

CONSTITUTION OF HORTICULTURE NEW ZEALAND INCORPORATED

(As adopted on **Date 2024**)

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1. DEFINITIONS

1.1 In this Constitution unless the context otherwise requires:

- (a) "Act" means the Incorporated Societies Act 2022;
- (b) "Active Grower Member" has the meaning set out in clause 4.2;
- (c) "Affiliated Member Organisation" has the meaning set out in clause 6.1;
- (d) "AGM" means the annual general meeting of the Society;
- (e) "Annual Report" means the report referred to in clause 10.2(d);

- (f) "Board" means the board of directors of the Society constituted pursuant to clause 11.1;
- (g) "Business Day" means a day when registered banks are customarily open for business in the place where the Society's registered office is located;
- (h) "Chairperson" means the Chairperson of the Society elected pursuant to clause 11.9;
- (i) "Chief Executive" means the person employed or engaged by the Society pursuant to clause 15 to manage the day to day operations of the Society;
- (j) "Complaint" has the meaning set out in section 38 of the Act;
- (k) "Director" means a person holding office for the time being as a director of the Society;
- (l) "Dispute" has the meaning set out in section 38 of the Act;
- (m) "Dispute Procedures" means the procedures set out in Schedule 2;
- (n) "Extraordinary Resolution" means a resolution passed at a Meeting by a majority of not less than 75% of those Active Grower Members entitled to vote and voting;
- (o) "Financial Year" means the 12 months ending on 31 March (or such other date as the Board adopts under clause 9) of each year;
- (p) "District Association" means any collective or organisation established in New Zealand comprising commercial growers of horticulture products and/or Product Groups or any combination of these from a particular district or area, purporting or intended to advance or protect the interests of its members;
- (q) "Elected Director" means a Director elected by Grower Members pursuant to clause 11.2;
- (r) "Interests Register" means the interests register kept by the Society pursuant to section 73 of the Act;
- (s) "Levy" means a levy payable to the Society under an Order (or any similar payment, by whatever named called);
- (t) "Meeting" means any meeting of the Members of the Society;
- (u) "Member" means a person who is a member of the Society;
- (v) "Order" means the Commodity Levies (Vegetables and Fruit) Order 2019 and any levy order made upon the revocation of that Order;
- (w) "Principal Representative" means the person nominated in writing by an Active Grower Member or Affiliated Member Organisation as its representative in dealings with the Society, which person must be:
 - (i) where the Active Grower Member is a natural person, that person or an employee of that person;
 - (ii) where the Active Grower Member is a company, a director, shareholder or employee of that company;
 - (iii) where the Active Grower Member is a partnership, a partner or employee of the partnership;

- (iv) where the Active Grower Member is a trustee, a trustee or employee of the trust; and
- (v) in the case of an Affiliated Member Organisation, a director, committee member or employee of that Affiliated Member Organisation;
- (x) "Product Group" means a differentiated part of the horticulture industry, which determines to organise itself as a separate group;
- (y) "Register of Members" means the register of members kept by the Society pursuant to section 79 of the Act;
- (z) "Registrar" means the Registrar of Incorporated Societies; and
- (aa) "Society" means Horticulture New Zealand Incorporated.

1.2 In the interpretation of this Constitution:

- (a) A reference to "writing" or "in writing" includes a reference to an electronic communication as that term is used in the Electronic Transactions Act 2002;
- (b) A reference to a "month" means a calendar month;
- (c) References to the singular shall include the plural and reference to the one gender shall include other genders;
- (d) A reference to any legislation, regulation or order includes a modification and re-enactment of that legislation enacted in substitution for, and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation;
- (e) A reference to any regulation, order-in-council and other instrument from time to time issued or made under any legislation includes a modification and re-enactment enacted in substitution for such regulation, order-in-council and other instrument;
- (f) A reference to the "Constitution" is to this Constitution, including the schedules, as amended from time to time;
- (g) Headings in this Constitution are included for the purpose of ease of reference only and shall not have any effect on construction and interpretation;
- (h) A reference to a person includes a partnership and also a body of persons, whether corporate or unincorporated; and
- (i) A reference to "includes" and "including" shall be by way of inclusion and shall not limit other matters to which no reference is made.

2. NAME AND REGISTERED OFFICE

2.1 The name of the Society shall be Horticulture New Zealand Incorporated.

2.2 The registered office of the Society shall be situated at such place as from time to time shall be decided by the Board. Notice of any change of situation of the registered office shall be sent by the Chief Executive to the Registrar.

3. OBJECTS

3.1 The Society is established for the object of providing benefits to the horticulture industry in New Zealand by creating a positive industry profile and business environment for grower members, which shall include the following objects:

- (a) Promoting to the general public, the media, policy makers and Members of Parliament, horticulture as a vital and growing sector of major social and economic significance to New Zealand;
- (b) Representing to the general public, the media, policy makers and Members of Parliament, the common views of the horticultural sector on generic issues, including, but not limited to, the issues listed under paragraph (f) below;
- (c) Providing information services to Product Groups and District Associations on legislative and regulatory initiatives from central and local government, and distributing information received from Product Groups and District Associations that is of wider interest;
- (d) Providing coordination services to Product Groups and District Associations where there are agreed common public policy issues and interests;
- (e) Acting as a distributor of information to Product Groups and District Associations on offshore regulatory initiatives and receiving and considering information received by the Society from Product Groups and District Associations;
- (f) Actively engaging and participating in the following areas of activity, as they relate to the interests of members and the horticultural industry generally [*Optional changes – see Part A of the Explanatory Notes*]:
 - (i) biosecurity and food safety matters;
 - (ii) general regulatory policy and resulting compliance work;
 - (iii) resource management and the environment, including making submissions on local and central government plans in key production areas;
 - (iv) education, training and leadership;
 - (v) labour issues;
 - (vi) high-level trade policy, including the lobbying of central government on important trade issues; and
 - (vii) crisis management;
- (g) Contracting for the provision of services, upon request, to Product Groups and district organisations;
- (h) Affiliating with and accepting affiliation from any organisation whether established in New Zealand or elsewhere having objects in every respect wholly or in part similar to the objects of the Society;

- (i) Publishing (including online [*Optional change – see Part A of the Explanatory Notes*]), printing, circulating or editing any newspaper, magazine, or other printed or online material relating to the affairs or objects of the Society;
- (j) Holding or arranging lectures, exhibitions, public meetings, classes or conferences calculated directly or indirectly to be of benefit to the Society or its members;
- (k) Supporting any provincial, district or specialised groups of growers of horticultural products within New Zealand [*Optional change – see Part A of the Explanatory Notes*];
- (l) Carrying out any activities permitted under any Order [*Optional change – see Part A of the Explanatory Notes*]; and
- (m) Acting as the collection and distribution agency in respect of any levies from time to time payable by or available for the benefit of growers of horticultural products under any statute, regulation, Order in Council or otherwise.

