



# Asthma Zealand Incorporated

## Constitution

Incorporated society number: 222135

Adopted at the General Meeting held on:

Signed by 3 Members:

17 March 2018

Three handwritten signatures in black ink, each written over a horizontal dashed line. The signatures are stylized and cursive.

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## ASTHMA NEW ZEALAND INCORPORATED CONSTITUTION

### PART 1 – STRUCTURE

#### 1. Name

The name of the Society is *Asthma New Zealand Incorporated*, which is abbreviated in this Constitution as “**Asthma NZ**”, “**Asthma New Zealand**”, or “**the Society**”.

#### 2. Effect of Constitution

- 2.1 This Constitution has no effect to the extent that it contravenes, or is inconsistent with, the Act.
- 2.2 Subject to the Act, this Constitution is binding, in accordance with its terms, as between:
- (a) the Society and each Member; and
  - (b) each Member.

#### 3. Interpretation

- 3.1 In this Constitution, unless the context otherwise requires:

*Act* means the Incorporated Societies Act 1908;

*Affiliate Member* means a Member of the Society under rule 17 (*Affiliate Members*);

*Annual General Meeting* means an annual general meeting of Members convened pursuant to rule 39 (*Annual General Meetings*);

*Annual Report* means a report, prepared by or on behalf of the President, on the affairs of the Society during the most recently-completed accounting period, progress on the plan for the current year, and on any other relevant matters;

*Area* means a geographic area of New Zealand, as determined by the Board from time to time;

*Associated*, and other expressions indicating the association of persons with each other, have the meanings given by section YA 1 of the Tax Act;

*Balance Date* means 31 March, or any other date adopted by the Board by resolution as the date to which accounts are to be made in each year;

*Board* means the committee established under rule 26 (*Board composition and membership*) comprising at least 3 natural persons, appointed or elected under this Constitution, responsible for managing the operation and affairs of the Society;

*Board Member* means a person serving on the Board of the Society;

*Bylaw* means a bylaw of Asthma NZ promulgated under rule 63 (*Bylaws*);

*Charities Act* means the Charities Act 2005;

*Constitution* means this constitution, as it may be altered from time to time in accordance with its terms and with the Act;

*Contact Officer* means the person who has been elected or appointed, in accordance with this Constitution, as the main point of contact for the Registrar;

*Corporate Member* means a Member of the Society under rule 16 (*Corporate Members*);

*Financial Year* means any year or other accounting period ending on a Balance Date;

*General Manager* means the staff member employed under rule 35 (*General Manager*), whose title may be chief executive, chief operating officer, or such other title as may be decided by the Board;

*General Meeting* means either an Annual General Meeting or a Special General Meeting;

*Governance Charter* has the meaning given by rule 31.1 (*Functions and powers of the Board*);

*Health Professional* means a general practitioner, specialist, pharmacist, health educator, researcher, representative of a pharmaceutical company, or other person working in a field of health related to the charitable purposes of the Society;

*Inaugural Board* means the persons holding office as the inaugural board of the Society immediately prior to the adoption of this Constitution, in accordance with the memorandum of understanding entered into on or about 9 October 2017 between Asthma New Zealand – The Lung Association Incorporated (#853020) and The Asthma Auckland Society Incorporated (#222135);

*Individual Member* means a Member of the Society under rule 13 (*Individual Members*);

*Intellectual Property* means all rights and/or goodwill in any copyright works, business names, names, trademarks (or signs), logos, designs, patents, or service marks, of or relating to the Society or any event promoted or administered by the Society;

A person is *Interested* in a Matter if the person:

- (a) may derive a material financial benefit from the Matter;
- (b) is the parent, child, or spouse of a person who may derive a material financial benefit from the Matter;
- (c) may have a material financial interest in a person to whom the Matter relates;
- (d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the Matter relates; or
- (e) is otherwise directly or indirectly interested in the Matter,

provided that a person is not Interested in a Matter:

- (f) merely because they receive an indemnity, insurance cover, remuneration, or other benefits authorised by the Act;
- (g) if their interest is the same or substantially the same as the benefit or interest of all or most other Members of the Society due to their Membership; or
- (h) if their interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence them in carrying out their responsibilities under the Act or this Constitution;

*Interests Register* means the register of disclosures required to be kept under rule 9 of schedule 1 (*Interests Register*);

*Interim Vacancy* has the meaning given by rule 30 (*Interim Vacancy*);

*Life Member* means a Member of the Society under rule 15 (*Life Members*);

*Matter* means:

- (a) the performance of the Society's activities or the exercise of its powers; or
- (b) an arrangement, agreement, or contract made or entered into, or proposed to be entered into, by the Society;

*Member* means a member of Asthma NZ as specified in Part 3 (*Membership*), whether they be an Individual Member, a Professional Member, a Life Member, a Corporate Member, an Affiliate Member, or other type of member of the Society as specified in this Constitution;

*Membership Fee* means a subscription, or other amount, payable by a Member to Asthma NZ as specified in rule 20 (*Membership Fees*);

*Membership Form* means the prescribed Asthma NZ application for membership form (if any) for the relevant category of Membership, or any other form which the Society agrees is suitable for collection of information from persons seeking to be Members of the Society;

*Officer* means a Board Member and any other person deemed by law to be an officer of the Society;

*Ordinary Resolution* means a resolution passed by a majority of the votes properly cast by those Members present and entitled to vote at the General Meeting at which the vote is occurring;

*President* means the Board Member who is elected as the chairperson of the Board under rule 32 (*President*);

*Privacy Officer* means the individual, who may be the General Manager or such other person appointed by the Board, whose responsibilities include encouraging compliance by the Society with the information privacy principles and dealing with requests made to the Society pursuant to the Privacy Act 1993;

*Professional Member* means a Member of the Society under rule 14 (*Professional Members*);

*Proxy* means a Member, who must be entitled to vote, and who has been appointed by another Member, who must also be entitled to vote but who is not able to attend the General Meeting in respect of which the Proxy has been appointed in person, provided that the Proxy has been duly appointed in writing in accordance with rule 45 (*Voting at General Meetings*);

*Purposes* means the purposes of the Society as set out in rule 8 (*Purposes*);

*Qualified Auditor* has the meaning given to that term by section 42D of the Charities Act;

*Register of Members* means the register of Members described in rule 22 (*Register of Members*);

*Registered Office* has the meaning given by rule 5 (*Registered Office*);

*Registrar* means the Registrar of Incorporated Societies, as defined in section 3 of the Act;

*Related Person* for the purposes of rule 9 (*No private pecuniary profit*), and in relation to any business to which section CW 42 of the Tax Act applies, means a person specified in paragraphs (i) to (iv) of subsection 5(b) of that section, the persons currently specified being:

- (a) a settlor or trustee of the trust by which the business is carried on; or
- (b) a shareholder or director of the company by which the business is carried on; or
- (c) a settlor or trustee of a trust that is a shareholder of the company by which the business is carried on; or
- (d) a person Associated with a settlor, trustee, shareholder or director already mentioned in this definition;

*Society* means Asthma New Zealand Incorporated;

*Special General Meeting* means a special general meeting of Members convened pursuant to rule 40 (*Special General Meetings*);

*Special Resolution* means a resolution passed by at least 2/3 of the votes properly cast by those Members present and entitled to vote at the General Meeting at which the vote is occurring;

*Tax Act* means the Income Tax Act 2007; and

*Teleconference Meeting* means a meeting where all the participants are contemporaneously linked by telephone, skype, or other means of instant audio, or audio and visual, communication.

- 3.2 Subject to rule 3.1, expressions which are defined in the Act (whether generally or for the purposes of one or more particular provisions) have the meanings given to them by the Act.

