

# New Zealand Heavy Haulage Association Incorporated Constitution

## Definitions and Interpretations

### Definitions

In this Constitution, unless the context requires otherwise, the following words and phrases have the following meanings:

‘Act’ means the Incorporated Societies Act 2022 or any Act which replaces it (including amendments to it from time to time), and any regulations made under the Act or under any Act which replaces it.

‘Annual General Meeting’ means a meeting of the Members of the Society held once per year which will receive and consider reports on the Society’s activities and finances.

‘Board’ means the Society’s governing body, also known as the Committee.

‘Chairperson’ means the Officer responsible for chairing General Meetings and Board meetings, and who provides leadership for the Society.

‘Contact Person’ means a person holding the position of contact person for the Society being the person the registrar of the Incorporated Societies can contact when needed.

‘Constitution’ means the rules in this document.

‘Deputy Chairperson’ means the Officer elected or appointed to deputise in the absence of the Chairperson.

‘General Meeting’ means either an Annual General Meeting or a Special General Meeting of the Members of the Society.

‘Interested Member’ means a Member who is interested in a matter for any of the reasons set out in section 62 of the Act.

‘Interests Register’ means the register of interests of Officers, kept under this Constitution and as required by section 73 of the Act.

‘Matter’ means—

1. the Society’s performance of its activities or exercise of its powers; or
2. an arrangement, agreement, or contract (a transaction) made or entered into, or proposed to be entered into, by the Society.

‘Member’ means a person (individual) or a body corporate (for example, company, partnership, or trust) who has consented to become a Member of the Society and has been properly admitted to the Society, and who has not ceased to be a Member of the Society.

‘Notice’ to Members includes any notice given by email, post, or courier.

‘Officer’ means a natural person who is:

- (a) a Member of the Board, or

- (b) occupying a position in the Society that allows them to exercise significant influence over the management or administration of the Society, including any Chief Executive.

'Register of Members' means the register of Members kept under this Constitution as required by section 79 of the Act.

'Special General Meeting' means a meeting of the Members, other than an Annual General Meeting, called for a specific purpose or purposes.

'Working Days' mean as defined in the Legislation Act 2019. Examples of days that are not Working Days include, but are not limited to, the following — a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, ANZAC Day, the Sovereign's birthday, Matariki Observance Day, and Labour Day.

## **Interpretation**

- 1.1. Unless the context otherwise requires:
  - (a) reference to a person includes any other entity or Society recognised by law and vice versa.
  - (b) words referring to the singular include the plural and vice versa.
  - (c) a reference to:
    - (i) a person includes their executors and administrators.
    - (ii) writing includes words printed, typewritten, or otherwise visibly represented, copied, or reproduced including by email. Written has a corresponding meaning.
    - (iii) statutory provisions is to them as amended or re-enacted.
  - (d) all periods of time or notice exclude the days on which they are given.
  - (e) time is of the essence.

## **2. Details of the Society**

### **Name**

- 2.1. The name of the society is New Zealand Heavy Haulage Association Incorporated (the 'Society').

### **Registered Office**

- 2.2. The registered office of the Society will be at a place in New Zealand as determined by the Board.

### **Notice**

- 2.3. Unless specified otherwise in this Constitution, any notice or other communication (Notice) given under this Constitution must be in writing.
- 2.4. A notice may be served by email to:
  - (a) Members at their email address in their Contact Details; or
  - (b) The Society at [hello@hha.org.nz](mailto:hello@hha.org.nz)
- 2.5. The Society may change its email address for the purposes of clause 2.4 by giving notice to all Members.

- 2.6. A notice is deemed served at the time evidenced by the sender's sent email history, unless another party can prove it was not received.

### **Contact Person**

- 2.7. The Board must appoint at least one (1) but not more than three (3) persons to be the Society's Contact Person, subject to those persons meeting the eligibility criteria set out in the Act.
- 2.8. The Board must ensure that the Registrar of Incorporated Societies is advised of any change in the Contact Person or their contact details.

## **3. Purposes and Powers**

### **Purposes**

- 3.1. The purposes of the Society are to:
- (a) Encourage, promote and maintain standards of safety and efficiency for the transportation of overweight and/or overdimension loads.
  - (b) Create, promote, and disseminate any commercially relevant information, products, practice guides or standards in connection with the transportation of overweight or overdimension loads across the relevant sectors.
  - (c) Be representative body to communicate and advocate in the interests of Members.
  - (d) Provide dispute resolution to resolve any matter or proceedings which appears to be relevant to the interests of the society or its Members.

### **Powers**

- 3.2. The Society has both within and outside New Zealand Full capacity, rights, powers and privileges to carry on or undertake any activity, do any act or enter into any transaction, subject to this constitution, the Act, any other legislation and the general law.

### **No Personal Benefits**

- 3.3. All income, benefit, or advantage must be used to advance the purposes of the Society.
- 3.4. No Member, person associated with a Member, or Board Member is allowed to take part in or influence any decision made by the Society in respect of payments to, or on behalf of, the Member, any person associated with a Member, or Board Member of any income, benefit, or advantage.
- 3.5. Any payments made to a Member, person associated with a Member, or Board Member must be for goods or services that advance the purposes of the Society and must be reasonable and relative to payments that would be made between unrelated parties.
- 3.6. The above provisions must not be removed from this Constitution and must be included and implied in any document replacing this Constitution.

## **4. Members**

### **Minimum Number of Members**

4.1. The Society shall maintain the minimum number of members required by the Act.

### **Classes of Membership**

4.2. The classes of Membership are as follows:

- (a) Full Members, which includes five sub-categories of Membership (sector groups):
  - (i) heavy haulage Full Members;
  - (ii) housemover Full Members;
  - (iii) load pilot Full Members;
  - (iv) heavy recovery Full Members; and
  - (v) general oversize Full Members;
- (b) Load Pilot Specialist Members;
- (c) Branch Members;
- (d) Life Members;
- (e) Associate Members;
- (f) Honorary Members;
- (g) Retired Members.