3.2 In carrying out its objects the Society shall have all the capacity, rights, powers, and privileges set out in the Act, including the power to do all things and make such arrangements whatsoever which are incidental or conducive to the above objects of the Society.

4. MEMBERSHIP

[*Optional change – see Part A of the Explanatory Notes*]

4.1 Classes of Members

At the date of adoption of this Constitution, there are three classes of Members:

- (a) Active Grower Members;
- (b) Affiliated Member Organisations; and
- (c) Life Members.

4.2 Active Grower Members

A person is eligible for membership of the Society as an Active Grower Member if the person:

- (a) is actively engaged in the commercial production of horticultural crops;
- (b) in the 12 month period preceding the date of application for membership, has paid a Levy, directly or indirectly, to the Society; and
- (c) consents in writing to be an Active Grower Member. [*Required change – see Part B of the Explanatory Notes*]

4.3 Affiliated Member Organisations

A person is eligible for membership of the Society as an “Affiliated Member Organisation” if the person meets the criteria set out in clause 6 and consents in writing to be an Affiliated Member Organisation [*Required change – see Part B of the Explanatory Notes*].

4.4 Life Members

- (a) The Board may recommend to a Meeting of the Society that a natural person who, in the opinion of the Board, has rendered distinguished and honourable services to the Society or the objects for which it is established be designated a Life Member of the Society.
- (b) A person may be recommended for life membership whether or not the person is or has been a member of the Society.
- (c) The person shall be designated a Life Member if:
 - (i) the resolution to so designate the person is approved by an ordinary resolution of those entitled to vote and voting on the resolution [*Optional change – see Part A of the Explanatory Notes*]; and
 - (ii) the person consents in writing to be a Life Member [*Required change – see Part B of the Explanatory Notes*].

Other categories

- (d) The Board may from time to time by by-law create further classes of membership and stipulate the criteria for admission to such classes of membership.
- (e) The Board may from time to time by by-law disestablish classes of membership (other than the Active Grower Member class and Life Membership). Upon any such disestablishment, a person who was a member of that disestablished class shall cease to be a Member of the Society, unless such person continues to qualify as an Active Grower Member pursuant to clause 5(a)(i).

4.5 Conditions of Membership

- (a) A Member shall not do any act or thing which is contrary to the best interests of the Society or the horticulture industry or which may bring the Society or the horticulture industry into disrepute.
- (b) The Board may from time to time impose conditions which are consistent with the objects of the Society on persons being or becoming Members or any class or classes of Members and which are applicable to all persons being or becoming Members or any class or classes of Members.

4.6 Application for Membership

[Optional change – see Part A of the Explanatory Notes]

- (a) Any person who wishes to become a Member (other than a Life Member) must complete the Society's membership application form for the class or classes of membership for which that person qualifies (which shall include the consent of the applicant to becoming a Member, as required by the Act) and must provide such details and information as the Board may require.
- (b) A person may be granted membership in one or more of the classes of membership at the same time.
- (c) Once a person has applied for a class of membership, the Board shall consider that person's application at the next Board meeting. The Board may either accept or decline the application and inform the applicant in writing of the outcome of the application, or adjourn the consideration of the application and call for more information regarding the applicant.
- (d) The Board may not unreasonably decline any application for membership or for any class of membership.
- (e) If the application is declined, the Board must advise the applicant in writing of its reasons for declining the application and the applicant may seek a rehearing in person at the Board meeting following notification that the application has been declined. If the application is declined after the rehearing, no further application from that applicant will be considered by the Board during that Production Season.
- (f) An applicant for any class of membership that is subject to a membership fee shall only become a Member upon receipt by the Board of the relevant membership fee (if any) for such class of membership.

4.7 Change of Membership Status

Any Member may apply for membership in a different or additional class by written notice to the Board. Every such notice shall (unless otherwise stated in the notice) take effect from the time of approval by the Board. Clause 4.6 shall apply to such an application with all necessary modifications.

4.8 Resignation or Removal from Membership

[Required change – see Part B of the Explanatory Notes]

- (a) Any Member may resign from membership by written notice to the Society. Every such notice shall take effect from the date of receipt of the notice, unless a later effective date is stated in the notice.
- (b) A notice in writing from a Member to the Society stating that the Member no longer meets the Membership Criteria relevant to the Member's class of membership shall be deemed to be a notice of resignation from that class of membership.
- (c) If any Member is convicted of an indictable offence or is adjudged bankrupt or makes a compromise with creditors or if any effective resolution or order of court is passed or made for the winding up or dissolution of any company or other body corporate or unincorporate which is a Member, then that Member

shall without release from any prior liability to the Society forthwith cease to be a Member, but the Board may in its discretion reinstate the Member.

- (d) Provided that it has first complied with the Dispute Procedures, the Board may, at any time, end an Active Grower Member's membership if:
 - (i) in the Board's view (acting reasonably), the person has ceased to be actively engaged in the commercial production of horticultural crops; or
 - (ii) the person has not, in the 12 month period preceding the relevant date, paid a Levy, directly or indirectly, to the Society,

and the Board has all powers necessary to audit membership qualifications for this purpose.

- (e) Provided that it has first complied with the Dispute Procedures, the Board may, at any time, end the membership of a member of another class if the Member no longer meets the relevant Membership Criteria.
- (f) Provided that it has first complied with the Dispute Procedures, the Board may, at any time, end the membership of a member of any class if is satisfied, by a two-thirds majority, that the Member:
 - (i) is in default of any of the Member's obligations under this Constitution (including obligations to pay membership fees or to provide information); or
 - (ii) has acted in a manner which is not in the best interests of the Society or the horticulture industry or which may bring the Society or the horticulture industry into disrepute.

4.9 Register of Members *[Required change – see Part B of the Explanatory Notes]*

- (a) The Society shall keep a register of its members, in accordance with the Act.
- (b) The register of members must contain:
 - (i) the name of each Member;
 - (ii) the Member's membership class;
 - (iii) the last known contact details of each Member;
 - (iv) the date on which each person became a Member;
 - (v) the name of each person who has ceased to be a Member of the Society within the previous 7 years and the date on which each person ceased to be a Member; and
 - (vi) any other information required by the Act.