#### **4. Construction**

In the construction of this Constitution, unless the context otherwise requires:

- (a) *charitable purpose* has the meaning given to that term in the Charities Act;
- (b) *contents page and headings*: the contents page and the headings appear as a matter of convenience only and are to be ignored in construing this Constitution;
- (c) *defined terms*: words or phrases appearing in this Constitution with capitalised initial letters are defined terms and have the meanings given to them in this Constitution. If a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) *documents*: a reference to any document, including this Constitution, includes a reference to that document as amended or replaced from time to time;

- (e) *inclusion*: words such as *including* and *for example* are not, and should not be interpreted to be, words of limitation, unless otherwise explicitly stated;
- (f) *legislation*: a reference to any legislation is a reference to that legislation as from time to time amended, substituted, or re-enacted and, unless the context otherwise requires, includes any statutory instruments issued under that legislation;
- (g) *person*: references to *persons* include natural persons, firms, bodies corporate, corporations, unincorporated associations, and authorities, and *firm* includes partnership. A reference to a *person* includes the legal personal representatives, successors, and permitted assigns of that person;
- (h) *rules, parts, schedules and sections*: a reference to a *rule*, a *part*, or a *schedule* is to a rule, part, or schedule of this Constitution, unless otherwise stated. The schedule to this Constitution forms part of this Constitution. A reference to a section is to a section of the Act, unless otherwise stated;
- (i) *singular, plural and gender*: the singular includes the plural and *vice versa*, and words denoting any gender include all genders; and
- (j) *spouses*: a reference to a *spouse* includes a civil union partner or a de facto partner.

## **5. Registered Office**

The Registered Office of the Society shall be at 581 Mt Eden Road, Mt Eden, Auckland, New Zealand, or such other place in New Zealand as the Board may determine by resolution from time to time.

## **6. Powers**

6.1 Subject to this Constitution, the Act, any other enactment and the general law, Asthma NZ has:

- (a) full capacity to carry on or undertake any activity, or enter into any transaction; and
- (b) for the purposes of paragraph (a), full rights, powers and privileges.

6.2 Notwithstanding rule 6.1, Asthma NZ may not:

- (a) enter into long-term (that is, 5 years or more) financial commitments, such as the purchase or disposal of real estate, or entry into a lease agreement; or
- (b) borrow money in circumstances where total borrowing would exceed 15% of the previous year's gross income,

unless approval to do so has first been granted by Special Resolution.

## **7. Charitable registration**

Asthma NZ may seek registration as a charitable entity under the Charities Act. If, and while, so registered, Asthma NZ and all its Officers shall comply with the requirements of the Charities Act.

## **PART 2 – PURPOSES**

### **8. Purposes**

- 8.1 **Holding and application of income and assets etc for charitable purposes:** the assets and income of, and any benefit or advantage obtained by, the Society shall be held and applied solely for charitable purposes, and not for the private pecuniary profit of any individual or the financial gain of any Member. Without limiting the generality of the foregoing, the Society may act in furtherance of the purposes set out in rule 8.2 (*Charitable purposes*), to the extent to which they are charitable according to the law of New Zealand.
- 8.2 **Charitable purposes:** the charitable purpose of the Society is to advance education and promote health, by helping people in New Zealand affected by asthma and other respiratory conditions to live the best possible lives, and by working with communities to promote healthy living and prevention of asthma and other respiratory conditions, including by:
- (a) promoting understanding, awareness, and management of asthma and other respiratory conditions;
  - (b) carrying out educational activities about asthma and other respiratory conditions throughout the community;
  - (c) providing, and providing access to, training, education and support to people with asthma and other respiratory conditions and their families so that they might lead as normal a lifestyle as possible;
  - (d) promoting the education, training and support of relevant personnel, including Health Professionals, so that they might further educate people with asthma and other respiratory conditions to safely self-manage their condition;
  - (e) acquiring, developing, and disseminating information and resources;
  - (f) developing, promoting and/or providing high-quality products and/or services to people living with asthma and other respiratory conditions and their families throughout New Zealand;
  - (g) stimulating and promoting research into the prevention, early detection, causes, self-management, and alleviation of asthma and other respiratory conditions;
  - (h) promoting dissemination of research findings; and
  - (i) providing input into and promoting changes to policies, programmes and services relating to asthma and the needs of people living with and affected by asthma and other respiratory conditions.
- 8.3 **Means of furthering purposes:** in furtherance of its charitable purposes, and without limiting any of its powers under this Constitution or generally, the Society may:
- (a) raise funds and seek volunteer support as needed to advance the Society's charitable purposes;
  - (b) facilitate and encourage cooperation, collaboration and mutual assistance amongst institutions and the community in furtherance of the Society's charitable purposes;

- (c) survey, acquire and disseminate information and advice about asthma and respiratory conditions, including by way of periodicals, publications, meetings, demonstrations, lectures and otherwise;
- (d) cooperate and/or collaborate with other like-minded organisations;
- (e) become a member of or affiliated to any other organisation, whether in New Zealand or overseas, with similar purposes to those of the Society;
- (f) invest the Society's funds in any type of investment that conforms with the principles of a prudent trustee investment under New Zealand law;
- (g) make Bylaws, in accordance with this Constitution, to advance the attainment of the Purposes;
- (h) undertake such other lawful activities as may from time to time seem to the Society to be necessary or desirable to enable the Society to achieve or advance its charitable purposes.

8.4 **Severance of any non-charitable purpose:** all of the Society's purposes are strictly charitable according to New Zealand law, and any purposes which do not qualify as charitable shall be deemed to have been deleted from this Constitution.

8.5 **Limitation to New Zealand:** except as otherwise expressly provided in this Constitution, the Society is limited in furthering or attaining its purposes to the advancement of charitable purposes in New Zealand.

8.6 **Prohibition on financial gain:** the Society must not be carried on for the financial gain of any of its Members.

## 9. No private pecuniary profit

9.1 **No private pecuniary profit:** no private pecuniary profit shall be made by any person from the Society, except that (but subject to rule 9.2 (*No influencing income, benefit, or advantage*)):

- (a) payments may be made to an Officer or to a Member, or to a person Associated with an Officer or a Member, for goods and services provided to the Society, provided that those goods or services advance the charitable purposes of the Society and the payment is reasonable and commensurate with payments that would be made between unrelated parties;
- (b) an Officer may be reimbursed, on production of receipts, for reasonable expenses properly incurred by that Officer in the course of performing duties or exercising powers as an Officer of the Society; and
- (c) a Member may be reimbursed, on production of receipts, for reasonable expenses properly incurred by that Member in connection with the affairs of the Society.

9.2 **No influencing income, benefit, or advantage:** notwithstanding anything to the contrary in this Constitution, no Related Person shall derive any income, benefit, or advantage from the Society where they can, directly or indirectly, materially influence the payment of the income, benefit, or advantage, except where that income, benefit, or advantage is derived from:

- (a) professional services to the Society, rendered in the course of business charged at no greater than current market rates; or

- (b) interest on money lent charged at no greater rate than current market rates.

### **PART 3 – MEMBERSHIP**

#### **10. Categories of Membership**

The Members of the Society shall comprise:

- (a) Individual Members, as described in rule 13 (*Individual Members*);
- (b) Professional Members, as described in rule 14 (*Professional Members*);
- (c) Life Members, as described in rule 15 (*Life Members*);
- (d) Corporate Members, as described in rule 16 (*Corporate Members*); and
- (e) Affiliate Members, as described in rule 17 (*Affiliate Members*).

#### **11. Eligibility for Membership**

To become a Member of Asthma NZ, an applicant must:

- (a) complete a Membership Form and forward it to the Board;
- (b) supply such further information as may be required by the Board;
- (c) pay any applicable Membership Fee as determined under rule 20 (*Membership Fees*);
- (d) agree to be bound by this Constitution and any Bylaws;
- (e) have had their attention drawn to rule 22.3 (*Privacy*);
- (f) satisfy any specific eligibility criteria associated with the category of Membership for which the application is made, as set out in this Constitution;
- (g) be admitted into Membership by the Board;
- (h) expressly consent to become a Member; and
- (i) satisfy such other Membership criteria as the Board may reasonably determine in relation to any particular category of Membership from time to time.

#### **12. Applications for Membership**

12.1 The Board shall consider each application for Membership. In considering the application, the Board may:

- (a) interview the applicant, or representatives of the applicant; and
- (b) consult with existing Members.

12.2 The Board has absolute discretion as to whether to accept, decline, or defer an application for Membership, provided that the Board shall not accept an application for Membership unless the Board is satisfied that the applicant:

- (a) meets the criteria for Membership for the category of Membership for which the application is made, as set out in this Constitution;
- (b) has otherwise satisfied the requirements of rule 11 (*Eligibility for Membership*); and

- (c) has not acted in a manner which the Board considers could bring the Society into disrepute.

12.3 The Board must advise the applicant of its decision, and may, but is not required to, provide reasons for that decision.