### **Qualifications For and Rights of Classes of Membership**

4.3. Full Member

- (a) for heavy haulage Full Members or housemover Full Members or heavy recovery Full Members or general oversize Full members: a transport operator holding a current goods service licence under the Land Transport Act 1998 and Land Transport Rule: Operator Licensing 2007 (or any substituted enactment or Land Transport Rule) and who transports goods that are either overdimension or overweight; or
- (b) for load pilot Full Members, a holder of a current class 1 or class 2 “Load Pilot Licence” approved by the New Zealand Transport Agency or other recognised Authority.

4.4. Load Pilot Specialist Member

- (a) A holder of a current class 1 or class 2 “Load Pilot Licence” approved by the New Zealand Transport Agency or other recognised Authority.
- (b) A load pilot specialist Member shall have the rights, benefits and privileges of all other classes of Membership, except that they shall not be eligible to be a Member of the Board, other than as the Chairperson or load pilot sector group representative Board Member [clause 7.1(d)] or have any voting rights in the Society other than each load pilot specialist Member shall have the right to nominate one Member of the load pilot Full Members or load pilot specialist Member to be a Member of the Board pursuant to clause 7.1(d), and to vote on the election of that Board Member.

4.5. Life Member

- (a) On the recommendation of the Board, any person or bodies corporate may at the General Meeting of the Society be elected a Life Member of the Society.

- (b) A life Member shall have the rights, benefits and privileges of all other classes of Membership, except that a life Member shall not by virtue of life Membership, be eligible to be a Member of the Board or have any voting rights in the Society.

#### 4.6. Associate Member

- (a) Persons or bodies corporate who, in the opinion of the Board, are engaged in a trade, business or service compatible with the objects and activities of the Society and have been invited by the Board to join the Society.
- (b) An Associate Member shall have the rights, benefits and privileges of all other classes of Membership, except that an Associate Member shall not be eligible to be a Member of the Board or have any voting rights in the Society.

#### 4.7. Branch Member

- (a) A branch of a Full Member or a Load Pilot Specialist Member which operates from a separate location (being a location other than that nominated by the Full Member or Load Pilot Specialist Member as its main location) but which is not a separate legal entity from the Full Member or load pilot specialist Member (as applicable), may be a branch Member.
- (b) A branch Member shall have the rights, benefits and privileges of all other classes of Membership, except that a branch Member shall not be eligible to be a Member of the Board or have any voting rights in the Society.

#### 4.8. Honorary Member

- (a) Persons who, in the opinion of the Board, have rendered loyal or outstanding assistance to the Society over many years.
- (b) An Honorary Member may be elected at any General Meeting of the Society. Honorary Members shall have the rights, benefits and privileges of all other classes of Membership, except that an Honorary Member shall not by virtue of Honorary Membership, be eligible to be a Member of the Board or have any voting rights in the Society.

#### 4.9. Retired Member

- (a) Retired persons, who have previously been a Member or worked for a Member, and, in the opinion of the Board, have previously been engaged in a trade, business, or service compatible with the objects and activities of the Society, and have been invited by the Board to join the Society as a retired Member.
- (b) A Retired Member shall have the rights, benefits and privileges of all other classes of Membership, except that a Retired Member shall not, by virtue of retired Membership, be eligible to be a Member of the Board or have any voting rights in the Society.

## 5. Application For Membership and Change Of Membership

### Becoming a Member: Consent

#### 5.1. A person or entity consents to become a Member:

- (a) Full Member or Load Pilot Specialist or Associate: by completing the Application form and paying the Membership fee.
- (b) Retired Member: by accepting the Board's invitation to become an Retired Member through giving Notice to the Society and paying the Membership fee.

- (c) Life Member and Honorary Member: by accepting conferral of their Honorary Membership or Life Membership.

### **Becoming a Member: Application Process**

- 5.2. An application for Full Membership or Load Pilot Specialist Membership or Associate Membership (Application) must be in the form required by the Board and must include all information as reasonably required to determine a candidate's suitability.
- 5.3. A Member may only be a Member of a particular class of membership (or, where applicable, sector group) if that Member satisfies the eligibility requirements as set out in clause 4 for that particular membership class or sector group.
- 5.4. All applications will be decided by the Board, which may accept or decline the Application depending on the suitability of the candidate.
- 5.5. The decision of the Board regarding whether an application for membership satisfies the conditions and qualifications for a class of Membership (or, where applicable, sector group) will be absolutely final. The Board may at its sole discretion decline any application for membership. The Board shall not be compelled to provide any reason for the declining of any application or enter into any correspondence on the same, having advised the applicant of their decision.
- 5.6. Subject to the above, the Board may at its sole discretion reject an application to become a Load Pilot Specialist Member if the applicant is an employee, shareholder, consultant, agent or director of an entity that is eligible for Full Membership of the Society.
- 5.7. A person or entity is deemed to have become a Member when their Application or nomination has been accepted and, if relevant, they have paid the required membership fees and satisfied any other preconditions.
- 5.8. A Full Member may apply to the Board no less than 2 months before the end of the financial year to change the sector group to which that Member belongs with effect from the commencement of the new financial year. The Board may at its absolute discretion accept or decline such application. Where an application is accepted, the Member will be required to pay the membership fees for the new sector group from the commencement of the new financial year. To avoid doubt, this does not include Load Pilot Members who wish to change their membership status from Full Membership to Load Pilot Specialist or vice versa.

### **Fees**

- 5.9. The Board will decide:
- (a) any membership and other fees payable by each Member; and
  - (b) The due date for these fees.
- 5.10. When determining membership fees, the Board may in its discretion classify Members according to the class of business conducted by such Members or on any other basis as the Board may decide upon.

