

# Constitution of The Napier Free Kindergarten Association Incorporated

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LAWYERS

# CONSTITUTION OF THE NAPIER FREE KINDERGARTEN ASSOCIATION INCORPORATED

**NOTE:** Words or phrases in *italics* are defined in Rule 1.7

## 1.0 THE ASSOCIATION

### The Association

- 1.1** The name of the *Association* is The Napier Free Kindergarten Association Incorporated, sometimes referred to as “Te Pūtahi Kura Pūhou O Ahuriri” or “Napier Kindergartens.”
- 1.2** The *Association* was incorporated on 10 December 1951 under the Incorporated Societies Act 1908.

### Association Purposes and Powers

- 1.3** The primary purposes of the *Association* are:
- (a) To provide, establish, manage and control kindergartens and early childhood education or early childhood learning services in the *Association* area,
  - (b) To represent and promote the interests of the *Association* and its members,
  - (c) To promote the development of kindergartens and early childhood education or early childhood learning services in New Zealand, and
  - (d) To lobby Government to promote the interests of the *Association* and/or early childhood education
- 1.4** The *Association* must not operate for the purpose of, or with the effect of:
- (a) Any *Member* of the *Association* or any *Associated Person* deriving any personal financial gain from membership of the *Association*, other than as may be permitted by law, or
  - (b) Returning all or part of the surplus generated by the *Association's* operations to *Members*, in money or in kind, or
  - (c) Conferring any kind of ownership in the *Association's* assets on *Members*, but the *Association* would not operate for the financial gain of *Members* in breach of the *Statute* simply if the *Association*:
    - (i) Engages in trade,
    - (ii) Reimburses a *Member* for reasonable expenses legitimately incurred on behalf of the *Association* or while pursuing the *Association's* purposes,
    - (iii) Provides benefits to members of the public or of a class of the public and those persons include *Members* or their families,
    - (iv) Pays a *Member* a salary or wages or other payments for services to the *Association* on arm's length terms (terms reasonable in the circumstances if the parties were connected or related only by the transaction in question, each acting independently, and each acting in its own best interests, or are terms less favourable to the *Member* than those terms), or
    - (v) Provides a *Member* with incidental benefits (for example, trophies, prizes, or discounts on products or services) in accordance with the purposes of the *Association*.

- 1.5** Despite Rules 1.3-1.4:
- (a) The *Association* shall not be required to advance all of its primary purposes all of the time, and
  - (b) Otherwise this constitution shall be read and interpreted subject to the provisions of Rule 1.3.
- 1.6** Subject to Rules 1.3-1.4, the *Association* shall have power:
- (a) To represent and promote the interests of *Members* of the *Association*,
  - (b) To make bylaws and policies under Rule 5.12 to advance or achieve any of the above purposes,
  - (c) To establish codes of conduct applicable to *Members* under Rule 5.12, and
  - (d) To do any act or thing related or contributing to advancing or attaining any of the above purposes.

### **Interpretation of this Constitution**

- 1.7** In this constitution, unless the context otherwise requires the following words and phrases have the following meanings:
- (a) "*Association*" is the Association referred to in Rule 1.1,
  - (b) "*Association Area*" is Napier City, Wairoa and Te Awanga, or as otherwise determined by the Board,
  - (c) "*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*,
  - (d) "*Board*" means the *Association's* governing body referred to in Rule 4.1,
  - (e) "*Board member*" includes the *Association's* President, Vice President, and other *Board members* elected under Rule 4.1, appointed under Rule 4.4, or co-opted under Rule 5.5,
  - (f) "*clear days*" means complete days excluding 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),
  - (g) "*complaint*" means an allegation that the conduct or discipline of any *Member(s)* has/have fallen short of expected standards of conduct for *Association Members*, and the *complaint* may allege:
    - (i) A breach or failure to observe a specific *Association* Rule, by-law or policy, and/or
    - (ii) Other misconduct likely to cause distress, embarrassment or concern to other *Members* or members of the public or tend to damage the reputation of the *Association*,
 BUT the *Association* is not concerned with *Members'* conduct outside of or away from *Association* activities, unless there is some identifiable connection with the *Association*, or the reputation of the *Association* may be affected, or both,
  - (h) "*Friends*" of a kindergarten, early childhood education or early childhood learning service in the *Association* area is such group of people as may from time to time be recognised by the *Board* as being representative of any particular kindergarten, early childhood education or early childhood learning service.
  - (i) "*General Manager*" is the person appointed pursuant to Rule 4.7,
  - (j) "*grievance*" means a formal concern raised by a *Member* relating to the *Member's* rights and interests as a member 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*.