12.4 Upon the applicant becoming a Member, the Board shall ensure the Register of Members is updated accordingly.

### 13. Individual Members

**Criteria:** any individual with an interest in furthering the charitable purposes of the Society may apply to become an Individual Member of the Society, provided they meet the requirements of rule 11 (*Eligibility for Membership*).

### 14. Professional Members

14.1 **Criteria:** any Health Professional with an interest in the charitable purposes of the Society may apply to become a Professional Member of the Society, provided they meet the requirements of rule 11 (*Eligibility for Membership*).

14.2 **Non-voting:** Professional Members are entitled to attend and speak at all General Meetings of the Society, but are not entitled to vote in that capacity.

14.3 **Entitlements:** in addition to the entitlements set out in rule 19 (*Member entitlements*), Professional Members are entitled to receive specialist publications and bulletins prepared or received by the Society, and shall also be entitled to attend and participate in seminars organised by the Society.

### 15. Life Members

15.1 **Eligibility:** an individual who has rendered exceptional service to the Society, or carried out special or outstanding work in fields related to its Purposes, is eligible to be nominated as a Life Member of the Society, provided that no member of the Board is eligible for nomination as a Life Member during their tenure as a Board Member.

15.2 **Nomination:** a person who is eligible under rule 15.1 may be nominated for Life Membership by the Board. If the nomination is approved by a 2/3 majority vote at an Annual General Meeting, and the person consents to become a Member of the Society, the person shall become a Life Member of the Society and the Board shall ensure that the Register of Members is updated accordingly.

15.3 **Voting:** subject to rule 45.1 (*Members may exercise one vote only*), a Life Member is entitled to attend, speak, vote and be counted for the purposes of establishing a quorum, at all General Meetings of the Society.

15.4 Notwithstanding rule 11 (*Eligibility for Membership*), a Life Member is not required to complete a Membership Form, or to pay any Membership Fee, but is otherwise deemed upon their appointment to acknowledge and agree to the obligations of a Member under rule 18 (*Member obligations*).

### 16. Corporate Members

16.1 **Criteria:** any incorporated entity that supports or wishes to align itself with the charitable purposes of the Society may apply to become a Corporate Member of the Society, provided they meet the requirements of rule 11 (*Eligibility for Membership*).

16.2 **Voting:** Corporate Members are entitled to attend and speak at all General Meetings of the Society, but are not entitled to vote in that capacity.

## 17. Affiliate Members

17.1 **Criteria:** any organisation with objectives similar to, or in keeping with, those of the Society may apply to be recognised as an Affiliate Member of the Society, provided they meet the requirements of rule 11 (*Eligibility for Membership*).

17.2 **Non-voting:** Affiliate Members have no voting rights at meetings of the Society, but may be invited to attend and speak at meetings in an advisory, non-voting capacity.

## 18. Member obligations

In addition to any specific rights and obligations set out in this Constitution and the Act, all Members acknowledge and agree that:

- (a) this Constitution, and any Bylaws, constitute a contract between each of them and the Society, and they are bound by this Constitution and any Bylaws;
- (b) they shall comply with and observe the Constitution, any Bylaws, and any applicable determination, resolution or policy which may be made or passed by the Board;
- (c) they shall promote and support the Purposes;
- (d) they shall provide and keep up to date the information required by rule 22 (*Register of Members*); and
- (e) they shall pay any Membership Fees as determined in accordance with rule 20 (*Membership Fees*).

## 19. Member entitlements

19.1 All Members are entitled to:

- (a) receive notice of, attend, speak, and vote at General Meetings in accordance with Part 7 (*General Meetings*), subject to any provision of this Constitution which affects voting rights in any particular case;
- (b) receive all general Asthma NZ communications; and
- (c) hold themselves out as being a Member of Asthma NZ.

19.2 Membership of Asthma NZ does not confer upon any Member any right, title or interest, either legal or equitable, in the property of Asthma NZ.

## 20. Membership Fees

20.1 **Annual fee:** all Members, other than Life Members, shall pay an annual fee to the Society at the rate for the respective category of Membership fixed in advance by Annual General Meeting. For the avoidance of doubt, the Annual General Meeting may fix a differential rate, based on reasonable criteria, for or within any particular category of Membership.

20.2 **Other fees:** the Society may, by General Meeting, determine other fees or payments that are payable by Members, or any particular category of Membership, to the Society from time to time.

20.3 **Consequences of non-payment:** subject to rule 20.4, any Member failing to pay any Membership Fee, or any other payment due to the Society, within 1 calendar month of the date the same was due shall be considered non-financial and shall (without being released from the obligation of payment) not be entitled to vote at General Meetings until all the arrears are paid.

20.4 The Board may, in its complete discretion:

- (a) extend the time for payment of a Membership Fee; and/or
- (b) waive the requirement to pay some or all of a Membership Fee, by a Member in any case it thinks appropriate.

## 21. Member liability

21.1 Subject to this rule 21, a Member is not liable for an obligation of the Society by reason only of being a Member.

21.2 Subject to rule 21.3, the liability of a Member to the Society is limited to the amount of any unpaid Membership Fee.

21.3 Nothing in this rule 21 affects the liability of a Member to the Society under a contract, or for any tort, breach of a fiduciary duty, or other actionable wrong committed by the Member.

## 22. Register of Members

22.1 **Register:** the Board must maintain a Register of Members, recording:

- (a) each Member's:
  - (i) name; and
  - (ii) contact details;
- (b) the category(s) of Membership to which the Member belongs;
- (c) if the Member belongs to more than one category of Membership, the category under which the Member chooses to exercise voting rights in accordance with rule 45.1 (*Members may exercise one vote only*);
- (d) the date on which the Member's Membership commenced; and
- (e) any other required details.

22.2 **Changes:** if a Member's name or contact details change, the Member must give written notice of the change to the Board as soon as reasonably practicable after the change occurring. The Board must then ensure the Register of Members is updated accordingly as soon as practicable.

22.3 **Privacy:** for the purposes of the Privacy Act 1993, the use or disclosure of personal information contained in rule 22.1 (*Register*) shall, subject to rule 22.4 (*Exemptions*), be a use or disclosure of information authorised by the person concerned, or a use or disclosure connected with or directly related to the purpose for which the information was obtained. For the purposes of compliance with the Privacy Act, the Society shall draw the attention of prospective new Members to this rule 22.

22.4 **Exemptions:** notwithstanding rule 22.3 (*Privacy*), in the event that any Member objects, for good reason, to the use or disclosure of personal information in the manner prescribed in rule 22.3, the person may apply to the Society's Privacy Officer for exemption in whole or in part from the said requirements. The application shall state fully the grounds upon which the person relies. The Privacy Officer, having regard to the privacy principles of the Privacy Act, may, in their absolute discretion, grant or refuse to grant such application. Any person dissatisfied with the decision of the Privacy Officer under this rule 22.4 may appeal the decision to the Board for determination.

### **23. Access to the Register of Members**

23.1 **Access by Officers:** an Officer of the Society may access the Register of Members, if access is necessary for the performance of the Officer's functions or the exercise of the Officer's powers.

23.2 **Access by Members:** a Member may make a request to the Board for access to the Register of Members. The Board shall provide the access requested, unless the Board considers, on reasonable grounds (including privacy grounds), that the request should be declined.

### **24. Access to other information by Members**

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

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

24.3 If the request relates to the minutes of, or the financial statements of the Society that were presented at, the most recent Annual General Meeting, the Society must, within a reasonable period after receiving the request and without charge, provide the requested information to the Member.

24.4 If the request relates to any other information, the Society must, within a reasonable time after receiving a request:

- (a) provide the information;
- (b) agree to provide the information within a specified period;
- (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.

### **25. Ceasing to be a Member**

25.1 **Resignation of a Member:** a Member may cease to be a Member by giving written notice to the Board. Unless the notice provides otherwise, the resignation shall take effect from the date on which the notice is received. The resignation shall not release the Member from any monetary or other obligation to the Society incurred during the Member's Membership. For the avoidance of doubt, unless written notice of resignation is received before 31 March in any year, the Member shall remain liable for payment of the applicable Membership Fee for the ensuing

year. Once resignation has taken effect, rule 25.7 (*Consequences of termination of membership*) applies.

