so, giving minimum of 7 days notice &amp; 2 public newspaper adverts or postal delivery to all Voting members</li> </ul>	<p><b>Special Meetings</b></p> <ul style="list-style-type: none"> <li>• The Board or two thirds of Voting members can request the General Manager to call a special meeting</li> <li>• Notice of the meeting must be called for within 21 days of receipt, failure to do so allows the Members calling it to proceed with convening the meeting</li> <li>• Minimum of 7 days notice must be given of date of Special meeting</li> <li>• Method of calling meeting can be by post or email</li> </ul>	<p><b>Special Meetings</b></p> <ul style="list-style-type: none"> <li>• Variation of the number of members required to call a meeting, the number of days within which the meeting must be called &amp; the method of calling the meeting</li> </ul>

<b>Attendance rights at meetings</b> <ul style="list-style-type: none"> <li>• General &amp; Special meetings – Any Parent, Board &amp; Life member &amp; invited person(s) may attend</li> <li>• Board meetings – Board members, employees, ex officio officers, Parent and Life Members may attend</li> </ul>	<b>Attendance rights at meetings</b> <ul style="list-style-type: none"> <li>• General &amp; Special Meetings – all Board, financial Ordinary and Voting members, the General Manager and invitees have a right to attend</li> <li>• Board meetings – Board members, the General Manager and any others the Board invites</li> </ul>	<b>Attendance rights at meetings</b> <ul style="list-style-type: none"> <li>• General and Special meetings are specifically for Ordinary and Voting Members of Association</li> <li>• Board meetings should be just that – meetings of the Board, not public meetings</li> <li>• The Board will invite participants to join their Board meeting at its discretion</li> </ul>
<b>Speaking rights at meetings</b> <ul style="list-style-type: none"> <li>• General &amp; Extraordinary General Meetings – All Parent, Board &amp; Life members, employees and any other person(s) the Chair grants speaking rights to</li> <li>• Board meetings – any Board &amp; Ex Officio members present, non board members at the discretion of the Board</li> </ul>	<b>Speaking rights at meetings</b> <ul style="list-style-type: none"> <li>• General &amp; Special General Meetings – all Board, Ordinary &amp; Life members present may speak as well as all Voting Members present in person or by proxy &amp; any invitees</li> <li>• Board Meetings – any Board members present or electronically present, General Manager and any others invited to attend may speak</li> </ul>	<b>Speaking rights at meetings</b> <ul style="list-style-type: none"> <li>• Reflects changes to classes of membership</li> <li>• Parents who are not Members and employees may be invited at the Board's discretion to attend meetings and if so, have speaking rights</li> <li>• Voting members who are not present at the meeting can pass their speaking rights on by proxy</li> </ul>
<b>Quorums</b> <ul style="list-style-type: none"> <li>• Board meetings = 5 Board members</li> <li>• Where 50% or more of the Board's quorum declare a conflict of interest a Special Meeting must be called</li> <li>• In committee Board meetings – 4 board members</li> <li>• General /Special Meetings – 20 Members (Parent, Board or Life)</li> <li>• Winding up – 15 Members (Parent, Board or Life)</li> <li>• Life membership quorum is 12 (Board, Life members &amp; 1 vote per kindergarten community)</li> </ul>	<b>Quorums</b> <ul style="list-style-type: none"> <li>• Board meetings = simple majority of Board members</li> <li>• In committee Board meetings = simple majority of Board members</li> <li>• General /Special Meetings – 50% of all Voting members must be in attendance in person or by proxy. If that is not achieved, then 10 Members who are Voting members in attendance in person or by proxy <b>and</b> Ordinary and Life members present</li> <li>• Winding up - 50% of all Voting members must be in attendance in person or by proxy. If that is not achieved, then 10 Members who are Voting members in attendance in person or by proxy <b>and</b> Ordinary and Life members present</li> </ul>	<b>Quorums</b> <ul style="list-style-type: none"> <li>• Board members can attend Board meetings electronically, provided they can hear all of the participants speaking</li> <li>• Changes to General, Special and Winding up quorums reflect changes to membership classes</li> </ul>

	<ul style="list-style-type: none"> <li>Subcommittees – 50% of the people on the subcommittee</li> </ul>	
<b>Voting</b> <ul style="list-style-type: none"> <li>All Parent, Life and Board members have voting rights but must be present at a General or Special meeting in order to vote</li> <li>General meeting votes – simple majority (51%) of Parent, Life &amp; Board members present at the meeting are required to pass any motion or resolution</li> <li>Voting to wind up - must be passed by simple majority of Parent, Life and Board Members present. If the quorum of 20 members is not present, then the vote shall proceed based on the actual number of Members present</li> </ul>	<b>Voting</b> <ul style="list-style-type: none"> <li>Each kindergarten community appoints an Ordinary member from their community to be a Voting member. The Voting Member must have a child at that kindergarten in order to be appointed (except for Wairoa based kindergartens, who appoint a Board Member to vote on their behalf)</li> <li>Only Voting members, and one person from the Board may cast a vote (unless there is a tie, in which case the Chair of the meeting may cast a deciding vote)</li> <li>If a Voting member cannot be present, they can appoint another Ordinary or Board member to cast a proxy vote on their behalf</li> <li>Wairoa based kindergartens appoint a Board member to be a Voting member on their behalf</li> <li>General or Special meeting votes - simple majority (51%) of voting members present in person or by proxy</li> <li>Winding up – two-thirds majority (66%) of Voting members present</li> </ul>	<b>Voting</b> <ul style="list-style-type: none"> <li>At present some communities are over represented in voting while others are under represented</li> <li>Under this change the current maximum number of voting members would be 17 (1 from each kindergarten community and 1 from the Board)</li> <li>Voting members can cast a proxy vote if they are unable to attend in person (they can predetermine what the vote will be, or allow the proxy person to use their discretion to decide how they will vote)</li> <li>This change means our Wairoa communities are at last able to have voting rights for General and Special meetings and enables all communities to have a vote without requiring them to be personally present provided they each have a Voting member. The Wairoa communities will be canvassed for how parents want their vote to be cast on their behalf.</li> <li>There are a number of ways a Voting Member may use to reach a decision as to which way they will vote on any matter eg they might canvass the views of their kindergarten parents via survey or ballot This change means the Board has one representative vote of its own</li> <li>It is possible for a community to have no Voting member if it has no Ordinary members and/or no Ordinary member wants to be a Voting member</li> </ul>