- (k) “*Local Committee*” means the committee of a kindergarten, early childhood education or early childhood learning service in the *Association* area or in the absence of such a committee the “*Friends*” of that kindergarten, early childhood education or early childhood learning service (at the time of adoption of this amended Constitution, the Bettie Christie Kindergarten, Carlyle Kindergarten, Eskview Kindergarten, Greenmeadows Kindergarten, Marewa Kindergarten, Mary Richmond Kindergarten, Nga Tamariki O Nga Hau E Wha Kindergarten, Onekawa Kindergarten, Pirimai Kindergarten, Riversdale Kindergarten, Tamatea Kindergarten, Taradale Kindergarten, Te Awanga Kindergarten, Wairoa Kindergarten, Wharerangi Kindergarten and Wycliffe Nga Tamariki Kindergarten),
- (l) “*Member*” is an Ordinary Member, Life Member and Board Member entitled to exercise membership rights under Rules 3.3, 3.4(a), 3.9(a), 3.11, 3.15, 6.2(b), 6.4 and 7.3,
- (m) “*Membership Register*” is the register of *Members* kept under Rule 2.5(a),
- (n) “*Register of Disclosures*” is the Register referred to in Rule 5.8(b),
- (o) “*Statute*” means the Incorporated Societies Act 1908 or any statute passed in substitution of the same, including amendments to it from time to time,
- (p) “*Voting Member*” means:
  - (i) For all *Local Committees* other than the Wairoa-based kindergartens a *Member* appointed by a *Local Committee* to represent and vote for it at a General Meeting,
  - (ii) In the case of the Wairoa-based kindergartens a *Board member* appointed by any *Local Committee* or *Friends* of the Wairoa-based kindergartens to represent and vote for it at a General Meeting, and
  - (iii) A Board member chosen by the *Board* to vote to represent and vote for the *Board* at a General Meeting, andany such *Voting Member* shall be entitled to exercise the rights specified in Rules 3.3, 3.4(b), 3.9(a), 3.11, 3.15, 6.2(b), 6.4 and 7.3,
- (q) “*working day*” means any day of the week other than a Saturday, Sunday, or national statutory holiday, and
- (r) “*written notice*” means communication by post, electronic means (including email, and website posting), or advertisement in periodicals, or a combination of these methods.

**1.8** Subject to Rules 1.3-1.4, in addition to its statutory powers, the *Association*:

- (a) May use its funds to pay the costs and expenses to advance or carry out its purposes, and to employ or contract with 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, but such borrowing powers shall not be exercised other than by resolution of the Board.

**1.9** No *Member* or any *Associated Person* shall participate in or materially influence any decision made by the *Association* relating to the payment to or on behalf of that

*Member or Associated Person* of any income, benefit or advantage whatsoever.

**1.10** The *Association* may, subject to the provisions of the Statute, indemnify *Members* and employees who act in good faith in seeking to advance the *Association's* activities, and to take insurance for the purposes of that indemnity, but no such indemnity or insurance shall be provided where a *Member* or employee is criminally liable for the actions or inaction in respect of which indemnity or insurance is sought.

**1.11** 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 assignees 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.

## **2.0 MEMBERSHIP**

### **Membership**

**2.1** The *Association* shall maintain the minimum number of members required by the *Statute*.

**2.2** The classes of membership and the method by which *Members* are admitted to different classes of membership are as follows:

- (a) **Ordinary Member** An *Ordinary Member* is an individual admitted to membership under Rule 2.3 and who or which has not ceased to be a *Member* under any other Rule, but does not include a *Life Member*, and
  - (i) Shall be open to any person interested in education, to any parent or guardian whose children have, are or will attend any *Association* facility, and any representative of an early childhood or other educational organisation, but
  - (ii) No *Association* employee (other than the elected employee representative to the Board) shall be permitted to be a member of the *Association*.
- (b) **Life Member** A *Life Member* is a person honoured for highly valued services to the *Association* who agrees to be elected as a *Life Member* by resolution of a General Meeting passed by a two-thirds majority of those *Voter Members* present and voting. A *Life Member* shall have all the rights and privileges of a financial *Ordinary Member* and shall be subject to all the duties of an *Ordinary Member* except those of paying subscriptions and levies.
- (c) **Voting Member** The *Local Committee* of a kindergarten or early childhood education or early childhood learning service may elect one *Ordinary Member* from its community who is a parent or full-time caregiver of a child at that kindergarten or early childhood education or early childhood learning service as the sole person to exercise voting rights on its behalf as a representative of that kindergarten or early childhood education or early childhood learning service.

**2.3 Admission of Members:**

- (a) Every *Member* must expressly consent to becoming a *Member*, and an applicant

for membership as a *Member* shall complete any application form provided by the *Board*, have paid the current annual subscription, and supply such information as may be required by the *Board*.

- (b) Membership applications shall be considered by the *Board* which may interview an applicant.
- (c) 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).
- (d) Until admitted to membership by the *Board*, no-one is entitled to claim the benefits of *Association* membership.

#### **2.4 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 pursuant to the processes under Rule 2.16 the applicant may be re-admitted only by a General Meeting on the recommendation of the *Board*.