- (c) A Member shall notify the Society in writing of any changes to the information recorded on the register in relation to that Member.
- (d) The Society must ensure that the register of members is updated as soon as practicable after becoming aware of changes to the information recorded on the register.
- (e) The Society may delegate its duties under this clause to the Chief Executive.

4.10 Provision of Information

- (a) The Board may from time to time require any Member or class of Members to provide information to the Society concerning any matter which is relevant to the application of this Constitution to that Member or class of Members in such form, within such period, and at such time or times as the Board determines.
- (b) A Member shall provide all information in such form, within such period, and at such time or times as the Board requires pursuant to paragraph (a) of this clause.

5. MEMBERSHIP FEES

5.1 The Board may from time to time determine the amount (or manner of calculation of the amount) of any annual membership fee payable by any class of Members, and may:

- (a) determine different amounts for different classes of Member;
- (b) provide for a discount for prompt payment; and
- (c) reduce the membership fee for a Member joining or changing its class of membership during a membership year.

5.2 Upon an application for membership being granted, the Member shall be liable to pay the annual membership fee for the Member's class of membership.

5.3 Where any Member or class of Members pays to the Society a Levy, the Board may deem such payment as constituting payment in full of the relevant membership fee.

5.4 If a Member fails to pay any applicable membership fee in full by the due date for payment, the Board may by written notice to the Member, suspend all, or a part of, that Member's voting rights until such time as the membership fee is paid in full **PROVIDED THAT** the Board has first complied with the Dispute Procedures [*Required change – see Part B of the Explanatory Notes*].

6. AFFILIATED MEMBER ORGANISATIONS

6.1 Any Product Group or District Association eligible for affiliated membership of the Society pursuant to this clause may apply in writing to the Board to be admitted as an Affiliated Member Organisation.

- 6.2** A Product Group or District Association that is itself an incorporated society is eligible to be an Affiliated Member Organisation provided that:
- (a) its aims and objectives do not conflict with those of the Society; and
 - (b) it meets the requirements of any by-laws made under this Constitution for the purposes of affiliation.
- 6.3** A Product Group that is not an incorporated society may organise itself as an autonomous Product Group under this Constitution and is eligible to be an Affiliated Member Organisation provided that:
- (a) it develops its own operational and procedural rules, and its aims and objectives set out in those rules do not conflict with those of the Society; and
 - (b) it submits its rules to the board for approval as by-laws of the Society pursuant to clause 21.3 (approval will not be withheld provided that the aims and objectives of the Product Group are not in conflict with those of the Society); and
 - (c) it meets the requirements of any by-laws made under this Constitution for the purposes of affiliation.
- 6.4** Each application for membership as an Affiliated Member Organisation shall be accompanied by:
- (a) a copy of the rules or constitution of the Product Group or District Association; and
 - (b) a list of its grower members duly certified by an officer of the applicant setting out the contact details of those grower members.
- 6.5** Once an organisation has applied to be an Affiliated Member Organisation, the Board shall consider the application at the next Board meeting. The Board may either accept or decline the application and inform the applicant in writing of the outcome of the application, or adjourn the consideration of the application and call for more information regarding the applicant.
- 6.6** The Board may not unreasonably decline any application to be an Affiliated Member Organisation.
- 6.7** If the application is declined, the Board must advise the applicant in writing of its reasons for declining the application and the applicant may seek a rehearing in person at the Board meeting following notification that the application has been declined. If the application is declined after the rehearing, no further application from that applicant will be considered by the Board during that Production Season.
- 6.8** An Affiliated Member Organisation may at any time by notice in writing addressed to the board resign from affiliated membership of the Society.
- 6.9** Provided that it has first complied with the Dispute Procedures, the Board may, at any time, end the membership of an Affiliated Member Organisation if the Affiliated

Member Organisation is no longer eligible for affiliated membership.

6.10 An Affiliated Member Organisation must give the Society, annually, a current list of persons forming the grower membership of the Affiliated Member Organisation.

7. HORTICULTURE INDUSTRY CONSULTATION

[Optional change – see Part A of the Explanatory Notes]

7.1 The Society may, from time to time, convene such meetings of Members and other persons involved in the horticulture industry as it considers necessary or desirable.

7.2 Active Grower Members and Affiliated Member Organisations present at any meetings called pursuant to this clause may make recommendations for consideration by the Board. Such recommendations are non-binding, and the Board is not required to take any action in respect of such recommendations.

8. DISPUTES

[Required change – see Part B of the Explanatory Notes]

If a Dispute arises, the Dispute Procedures shall apply.

9. BALANCE DATE

The balance date for the Society shall be 31 March in each year, unless at any time the Board adopts another date.

10. MEETINGS

10.1 Methods of Holding Meetings

A Meeting must be held by a quorum of Members:

- (a) being assembled together at the time and place appointed for the meeting;
- (b) participating in the meeting by means of audio link, audiovisual link, or other electronic communication; or
- (c) by a combination of both of the methods described in paragraphs (a) and (b).

10.2 Annual General Meeting

- (a) An Annual General Meeting of the Society (“AGM”) shall be held within 6 months of the end of each Financial Year and not later than 15 months after the previous AGM at such time and place as the Board from time to time determines.
- (b) The Chief Executive shall notify all Members of the proposed date and place of the AGM at least 8 weeks prior to the proposed date. The AGM shall be held on the date and at the place proposed unless the Board determines on

reasonable grounds that the AGM cannot be held on the proposed date or at the proposed place.

- (c) The purpose of the AGM shall be to:
 - (i) receive an Annual Report from the Board,
 - (ii) appoint an auditor for the ensuing Financial Year; and
 - (iii) consider any matters of general business which may be duly submitted to the AGM, including matters submitted pursuant to the notice of motion process set out in clause 10.3.
- (d) The Annual Report shall contain the following matters: *[Required change – see Part B of the Explanatory Notes]*
 - (i) an annual report on the operations and affairs of the Society during the preceding Financial Year;
 - (ii) audited financial statements of the Society for the preceding Financial Year; and
 - (iii) notice of the disclosures, or types of disclosures, made under section 63 of the Act (disclosure of interests) during the preceding Financial Year (including a brief summary of the matters, or types of matters, to which those disclosures relate).
- (e) At least 21 days' notice of every AGM shall be given to every Member.
- (f) The notice shall state the business to be transacted at the AGM, including the full text of any resolution which is proposed to be adopted at the AGM and whether any resolution is subject to dual voting pursuant to clause 10.10, and shall include a copy of the Annual Report.
- (g) No resolution may be passed at an AGM unless the full text of that resolution was included in the notice of the AGM.