- 5.11. No membership fee shall be payable by Life Members or Honorary Members.
- 5.12. Without being released from the obligation to pay, a Member who does not pay their membership or other fees within three (3) calendar months of the due date has no membership rights but is still bound by this Constitution. If the payment is not within six (6) calendar months of the due date, the Board may terminate the Member's membership by notice to the Member.

### **Ceasing to be a Member**

- 5.13. A Member ceases to be a Member:
- (a) On death or, if an entity, on liquidation or dissolution.
  - (b) By resignation by giving Notice to the Board
  - (c) By Resolution of the Board where:
    - (i) The Member has failed to pay a subscription, levy or other amount due in accordance with clause 5.9; or
    - (ii) The Member has, in the opinion of the Board, committed a serious breach of the Constitution or any other bylaw of the Society, or brought the Society into disrepute; or
    - (iii) The Member ceases to comply with their qualifications for membership in accordance with clause 4; or
    - (iv) Any other provision of the constitution that permits the Board to terminate their Membership.
- 5.14. The cessation takes effect from:
- (a) The date of receipt of the Member's notice of resignation by the Board (or any subsequent date stated in the notice of resignation); or
  - (b) The date of termination as specified by the Board in the Notice in accordance with clause 5.13(c); or
  - (c) The date of death of the Member (or if an Entity from the date of its liquidation or deregistration, or if a partnership from the date of its dissolution).
- 5.15. Where the Board resolves to terminate a Membership, the Board will give Notice of this decision to the Member within ten (10) working days of the resolution being passed (the Termination Notice). The Termination Notice will specify the grounds for the cessation of Membership and the date which the termination shall take effect.
- 5.16. A change of more than 50% to the shareholding of a Member shall be deemed a resignation from the Society, unless they have notified the Society of this change and sought approval from the Board to continue their Membership.
- 5.17. Clause 5.16 shall not apply to circumstances where the change of shareholding is an immediate family Member of the old shareholder. For the purposes of this clause, an "immediate family Member" means spouses, children, siblings, or parents, or a Trust where such person is a beneficiary of the Trust.

## **Member Register**

- 5.18. The Board will ensure an up-to-date Member Register is kept and the register must include:
- (a) Each Member's name;
  - (b) Each Member's Contact Details;
  - (c) The date each person or entity became a Member; and
  - (d) The name of each person or entity who has ceased to be a Member within the previous seven (7) years and the date which each person or entity ceased to be a Member.
- 5.19. Members must provide Notice to the Board of any change to the details in clause 5.18.
- 5.20. The Member Register must be updated as soon as practicable after the Board becomes aware of the changes of information recorded in the Member Register.

## **Members' Obligations and Rights**

- 5.21. All Members must promote the interests and purposes of the Society and must not do anything to bring the Society into disrepute.
- 5.22. Any Member that is an entity shall provide Notice to the Board with the name and contact details of the person who is the organisation's authorised representative, and that person shall be deemed to be the organisation's authorised representative for the purposes of voting at General Meetings.
- 5.23. All classes of Membership shall have the same rights, obligations, and privileges except as otherwise permitted by or set out in this Constitution or as determined by the Board.

## **6. General Meetings**

### **Annual General Meetings Intervals**

- 6.1. The Society must hold an Annual General Meeting (AGM) once a year at the time, date, and place determined by the Board, but not more than six (6) months after the balance date of the Society and not more than fifteen (15) months after the previous AGM.
- 6.2. The Board shall give all Members at least ten (10) Working Days' written Notice of any AGM and the business to be conducted.

### **Procedures for all General Meetings**

- 6.3. The following business may be discussed at the AGM:
- (a) Confirmation of the previous AGM minutes;
  - (b) The Board's presentation of the following information during the most recently completed accounting year:
    - (i) The annual report;
    - (ii) The annual financial statements;
    - (iii) The auditor's report to the Members on the audited financial statements (if relevant);

- (iv) Notice of any disclosures of conflicts of interest made by the Officers, including a brief summary or the matters or types of matters to which these disclosures relate.
  - (c) The election of the Chairperson;
  - (d) The election of Board Members;
  - (e) The appointment of the auditor (if relevant);
  - (f) The announcement of any Retired Members;
  - (g) The election of any Honorary Members or Life Members;
  - (h) The announcement of any appointed Board Members;
  - (i) Consideration of any motions to amend this Constitution that have been properly submitted for consideration at the AGM; and
  - (j) Consideration of any other items of business that have been properly submitted for consideration at the AGM.
- 6.4. The Board must receive any proposed motions and other items of business in writing from Members at least twenty (20) Working Days before the date of the AGM (Members Motion). The Member may also provide information in support of the motion ('Member's Information'). If notice of the motion is given to the Board before written Notice of the General Meeting is given to Members, notice of the motion shall be provided to Members with the written Notice of the General Meeting.
- 6.5. An agenda containing the business to be discussed at the AGM will be sent by the Board to the Members at least ten (10) Working Days before the date of the AGM. No additional items of business can be voted on other than those set out in the agenda, but the Members present may agree by Special Resolution to discuss any other items.

### **Special General Meeting**

- 6.6. A Special General Meeting (SGM) must be called by the Board if it receives a request in writing stating the purpose of the SGM:
- (a) From the Board; or
  - (b) Signed by 10% of Members
- 6.7. The Board must give Members at least twenty (20) Working Days' Notice of the SGM, unless the Board acting reasonably decides that the nature of the SGM business is of such urgency that a shorter notice period should be given.
- 6.8. Any resolution or written request must state the business that the Special General Meeting is to deal with.
- 6.9. The rules in this Constitution relating to the procedure to be followed at General Meetings shall apply to a Special General Meeting, and a Special General Meeting shall only consider and deal with the business specified in the Board's resolution or the written request by Members for the Meeting.