		<ul style="list-style-type: none"> <li>The Board would like to ensure if possible that each community has a Voting Member</li> <li>The Association will support kindergartens without a committee to appoint a Voting member</li> </ul>
<b>Alterations to constitution</b> <ul style="list-style-type: none"> <li>Requires 75% of all Parent, Board &amp; Life Members present at the meeting to pass a resolution to alter, amend, add to or rescind the Constitution</li> </ul>	<b>Alterations to constitution</b> <ul style="list-style-type: none"> <li>Requires three fifths majority (60%) of Voting members present in person</li> <li>New rule - Members may propose a motion to amend or replace the constitution, provided at least 50% of Voting Members sign the motion</li> </ul>	<b>Alterations to constitution</b> <ul style="list-style-type: none"> <li>The % of members required has reduced</li> <li>Voting Members can give notice of a motion to amend or replace the constitution provided they have sufficient numbers to do so. The motion would be considered at a General Meeting, called by the General Manager</li> </ul>
<b>Grievances, Disputes Complaints &amp; Discipline</b> <ul style="list-style-type: none"> <li>Board &amp; Committee members may be removed from membership, following Association policies, if they have endangered the Association (character, good order or welfare)</li> </ul>	<b>Grievances, Disputes Complaints &amp; Discipline</b> <ul style="list-style-type: none"> <li>Processes for dealing with these matters are now outlined and are applicable to <i>any</i> Member including Ordinary, Voting and Life members</li> </ul>	<b>Grievances, Disputes Complaints &amp; Discipline</b> <ul style="list-style-type: none"> <li>There will be a requirement to have a process in the constitution under proposed amendment of the Act to deal with complaints &amp; discipline relating to any member</li> </ul>
<b>Conflict of interest</b> <ul style="list-style-type: none"> <li>Board members must declare potential conflicts of interest</li> <li>Board member loses right to vote on that matter to which conflict relates but loses right to vote on that matter</li> </ul>	<b>Conflict of interest</b> <ul style="list-style-type: none"> <li>Conflicts of interest more clearly defined</li> <li>Register of declared conflicts to be kept by General Manager</li> <li>A summary of the nature &amp; extent or types of any declared interests is to be made at the AGM</li> <li>Board member cannot vote on the matter with which they have a conflict of interest</li> <li>Board member may still participate in any discussion relevant to a declared interest but could be excluded from discussion if Board decides so</li> <li>The Board member excluded from a decision may still be counted as part of the</li> </ul>	<b>Conflict of interest</b> <ul style="list-style-type: none"> <li>Board will have the right to remove conflicted members from discussion if deemed appropriate.</li> <li>Disclosure of nature, extent &amp; types of conflicting interests at AGM's now required</li> <li>General Manager maintains register of disclosures</li> </ul>

	Board's quorum	
<b>Additional changes</b> <ul style="list-style-type: none"> <li>• An ex officio officer of the Board has a right, because of the position they hold as an employee, to be involved in discussion &amp; debates of the board and advises and informs the Board as required</li> <li>• Ex officio officers of the Board are defined under Constitution as being the General Manager, Finance &amp; Education Managers</li> <li>• Board has an obligation to employ a General Manager, Finance Manager &amp; an Education Manager</li> <li>• Subcommittees – Board must have Standing committees for teaching appointments and staff matters</li> </ul>	<b>Additional changes</b> <ul style="list-style-type: none"> <li>• No Ex Officio officers</li> <li>• Board only obliged to employ a General Manager</li> <li>• The Board has the <i>right</i> to form sub committees, is not <i>obligated</i> to form standing committees</li> </ul>	<b>Additional changes</b> <ul style="list-style-type: none"> <li>• 'Best practice' suggests ex officio positions are not required on a Board but rather the Board should invite the people it needs to inform them either in person or via reports and can invite them to be part of discussions or debates, for which they have speaking rights.</li> <li>• General Manager would be present for most meetings and is the primary conduit for communications between the Board, parents and employees</li> <li>• General Manager decides what positions are necessary to be employed, employment of other managers can be covered off by policy statements. In actual fact this aligns with what happens now</li> <li>• Formation of standing committees can be achieved by policy statements &amp; doesn't need to be expressly provided for in the constitution</li> </ul>