- 25.2 **Default in payments:** a Member who is considered non-financial under rule 20.2 (*Consequences of non-payment*) for default in payment of any Membership Fee is liable to have their membership terminated if such arrears remain unpaid 12 months after the date the amount became due. Before such termination can occur, the Board must give the Member written notice specifying the outstanding monies owed, and demanding payment by a due date, being a date not less than 7 days from the date of the demand. If payment is not received by the said due date, the Board may terminate the Member's Membership by giving written notice of such termination to the Member concerned.
- 25.3 **Automatic cessation:** a non-individual Member's Membership shall automatically cease if the Member is wound up, liquidated, dissolved or otherwise ceases to exist.
- 25.4 **Termination for cause:** if a Member refuses or neglects to comply with this Constitution, or engages in any conduct which, in the opinion of the Board, is prejudicial to the interests of the Society or may otherwise bring the Society into disrepute, the Board may terminate the Member's Membership if, after a grievance or complaints procedure under Part 7 (*Procedures for resolving disputes*) has been undertaken, the Board considers that termination is appropriate. The termination will take immediate effect.
- 25.5 **Appeal to Special General Meeting:** any Member whose membership is terminated under rule 25.2 (*Default in payments*) or rule 25.4 (*Termination for cause*) may, within 30 days of being advised in writing of such action, appeal the decision to a Special General Meeting called for that purpose. The appeal shall be allowed if a Special Resolution is passed in favour of such appeal.
- 25.6 **Reinstatement:** Membership which has been terminated under this Constitution may be reinstated, following reapplication in accordance with rule 12 (*Applications for membership*), at the discretion of the Board.
- 25.7 **Consequences of termination of membership:** where any Member ceases, for whatever reason, to be a Member of the Society:
- (a) the Board shall ensure the Register of Members is updated accordingly;
  - (b) the former Member shall cease to hold themselves out as being a Member of the Society, and shall cease to use any Intellectual Property;
  - (c) the Member must forthwith return any other Society property; and
  - (d) all Membership Fees and other amounts due up to the date of termination shall remain due and payable, and no Membership Fee, or other amount, that has already been paid by the Member to the Society shall be refundable, unless the Board considers that special circumstances apply which justify otherwise in any particular case.

## **PART 4 – GOVERNANCE**

### **26. Board composition and membership**

**26.1 Number of Board members:** the Society shall have a Board that shall comprise at least 3 and no more than 12 persons, of which:

- (a) up to 8 Board Members shall be elected at an Annual General Meeting under rule 27 (*Election of Board Members*) or, in the case of an Interim Vacancy, may be appointed by the Board under rule 30 (*Interim Vacancy*); and
- (b) the Board may, by resolution, appoint up to 4 additional people with relevant skills or expertise, or other characteristics sought by the Board, for such term as may be agreed, provided that that term shall not exceed the term for an elected Board Member under rule 28 (*Term of office*).

**26.2 Transition:** the persons holding office as members of the Inaugural Board of the Society on the date of adoption of this Constitution continue in office and are deemed to have been elected as the Board pursuant to this Constitution.

**26.3 Qualification for membership of Board:** subject to rule 26.4 (*Disqualification from membership of Board*), any natural person who is a financial Member of the Society, and who has the capacity to competently exercise the powers, authorities and discretions of office, is eligible to be a Board Member.

**26.4 Disqualification from membership of Board:** the following persons are not eligible for election, appointment, or to remain in office as a Board Member:

- (a) a staff member employed by the Society:
- (b) a person who is under the age of 18 years:
- (c) a person who is an undischarged bankrupt:
- (d) a person who has been convicted of an offence punishable by imprisonment of 2 years or more, subject to the discretion of the Board to waive this paragraph (d) as a disqualifying criterion in any particular case:
- (e) a person who is disqualified from being an officer of an incorporated society under the Act:
- (f) a person who is disqualified from being an officer of a charitable entity under the Charities Act:
- (g) a Member, or a representative of a Member, who is considered non-financial under rule 20.3 (*Consequences of non-payment*).

**26.5 Composition of the Board:** in nominating, electing, and appointing Board Members, consideration shall be given to reflecting the diversity, and the geographic spread, of New Zealand's communities, as well as the requirement for governance skills and knowledge.

### **27. Election of Board Members**

**27.1 Call for nominations:** at least 28 days before each Annual General Meeting, the Board shall:

- (a) advise all Members of the number of elected Board Member positions that are vacant or that, due to the expiry of a Board Member's term of office, are about to become vacant; and
- (b) call for nominations.

27.2 **Nominations:** candidates for election as a Board Member under rule 27.1 (*Call for nominations*) must be nominated in writing. Written nominations must be duly signed, witnessed and endorsed and must be received at the Registered Office of the Society, together with any accompanying background information (which must not exceed one side of an A4 sheet of paper), at least 14 days prior to the Annual General Meeting.

27.3 **Voting papers:** a list of candidates for election, together with any accompanying background information, shall be circulated to all Members at least 7 days prior to the Annual General Meeting, along with instructions for voting. If there are insufficient valid nominations received under rule 27.2 (*Nominations*), but not otherwise, further nominations may be accepted from the floor of the Annual General Meeting.

27.4 **Voting:** voting for Board Members shall be conducted on the basis that the nominee(s) with the greatest number of votes will be elected to the vacancy (or vacancies). Each Individual Member who is eligible to vote at the time of voting shall have one vote per vacancy. Voting shall be by written ballot, unless otherwise decided by the Annual General Meeting.

27.5 **Scrutineers:** two Members (who are not Board Members or nominees), designated by the chairperson of the Annual General Meeting, shall act as scrutineers for the counting of the votes and subsequent destruction of all voting papers.

## 28. Term of office

28.1 **Term of office:** subject to rule 28.2 (*Schedule of rotation*) and rule 30 (*Interim Vacancy*), the term of office for all elected Board Members shall be 2 years, commencing at the conclusion of the General Meeting at which they are elected, and expiring at the conclusion of the 2<sup>nd</sup> Annual General Meeting after their election. Retiring Board Members shall be eligible for re-election, provided that no Board Member may serve for more than 4 consecutive terms as an elected Board Member.

28.2 **Schedule of rotation:** prior to each Annual General Meeting, the Board shall determine a schedule of rotation with the intention that at least the 2 longest-serving elected Board Members stand for re-election annually.

## 29. Appointed Board Members

29.1 Once the elected Board Member positions have been confirmed, the Board may appoint up to 4 additional persons to serve as Board Members, in accordance with rule 26.1(b) (*Number of Board Members*). Subject to rule 28 (*Term of office*), retiring appointed Board Members shall be eligible for reappointment or election.

29.2 Subject to rule 26.4 (*Disqualification from membership of Board*), appointed Board Members may be removed from office by resolution of the Board.

### **30. Interim Vacancy**

30.1 An Interim Vacancy in the Board arises if:

- (a) a position on the Board for an elected Board Member is not filled by the Members at an Annual General Meeting; or
- (b) an elected Board Member:
  - (i) resigns from office, by notice in writing delivered to the Registered Office, prior to the expiry of their term of office (which notice shall take effect from the date received or such later date as may be specified in the notice);
  - (ii) dies;
  - (iii) becomes disqualified under rule 26.4 (*Disqualification from membership of Board*);
  - (iv) is absent from 3 consecutive Board meetings, without leave of absence having first been granted by the President, or the President's nominee, or in the case of the President, by the Board as a whole;
  - (v) is convicted of a criminal offence punishable by imprisonment; or
  - (iv) is removed from office under rule 37 (*Grounds for removal from office*).

30.2 Subject to rule 26.1(a) (*Number of Board Members*), if an Interim Vacancy arises, the Board may, by resolution, appoint a suitable person with the necessary skills and attributes to fill the vacancy until the next Annual General Meeting, at which time such appointee shall retire and an election process to fill the position shall take place under rule 27 (*Election of Board Members*). The retiring appointee shall be eligible for election.