### **Methods of Holding General Meetings**

- 6.10. General Meetings must be held by the required quorum of Members:
- (a) being assembled at the time and place appointed for the meeting; or

- (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 sub-clauses (a) and (b).

6.11. General Meetings may be held at one or more venues by Members present in person and/or using any audio, audio and visual, or electronic communication that gives each Member a reasonable opportunity to participate.

### **Quorum**

6.12. No business is to be transacted at any General Meeting unless a quorum is present at the time when the meeting is due to start. The quorum for a General Meeting is 15 Full Members who are entitled to vote. The quorum must be present at all times during the General Meeting.

6.13. If a quorum is not reached within 30 minutes of the scheduled start time of:

- (a) a SGM, then it is cancelled.
- (b) an AGM, then it will be adjourned to a day, time, and place determined by the Chair. If no quorum is achieved at the further AGM, the Members present 15 minutes after the scheduled start time of that further AGM are deemed to constitute a valid quorum.

### **Control of General Meetings**

6.14. All General Meetings shall be chaired by the Chairperson. If the Chairperson is absent, the meeting shall elect another Member of the Board to chair that meeting. In the absence of both of those persons, the Members present will elect a chair of the General Meeting.

6.15. Any person chairing a General Meeting has a regular vote (if eligible) and, in the event of a tied vote, a casting vote. In the case of the chairperson not being a Full Member, then that person is entitled to vote as if they were a Full member with relevant voting entitlements.

### **Attendance and Voting**

6.16. All Members may attend and speak at General Meetings:

- (a) In person; or
- (b) By proxy; or
- (c) Through the authorised representative of an entity as notified to the Board.

6.17. The voting entitlement for each Member eligible to vote is:

- (a) Full Members have one vote at any General Meeting.
- (b) Load Pilot Specialist Members have no vote, except for those specified in clause 4.4(b).
- (c) Associate, Branch, Retired, Life and Honorary Members have no vote.
- (d) For the avoidance of doubt, Load Pilot Specialist Members are only entitled to cast votes for the election of the Board Member to represent their sector group.

- 6.18. An Ordinary Resolution at a General Meeting will be sufficient to pass a resolution, except as specified in this Constitution.
- 6.19. Voting will generally be conducted by voices or by a show of hands as determined by the Chair of the General Meeting unless a secret ballot is called for and approved by Ordinary Resolution. Casting votes by electronic means is permitted.

### **Minutes**

- 6.20. The Society must keep minutes of all General Meetings.

### **Proxy**

- 6.21. Voting by proxy is permitted and the voting process set out in clause 6.19 must allow for that. Where a Member is attending a General Meeting by proxy, written notice of the proxy signed by the Member must be received by the Chairperson prior to the start of the General Meeting.

The form of the proxy is:

I [insert name] of [insert address] being a Member of [insert society name] appoint [insert name of proxy] as my proxy to speak [and vote] for me at the General Meeting to be held on [insert date] and at any adjournment of that General Meeting. [optional: if vote is directed] I direct my proxy to vote in the following manner [insert resolutions and whether the proxy is to vote for or against].

- 6.22. Elections of the Chairperson and Board Members at an AGM must be undertaken by secret ballot.
- 6.23. A proxy shall be a member of the Association, but they do not have to be a Member of that sector group in which they are voting on behalf of (if applicable at the time). A member may only act as a proxy for a maximum of three other members at any one General Meeting.

### **Irregularities**

- 6.24. An irregularity in the manner of calling a General Meeting is waived if all the Members entitled to attend and voting at the meeting attend the meeting without protest as to the irregularity, or if all such Members agree to the waiver.
- 6.25. An accidental omission to give notice of a General Meeting to, or a failure to receive notice of a General Meeting by, a Member does not invalidate the proceedings at that General Meeting.
- 6.26. Any irregularity, error or omission in notices, agendas and relevant papers of General Meetings or the omission to give notice within the required time frame or the omission to give notice to all Members and any other error in the organisation of the General Meeting will not invalidate the General Meeting nor prevent the General Meeting from considering the business of the meeting if:
- (a) the Chair in their discretion determines that it is still appropriate for the General Meeting to proceed despite the irregularity, error, or omission; and

- (b) a motion to proceed is put to the General Meeting and such motion is passed by a Special Resolution

### **Resolution Passed in Lieu of a Meeting**

- 6.27. The Society may pass a written resolution in lieu of a General Meeting, and a written resolution is as valid for the purposes of the Act and this Constitution as if it had been passed at a General Meeting if it is approved by no less than seventy five (75) percent of the eligible financial Members voting on the resolution and clauses 6.28 and 6.29 are complied with.
- 6.28. The Board must ensure that a proposed resolution is sent to Members entitled to vote which contains:
  - (a) the date it was circulated to all Members entitled to vote;
  - (b) statement that the proposed resolution will lapse if it is not passed within three (3) months, or any lesser period stated, of the date specified in clause 6.8(a)
- 6.29. The Board must ensure that within five (5) Working Days after a resolution is passed under clause 6.27, a copy of the resolution is sent to the address, including an electronic address, of all Members who did not approve the resolution.
- 6.30. A written resolution may consist of one (1) or more documents in similar form (including letters, electronic mail, or other similar means of communication) each proposed by or on behalf of one (1) or more Members.
- 6.31. A Member may give their approval to a written resolution by signing the resolution or giving approval to the resolution in any other manner permitted by the Constitution (for example, by electronic means).