#### **Membership Register**

##### **2.5** The *General Manager* shall:

- (a) Keep an up-to-date *Membership Register* of *Members* (including *Life Members* and *Voting Members*) recording their names, postal and email addresses, phone numbers, occupations, the dates each *Member* became a *Member*, and whether or not the *Member* is financial under Rule 2.12,
- (b) On reasonable notice and at reasonable times:
  - (i) Make available for inspection by *Members* copies of this constitution and of any *Association* bylaws or policies, and copies shall be provided (at a reasonable cost) to any *Member* on request,
  - (ii) Permit *Board Members* and *Members* to inspect the *Membership Register*,
  - (iii) Permit *Board Members* and *Members* to inspect the *Register of Disclosures*, and
  - (iv) Provide *Members* with access to the financial statements presented to the last Annual General Meeting and the minutes of any previous General Meetings.

**2.6** Every *Member* (including *Life Members* and *Voting Members*) shall advise the *General Manager* of any change of name, postal and email address, phone number, and occupation, and if any *Member* fails to do so or provides incorrect information that *Member* shall have no ground of complaint if as a result the *Member* fails to receive any notice from the *Society*.

##### **2.7 Membership obligations and rights:**

- (a) All *Members* (including *Board members*) shall promote the interests and purposes of the *Association* and shall do nothing to bring the *Association* into disrepute.
- (b) A *Member* is entitled to exercise the rights of membership (including attending General Meetings) only if any subscriptions and any other fees or levies have been paid by due date (see Rule 2.12), but no *Member* or *Life Member* is liable for an obligation of the *Association* by reason only of being a *Member*.

- (c) Membership does not confer on any *Member* any right, title, or interest (legal or equitable) in the property of the *Association*.
- 2.8 Other than as permitted under Rule 2.5(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 *Association's* records, but is entitled, subject to the provisions of the *Statute*, to access information the *Association* holds about that *Member* (but not about other *Members*).
- 2.9 The *Association* shall be entitled to collect and record information about *Members* for the *Association's* purposes, including information in the *Membership Register* and in the agendas and minutes of *Board* meetings and General Meetings.

### Subscriptions and levies

- 2.10 Any annual subscription and any other fees for different classes of membership for the then current financial year shall be set by resolution of a Board Meeting (which can also decide that payment may be made by periodic instalments), provided however that the Board shall have a discretion, in cases of hardship, by resolution to allow payment by instalments or to reduce the annual subscription, other fees and levies.
- 2.11 The *Board* or a General Meeting may by resolution impose a levy or levies on *Members* in different classes of membership (except Life *Members*) in any financial year up to a maximum totalling 50% of the annual subscription for that year for each class of *Member*.
- 2.12 Any *Member* failing to pay any annual subscription (including any periodic payment), any levy, or any capitation fees, within one calendar month of the date the same was due for payment shall be considered as nonfinancial and shall (without being released from the obligation of payment) have no membership rights and shall not be entitled to participate in any *Association* activity until all the arrears are paid. If such arrears are not paid within six months of the due date for payment of the subscription, any other fees, or levy the *Board* may terminate the *Member's* membership (without being required to give prior notice to that *Member*).

### Member Resignations

- 2.13 Any *Member* is deemed to have ceased (resigned) to be a *Member* on death. Any *Member* may resign from that *Member's* class of membership by *written notice* to the *General Manager*, and each such resignation shall take effect on the later of the date stated in the notice of resignation or the date of receipt by the *General Manager*, and Rule 2.15 shall apply.
- 2.14 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.
- 2.15 A *Member* who resigns or whose membership is terminated under this constitution:
- (a) Remains liable to pay all subscriptions, levies and other fees to the end of the *Association's* next balance date under Rule 4.14, 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 *Association*, and

- (c) Shall return to the *Association* all material provided to *Members* by the *Association* (including any membership certificate, badges, handbooks and manuals),
- (d) May later re-apply for membership in accordance with Rule 2.3 (in which event the reasons for the previous termination of membership may be taken into account in considering that application), and
- (e) Shall cease to be entitled to any of the rights of *Association Members*.

### **Grievances, Disputes, Complaints and Discipline**

**2.16** 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.

## **3.0 GENERAL MEETINGS**

### **Annual General Meetings**

- 3.1** The Annual General Meeting shall be held no later than 30 June in each year (and not later than 6 months after the balance date under Rule 4.14 and not later than 15 months after the previous Annual General Meeting) on a date, at a time and at venue/s fixed by the *Board*.
- 3.2** 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* on the affairs of the *Association*,
  - (c) Audited financial statements of the *Association* for the most recent financial year,
  - (d) Appointment of a member of the Chartered Accountants of Australia and New Zealand who is not a *Member* to conduct an audit of the annual accounts of the *Association* (see also Rule 4.15) for the then current financial year.
  - (e) A summary of the nature and extent of any disclosures or the types of disclosures made by *Board members* of interest in matters being considered by or affecting the *Association*, recorded since the previous Annual General Meeting (see Rule 5.8),
  - (f) Election of the *Board* in accordance with Rules 4.1-4.2,
  - (g) Election of any *Life Members*,
  - (h) Motions of which notice has been given under Rule 3.3,
  - (i) Set the annual subscription and any other fees for different classes of membership for the then current financial year, and
  - (j) General business.
- 3.3** Any *Voting Member* wishing to give notice of any motion for consideration at the Annual General Meeting shall forward *written notice* of the same to the *General Manager* at least 7 *clear days* before the date of the Meeting. The *Board* may consider all such notices of motion and may notify *Voting Members* of its recommendations in respect of such notices of motion at any time before the Annual General Meeting in accordance with Rule 3.8 or at the Annual General Meeting.