10.3 Notices of motion *[Optional change – see Part A of the Explanatory Notes]*

- (a) If a Director or a Member wishes to have a certain matter considered at an AGM pursuant to this clause (“a notice of motion”), then the relevant person (“the proposer”) shall give notice in writing to the Chief Executive of the notice of motion and the text of any proposed resolution not less than 28 days prior to the proposed date of the AGM.
- (b) If the notice referred to in paragraph (a) of this clause is received by the Chief Executive not less than 28 days prior to the proposed date of the AGM, the notice of motion and the text of any proposed resolution must be included in the notice of AGM.
- (c) If the Board intends that Members may vote on a notice of motion by proxy or by postal vote, it must give the proposer the right to include in or with the

notice of AGM a statement of not more than 1,000 words prepared by the proposer in support of the notice of motion, together with the name and address of the proposer.

- (d) The Board is not required to include in or with the notice of AGM a statement prepared by a proposer which the Board considers to be defamatory, frivolous or vexatious.

10.4 Special General Meetings [*Optional change – see Part A of the Explanatory Notes*]

- (a) The Board shall convene a Special General Meeting on a date and at a place determined by the Board:
 - (i) upon the direction of the Board by simple majority from time to time, for the consideration of such matters as it determines; or
 - (ii) [*Required change – see Part B of the Explanatory Notes*]by the Chairperson if 5 or more Directors are prevented from voting on a matter under section 64(1) of the Act and clause 12 of this Constitution;
 - (iii) upon the requisition in writing of 50 Active Grower Members or, if lower, 10% in number of the Active Grower Members stating the purpose for which the Meeting is required. [*Optional change – see Part A of the Explanatory Notes*]
- (b) At least 21 days' notice of every Special General Meeting shall be given to every Member.
- (c) The notice shall state the business to be transacted at that Meeting, including the full text of any resolution which is proposed to be adopted at that meeting and whether any resolution is subject to dual voting pursuant to clause 10.10.
- (d) No resolution may be passed at a Special General Meeting unless the full text of that resolution was included in the notice of the Meeting.

10.5 General Provisions Regarding Notice

- (a) Any matter raised at a Meeting that is not stated in the notice convening the Meeting may, with the consent of a majority of those present at the Meeting, be accepted for discussion but shall not be put to a resolution at that Meeting.
- (b) The accidental omission to give notice of a Meeting to, or the failure to receive notice of a Meeting by, a Member does not invalidate the proceedings at that Meeting.
- (c) The period applicable to a notice of a Meeting shall be counted from and including the day on which the notice is delivered or deemed to be delivered and shall end on the day before the day of the Meeting.

10.6 Chairperson

- (a) The Chairperson of a Meeting shall be the Chairperson of the Board.
- (b) If the Chairperson is unavailable, the Board shall appoint one of its number to chair the meeting in the Chairperson's absence.
- (c) The Chairperson shall not have a casting vote in the case of an equality of votes. *[Optional change – see Part A of the Explanatory Notes]*

10.7 Quorum

- (a) A quorum for a Meeting is 20 Active Grower Members present in person, by proxy or by participating in the Meeting by means of audio link, audiovisual link, or other electronic communication. *[Optional change – see Part A of the Explanatory Notes]*

10.8 Voting Rights – Active Grower Members only

- (a) Only Active Grower Members who are recorded in the Register of Members as at 5pm on the day before the date on which notice is given of a Meeting are entitled to vote at the Meeting.
- (b) An Affiliated Member Organisation does not have voting rights on any matter.
- (c) A Life Member does not have voting rights on any matter unless the Life member is also an Active Grower Member.

10.9 Majority Voting

Except in the case of dual voting or as otherwise provided in this Constitution, every resolution of the Society shall be duly made if a simple majority of the valid votes of Active Grower Members recorded are in favour of the resolution.

10.10 Dual Voting

- (a) Except as provided in paragraph (b), a resolution will be subject to dual voting if:
 - (i) the Board so determines;
 - (ii) 50 Active Grower Members or, if lower, 10% in number of the Active Grower Members so require by notice in writing signed by those Members and given to the Chief Executive not less than 28 days' prior to the proposed date of the AGM; or
 - (iii) it is a resolution for a change to the Levy rate during the term of an Order.
- (b) A resolution to elect an Elected Director under clause 11.2 and a resolution to alter this Constitution under clause 21 shall not be subject to dual voting.
- (c) Where a dual vote is required on a resolution in accordance with this Constitution, voting will be by both:

- (i) Active Grower Members by 1 vote per Member; and
 - (ii) (subject to paragraph (b) of this clause) Active Grower Members by weighted vote, with each Active Grower Member being entitled to 1 vote for every \$100 (or part thereof) of levy paid to the Society by the Active Grower Member during the Active Grower Member's most recently completed financial year.
- (d) An Active Grower Member will be entitled to cast a weighted vote if it has completed and returned to the Chief Executive at least 14 days prior to the Meeting a declaration (or a statutory declaration, if the Society so requires) setting out the amount of levy paid to the Society by the Active Grower Member during the Active Grower Member's most recently completed financial year. The Society shall be entitled to audit the declaration before confirming the Active Grower Member's weighted vote.
- (e) A resolution that is subject to dual voting will pass if:
- (i) A simple majority of the valid votes of Active Grower Members on a 1 vote per Member basis are in favour of the resolution; and
 - (ii) A simple majority of the valid votes of Active Grower Members on a weighted vote basis are in favour of the resolution.

10.11 Voting at Meetings

- (a) At any Meeting a resolution put to the vote and not requiring a dual vote shall be decided by a show of hands unless a poll is (before, or on, the declaration of the result of the show of hands) demanded by the Chairperson of the Meeting or at least 5 Active Grower Members who are present in person.
- (b) At any Meeting a resolution put to the dual vote shall be decided by a poll.
- (c) Unless a poll is demanded under paragraph (a) or required under paragraph (b), a declaration by the Chairperson that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against that resolution.
- (d) If a poll is demanded under paragraph (a) or required under paragraph (b), it shall be taken in such manner as the Chairperson directs and the result of the poll shall be deemed to be the resolution of the Meeting at which the poll was demanded.
- (e) A poll demanded on a question of adjournment shall be held forthwith. A poll demanded on any other question shall be taken at such time as the Chairperson directs.

10.12 Proxy

- (a) An Active Grower Member may exercise the right to vote either by being present or by proxy.
- (b) Any instrument appointing a proxy shall be in writing in the form attached as Schedule 1, or in similar form.
- (c) No proxy is effective in relation to a Meeting unless a copy of the notice of appointment is produced at least 48 hours before the start of the Meeting.
- (d) A proxy for an Active Grower Member is entitled to attend, vote and be heard at a Meeting as if the proxy were the Member.