## **7. Board**

### **Board Composition**

- 7.1. The Board will consist of seven (7) Officers made up as follows:
  - (a) A Chairperson (who may be a member or non-member);
  - (b) Two Members representing the heavy haulage sector group, one of which shall be elected as the sector convenor;
  - (c) Two Members representing the housemover sector group, one of which shall be elected as the sector convenor;
  - (d) One Member representing the load pilot sector group, who shall be the sector convenor;
  - (e) One other Full Member.
- 7.2. A majority of the Officers on the Board must be either:
  - (a) Members of the Society, or
  - (b) Authorised representatives of entities that are Members of the Society

### **Eligibility**

- 7.3. Every Board Member must, in writing:
  - (a) Consent to being a Board Member

- (b) Certify that they are not disqualified from being elected, appointed, or holding office as a Board Member by this Constitution or under section 47 of Act.

### **Functions of the Board**

- 7.4. From the end of each Annual General Meeting until the end of the next, the Society will be managed by, or under the direction or supervision of, the Board, in accordance with the Incorporated Societies Act 2022, any Regulations made under that Act, and this Constitution.

### **Powers of the Board**

- 7.5. The Board has all the powers necessary to govern, manage, direct and supervise the operation and affairs of the Society, and to engage a Chief Executive, subject to such modifications, exceptions, or limitations as are contained in the Act, any Regulations made under the Act, or in this Constitution, including to make any levy or levies upon the members of the Association.

### **Term of Office**

- 7.6. The term of office for all Officers elected to the Board shall be one (1) year, expiring at the end of the following Annual General Meeting.

### **Election of the Board**

- 7.7. The Board Members will be elected as follows:
- (a) Before and/or at the AGM, the Board must call for nominations for Board Members;
  - (b) When electing a sector convenor, only eligible Members that belong to that sector group are entitled to vote.
  - (c) Nominations for Board Members to represent the different sector groups must only be made by Full Members that are entitled to elect that representative or Load Pilot Specialist Members that are entitled to elect that representative;
  - (d) Nominations for Chairperson of the Board or other Board Members not representing sector groups can be made by any eligible Full Member;
  - (e) At the AGM, the Chair will read out to all Members the names of the nominees;
  - (f) If there is more than one nominee for any position, the election will be by secret ballot;
  - (g) The successful applicant for each contested position is the nominee gaining the highest number of votes. If there is an equality of votes for any position, a casting vote by the Chairperson shall determine the outcome;
  - (h) If there is only one nominee for any position, that person will be declared to be elected without the need for a vote.
- 7.8. To avoid doubt, the election procedure under clause 7.7. will be followed for the purpose of electing a Chairperson.
- 7.9. If there are not enough nominations for the number of vacant Board Member positions, then by resolution the Board may or may not co-opt persons to fill the vacant Board Member positions at any time during the period before the next AGM. Notwithstanding clause 7.11, any Board Member co-opted under this clause will continue only until the next AGM.

7.10. A nominee may at any time commence or continue a position as an employee of the Society if they are elected as a Board Member.

### **Casual Vacancy**

7.11. If there is a Casual Vacancy for a Board Member, the Board in its discretion and by resolution either:

- (a) May appoint a Full Member or, if relevant, a Load Pilot Specialist Member to fill in that vacancy until the next General Meeting; or
- (b) Leave the vacancy unfilled until the next General Meeting; or
- (c) Allow the relevant sector group to elect a replacement, subject to the appointment being approved by the Board.

7.12. A person appointed to fill a Casual Vacancy of an Appointed Board Member will continue until the expiry of the term of the person they replace but only until the next AGM.

### **Removal of Board Member**

7.13. The Board Member may, by Special Resolution of the Board remove any Board Member from the Board before the expiry of their term of office if the Board considers that Board Member has seriously breached duties under this Constitution or the Act or is no longer suitable to be a Board Member. The Board Member who is the subject of the motion will be counted for the purpose of reaching a quorum and will not participate in the vote on the motion.

7.14. Before considering a motion for removal, the Board Member affected by the motion must be given:

- (a) Notice that a Board meeting is to be held to discuss the motion to remove them and the basis for the motion; and
- (b) adequate time to prepare a response; and
- (c) the opportunity prior to the Board meeting to make written submissions; and
- (d) the opportunity to be heard at the Board meeting.

7.15. A person ceases to be a Board Member if:

- (a) The person resigns by delivering a Notice of resignation to the Board;
- (b) The person has brought the Society into disrepute;
- (c) The person becomes disqualified from being an officer under section 47(3) of the Act;
- (d) The person has failed to disclose a conflict of interest;
- (e) The Board passes a vote of no confidence in the person;
- (f) The person dies;
- (g) The Member they represent is no longer a Member of the Association

7.16. Within twenty (20) working days of the cessation of their position as Board Member, that person shall deliver to the Board all books, papers and other property of the Society held by such former Officer.

## **Suspension of a Board Member**

- 7.17. Should a Board Member be subject to any allegations of serious misconduct, the Board is entitled to suspend that Board Member, pending the outcome of any internal or external investigation.

## **Remuneration and expenses**

- 7.18. Board Members:
- (a) may not be paid any remuneration for their service as a Board Member; and
  - (b) may receive Full reimbursement for all reasonable expenses incurred by that Officer on behalf of the Society when authorised by resolution of the Board.

## **Sub-committees**

- 7.19. The Board may create sub-committees consisting of such persons (whether or not Members of the Society) 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 but not less than 2,
  - (b) a sub-committee must not commit the Society to any financial expenditure without express authority from the Board, and
  - (c) a sub-committee must not further delegate any of its powers.

## **General Matters**

- 7.20. The Board and any sub-committee may act by resolution approved during a conference call using audio and/or audio-visual technology or through a written ballot conducted by email, electronic voting system, or post, and any such resolution shall be recorded in the minutes of the next Board or sub-committee meeting. Other than as prescribed by the Act or this Constitution, the Board or any sub-committee may regulate its proceedings as it thinks fit.