### **Special General Meetings**

- 3.4** Special General Meetings shall be called by:
- (a) The *Board*, or



- (b) Within a calendar month of written requisition to the *General Manager* signed by not less than two-thirds of the *Voting Members* and such requisition must specify the business to be considered by the Special General Meeting.
- 3.5 A Special General Meeting shall consider and deal only with the business:
  - (a) If Rule 3.4(a) applies, as specified in the *Board's* resolution, or
  - (b) If Rule 3.4(b) applies, as specified in the written requisition calling the Meeting plus any additional business specified by the *Board*.
- 3.6 If the *Board* fails to give notice to *Voting Members* of a Special General Meeting within 21 days of receipt of a written requisition under Rule 3.4(b), those requisitioning the Special General Meeting may convene it in accordance with the procedures set out in Rules 3.7-3.8.

### Calling and Notice of General Meetings

- 3.7 At least 14 *clear days* before any Annual General Meeting and 7 clear days before any Special General Meeting the *General Manager* shall, in accordance with Rule 3.8:
  - (a) Notify all *Voting Members* of the venue, date, time and business to be conducted at the General Meeting, and publish a notice of the General Meeting in a public newspaper circulating in Hawke's Bay.
  - (b) In the case of Annual General Meetings send all *Voting Members* copies of the Annual Report, financial statements of the most recent financial year, a list of and information about nominees under Rule 4.3, and notice of any motions and the *Board's* recommendations in respect of any notices of motion.
- 3.8 Notices to *Members* may be given by post or email and:
  - (a) If sent by email shall be deemed to have been received the day it was sent, and
  - (b) If sent by post, shall be deemed to have been received the third day after being sent, andthe failure for any reason of any *Member* to receive such notice or information shall not invalidate the meeting or its proceedings.

### Procedure at General Meetings

- 3.9 General Meetings may be attended:
  - (a) By all *Members* who are financial and by *Life Members*, but such people may only speak or vote if they are entitled to do so under Rule 3.11,
  - (b) By the General Manager who may speak but not vote, and
  - (c) By any other people invited by the *Board* or the General Manager who may speak but not vote.
- 3.10 If within half an hour after the time appointed for a General Meeting to commence the quorum required under Rule 3.12 is not present the meeting shall stand adjourned for seven days to the same time and venue/s, and if at such adjourned meeting the required quorum under Rule 3.12 is not present those present in person shall be deemed to be a sufficient quorum.
- 3.11 (a) A *Voting Member* shall be entitled to attend and speak at a General Meeting either in person or by a signed original written proxy (an email or copy not being acceptable) received by or handed to the *General Manager* before the commencement of the General Meeting in favour of some other Ordinary *Member* from the kindergarten, early childhood education or early childhood

learning service the *Voting Member* represents who is entitled to be present at the meeting.

- (b) Ordinary *Members* and Life *Members* may attend and speak at a General Meeting in person.

**3.12** The quorum for General Meetings when the meeting is called to order and throughout the meeting is at least a half of the *Voting Members* in attendance in person or by proxy under Rule 3.11, or in the absence of such a quorum of *Voting Members* then 10 *Members* comprised of *Voting Members* (present in person or by proxy under Rule 3.11), Ordinary *Members* and Life *Members*. Any decisions made when any such quorum is not present are invalid.

**3.13** Every General Meeting shall be chaired by:

- (a) The President, or
- (b) In the President's absence, by the Vice President, or
- (c) In the absence of both of them by some other *Board member* elected for the purpose by the meeting, or
- (d) By some independent person appointed by resolution of the *Board*, or
- (e) 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 the following powers and discretions:

- (f) To decide the order of business,
- (g) To exercise a deliberative and a casting vote,
- (h) To direct that any person not entitled to be present at the Meeting, obstructing the business of the Meeting, behaving in a disorderly manner, being abusive, or failing to abide by the directions of the chairperson be removed from the Meeting, and
- (i) In the absence of a quorum or in the case of emergency, to adjourn the Meeting or declare it closed.

**3.14** The *Association* 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.

### **Voting at General Meetings**

**3.15** Each *Voting Member* is entitled to exercise one vote on any motion at a General Meeting, 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 *Voting Members* present in person or by proxy under Rule 3.11, by secret ballot (in which event the chairperson will appoint two scrutineers).

**3.16** Unless otherwise required by this constitution, all questions shall be decided by a simple majority of *Voting Members* in attendance in person or by proxy under Rule 3.11 at a General Meeting.