10.13 Postal and Electronic Voting [*Optional change – see Part A of the Explanatory Notes*]

- (a) Any matter which may be determined at a Meeting may, at the discretion of the Board, be determined by a postal ballot of Members and, for the purposes of this clause a “postal ballot” includes a ballot which is conducted by electronic means (including e-mail).
- (b) If the Board so determines (which determination shall be evidenced by a statement to that effect in the notice of the meeting), Members may cast a postal vote on all or any of the matters to be voted on at a Meeting by sending a written notice of the manner in which the Member’ votes are to be cast to a person authorised to receive and count postal votes at that meeting. The notice must reach that person before the date specified as the date by which votes must be returned.
- (c) The notice calling for a postal vote or permitting the casting of postal votes at a Meeting shall be in such form as the Board determines but shall state:
 - (i) that Members are entitled to cast a postal vote;
 - (ii) the name and address of the person or persons authorised by the Board to receive and count postal votes;
 - (iii) the text of the resolution to be voted on; and
 - (iv) the date by which votes must be returned.
- (d) It is the duty of the person authorised to receive and count postal votes:
 - (i) to collect together all postal votes received;
 - (ii) in relation to each resolution to be voted on, to count the number of votes in favour of, and against, the resolution;
 - (iii) to sign a certificate that they have carried out the duties set out in paragraphs (i) and (ii) of this clause and which sets out the results of the counts required by paragraph (ii) of this clause; and

- (iv) to ensure that the certificate required by paragraph (iii) of this clause is presented to the Chairperson.
- (e) Except as specified in this clause the Board may determine the manner in which it conducts a postal vote.

10.14 Minutes

- (a) The Board must ensure that full and accurate minutes are kept of all proceedings at Meetings of the Society.
- (b) Minutes which have been signed correct by the chairperson of the Meeting are prima facie evidence of the proceedings.

10.15 Other Proceedings

- (a) Unless otherwise provided in this Constitution, all Members shall have the right to speak at Meetings of the Society.
- (b) Subject to this Constitution, a meeting of Members may regulate its own procedure.

11. THE BOARD

11.1 The Board

- (a) The management and control of the affairs and business of the Society shall be vested in the Board, which shall comprise of a maximum of 9 directors. Subject to that maximum, the Board may comprise:
 - (i) Up to seven Elected Directors; and
 - (ii) Up to three Appointed Directors, appointed pursuant to clause 11.4.
- (b) The persons eligible for election as an Elected Director are natural persons who are the Principal Representative of an Active Grower Member and who are not disqualified under section 47(3) of the Act.
- (c) The persons eligible for appointment as an Appointed Director are natural persons who are not disqualified under section 47(3) of the Act.

11.2 Election of Elected Directors

The election of Elected Directors shall be conducted as follows:

- (a) The Board shall call for nominations for election as an Elected Director at least 8 weeks before the AGM by written notice to all Active Grower Members and Affiliated Member Organisations. The notice shall:

- (i) specify that nominations must be returned to the Board within the time specified in the notice which shall not be less than 14 days after the date of the notice; and
 - (ii) identify the Directors whose term of office is due to end pursuant to this Constitution, including under clauses 11.3(b), 11.5(a) and 11.7(b).
- (b) A nomination must be signed by the person making the nomination and the person seconding the nomination both of whom must be the Principal Representative of an Active Grower Member or an Affiliated Member Organisation.
- (c) If the nominations received by the Board do not exceed the number of Directors to be elected as Elected Directors in that year, the Board shall then declare those so nominated elected and those so elected shall take office at the conclusion of the next AGM.
- (d) If the nominations received by the Board exceed the number of Directors to be elected as Elected Directors in that year, then the election of Elected Directors shall be determined by a ballot of Active Grower Members at the next AGM. Those Directors elected by ballot at an AGM shall take office from the conclusion of that AGM [*Optional change – see Part A of the Explanatory Notes*].
- (e) Each Active Grower Member will have 1 vote on the election of Elected Directors.

11.3 Removal by Extraordinary Resolution

- (a) The Members may, at a Meeting, by an Extraordinary Resolution of which notice has been properly given in accordance with clause 10:
- (i) remove any Director from office; and
 - (ii) appoint any person who is not disqualified under section 47(3) of the Act as a Director in place of the Director so removed.
- (b) A Director appointed in accordance with this clause will hold office for the balance of the term of office of the Director so removed.

11.4 Appointment of Appointed Directors

- (a) The Board will establish a “Director Selection Group” comprising the Chairperson and 2 members independent of the Board who are appointed by the Board.
- (b) The Director Selection Group will advertise, screen and recommend to the Board persons suitable to be “Appointed Directors” pursuant to clause 11.1(a)(ii).
- (c) A person:

- (i) may not be appointed by the Board as an Appointed Director unless they have been recommended by the Director Selection Group; but
 - (ii) may be reappointed by the Board as an Appointed Director without further recommendation by the Director Selection Group.
- (d) The Board must take into account the recommendations of the Director Selection Group but the appointment of an Appointed Director is ultimately a matter for the Board.
- (e) The Board may at any time remove from office any Appointed Director.

11.5 Terms of Office

- (a) Unless otherwise specified in this Constitution, every Elected Director shall hold office until the end of the third AGM after they take office.
- (b) Subject to paragraph (d) of this clause, an Elected Director whose term of office is due to expire may offer him or herself for re-election.
- (c) An Appointed Director shall hold office for such term determined by the Board from time to time but not exceeding 3 years. At the end of the term that person shall be eligible for reappointment for a further term, but no Appointed Director shall hold office as an Appointed Director for more than 9 consecutive years. *[Optional change – see Part A of the Explanatory Notes]*
- (d) A person may not hold office as a Director (whether as an Elected Director or as an Appointed Director) for a consecutive period of 9 years from the date they took office. *[Optional change – see Part A of the Explanatory Notes]*

11.6 Vacancy of Office

The office of any Director shall become vacant if the Director:

- (a) dies;
- (b) resigns in writing;
- (c) is absent without leave of the Chairperson from more than 2 successive Board meetings;
- (d) is removed from office by an Extraordinary Resolution pursuant to clause 11.3;
- (e) is an Appointed Director and is removed from office by the Board; or
- (f) ceases to be eligible for appointment as a Director pursuant to clause 11.1(b) or clause 11.1(c).