# **8. Board Meetings**

## **Procedure**

- 8.1. The quorum for Board meetings is at least four Members of the Board.
- 8.2. The Board shall meet at least quarterly at such times and places and in such manner (including by audio, audio and visual, or electronic communication) as it may determine and otherwise where and as convened by the Chairperson.
- 8.3. A Board meeting must be held:
- (a) by a number of Board Members who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
  - (b) by means of audio, or audio and visual, communication by which all Members of the Board participating and constituting a quorum can simultaneously hear each other throughout the meeting.

- 8.4. The Society shall give to all Board Members not less than five (5) Working Days' notice of Board meetings.
- 8.5. At any meeting of the Board, the Chairperson shall be the Chairperson of that meeting, or if the chairperson is not present, the Members of the Board present may choose one of their number to be chairperson of the meeting. The chairperson does have a casting vote in the event of a tied vote on any resolution of the Board.
- 8.6. Except as otherwise provided in this Constitution, the Board may regulate its own procedure.

### **Special Board Meeting**

- 8.7. A Chairperson or any three Members of the Board may call a Special Meeting of the Board to be held at any time by giving to the Society ten (10) days' Notice
- 8.8. The Notice must specify the day and hour and place and the business for which the meeting is to be called.

### **Voting**

- 8.9. Each Board Member has one vote. Voting is by voices, or on request of any Board Member by a show of hands or by a ballot. Voting by electronic means is permitted.
- 8.10. If a Member of the Board is unable to attend a meeting of the Board, that Board Member may appoint a proxy to attend and vote in their place.
- 8.11. A resolution of the Board is passed at any meeting of the Board if a majority of the votes cast on it are in favour of the resolution.

### **Resolution in Writing**

- 8.12. A resolution in writing signed or consented to by email or other electronic means by the required majority of Board Members will be valid as if it had been passed at a meeting of the Board. Any resolution may consist of several documents in the same form each signed by one or more Board Members. Any resolution may consist of several documents in the same form each signed by one or more Board Members.

## **9. Board Members**

### **Duties of Officers (Including Board Members)**

- 9.1. At all times each Officer:
  - (a) shall act in good faith and in what they believe to be the best interests of the Society,
  - (b) must exercise all powers for a proper purpose,
  - (c) must not act, or agree to the Society acting, in a manner that contravenes the Act or this Constitution,
  - (d) when exercising powers or performing duties as an Officer, 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:

- (i) the nature of the Society,
  - (ii) the nature of the decision, and
  - (iii) the position of the Officer and the nature of the responsibilities undertaken by them,
- (e) must not 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 or to the Society's creditors, or 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 or to the Society's creditors, and
- (f) must not agree to the Society incurring an obligation unless they believe at that time on reasonable grounds that the Society will be able to perform the obligation when it is required to do so.

9.2. The Board is responsible for:

- (a) ensuring minutes are kept of General Meetings, Board Meetings and any sub-committee meetings.
- (b) ensuring the accounting records of the Society are kept in the manner and form required by the Act;
- (c) ensuring that if the Society is required to have its financial statements audited or reviewed, that this occurs; and
- (d) submitting appropriate financial statements of the Society at each AGM and ensuring any returns are completed, and
- (e) allocating specific tasks among the Board Members and any members including appointing a sub-committee to engage a Chief Executive as required.

## 10. Records

### Interests Register

10.1. The Board shall at all times maintain an up-to-date register of the interests disclosed by Officers and by Members of any sub-committee.

### Access to Information for Members

10.2. A Member may at any time make a written request to the Society for information held by the Society.

10.3. The request must specify the information sought in sufficient detail to enable the information to be identified.

10.4. The Society must, within a reasonable time after receiving a request:

- (a) provide the information, or
- (b) agree to provide the information within a specified period, or
- (c) agree to provide the information within a specified period if the Member pays a reasonable charge to the Society (which must be specified and explained) to meet the cost of providing the information, or
- (d) refuse to provide the information, specifying the reasons for the refusal.

10.5. Without limiting the reasons for which the Society may refuse to provide the information, the Society may refuse to provide the information if:

- (a) withholding the information is necessary to protect the privacy of natural persons, including that of deceased natural persons, or
  - (b) the disclosure of the information would, or would be likely to, prejudice the commercial position of the Society or of any of its Members, or
  - (c) the disclosure of the information would, or would be likely to, prejudice the financial or commercial position of any other person, whether or not that person supplied the information to the Society, or
  - (d) the information is not relevant to the operation or affairs of the society, or
  - (e) withholding the information is necessary to maintain legal professional privilege, or
  - (f) the disclosure of the information would, or would be likely to, breach an enactment, or
  - (g) the burden to the Society in responding to the request is substantially disproportionate to any benefit that the Member (or any other person) will or may receive from the disclosure of the information, or
  - (h) the request for the information is frivolous or vexatious, or
  - (i) the request seeks information about a dispute or complaint which is or has been the subject of the procedures for resolving such matters under this Constitution and the Act.
- 10.6. If the Society requires the Member to pay a charge for the information, the Member may withdraw the request, and must be treated as having done so unless, within 10 Working Days after receiving notification of the charge, the Member informs the Society
- (a) that the Member will pay the charge; or
  - (b) that the Member considers the charge to be unreasonable.

## **11. Conflict of Interest**

- 11.1. The Board must keep an Interests Register.
- 11.2. An Officer who is Interested in a Matter relating to the Society must 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 as soon as practicable after the Officer becomes aware that they are Interested in the Matter; and
  - (b) in the Interests Register.
- 11.3. A Board Member who is Interested in a Matter:
- (a) must not vote or take part in a decision of the Board to that Matter;
  - (b) must not sign any document in relation to that Matter;
  - (c) may take part in any Board discussion and be present at the time of Board decision, unless the Board decides otherwise;
  - (d) may be counted for the purpose of determining whether there is a quorum at any meeting at which the Matter is considered.
- 11.4. Clause 11.3(a) and 11.3(b) do not apply to a Board Member in relation to a particular Matter if all Members of the Board who are not Interested in the Matter consent to the Interested Board Member acting as referred to in clauses 11.3(a) and 11.3(b).