### **31. Functions and powers of the Board**

31.1 Subject to the Act, this Constitution and any Bylaws, the Board's functions are to manage, or to direct and supervise the management of, the operation and affairs of the Society between Annual General Meetings. In doing so, the Board may exercise all powers of the Society that are not required by law or by this Constitution to be exercised by the Society in General Meeting. The Board is subject to any general directions given to it by Members in General Meeting, and is accountable to Members for the implementation of the policies of the Society as approved by any General Meeting. Without limiting the generality of the foregoing, the Board's functions include to:

- (a) carry out and further the Society's charitable purposes, using monies or other assets of the Society to do so;
- (b) make policies and procedures within any general framework established by General Meeting;
- (c) create and keep under review a Governance Charter, specifying a code of ethics and any other matters the Board from time to time deems critical or best practice for the good governance of the Society;

- (d) control and manage the Society's financial affairs, including adopting an annual budget for financial performance and monitoring results against the annual budget;
- (e) ensure that properly-prepared financial statements for the preceding Financial Year are presented to each Annual General Meeting;
- (f) meet the Society's record-keeping and reporting obligations under the Act and the Charities Act;
- (g) employ such staff as considered necessary or desirable for the management of the affairs of the Society;
- (h) delegate powers and duties of the Board (not being duties imposed on the Board by law), where considered necessary or desirable;
- (i) make provision for the signing and endorsing of cheques or other negotiable instruments on behalf of the Society, open such bank accounts as the Board may think fit, give and receive receipts, and execute discharges for all gifts, legacies, bequests or other monies;
- (j) unless otherwise provided by this Constitution, decide the time, location and manner of holding General Meetings;
- (k) set the agenda for General Meetings;
- (l) recommend the level of Membership Fees for approval by a General Meeting; and
- (m) carry out an annual review of its performance.

31.2 Any resolution of the Board may be disallowed by the Society in General Meeting, but no resolution or Bylaw made by the Society in General Meeting shall invalidate any prior and otherwise valid act of the Board.

31.3 Schedule 1 (*Proceedings of the Board*) governs the proceedings at meetings of the Board, except where otherwise agreed by all Board Members in relation to a particular meeting.

## **32. President**

32.1 At the first meeting of the Board following each Annual General Meeting, the Board Members shall elect from amongst themselves a President, and any other specific officers that the Board considers necessary.

32.2 **Role of President:** the role of the President is to chair meetings of the Board, and to represent the Board. The President, or their nominee, shall have the right to attend any meeting of any Board subcommittee. The President is responsible for ensuring an Annual Report is prepared and presented to each Annual General Meeting.

32.3 **Acting President:** subject to rule 30 (*Interim Vacancy*), if the President is any temporarily unavailable for reason, the Board shall, by resolution, appoint another Board Member to undertake the President's role during the period of unavailability.

32.4 **Vacancy:** if the office of President becomes vacant between Annual General Meetings, the Board shall, by a 2/3 majority vote at a meeting of the Board to which

at least 14 days' written notice has been given to each Board Member, elect one of its number to fill the position until the conclusion of the next Annual General Meeting.

### **33. Contact Officer**

If, and while, required by the Act, the Board shall appoint by resolution a Contact Officer to be the point of contact for the Registrar. The name and contact details of the Contact Officer shall be notified to the Registrar in accordance with the Act.

### **34. Subcommittees**

34.1 The Board may resolve to:

- (a) establish one or more subcommittees, whether permanent or ad hoc, consisting of such persons as the Board determines to deal with and report on any matters the Board considers appropriate;
- (b) delegate to each such subcommittee, or to any person, such of the Board's functions or powers as the Board shall, in its discretion, decide;
- (c) revoke or vary any or all of the powers delegated to any subcommittee; and
- (d) change the make-up of a subcommittee at any time or dissolve it altogether.

34.2 The chairperson of any such subcommittee must be a Board Member, unless the Board decides otherwise in any particular case.

34.3 A subcommittee shall be conducted, and shall exercise the powers delegated to it, in accordance with any directions of the Board which, for the avoidance of doubt, may be contained within policies, guidelines or protocols.

34.4 The Board may continue to exercise all of its powers despite any delegation made under this rule.

34.5 The provisions of this Constitution relating to proceedings of the Board also apply to proceedings of any subcommittee of the Board, except to the extent that the Board determines otherwise. All subcommittee decisions shall be approved by the Board before they become effective and before they are implemented, unless the Board otherwise directs.

### **35. General Manager**

35.1 Without limiting the generality of rule 31.1(h) (*Functions and powers of the Board*), the Board may employ a General Manager of the Society, for such term and on such conditions as the Board may determine. The title of the General Manager may be chief executive, chief operating officer, or such other title as may be determined from time to time by the Board.

35.2 Subject to this Constitution and the Act, the Board may delegate to the General Manager such of its functions and powers, that the Board is not prohibited from delegating under the Act or under this Constitution, as the Board considers appropriate and as may be agreed between the Board and the General Manager.

35.3 Subject to rule 35.4, the General Manager may attend and speak at all Board meetings and all General Meetings, but shall have no voting rights.

35.4 For the avoidance of doubt, the Board or a General Meeting may exclude the General Manager from any meeting, or any part of any meeting, at its discretion.

### **36. Duties of Officers**

36.1 The duties of each Officer of the Society include to:

- (a) act at all times in good faith and in what the Officer believes to be the best interests of the Society;
- (b) exercise the powers of the Officer for proper purposes;
- (c) act, and ensure the Society acts, in accordance with the Act, the Charities Act, this Constitution and any Bylaws;
- (d) exercise the care and diligence that a reasonable person with the same responsibilities would exercise in the same circumstances;
- (e) not agree to, nor 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;
- (f) not agree to the Society incurring any obligation unless the Officer believes at that time, on reasonable grounds, that the Society will be able to perform the obligation when it is required to do so;
- (g) disclose any conflict of interest in accordance with rule 10 of schedule 1 (*Duty to disclose conflicts of interest*);
- (h) not disclose information that the Officer would not otherwise have available but for their capacity as an Officer, to any person, or make use of or act on the information except:
  - (i) as agreed by the Board for the Purposes of the Society;
  - (ii) as required by law; or
  - (iii) in circumstances analogous to those specified in section 145(2) and (3) of the Companies Act 1993 (*Use of company information*);
- (i) make reasonable efforts to attend all Board meetings and General Meetings of the Society; and
- (j) participate in the ongoing development of, and comply with, the Governance Charter.

36.2 **Use of information and advice:** subject to rule 36.3, an Officer, when exercising powers or performing their duties as an Officer, may rely on reports, statements, financial data, and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:

- (a) an employee of the Society whom the Officer believes, on reasonable grounds, to be reliable and competent in relation to the matters concerned;
- (b) a professional adviser or expert in relation to matters that the Officer believes, on reasonable grounds, to be within the person's professional or expert competence;
- (c) any other Officer or subcommittee of Officers upon which the Officer did not serve in relation to matters within the Officer's or subcommittee's designated authority.

36.3 Rule 36.2 (*Use of information and advice*) applies to an Officer only if the Officer:

- (a) acts in good faith;
- (b) makes proper enquiry where the need for inquiry is indicated by the circumstances; and
- (c) has no knowledge that the reliance is unwarranted.

### **37. Grounds for removal from office**

The Society may, by Special Resolution, remove any Board Member, before the expiration of their term of office, if that Board Member:

- (a) is found, after a disputes resolution process (conducted in accordance with Part 7 (*Procedures for resolving disputes*) as though the matter were a complaint about a "Member"), to have breached any of the duties in rule 36 (*Duties of Officers*); or
- (b) does not have capacity to exercise the powers, authorities and discretions of office competently. Lack of capacity shall include being mentally disordered within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992 and being mentally incapable within the meaning of the Protection of Personal and Property Rights Act 1988.

### **38. Indemnity and insurance**

**38.1 Indemnities:** the Society may indemnify an Officer, a Member, or an employee, of the Society in respect of:

- (a) liability to any person other than the Society for any act or omission in their capacity as an Officer, Member, or employee (not being a liability specified in rule 38.2);
- (b) costs incurred by the Officer, Member, or employee in defending or settling any claim or proceeding relating to that liability; and
- (c) costs incurred by the Officer, Member, or employee in defending or settling any proceeding that relates to liability to any person for any act or omission in their capacity as an Officer, Member, or employee, but only if judgment is given in their favour, they are acquitted or the proceeding is discontinued.

**38.2** The liability specified in this rule is:

- (a) criminal liability; or
- (b) a liability that arises out of a failure to act in good faith and in the best interests of the Society when acting in the capacity as an Officer, Member, or employee.