11.7 Filling of Vacancy

- (a) If a vacancy in the number of Elected Directors arises on the Board, the Board may appoint such person as it thinks fit to fill the vacancy.
- (b) Every person so appointed must retire from office at the end of the next AGM, but may offer him or herself for re-election. If re-elected, the person's first term of office as an Elected Director commences upon being re-elected.
- (c) If a vacancy in the number of Appointed Directors arises on the Board, the Board may appoint an Appointed Director in accordance with clause 11.4.

11.8 Duties of Directors [*Change reflects new Act – see Part B of the Explanatory Notes*]

- (a) In exercising powers or performing duties as a Director, each Director shall:
 - (i) act in good faith and in what the Director believes to be the best interests of the Society;
 - (ii) exercise a power as a Director for a proper purpose;
 - (iii) not act, or agree to the Society acting, in a manner that contravenes the Act or this Constitution;
 - (iv) exercise the care and diligence that a reasonable person with the same responsibilities would exercise in the same circumstances taking into account (without limitation):
 - (1) the nature of the Society;
 - (2) the nature of the decision; and
 - (3) the position of the Director and the nature of the responsibilities undertaken by him or her.
- (b) A Director must not:
 - (i) agree to the activities of the Society being carried on in a manner likely to create a substantial risk of serious loss to the Society's creditors;
 - (ii) cause or allow the activities of the Society to be carried on in a manner likely to create a substantial risk of serious loss to the Society's creditors; or
 - (iii) agree to the Society incurring an obligation unless the Director believes at that time on reasonable grounds that the Society will be able to perform the obligation when it is required to do so.
- (c) No part of the income or property of the society will be paid directly or indirectly to any member provided that this clause will not prevent the society making reasonable payments to members for professional or other services rendered.

11.9 Chairperson and Deputy Chairperson

[Optional change – see Part A of the Explanatory Notes]

- (a) At the first meeting of the Board following the AGM, the Directors must:
 - (i) elect one of their number to be Chairperson of the Society, to hold office until the conclusion of the next AGM; and
 - (ii) elect one of their number as deputy chairperson of the Society, to hold office until the conclusion of the next AGM.
- (b) If the Chairperson should resign from office, die, become bankrupt, or in some other way become incapable of carrying out their duties for a period of more than 6 weeks, then the Deputy Chairperson shall assume the position of Chairperson and hold office until the conclusion of the next AGM.

11.10 Remuneration *[Optional change – see Part A of the Explanatory Notes]*

- (a) Directors and members of Board sub-committees may be paid:
 - (i) such remuneration by way of honorarium; and
 - (ii) such other amounts (if any) for additional services provided by the Director in that capacity to the Society,as may be determined by the Society at a Meeting.
- (b) Each Director will be entitled to be paid for all reasonable travelling, accommodation and other expenses incurred by the Director in connection with the Director's attendance at meetings or otherwise in connection with the Society's business and the Board may authorise such payments without member approval.

11.11 Indemnities and Insurance

[Change reflects new Act – see Part B of the Explanatory Notes]

- (a) The Society may, in accordance with subpart 6 of the Act, indemnify a Director, officer, a Member, or an employee of the Society for:
 - (i) liability to any person other than the society for any act or omission in their capacity as an officer, a member, or an employee of that society (not being a liability specified in paragraph (b));
 - (i) subject to paragraph (c), costs incurred by the officer, member, or employee in defending or settling any claim or proceeding relating to that liability.
- (b) The liabilities for which the Society may not indemnify a Director, officer, a Member, or an employee of the Society are:
 - (i) criminal liability; and

- (ii) a liability that arises out of a failure to act in good faith and in what the Director, officer, Member, or employee believes to be the best interests of the Society when acting in their capacity as a Director, officer, a Member, or an employee of the Society.
- (c) The Society may indemnify a Director, officer, a Member, or an employee of the Society for any costs incurred by them in defending or settling a proceeding that relates to liability of a kind referred to in paragraph (a)(i) if:
 - (i) judgment is given in their favour or if they are acquitted; or
 - (ii) the proceeding is discontinued.
- (d) The Society may, with the prior approval of the Board, effect insurance for a Director, officer, a Member, or an employee of the Society in respect of:
 - (i) liability (other than criminal liability) of a kind referred to in section 94 of the Act; or
 - (ii) costs incurred by the Director, officer, Member, or employee in defending or settling any claim or proceeding relating to that liability; or
 - (iii) costs incurred by the Director, officer, Member, or employee in defending any criminal proceedings:
 - (1) that have been brought against the Director, officer, Member, or employee in relation to any alleged act or omission in their capacity as a Director, officer, Member, or employee; and
 - (2) in which they are acquitted.
- (e) The Directors who vote in favour of authorising the insurance under paragraph (d) must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Society.
- (f) For the purposes of section 98 of the Act, the Society is expressly authorised to indemnify a Director or officer, or to effect insurance for a Director or officer, for the following matters:
 - (i) liability (other than criminal liability) for a failure to comply with:
 - (1) a duty under sections 54 to 61 of the Act (officers' duties); or
 - (2) any other duty imposed on the Director or officer in their capacity as an officer; and
 - (ii) costs incurred by the Director or officer for any claim or proceeding relating to that liability.

12. CONFLICTS OF INTEREST

[Required change – see Part B of the Explanatory Notes]

12.1 Where a Director is interested (as defined in the Act) in a matter relating to the Society, the Director must, as soon as practicable after the Director becomes aware that they are interested in the matter, disclose details of the nature and extent of the interest (including any monetary value of the interest if it can be quantified):

- (a) to the Board; and
- (b) in the Interests Register.

12.2 A Director who has a conflict of interest:

- (a) must not vote or take part in a decision of the Board relating to the matter;
- (b) may sign any document relating to the entry into a transaction or the initiation of the matter; and
- (c) may take part in any discussion of the Board relating to the matter and be present at the time of the decision of the Board (unless the Board decides otherwise).

12.3 A Director who is prevented from voting on a matter under the Act and this Constitution may still be counted for the purpose of determining whether there is a quorum at any meeting at which the matter is considered.

12.4 Paragraphs (a) and (b) of clause 12.2 do not apply to a Director if all Directors who are not interested in the matter consent to the Director so acting.

12.5 If 5 or more of the Directors are prevented from voting on the matter under clause 12.2(a), a Special General Meeting of the Society must be called to consider and determine the matter.

12.6 Section 64(3) of the Act is hereby negated.

12.7 No member of the Society or any person associated with a member shall participate or materially influence any decision made by the Society, in respect of the payment to or on behalf of that member or associated person of any income, benefit or advantage whatsoever. Any such income shall be reasonable and relative to that which would be paid in an arm's length transaction (being open market value).