- 11.5. Despite clause 11.4, if 50% or more of the Board Members are Interested in a Matter, a SGM must be called to consider and determine the Matter.

## **12. Finances**

### **Control and Management**

- 12.1. The funds and property of the Society will be controlled and managed by the Board subject to this Constitution, and may delegate management to a Chief Executive.
- 12.2. The Board shall maintain bank accounts in the name of the Society.
- 12.3. All money received on account of the Society shall be banked within three (3) Working Days of receipt.
- 12.4. All accounts paid or for payment shall be submitted to the Board Members with the appropriate authority for approval of payment.
- 12.5. The Society must prepare and register financial statements as required by the Act.
- 12.6. The Board must establish and maintain a satisfactory system of control of the Society's accounting records.
- 12.7. The accounting records must be kept in written form or in a form or manner that is easily accessible and convertible into written form. The accounting records must be kept for the current accounting period and for the last 7 completed accounting periods of the Society.
- 12.8. The Board may authorise its Officers (including a Chief Executive) to pay or deal with all funds under its control in such manner and all in respects as it may from time to time decide.
- 12.9. The Society's financial statements must be reviewed or audited each year as required by law and the reviewed or audited financial statements must be submitted to the AGM. The auditors will be appointed at each AGM. Their remuneration must be determined by the Board. The Board has power to fill any casual vacancy in the office of auditor.

### **Balance Date**

- 12.10. The Society's financial year shall commence on 1 July of each year and end on 30 June (the latter date being the Society's balance date).

## **13. Dispute Resolution**

### **Meanings of Dispute and Complaint**

- 13.1. A dispute is a disagreement or conflict involving the Society and/or its Members in relation to specific allegations set out below.
- 13.2. The disagreement or conflict may be between any of the following persons —
- (a) 2 or more Members

- (b) 1 or more Members and the Society
- (c) 1 or more Members and 1 or more Officers
- (d) 2 or more Officers
- (e) 1 or more Officers and the Society
- (f) 1 or more Members or Officers and the Society.

13.3. The disagreement or conflict relates to any of the following allegations—

- (a) a Member or an Officer has engaged in misconduct – excluding any regulatory compliance issues that could be referred to the NZ Police for investigation, or other regulatory authority such as WorkSafe NZ
- (b) a Member or an Officer has breached, or is likely to breach, a duty under the Society's Constitution or bylaws or the Act
- (c) the Society has breached, or is likely to breach, a duty under the Society's Constitution or bylaws or the Act
- (d) a Member's rights or interests as a Member have been damaged or Member's rights or interests generally have been damaged.

13.4. A Member or an Officer may make a complaint by giving to the Board (or a complaints subcommittee) a notice in writing that —

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

13.5. The Society may make a complaint involving an allegation against a Member or an Officer by giving to the Member or Officer a notice in writing that—

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

13.6. The information setting out the allegations must be sufficiently detailed to ensure that a person against whom an allegation or allegations is made is fairly advised of the allegation or allegations concerning them, with sufficient details given to enable that person to prepare a response.

13.7. A complaint may be made in any other reasonable manner permitted by the Society's Constitution.

13.8. All Members (including the Board) are obliged to cooperate to resolve disputes efficiently, fairly, and with minimum disruption to the Society's activities.

13.9. The complainant raising a dispute, and the Board, must consider and discuss whether a dispute may best be resolved through informal discussions, mediation, arbitration, or a tikanga-based practice. Where mediation or arbitration is agreed on, the parties will sign a suitable mediation or arbitration agreement.

### **How Complaint is Made**

13.10. A Member or an Officer may make a complaint by giving to the Board (or a complaints subcommittee) a notice in writing that—

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

13.11. The Society may make a complaint involving an allegation or allegations against a Member or an Officer by giving to the Member or Officer a notice in writing that—

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

13.12. The information given under subclause 13.10(b) or 13.10(c) must be sufficient to ensure that a person against whom an allegation is made is fairly advised of the allegation or allegations concerning them, with sufficient details given to enable that person to prepare a response.

13.13. A complaint may be made in any other reasonable manner permitted by the Society's Constitution.

#### **Person Who Makes Complaint has Right to be Heard**

13.14. A Member or an Officer who makes a complaint has a right to be heard before the complaint is resolved or any outcome is determined

13.15. 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) an Officer may exercise that right on behalf of the Society.

13.16. Without limiting the manner in which the Member, Officer, 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, Officer's, or Society's written or verbal statement or submissions (if any) are considered by the decision maker.

#### **Person who is Subject of Complaint has Right to be Heard**

13.17. This clause applies if a complaint involves an allegation that a Member, an Officer, or the Society (the 'respondent') —

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

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

- 13.19. If the respondent is the Society, an Officer may exercise the right on behalf of the Society.
- 13.20. 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.