**38.3 Insurance:** the Society may, with the prior approval of the Board, effect insurance for an Officer, Member, or employee, of the Society in respect of:

- (a) liability (other than criminal liability) to any person for any act or omission in their capacity as an Officer, Member, or employee;
- (b) costs incurred by the Officer, Member, or employee in defending or settling any claim or proceeding relating to that liability; or
- (c) costs incurred by the Officer, Member, or employee in defending any criminal proceedings:

- (i) that have been brought against the Officer, Member, or employee in relation to any alleged act or omission in their capacity as an Officer, Member, or employee; and
- (ii) in which they are acquitted.

38.4 Board Members may only vote in favour of authorising the insurance under rule 38.3 if they consider that the cost of effecting the insurance is fair to the Society.

38.5 The power of the Society to indemnify and effect insurance pursuant to this rule may not be exercised if and to the extent that to do so would prejudice the charitable status of the Society.

## **PART 5 – GENERAL MEETINGS**

### **39. Annual General Meetings**

39.1 An Annual General Meeting of the Society must be held no later than 6 months after Balance Date and no later than 15 months after the previous Annual General Meeting.

39.2 The Board shall determine when the Annual General Meeting will be held.

39.3 The Board shall ensure that minutes of the Annual General Meeting are taken.

39.4 The business of the Annual General Meeting shall include:

- (a) receiving the minutes of the previous Annual General Meeting, and of any Special General Meeting held since the previous Annual General Meeting;
- (b) the presentation of:
  - (i) the Annual Report;
  - (ii) the signed financial statements of the Society for the most recently-completed accounting period, together with the report of any Qualified Auditor appointed under rule 51 (*Audit*); and
  - (iii) a summary of any disclosures or the types of disclosures made by Board Members under rule 10.4 of schedule 1 (*Duty to disclose conflicts of interest*), recorded since the previous Annual General Meeting;
- (c) whether a Qualified Auditor is to be appointed under rule 51 (*Audit*) and, if so, the appointment of a Qualified Auditor;
- (d) election of Board Members;
- (e) fixing the annual Membership Fee;
- (f) motions to be considered; and
- (g) any general business.

### **40. Special General Meetings**

40.1 The Board may call a Special General Meeting at any time.

40.2 The Board must call a Special General Meeting:

- (a) if 2 Board Members request it:

- (b) on receipt of a written request (which must state the purpose for which the Special General Meeting is requested, and include any proposed motion(s) signed by at least 10 financial Members:
- (c) if the Board receives a written request from any Member under rule 25.5 (*Appeal to a Special General Meeting*).

40.3 The Board shall determine when a Special General Meeting will be held, provided that Special General Meetings must be convened within 30 days of receipt of a valid request under rule 40.2.

40.4 The business to be dealt with at a Special General Meeting is limited to the matters stated in the valid written request and/or the notice of such meeting.

40.5 A written resolution that has been forwarded to all Members entitled to receive notice of a Special General Meeting, and that has been signed by the requisite majority of Members, is as valid and effective as if it had been passed at a Special General Meeting duly convened and held. Such resolution may consist of several duplicated documents, and may be provided by electronic communication through which each signing Member expressly refers to the resolution and records their specific position on the resolution.

#### **41. Notice of General Meetings**

41.1 The Board shall ensure that written notice of a General Meeting is given to all Members and all Board Members, at least 14 days prior to the date of the meeting.

41.2 The notice of a General Meeting must:

- (a) specify the date, time, and place of the meeting, as determined by the Board;
- (b) provide the instructions for connecting to the meeting, if it is to be conducted wholly or partially as a Teleconference Meeting;
- (c) include an agenda, or otherwise clearly state why the meeting is being convened, and provide as full details as practicable about the nature of the business to be transacted at the meeting; and
- (d) provide:
  - (i) notice of any motions to be considered at the meeting;
  - (ii) any information provided by a Member in support of a Member's motion; and
  - (iii) the Board's recommendation about any motions.

41.3 For an Annual General Meeting, the notice of meeting must also be accompanied by:

- (a) a copy of the Annual Report;
- (b) the financial statements of the Society for that period; and
- (c) a list of all candidates for election to the Board, and any other information required by rule 27.3 (*Voting papers*).

41.4 All written notices shall be deemed to have been properly sent if forwarded by ordinary or electronic mail to the address appearing in the Register of Members. If the Board has in good faith made reasonable efforts to send written notice to all

Members, the General Meeting and its business shall not be invalidated simply because one or more Members inadvertently did not receive the notice.

41.5 The Society may, by Ordinary Resolution, deal with any business or proposed resolution at any meeting irrespective of whether prior notice of the same has been given, with the exception of a motion to amend the Constitution, which may not be considered at a General Meeting unless prior written notice of the proposed motion has been given to all Members in accordance with rule 62 (*Amendments to Constitution*).

## **42. Motions**

42.1 Any proposed motions and other items of business that Members and/or the Board wish to be considered at a General Meeting must be in writing and received at the Registered Office not less than 30 days before the date set for the General Meeting at which they are to be considered.

42.2 The Board must decide whether or not the Society will vote on any motion proposed by a Member. However, if the proposed motion is signed by at least 3 Members, it must be voted on at the meeting.

42.3 Any matter of an urgent or extraordinary nature which would normally be required to be the subject of a notice of motion may, if prior written notice is given to the President, be brought before a General Meeting and determined by it, but only if a majority of Members vote in favour of the motion being tabled without the requisite notice.

42.4 A proposed motion to amend the Constitution must be accompanied by the text of the proposed amendment and a written explanation of the reasons for the proposal.

42.5 The Board may provide a recommendation on any motions and other items of business put forward by a Member for consideration at a General Meeting.

## **43. Meetings generally**

43.1 The quorum for a General Meeting is 50% of all Members entitled to vote at the General Meeting under this Constitution. Board Members are entitled to attend and speak at General Meetings, but do not have any right to vote in that capacity.

43.2 No business may be conducted at a General Meeting unless a quorum is present. If a quorum is not present within 30 minutes of the appointed time, the Members present may transact the business at that meeting as if they constituted a quorum.

43.3 A General Meeting may be held by a number of Members constituting a quorum:

- (a) being assembled together at the place and time appointed for the meeting;
- (b) participating in the meeting by Teleconference Meeting; or
- (c) by a combination of the methods described in paragraphs (a) and (b).

43.4 In the case of a Teleconference Meeting, a Member attending by means of the internet is considered to be present when they have logged their presence on the host site. Members present and participating at a General Meeting by Teleconference Meeting are deemed to be present and to form part of the quorum at all times during the meeting unless and until they indicate their intention to disconnect from the meeting.

43.5 If the President is present at a General Meeting, the meeting will be chaired by the President. If the President is absent within 5 minutes after the time appointed for the meeting, the financial Members present shall elect one of their number to chair the meeting in the President's absence.

#### **44. Decisions at General Meetings**

44.1 All questions before a General Meeting shall, if possible, be decided by consensus.

44.2 In the event that a consensus cannot be reached, and except where this Constitution otherwise provides, the question shall, if moved by one Member eligible to vote and seconded by another Member eligible to vote, be put as a motion to be decided. A resolution on that motion will be validly made if it is passed by an Ordinary Resolution, unless this Constitution requires a Special Resolution in any particular case, in which case it will only be validly made if passed by a Special Resolution. If a motion is tied, and the chairperson of the meeting does not exercise a casting vote in favour of the motion, the motion shall be lost.

#### **45. Voting at General Meetings**

45.1 **Members may exercise one vote only:** notwithstanding any other provision in this Constitution, a person who falls under more than one of the categories of Membership listed in rule 10 (*Categories of Membership*) may exercise voting rights under one category of Membership only, as listed in the Register of Members.

45.2 **Voting by Individual Members:** at each General Meeting, each Individual Member who is entitled to vote under this Constitution shall receive one vote, provided that no Individual Member shall be entitled to vote at any General Meeting if, and while, any of their Membership Fees are in arrears.

45.3 **Proxies:** if a Member who is entitled to vote is unable to be present in person at any particular General Meeting, the Member may appoint a Proxy to attend the meeting and act in the manner, and to the extent, authorised by the Member. A Proxy is not eligible to vote at a General Meeting on behalf of a Member unless the Member has, at least 24 hours prior to the meeting, notified the Board in writing of the name and contact details of the Proxy. The notification must specify the matters on which the Proxy is able to vote, and how the Member wishes the Proxy to vote on those matters.