13. MEETINGS OF THE BOARD

13.1 Convening Meetings

Meetings of the Board may be convened by written notice to all of the Directors at such times and places as the Chairperson from time to time determines or as any two Directors from time to time request . At least 6 meetings of the Board shall be convened each calendar year. *[Optional change – see Part A of the Explanatory Notes]*

13.2 Manner of Holding Board Meetings:

A Meeting must be held by a quorum of Directors:

- (a) being assembled together at the time and place appointed for the meeting;
- (b) participating in the meeting by means of audio link, audiovisual link, or other electronic communication; or
- (c) by a combination of both of the methods described in paragraphs (a) and (b).

13.3 Chairperson

- (a) If the Chairperson is present, the Chairperson shall chair the Board meeting.
- (b) If the Chairperson is absent, the Vice President shall chair the Board meeting.
- (c) If both the Chairperson and the Vice President are absent, the Directors present shall elect one of their number to chair the Board meeting.

13.4 Quorum

The quorum for a meeting of the Board shall be 5 Directors.

13.5 Voting

Each Director shall have one vote on any resolution at a Board meeting.

13.6 Casting Vote

The Chairperson shall not have a casting vote on any resolution at a Board meeting. *[Optional change – see Part A of the Explanatory Notes].*

13.7 Notice

- (a) Not less than 7 days' written notice of a meeting of the Board must be sent to every Director by the Chief Executive, and the notice must include the date, time, and place of the meeting and the matters to be discussed.
- (b) An irregularity in the notice of a meeting is waived if either all Directors attend the meeting and no issue is raised about the irregularity, or all Directors agree to waive the irregularity *[Optional change – see Part A of the Explanatory Notes].*

13.8 Written Resolution: A resolution in writing signed by all of the Directors entitled to receive notice of a Board meeting shall be valid and effectual as if it had been passed at a Board meeting duly convened and held. Any such resolution may consist of several instruments in writing in like form, each signed by one or more Directors.

13.9 Other Proceedings: Except as provided in this clause 13, the Board may regulate its own procedure.

14. MANAGEMENT

14.1 Subject to clause 14.2, the business and affairs of the Society must be managed by or under the direction or supervision of the Board.

14.2 The Board has, and may exercise, all the powers necessary for managing, directing and supervising the management of the business and affairs of the Society except to the extent that this Constitution expressly require those powers to be exercised by the Members or any other person.

14.3 The Board may delegate to:

- (a) a subcommittee of the Board of such members as is thought fit (whether or not Directors);
- (b) a Director;
- (c) an employee of the Society; or
- (d) any other person,

any one or more of its powers, other than this power of delegation.

14.4 To the extent that the Board delegates a power, the Board is responsible for the exercise of the power by the delegate as if the power had been exercised by the Board, unless the Board:

- (a) believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on Directors of the Society by this Constitution; and
- (b) has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

14.5 The meetings and proceedings of any Board subcommittee shall be governed by clause 13 of this Constitution with such modifications as the subcommittee members determine are reasonably required.

15. CHIEF EXECUTIVE OFFICER

15.1 The Board shall appoint a Chief Executive, who shall hold office for such period and upon such terms as to salary or otherwise as the Board shall from time to time determine.

15.2 The Board will determine and agree the responsibilities and duties of the Chief Executive.

16. RECORDS

16.1 The Board shall ensure that:

- (a) a record is kept of all proceedings of the Society and the Board;
- (b) the Register of Members and Interests Register are kept;
- (c) a correct record is kept of all monies due to the Society, or all payments made by the Society; and
- (d) all correspondence, records and reports connected with the Society are kept for a reasonable period.

AUDITOR

16.2 The auditor shall be a person who is not a Member, but who is a chartered accountant (within the meaning of section 19 of the Institute of Chartered Accountants of New Zealand Act 1996).

16.3 A partnership may be appointed by the firm name to be the auditor of the Society if all or some of the partners are persons who are qualified to be appointed as auditors of the Society and:

- (a) the appointment of a partnership by the firm name to be the auditor of the Society is deemed to be the appointment of all the persons who are partners in the firm from time to time; and
- (b) where a partnership that includes persons who are not qualified to be appointed as auditors of the Society is appointed as auditor, the persons who are not qualified to be appointed as auditors must not act as auditors of the Society.

16.4 The auditor shall audit the financial statements of the Society.

17. METHOD OF CONTRACTING

[Change reflects new Act – see Part B of the Explanatory Notes]

Unless expressly required by law, a contract or other enforceable obligation may be entered into by the Society as follows:

- (a) An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Society in writing signed under the name of the Society by:
 - (i) 2 or more Directors; or
 - (ii) a Director, whose signature must be witnessed; or
 - (iii) 1 or more attorneys appointed by the Society;
- (b) An obligation which, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the Society in writing by a person acting under the Society's express or implied authority; and

- (c) An obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Society in writing or orally by a person acting under the Society's express or implied authority.

18. SOCIETY FUNDS

- 18.1** All monies received by or on behalf of the Society shall forthwith be paid to the credit of the Society in a bank account nominated by the Board and all payments and withdrawals drawn on the account shall be signed by any one or more persons appointed for that purpose by the Board.
- 18.2** The Society may from time to time invest and reinvest the whole or any part of its funds not required for the immediate business of the Society. The Board in exercising their powers pursuant to this clause shall exercise the care, diligence, and skill that a prudent person of business would exercise in managing the affairs of others.
- 18.3** None of the income and property of the Society shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profits to members of the Society.

19. BORROWING

The Society may in addition to the other powers vested in it borrow or raise money from time to time by the issue of debentures, bonds, mortgages or any other security founded or based on all or any of the property and/or rights of the Society or without any security and upon such terms as to priority and otherwise as the Society thinks fit.

20. WINDING UP

- 20.1** The Society may be wound up voluntarily if, at a Meeting, Active Grower Members pass a simple majority resolution:
 - (a) requiring the Society to be wound up; or
 - (b) subject to compliance with subpart 6 of the Act, to appoint a liquidator.
- 20.2** If the Society is wound up, any surplus assets of the Society after the payment of all costs, debts and liabilities shall be disposed of to one or more not-for-profit entities in accordance with section 216 of the Act.
- 20.3** For the avoidance of doubt, no part of any surplus assets may be paid to or distributed amongst the Members or other owners of the Society.

21. AMENDMENT OF CONSTITUTION

- 21.1** With the exception of this clause, this Constitution may be amended by a resolution passed by Extraordinary Resolution of Active Grower Members entitled to vote and voting at a Meeting of which notice has been given in accordance with clause 10. No alteration shall be made to this Constitution if it would enable the income or other funds of the Society to be used for or be available for the private pecuniary profit of

any Member or in any other way would affect the charitable or non-profit status of the Society.