### **Investigating and Determining Dispute**

- 13.21. The Board must, as soon as is reasonably practicable after receiving or becoming aware of a complaint made in accordance with its Constitution, ensure that the dispute is investigated and determined.
- 13.22. Disputes must be dealt with under the Constitution in a fair, efficient, and effective manner and in accordance with the provisions of the Act.
- 13.23. Despite the 'Investigating and determining dispute' clause in 13.21. the Board may decide not to proceed further with a complaint if—
- (a) the complaint is considered to be trivial; or
  - (b) the complaint does not appear to disclose or involve any allegation of the following kind:
    - (i) that a Member or an Officer has engaged in material misconduct;
    - (ii) that a Member or an Officer has allegedly engaged in regulatory compliance issues that should be referred to the NZ Police or other regulatory authority such as WorkSafe NZ, for investigation;
    - (iii) that a Member, an Officer, or the Society has materially breached, or is likely to materially breach, a duty under the Society's Constitution or bylaws or the Act;
    - (iv) that a Member's rights or interests or Members' rights or interests generally have been materially damaged;
  - (c) the complaint appears to be without foundation or there is no apparent evidence to support it; or
  - (d) the person who makes the complaint has an insignificant interest in the matter; or
  - (e) the conduct, incident, event, or issue giving rise to the complaint has already been investigated and dealt with under the Constitution; or
  - (f) there has been an undue delay in making the complaint.
- 13.24. While investigating any dispute or complaint, the Board has the right to suspend any Member from the Society, pending the completion of any internal or external investigation.

- 13.25. Upon the completion of such investigation, the Board will determine whether to reinstate the Member or whether to terminate the individual's Membership in accordance with clause 5.13(c).

### **Board May Refer Complaint**

- 13.26. The Board may refer a complaint to-
- (a) a Disputes sub-committee or an external person to investigate and report; or
  - (b) a Disputes sub-committee, an arbitral tribunal, or an external person to investigate and make a decision.
  - (c) the NZ Police, or other regulatory authority such as WorkSafe NZ, for investigation; or
- 13.27. The Board may, with the consent of all parties to a complaint, refer the complaint to any type of consensual dispute resolution.

### **Decision Makers**

- 13.28. The Disputes sub-committee will be elected by the Board and shall consist of a chairperson (who shall be a Full Member) and two Members of the Society (at least one of whom shall be a Full Member).
- 13.29. A Disputes sub-committee shall have Full power determine any dispute referred to it by the Board, reporting the result of its determination to the Board.
- 13.30. At any meeting of the Disputes Committee, the chairperson shall be the chairperson determined by the Board, or in their absence, then the Members present shall elect a chairperson from amongst themselves.
- 13.31. A person may not act as a decision maker in relation to a complaint if 2 or more Members of the Board or a complaints sub-committee 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.

## **14. Alterations to the Constitution**

- 14.1. This Constitution may only be amended or replaced by a special resolution passed by no less than sixty-six (66) percent majority of the total votes cast at a General Meeting.
- 14.2. That amendment may be approved by a resolution passed in lieu of a meeting but only if authorised by this Constitution.
- 14.3. Any proposed resolution to amend or replace this Constitution shall be:
- (a) If it is proposed by the Members then it must:
    - (i) Be given in writing to the Board at least 20 Working Days before the General Meeting at which the resolution is to be considered;
    - (ii) Signed by at last 25% of Members eligible to vote; and
    - (iii) Accompanied by a written explanation of the reasons for the proposal; or
  - (b) If it is a Board proposal, then it must:

- (i) Be agreed by resolution of the Board.
- (ii) At least 15 Working Days before the General Meeting at which any amendment is to be considered the Board shall give to all Members notice of the proposed resolution, the reasons for the proposal, and any recommendations the Board has.

14.4. When an amendment is approved by a General Meeting it shall be notified to the Registrar of Incorporated Societies in the form and manner specified in the Act for registration and shall take effect from the date of registration.

14.5. If an amendment to this Constitution would have no more than a minor effect or is to correct errors or makes similar technical alterations, then the Board may give Notice of the amendment to every Member stating the text of the amendment and the right of Members to object to the amendment.

14.6. If the Board does not receive any objections from Members within 20 Working Days after the date on which the Notice is sent, or any longer period of time that the Board decides, then the Board may make that amendment. If it does receive an objection, then the Board may not make the amendment.

## **15. Other**

15.1. The Board from time to time may make and amend bylaws, and policies for the conduct and control of Society activities and codes of conduct applicable to Members, but no such bylaws, policies or codes of conduct applicable to Members shall be inconsistent with this Constitution, the Act, regulations made under the Act, or any other legislation.

## **16. Liquidation and Removal From the Register**

### **Resolving to put Society into Liquidation**

16.1. The Society may be liquidated in accordance with the provisions of Part 5 of the Act.

16.2. The Board shall give 20 Working Days written Notice to all Members of the proposed resolution to put the Society into liquidation.

16.3. The Board shall also give written Notice to all Members of the General Meeting at which any such proposed resolution is to be considered. The Notice shall include all information as required by section 228(4) of the Act.

16.4. Any resolution to put the Society into liquidation must be passed by a special resolution with at least sixty-six (66) percent of total votes cast at the General Meeting.

### **Resolving to Apply for Removal From the Register**

16.5. The Society may be removed from the Register of Incorporated Societies in accordance with the provisions of Part 5 of the Act.

16.6. The Board shall give 20 Working Days written Notice to all Members of the proposed resolution to remove the Society from the Register of Incorporated Societies.

- 16.7. The Board shall also give written Notice to all Members of the General Meeting at which any such proposed resolution is to be considered. The Notice shall include all information as required by section 228(4) of the Act.
- 16.8. Any resolution to remove the Society from the Register of Incorporated Societies must be passed by a special resolution with at least sixty-six (66) percent of total votes cast at the General Meeting.

### **Surplus Assets**

- 16.9. If the Society is liquidated or removed from the Register of Incorporated Societies, no distribution shall be made to any Member.
- 16.10. On the liquidation or removal from the Register of Incorporated Societies of the Society, its surplus assets — after payment of all debts, costs and liabilities — shall be vested in another non-for-profit transport-related incorporated society.
- 16.11. However, in any resolution under this rule, the Society may approve a different distribution to a different not-for-profit entity from that specified above, so long as the Society complies with this Constitution and the Act in all other respects.