45.4 Despite rule 45.3, the General Meeting may, by Ordinary Resolution, accept Proxies notified in writing up to the commencement of a General Meeting.

46.5 For the avoidance of doubt, a Proxy vote can only be exercised for items listed in the agenda included with the notice of the meeting.

45.6 A resolution put to the vote of a General Meeting shall be decided on the voices, unless a poll is immediately demanded by a Member present in person and entitled to vote, in which case a show of hands shall be taken, unless 5 Members present and entitled to vote immediately demand that the motion be determined by written ballot, in which case the motion shall be determined by written ballot.

45.7 At a Teleconference Meeting, Members attending by means of the internet must vote individually by posting their vote on the host site, unless their vote on a show

of hands is visible to all other attendees, for example by means of skype or similar form of communication.

45.8 In the event of an equality of votes upon any proposed resolution at a General Meeting, the person chairing the General Meeting may, but is not required to, exercise a second or casting vote, in addition to any deliberative vote the chairperson may have.

45.9 A declaration by the person chairing a General Meeting that a resolution has, on the voices or on a show of hands, been carried, or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the minutes, is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

## **PART 6 – LEGAL AND FINANCIAL MATTERS**

### **46. Method of contracting**

Subject to rule 47 (*Common seal*), Asthma NZ may enter into a contract or other enforceable obligation as follows:

- (a) an obligation that, 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 Board Members of the Society;
  - (ii) one Board Member, or the General Manager, whose signature must be witnessed; or
  - (iii) an attorney appointed by the Society, by deed, either generally or in relation to the specific matter;
- (b) an obligation that, 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;
- (c) an obligation that, 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.

### **47. Common seal**

If, and while, required by the Act, the Society shall have a common seal, which shall be kept in the custody and control of the Board, and shall be used only as directed by the Board. The common seal must not be affixed to any document unless the Board has already authorised its use on that document by resolution. When a document is to be sealed on the prior authority of the Board, the seal must be affixed to the document in the presence of 2 signatories of the Society, who must each sign the document.

### **48. Use of Society name**

The Society must ensure that its name is clearly stated in:

- (a) every written communication sent by, or on behalf of, the Society; and

- (b) every document issued or signed by, or on behalf of, the Society that evidences or creates a legal obligation of the Society.

#### **49. Control and management of finances**

49.1 The funds of the Society must be used to further the charitable purposes of the Society:

- (a) as the Board decides; or
- (b) as the Society decides by resolution passed at a General Meeting.

49.2 The Board is responsible for the receipt and banking of all monies received by the Society and all sums paid out by the Society.

49.3 The Society's bank account(s) shall be kept at such trading bank, and operated with such signatories, as may be determined from time to time by the Board.

49.4 All monies received by or on behalf of the Society shall be paid promptly to the credit of the Society's bank account.

49.5 All payments must be signed or otherwise approved by 2 Board Members or employees of the Society, being persons who have been authorised to do so by the Board, or otherwise in such manner as the Board shall decide from time to time.

49.6 The Board shall ensure that all payments by or on behalf of the Society are properly authorised before payment, are promptly paid once authorised, and that generally the funds of the Society are properly accounted for.

49.7 The Board may appoint a financial adviser for the Society.

#### **50. Accounting records and financial statements**

50.1 The Board is responsible for ensuring that there are kept, at all times, accounting records that:

- (a) correctly record the transactions of the Society;
- (b) will allow the Society to produce financial statements that comply with the Act; and
- (c) would enable the financial statements to be readily and properly audited (if required).

50.2 The Board must establish and maintain a satisfactory system of control of the Society's accounting records.

50.3 The Board must ensure that, within 6 months after the end of each Financial Year, financial statements are:

- (a) completed in relation to the Society and that Financial Year; and
- (b) dated and signed on behalf of the Board by 2 Board Members.

#### **51. Audit**

51.1 If the Society is required, or at any time resolves, to appoint an auditor or reviewer, then the Society shall appoint a Qualified Auditor to:

- (a) hold office until the conclusion of the next Annual General Meeting; and
- (b) audit or review, as the case may be, the financial statements of the Society.

51.2 The Board shall ensure that the Qualified Auditor so appointed has access to the documentation of the Society, and to such information and explanations as the Qualified Auditor thinks fit for the proper performance of their duties.

## **PART 7 – PROCEDURES FOR RESOLVING DISPUTES**

### **52. Guiding principles**

52.1 All parties to a complaint or grievance shall endeavour to resolve the matter informally and in the spirit of the following principles:

- (a) **fairness:** the process shall be fair to all parties;
- (b) **good faith:** all parties shall deal with each other honestly and in good faith;
- (c) **timeliness:** the process shall be timely and properly documented;
- (d) **accountability:** the process is to determine accountability, provide outcomes and give reasons for decisions.

52.2 In the event that informal discussions cannot resolve the issue, the procedures in this Part 7 (*Procedures for resolving disputes*) shall apply.

### **53. Complaints about a Member**

53.1 Any person may make a complaint about the conduct of a Member.

53.2 Complaints about the conduct of a Member or a Board Member must be made in writing, directed to the General Manager, and contain sufficient detail to identify the complainant, the subject matter, and the nature of the complaint.

53.3 Subject to rule 57 (*General Manager or Board may decide not to investigate complaint or grievance*), the General Manager must forward the written complaint to the Member complained of within 14 days of receipt.

53.4 If the General Manager forwards the written complaint under rule 53.3, the Member complained of may, within a further period of 14 days, provide the General Manager with their written response to the complaint. The General Manager must forward the written response to the complainant within 14 days of receipt.

53.5 The General Manager will consider the matter and, if considered necessary or desirable in order to give both parties a reasonable opportunity to be heard, may convene a face-to-face meeting between the complainant and the Member complained of.

53.6 Having considered the matter under rule 53.5, the General Manager will make a decision as to how the complaint is to be resolved.

### **54. Escalation to the Board**

54.1 If either the complainant, or the Member complained of, is unhappy with a decision of the General Manager made under rule 53 (*Complaints about a Member*), either party may request that the General Manager escalate the matter to the Board.

54.2 If the General Manager receives a request for escalation to the Board, or if the General Manager otherwise considers that escalation of the matter to the Board is necessary or desirable, the General Manager shall, within 14 days of the decision, or of receipt of the request, whichever is the later, forward to the Board a copy of

the complaint, the written response and any other documentation considered desirable.

54.3 Notwithstanding rule 54.2, the complainant or the Member complained of may escalate the matter directly to the Board of their own motion.

54.4 The Board shall consider the matter at a Board meeting held within 14 days of the escalation, or as soon as practicable thereafter.

54.5 The Member complained of has a right to be heard before the complaint is resolved or any outcome is determined.

#### **55. A Member's grievance against the Society or another Member**

55.1 A Member may raise with the Board an allegation of damage (caused by the Society, or a Member) to a Member's rights or interests (as a Member) or to Members' rights and interests generally.

55.2 An oral hearing of the grievance will be held if the Board decides that, for serious or complex cases, after taking into account the potential consequences for a Member if a grievance is upheld or not upheld, an oral hearing is needed to achieve an adequate process, or is otherwise desirable.

55.3 The Member will be heard before the grievance is resolved or any outcome is determined.

#### **56. Investigating and determining complaint or grievance**

56.1 Subject to rule 57 (*General Manager or Board may decide not to investigate complaint or grievance*), the Board must, as soon as is reasonably practicable after receiving a complaint or grievance, investigate and determine the complaint or grievance. In conducting the investigation, the Board may consult with other parties considered relevant.

56.2 The Board will endeavour to resolve the dispute by consensus.

56.3 In the event that consensus is not possible, or if the Board decides that, for serious or complex cases, after taking into account the potential consequences for any person if a complaint or grievance is upheld, an oral hearing is needed to achieve an adequate process, or is otherwise desirable, the Board may call a General Meeting to consider and determine the matter.

56.4 The written material and any additional submissions by either party will be considered by the Board. If a General Meeting is convened under rule 56.3, the parties will be given the opportunity to speak at the meeting, and the parties' submissions and/or written statements will be considered by the General Meeting.