**3.17** A resolution passed by the required majority of *Voting Members* voting in person or by proxy under Rule 3.11 at any General Meeting binds all *Members*, irrespective of whether or not they were present or represented at any General Meeting when the resolution was adopted and whether or not they voted.

## 4.0 BOARD AND OFFICERS

### Election of Board

- 4.1** A *Board* consisting of those people elected in accordance with Rule 4.2, including:
- (a) A person who is an employee (but not a casual employee) in one of the *Association's* kindergartens, early childhood education or early childhood learning services, and
  - (b) Up to 8 other *Board members* (the number being determined by the *Board*) shall be elected annually in accordance with the provisions of Rule 4.2, and shall be the *Association's Board* and each *Board member* shall hold office for a term of two years (until the Annual General Meeting in the second year after election) unless the *Board member* resigns, dies or is otherwise removed from office or, in the case of an employee representative *Board member*, ceases to be employed by the *Association*, and any *Board member* may stand for re-election at the end of that person's term, provided however that no *Board member* shall serve more than six continuous years on the *Board*.
- 4.2** **Board election procedures**
- (a) Not less than 42 clear days before the date of the Annual General Meeting the *General Manager* shall give *written notice* to *Members* and employees calling for nominees for election to the *Board*,
  - (b) Nominees for election must not be precluded from serving on the *Board* under Rule 5.9, and
  - (c) Nominees for positions under Rule 4.1(b) must be *Members* and not employees of the *Association*, and the nominee's nomination must be on a form provided by the *General Manager* (including a declaration that they are not precluded from standing by virtue of Rule 5.9) and signed by the nominee and by two other *Members*, and
  - (d) Nominees for positions under Rule 4.1(a) must be an employee (but not a casual employee), and the nominee's nomination must be on a form provided by the *General Manager* (including a declaration that they are not precluded from standing by virtue of Rule 5.9) and signed by the nominee and by two other employees of the *Association*, and
  - (e) In all cases, a candidate's written nomination accompanied by the written consent of the nominee must be received by the *General Manager* at least 28 clear days before the date of the Annual General Meeting,
  - (f) Not less than 21 clear days before the date of the Annual General Meeting the *General Manager* shall, if an election, is required give *written notice* of the nominees for election together with instructions on how to vote for nominees:
    - (i) To employees of the *Association* (excluding casual employees) of the nominations received pursuant to Rule 4.2(a), and a ballot form to elect the employee *Board member* shall be held with voting closing 48 hours before the time for the commencement of the Annual General Meeting and
    - (ii) To *Members* of the nominations received pursuant to Rule 4.2(b).
- 4.3** At the Annual General Meeting:
- (a) No further *Board member* nominations will be received, and
  - (b) In respect *Board members* under Rule 4.1(b):
    - (i) In the event that there are more nominees than *Board* positions available

under Rule 4.1(b) the Annual General Meeting shall be informed of the number of nominees to be elected to hold office under Rule 4.1(b) for the following year,

- (ii) A written ballot will then be held, and
- (iii) No candidate for election can be elected without obtaining at least 51% of the votes cast, and

In the event of a tie of votes the successful candidate shall be determined by the chairperson of the meeting or, if the chairperson is a candidate to whom the tie applies, by some other person appointed by the Board.

- (c) The *General Manager* will give written notice of the names of those elected to the *Board* during the first working day after the Annual General Meeting, and any *Board Member* so elected who is a member of a *Local Committee* shall immediately resign from that *Local Committee*.

#### 4.4 *Board members:*

- (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 *Association* for any reasonable actual expenses incurred by them on behalf of the *Association* as approved by resolution of the *Board*.

- 4.5 If a vacancy in the position of any *Board member* occurs between Annual General Meetings (whether under Rule 5.9 or by death, resignation in writing delivered to the Registered Office, removal or retirement) that vacancy may be filled by resolution of the *Board*.

#### **President and Vice President**

- 4.6 At the first *Board Meeting* held after the Annual General Meeting the *Board* shall:
- (a) Every second year elect a President who, unless the President earlier resigns, shall hold office for two years until the close of the Annual General Meeting in that second year, and
  - (b) Every year elect a Vice President who shall hold office until the close of the next Annual General Meeting.

#### 4.7 Duties and powers:

- (a) The President shall, in addition to all other duties described in this constitution, generally oversee and direct the affairs and business of the *Association* and act as spokesperson for the *Association*.
- (b) The Vice President shall assist the President and, in the absence or the event of the inability of the President, the Vice President shall undertake all duties and have all the powers of the President.