21.2 Every notice given in terms of clause 21.1 shall set out the wording and purpose of the proposed amendment to this Constitution.

21.3 The Society may from time to time make, amend or rescind regulations or by-laws not inconsistent with this Constitution governing the affairs of the Society and the procedures at its Meetings.

21.4 The decision of the Board on the interpretation of this Constitution or any matter or thing not contained in this Constitution and which pertains to the Society shall be conclusive and binding on all Members unless revoked at a Meeting.

22. CONTACT PERSON

[Required change – see Part B of the Explanatory Notes]

For the purposes of the Act, the contact person of the Society shall be the Chief Executive.

23. NOTICES

23.1 Any notice required or permitted to be given under this Constitution shall be validly given if sent to the last known address of the person as shown in the records of the Society and shall be deemed to have been delivered:

- (a) if delivered by hand, on delivery;
- (b) if given by post, five Business Days after posting; and
- (c) if by email, then on the first Business Day following the day on which the email is sent.

23.2 The Board may, in its discretion, make and amend such further provisions relating to the receipt and delivery of notices as it considers appropriate.

**SCHEDULE 1
Form of Proxy
HORTICULTURE NEW ZEALAND INCORPORATED (“the Society”)**

I/We _____
being a Member/Members of the Society hereby appoint _____
or failing him/her _____, as my/our proxy to vote for
me/us on my/our behalf at the general meeting of the Society to be held on the ___
day of _____ 20___, and at any adjournment thereof.

My/our voting Entitlement pursuant to the Constitution of the Society is
_____ votes.

This form is to be used as follows [insert resolution numbers and whether for or
against]

Resolution No. [] For/Against*

Resolution No. [] For/Against*

Resolution No. [] For/Against*

Resolution No. [] For/Against*

[*Delete One]

Unless otherwise instructed the proxy will vote as the proxy thinks fit.

SIGNED this ___ day of _____ 20___,

Signature of Member/Members:

SCHEDULE 2

Dispute Procedures

1 Overview of this schedule

This Schedule sets out the procedures to be followed relating to Disputes (as defined in section 38 of the Act).

2 How Complaint is made

2.1 A Member or a Director may make a Complaint by giving to the Board (or a complaints subcommittee, if the Board has established one) a notice in writing that:

- (a) states that the Member or Director is starting a procedure for resolving a Dispute in accordance with this Constitution; and
- (b) sets out the allegation to which the Dispute relates and whom the allegation is against; and
- (c) sets out any other information reasonably required by the Society.

2.2 The Society may make a Complaint involving an allegation against a Member or a Director by giving to the Member or Director a notice in writing that:

- (a) states that the Society is starting a procedure for resolving a Dispute in accordance with this Constitution; and
- (b) sets out the allegation to which the Dispute relates.

2.3 The information given under clause 2.1(b) or clause 2.2(b) must be enough to ensure that a person against whom an allegation is made is fairly advised of the allegation concerning them, with sufficient details given to enable them to prepare a response.

3 Person who makes Complaint has right to be heard

3.1 A Member or a Director who makes a Complaint has a right to be heard before the Complaint is resolved or any outcome is determined.

3.2 If the Society makes a Complaint:

- (a) the Society has a right to be heard before the Complaint is resolved or any outcome is determined; and
- (b) a Director may exercise that right on behalf of the Society.

3.3 Without limiting the manner in which the Member, Director, or Society may be given the right to be heard, they must be taken to have been given the right if:

- (a) they have a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
- (b) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
- (c) an oral hearing (if any) is held before the decision maker; and

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

4 Person who is subject of Complaint has right to be heard

4.1 This clause applies if a Complaint involves an allegation that a Member, a Director, or the Society (the **respondent**)—

- (a) has engaged in misconduct; or
- (b) has breached, or is likely to breach, a duty under this Constitution or bylaws or the Act; or
- (c) has damaged the rights or interests of a Member or the rights or interests of Members generally.

4.2 The respondent has a right to be heard before the Complaint is resolved or any outcome is determined.

4.3 If the respondent is the Society, a Director may exercise the right on behalf of the Society.

4.4 Without limiting the manner in which a respondent may be given a right to be heard, a respondent must be taken to have been given the right if:

- (a) the respondent is fairly advised of all allegations concerning the respondent, with sufficient details and time given to enable the respondent to prepare a response; and
- (b) the respondent has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
- (c) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
- (d) an oral hearing (if any) is held before the decision maker; and
- (e) the respondent's written statement or submissions (if any) are considered by the decision maker.

5 Investigating and determining Dispute

5.1 The Society must, as soon as is reasonably practicable after receiving or becoming aware of a Complaint made in accordance with this Constitution, ensure that the Dispute is investigated and determined.

5.2 Disputes must be dealt with under this Constitution in a fair, efficient, and effective manner.

6 The Society may decide not to proceed further with a Complaint

6.1 Despite clause 5, the Society may decide not to proceed further with a Complaint if:

- (a) the Complaint is trivial; or

- (b) the Complaint does not appear to disclose or involve any allegation of the following kind:
 - (i) that a Member or a Director has engaged in material misconduct;
 - (ii) that a member, a Director, or the Society has materially breached, or is likely to materially breach, a duty under this Constitution or bylaws or the Act; or
 - (iii) that a Member's rights or interests or Members' rights or interests generally have been materially damaged; or
- (c) the Complaint appears to be without foundation or there is no apparent evidence to support it; or
- (d) the person who makes the Complaint has an insignificant interest in the matter; or
- (e) the conduct, incident, event, or issue giving rise to the Complaint has already been investigated and dealt with under this Constitution; or
- (f) there has been an undue delay in making the Complaint.

7 The Society may refer matter

7.1 The Society may refer a Complaint to:

- (a) a subcommittee or an external person to investigate and report; or
- (b) a subcommittee, an arbitral tribunal, or an external person to investigate and make a decision.

7.2 The Society may, with the consent of all parties to a Complaint, refer the Complaint to any type of consensual dispute resolution (for example, mediation, facilitation, or a tikanga-based practice).

8 Decision makers

A person may not act as a decision maker in relation to a Complaint if 2 or more Directors or (if there is a complaints subcommittee) 2 or more members of the complaints subcommittee consider that there are reasonable grounds to believe that the person may not be:

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

9 Time periods and other matters

Except as set out in this Schedule 3, the Board, or any complaints subcommittee, shall determine the timetable to be followed in any investigation, including the dates by which any submissions are due, any hearings will be held and any determination will be made.