#### **General Manager, Records and Registered Office**

- 4.8 The *Board* shall appoint a *General Manager* on such terms and conditions as it thinks fit.
- 4.9 The *General Manager* shall:
- (a) Record or arrange to have recorded 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:
    - (i) Confirmation that that meeting was duly called, and

- (ii) Accepted as a true and correct record of what occurred at that meeting.
  - (b) Be the *Association's* contact 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 5.9 from holding that office, and any change in that contact 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 occurs or after the *Association* became aware of the change,
  - (c) Maintain the *Membership Register*,
  - (d) Hold the *Association's* records, documents, and books (and paper records may be digitally recorded and stored),
  - (e) Maintain the *Register of Disclosures*,
  - (f) Lodge with Registrar of Incorporated Societies annual return in a form and as required by the *Statute*,
  - (g) Employ such staff and engage such contractors as may be required from time to time to advance the *Association's* purposes having regard to the plan and budget approved under Rule 4.10(c),
  - (h) Deal with and answer *Association* correspondence, and
  - (i) Perform such other duties as directed by the *Board*.
- 4.10** The Registered Office of the *Association* shall be at such place as the *Board* from time to time determines, and changes to the Registered Office shall immediately be notified to the Registrar of Incorporated Societies in a form and as required by the *Statute*.

#### **Financial Procedures**

- 4.11** The *General Manager* shall:
- (a) Keep such written books of account as may be necessary to provide a true record of the *Association's* financial position,
  - (b) Maintain an assets register recording the assets of the *Association*,
  - (c) Provide the *Board* with a plan and budget for the next financial year for approval in December each year,
  - (d) Report on the *Association's* financial position to each *Board* meeting,
  - (e) Present financial statements of the most recent financial year (in such format as may be required by law) to the Annual General Meeting, and
  - (f) File copies of those financial statements with the Registrar of Incorporated Societies or the Charities Board in a form and as required by the *Statute* and/or the Charities Act 2005.
- 4.12** The *Board* shall maintain bank accounts in the name of the *Association*, and all cheques shall be signed, and electronic banking systems operated by any two of the President, Vice President, *General Manager* and other persons designated by the *Board*.
- 4.13** All money received on account of the *Association* shall be banked within seven *clear days* of receipt.
- 4.14** No liabilities may be incurred or money spent without the prior approval of the *Board*, with the exception that the *General Manager* may approve:
- (a) Payments for expenditure that has been anticipated in the annual budget approved under Rule 4.10(c) (plus such percentage variation as may be

authorised by the *Board*), and

(b) Unbudgeted expenditure approved in principle by the Board.

- 4.15 The *Association's* financial year shall commence on 1 January of each year and end on 31 December in that year (the latter date being the *Association's* balance date).
- 4.16 The Annual General Meeting each year shall, appoint a member of Chartered Accountants Australia and New Zealand who is not a *Member* to conduct an audit of the annual accounts of the *Association*, and if any such person is unable to act the *Board* shall appoint a replacement.

## 5.0 GOVERNANCE AND MANAGEMENT

### Governance, Functions and Powers of Board

- 5.1 From the end of each Annual General Meeting until the end of the next, the *Association* shall be governed by the *Board*, which shall be accountable to the *Members* for the advancement of the *Association's* purposes and the implementation of resolutions approved by any General Meeting, and at all times each *Board member*:
- (a) Shall act in good faith and in what he or she believes to be the best interests of the *Association*,
  - (b) Must exercise all powers for a proper purpose,
  - (c) Must not act, or agree to the *Association* acting, in a manner that contravenes the *Statute* or this constitution,
  - (d) When exercising powers or performing duties as a *Board member*, must exercise the care and diligence that a reasonable person with the same responsibilities would exercise in the same circumstances taking into account, but without limitation, the nature of the *Association*, the nature of the decision, and the position of the *Board member* and the nature of the responsibilities undertaken by him or her,
  - (e) Must not agree to the activities of the *Association* being carried on in a manner likely to create a substantial risk of serious loss to the *Association* or to the *Association's* creditors, or cause or allow the activities of the *Association* to be carried on in a manner likely to create a substantial risk of serious loss to the *Association* or to the *Association's* creditors, and
  - (f) Must not agree to the *Association* incurring an obligation unless he or she believes at that time on reasonable grounds that the *Association* will be able to perform the obligation when it is required to do so.
- 5.2 Subject to this constitution and any resolution of any General Meeting the *Board* may:
- (a) Exercise all the *Association's* powers, other than those required by the *Statute* or by this constitution to be exercised by the *Association* in General Meeting, and
  - (b) Enter into contracts on behalf of the *Association* or delegate such power to a *Board member*, sub-committee, employee or other person.
- 5.3 The *Board* shall meet at least bi-monthly at such times and venue/s and in such manner (including by audio, audio and visual, or electronic communication, provided that all such meeting participants must at all times be able to hear all participants speaking at the meeting) as it may determine and otherwise where, how and as

convened by the President or *General Manager*.

**5.4** At all *Board* meetings:

- (a) The President or the Vice President or in the absence of both of them some other *Board member* elected for the purpose by the meeting shall chair the meeting, and any such chairperson shall have a deliberative and casting vote, and
- (b) The *General Manager* and any other people invited by the *Board* may attend and speak but not vote.

**5.5** The *Board* may co-opt any person to the *Board* for a specific purpose, or for a limited period, or generally until the next Annual General Meeting, and unless otherwise specified by the *Board* any person so co-opted shall have full speaking and voting rights as a *Board* member.

**5.6** The quorum for *Board* meetings is at least a majority of *Board members* excluding any *Board member* who has declared an interest (see also Rule 5.8(c)). Only *Board members* elected under Rule 4.1, appointed under Rule 4.4, or co-opted under Rule 5.5 who are present in person or by audio, audio and visual, or electronic communication at a *Board* meeting shall be counted in the quorum and entitled to vote.

**5.7** A *Board member* shall be deemed to have resigned from the *Board* if the *Board member* has been absent from three consecutive *Board* meetings without having leave of absence approved by the *Board*.

**5.8 Conflicts of interest or loyalty of *Board members*:**

- (a) A *Board member* shall be considered to have an interest in a matter being considered by or affecting the *Association* if he or she:
  - (i) May derive a financial benefit from the matter, or
  - (ii) Is the spouse, civil union or de facto partner, child, or parent of a person who may derive a financial benefit from the matter, or
  - (iii) May have a financial interest in a person or entity to which the matter relates, or
  - (iv) Is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person or entity to which the matter relates,but excluding the following interests:
  - (v) Arising merely because the *Board member* may receive any indemnity, insurance cover, remuneration or other benefits authorised by the *Statute*, or
  - (vi) 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
  - (vii) An interest that the *Board member* has in common with other *Board Members* as a result of membership of the *Association*.
- (b) Any *Board member* having any such interest in a matter shall, as soon as practicable after becoming aware of the interest, disclose the same, and the *General Manager* shall record such disclosures in the *Register of Disclosures* (see also Rules 2.5(b)(iii) and 3.2(e)).
- (c) Where any such interest in a matter has been disclosed:

- (i) 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 and must not sign any document relating to the entry into a transaction or the initiation of the matter, but
- (ii) The *Board* may, where it considers it appropriate, exclude that person from any further discussion or involvement with the matter, but
- (iii) The person who is prevented from voting on a matter because he or she has an interest in it may continue to be counted as part of the quorum of the *Board*, and
- (iv) Where 50 per cent or more of those forming the *Board's* quorum are prevented from voting on the matter because they have disclosed an interest, then the remaining *Board members* must call a Special General Meeting to determine the matter.

**5.9** 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 or becomes prohibited from being a director or promoter of, or being concerned or taking part in the management of an incorporated or unincorporated body under the Companies Act 1993, the Financial Markets Conduct Act 2013, or the Takeovers Act 1993, or
- (c) Is or becomes a person who is prohibited from 1 or more of the following under an order made, or a notice given, under a law of a country, State, or territory outside New Zealand that is prescribed for the purposes of section 151(2)(b) of the Companies Act 1993:
  - (i) Being a director of a body corporate incorporated outside New Zealand (an overseas company), or
  - (ii) Being a promoter of an overseas company, or
  - (iii) Being concerned in or taking part in the management of an overseas company, or
- (d) Is or becomes disqualified from being an officer of a charitable entity under section 31(4) of the Charities Act 2005, or
- (e) Has been or is convicted:
  - (i) Of an offence under subpart 6 of Part 4, or under any of sections 217 to 266 of the Crimes Act 1961, within the past 5 years, or
  - (ii) Within the past 5 years, in a country other than New Zealand, of an offence that is substantially similar to an offence specified in subparagraph (i), or
  - (iii) Of a money laundering offence or an offence relating to the financing of terrorism, whether in New Zealand or elsewhere,
- (f) Is or becomes a person subject to:
  - (i) A banning order under the *Statute*, or
  - (ii) A management banning order under the Financial Markets Conduct Act 2013 or the Takeovers Act 1993, or
  - (iii) An order under section 108 of the Credit Contracts and Consumer Finance Act 2003, or
  - (iv) A confiscation order under the Proceeds of Crime Act 1991, or
  - (v) A property order made under the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act, or



- (g) Is not or ceases to be a *Member*.

### Subcommittees

- 5.10** The *Board* may appoint sub-committees consisting of such persons (whether or not *Members* of the *Association*) 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 *Association* to any financial expenditure without express authority, and
  - (d) A sub-committee must not further delegate any of its powers.

### Incidental powers

- 5.11** The *Board* and any sub-committee may act by resolution approved in the course of a telephone conference call or through a written ballot conducted by email, electronic voting system or mail.
- 5.12** The *Board* from time to time may make and amend bylaws and policies for the conduct and control of *Association* activities and codes of conduct applicable to *Members*, but no such bylaws, policies or codes of conduct applicable to *Members* shall be inconsistent with the *Statute* or this constitution.
- 5.13** Other than as prescribed by the *Statute* or this constitution (including under Rule 3.15), the *Board* may regulate its proceedings as it thinks fit.
- 5.14** 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*.
- 5.15** Each *Board member* shall within 14 *clear days* of submitting a resignation or ceasing to hold office deliver to the *General Manager* all books, papers and other property of the *Association* possessed by such former *Board member*.
- 5.16** The *Board* shall employ or contract with any person to administer or manage the affairs of the *Association*, and may delegate to the *General Manager* such powers and duties as the *Board* thinks fit.
- 5.17** 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 *Association*, 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 *Association* would exercise in the circumstances applying at the time,
  - (d) Not allow the activities of the *Association* to be carried on recklessly or in a manner that is likely to create a substantial risk of serious loss to the *Association's* creditors, or
  - (e) Not allow the *Association* to incur obligations that they do not reasonably believe will be fulfilled, and
  - (f) Must comply with the duties required of them under the *Statute*.

### 5.18 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 *Association* for all liabilities and costs incurred by them acting in good faith 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, but no such indemnity shall be provided where this is prohibited by the *Statute*.

### Association Contracts and Execution of Documents

- 5.19 The *Association* shall have a Common Seal which shall be retained by the *General Manager*.
- 5.20 Unless entered into by a delegate authorised under Rule 5.2(b), documents shall be executed for the *Association* pursuant to a resolution of the *Board*:
  - (a) By affixing the Common Seal witnessed by any two of the *General Manager*, another senior employee authorised by the *Board*, or a *Board member*, or
  - (b) Where the document is not required by law to be executed under common seal, by the *General Manager* signing on behalf of the *Association*, and all such signatories must be at least 18 years of age.

## 6.0 AMENDMENT OF THIS CONSTITUTION

- 6.1 This constitution may be amended or replaced in accordance with Rule 6.4, provided that no amendment may be made which would:
  - (a) Alter this constitution restricting the purposes of the *Association* to advancing charitable purposes within New Zealand,
  - (b) Alter any provision in this constitution precluding *Members* from obtaining any personal benefit or profit from their membership, or
  - (c) Otherwise conflict with the provisions of the *Statute*, but no change shall be made to the *Association's* balance date without the prior approval of the Registrar of Incorporated Societies pursuant to the *Statute*.
- 6.2 Any proposed motion to amend or replace this constitution:
  - (a) May be proposed by the *Board*, or
  - (b) Shall be signed by at least half of the *Voting Members* and given in writing to the *General Manager* at 28 *clear 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.
- 6.3 The *General Manager* shall in accordance with Rules 3.7 and 3.8 notify all *Voting 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.
- 6.4 Any resolution to amend or replace this constitution must be passed by a three fifths majority of all *Voting Members* present and voting.
- 6.5 Every alteration to this constitution, including any change of its name, shall be promptly registered with the Registrar of Incorporated Societies as required by the

## **7.0 WINDING-UP**

- 7.1** The *Association* may be wound up or liquidated or removed from the Register of Incorporated Societies under the provisions of the *Statute* provided that any such proposal is notified and approved as may be required by the *Statute*.
- 7.2** In accordance with Rules 3.7 and 3.8 the *General Manager* shall notify all *Voting Members* and *Life Members* of the proposed motion to wind up the *Association* or remove it from the Register of Incorporated Societies 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.
- 7.3** Any resolution to wind up the *Association* or remove it from the Register of Incorporated Societies must be passed by a two-thirds majority of all *Voting Members* present and voting.
- 7.4** If the *Association* is wound up or liquidated or removed from the Register of Incorporated Societies:
- (a)** Any asset acquired in whole or in part with Government funds shall not be disposed of without the prior consent of the Minister of Education and, if such consent is given, subject to such conditions as the Minister thinks fit, and
  - (b)** No distribution shall be made to any *Member* or former *Member*.
- 7.5** Subject to Rule 7.4, on the *Association's* winding up or liquidation or removal from the Register of Incorporated Societies of its surplus assets after payment of all debts, costs and liabilities shall be vested in one or more charitable societies or charitable trusts.

### **SCHEDULE – GRIEVANCES, DISPUTES, COMPLAINTS AND DISCIPLINE**

The following disputes procedures are designed to enable and facilitate the fair, prompt and efficient resolution of *grievances* and *complaints* in a manner that complies with the requirements set out in the *Statute*. All *Members* (including the *Board*) are obliged to comply with these procedures to resolve *grievances* and *complaints*, and to cooperate to resolve disputes efficiently, fairly, and with minimum disruption to the *Association's* activities.

- (a)** Any grievance by a *Member*, and any complaint by anyone, is to be lodged in writing by the complainant with the *General Manager*.
- (b)** The complainant raising a grievance or complaint and the *Board* 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, 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:
  - (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 *Association*).
- (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* complained against must be advised of all details of the *grievance*,
  - (ii) The *Member* or the *Association* 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 *Association* 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 advised of all allegations concerning the *Member* and of all details of the *complaint*,
  - (ii) The *Member* complained against must be given an adequate time to prepare a response,
  - (iii) The *Member* 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 on 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 *Association* 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 *Association* and *Members* shall comply),
  - (iii) Uphold a *complaint* and:

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

If the *Member* complained against resigns after a complaint is received the *Association* shall have power to continue to follow the procedures set out for investigating and making decisions on the complaint and, if the complaint is upheld, of imposing penalties and making orders for payment of costs.