#### **57. General Manager or Board may decide not to investigate complaint or grievance**

57.1 Despite rules 54.3 (*Complaints about a Member*) and 56 (*Investigating and determining complaint or grievance*), the General Manager or the Board may decide not to proceed with a matter further if the General Manager or the Board, as the case may be, determines that:

- (a) the matter is trivial;
- (b) the complaint or grievance does not appear to disclose:

- (i) in the case of a complaint, any material misconduct; or
- (ii) in the case of a grievance, any material damage to a Member's rights or interests;
- (c) the complaint or grievance appears to be without foundation or there is no apparent evidence to support it;
- (d) the person who makes the complaint or brings the grievance has an insufficient interest in the matter; or
- (e) the conduct, incident, event, or issue has already been dealt with by or on behalf of the Society.

57.2 Despite rule 57.1, the General Manager will ensure that details of all complaints, including those that are not investigated as a result of a determination made under rule 57.1, are notified to the Board on a regular and timely basis.

#### **58. Board may refer complaint to subcommittee or other**

**investigator** The Board may refer a complaint or grievance to:

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

#### **59. Decision-makers**

A person may not act as a decision-maker in relation to a complaint or grievance if 2 or more Board Members, a complaints subcommittee, or the Members by resolution at a General Meeting, consider that there are reasonable grounds to believe that the person may not:

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

#### **60. Decisions**

Having considered all relevant information, and provided a reasonable opportunity to be heard, the decision-maker in relation to a complaint or grievance may make any decision they think fit, including:

- (a) that no further action needs to be taken;
- (b) requiring a Member to take specified corrective action;
- (c) the publication of any corrective letter or statement;
- (d) the suspension of the Member for any period of time; and/or
- (e) termination under rule 25.4 (*Termination for cause*) or removal under rule 37 (*Grounds for removal from office*).

### **PART 8 – ADMINISTRATION**

#### **61. Patron**

On the recommendation of the Board, the Society may, by Ordinary Resolution, invite a person to be a patron of Asthma New Zealand. Such invitation, if subsequently accepted, shall be for such term as the General Meeting determines. The Patron shall not be a member of the Board.

## **62. Amendments to Constitution**

- 62.1 This Constitution may only be amended by Special Resolution passed at a properly-convened General Meeting for which prior written notice has been given to all Members in accordance with rule 41 (*Notice of General Meetings*).
- 62.2 The power of amendment conferred by rule 62.1 may not be exercised to make an amendment:
- (a) inconsistent with the charitable purposes of the Society; or
  - (b) which would prejudice the charitable nature of the Society.
- 62.3 No amendment to the Constitution shall take effect unless and until registered with the Registrar. Any amendment to this Constitution shall also be notified as required by the Charities Act.

## **63. Bylaws**

- 63.1 The Society may, by Ordinary Resolution, make such Bylaws as it considers desirable, provided that they are not inconsistent with:
- (a) the Act;
  - (b) this Constitution;
  - (c) the Purposes; or
  - (d) any directive given at a General Meeting.
- 63.2 All Bylaws are binding on the Society and its Members.
- 63.3 The making, amendment, or replacement of a Bylaw is not an amendment of the Constitution.

## **64. Winding up**

- 64.1 The Society may be voluntarily put into liquidation if:
- (a) a Special Resolution is passed, at a General Meeting that is properly notified and convened in accordance with the Act and Part 5 (*General Meetings*), to dissolve the Society, or to appoint a liquidator, as the case may be; and
  - (b) if required by the Act, such resolution is confirmed by Ordinary Resolution at a subsequent Special General Meeting called for that purpose and held not later than 30 days after the date on which the first resolution was passed.
- 64.2 The Society may request the Registrar that it be voluntarily dissolved in the circumstances permitted by the Act.
- 64.3 On the liquidation or dissolution, all surplus assets, after the payment of all costs of winding up and all of the Society's debts and liabilities, must, subject to any trust affecting the same, be distributed to such charitable entity or entities in New Zealand, having similar or allied charitable purposes to the Society, as the Society shall determine.
- 64.4 In the absence of a decision by the Society in accordance with rule 64.3, the surplus assets of the Society shall be applied to such charitable purposes in New Zealand as a Judge of the High Court of New Zealand directs.

**65. Matters not provided for**

If any matter arises which, in the opinion of the Board, is not provided for in this Constitution, then the same may be determined by the Board in such manner as it deems fit, and every such determination shall be binding upon Members unless and until set aside by a resolution of a General Meeting.

## **SCHEDULE 1: PROCEEDINGS OF THE**

### **BOARD 1 Meetings**

- 1.1 The Board Members shall meet as often as they consider desirable for the efficient and proper conduct of the affairs of the Society, provided that they meet at least 4 times per year.
- 1.2 A meeting may be called at any time on the President's own motion or if a 2/3 majority of Board Members request it.
- 1.3 Except where this Constitution otherwise expressly provides, each Board Member present at a meeting of the Board is entitled to one vote.

### **2 Notice of meetings**

- 2.1 A schedule of meetings shall be communicated by the President by email, or otherwise in writing, to each of the other Board Members at the start of each Financial Year, noting the proposed date, time and place of each meeting. This schedule of meetings shall be updated as required throughout the year.
- 2.2 At least 5 days' notice of any Board meeting shall be communicated by the President by email, or otherwise in writing, to each of the other Board Members. However, all of the Board Members may agree to shorten or waive the period of notice.
- 2.3 The notice of meeting shall include the date, time and place of the meeting and an indication of the matters to be discussed.
- 2.4 No notice is necessary for the resumption of an adjourned meeting. However, a Board Member who was not present at the meeting adjourned must be notified of the date, time and place of the reconvened meeting.
- 2.5 The President shall use all reasonable endeavours to ensure all notices of meeting have been correctly sent. However, the inadvertent failure of any Board Member to receive a notice of a meeting of the Board shall not invalidate such meeting or its proceedings.

### **3 Methods of holding meetings**

- 3.1 A meeting of the Board may be held either:
  - (a) by a number of Board Members who constitute a quorum being assembled together at the date, time and place appointed for the meeting; or
  - (b) by a Teleconference Meeting at which a quorum of Board Members participating can simultaneously hear each other throughout the meeting, provided that all Board Members received notice of the meeting and the requirements of rule 3.2 of this schedule are met.
- 3.2 In the case of a Teleconference Meeting:
  - (a) at the start of the meeting, each participant must acknowledge their presence to all the others taking part; and
  - (b) a Board Member must not disconnect their means of communication without the prior consent of the chairperson.

- 3.3 A Board Member shall be conclusively presumed to have been present and to have formed part of the quorum at all times during a meeting unless they have previously obtained the express consent of the chairperson to leave the meeting.

#### **4 Quorum**

- 4.1 A quorum for a meeting of the Board shall be a majority of the Board Members in office at the time of the meeting.
- 4.2 A Board Member who is diagnosed by a registered medical practitioner as having any physical or mental incapacity that means the person is temporarily unable to fulfil the duties and responsibilities of a Board Member shall not be treated as a Board Member for the purposes of rule 4.1.
- 4.3 At any meeting of the Board, no business shall be transacted unless a quorum is present.

#### **5 Adjournment**

- 5.1 If a quorum is not present within 30 minutes after the time appointed for a meeting, the meeting will stand adjourned to the same day in the next week at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting will be dissolved.
- 5.2 The President may adjourn any meeting on the adoption of a resolution for its adjournment.

#### **6 President and Officers**

- 6.1 Subject to rule 32 (*President*) of this Constitution, the President shall chair all meetings of the Board.
- 6.2 The chairperson of a Board meeting shall have a deliberative vote and, in the event of an equality of votes, a casting vote.
- 6.3 All Board appointments shall be recorded in the minutes.

#### **7 Voting on resolutions**

- 7.1 All questions before the Board shall, if possible, be decided by consensus.
- 7.2 In the event that a consensus cannot be reached, and except where this Constitution otherwise provides, the question shall be put as a motion to be decided. A resolution on that motion will be validly made if it is passed by a simple majority of votes of those present and entitled to vote at a duly-convened and conducted meeting of the Board. Subject to this schedule, the method of voting shall be decided by the Board. Different methods may be adopted for different motions. If the voting is tied, and the President does not exercise a casting vote under rule 6.2 of this schedule, the motion shall be lost.
- 7.3 A Board Member present at a meeting of the Board shall be presumed to have agreed to, and to have voted in favour of, a resolution of the Board, unless they expressly dissent from or vote against the resolution at the meeting.
- 7.4 A written resolution signed by all of the Board Members then entitled to receive notice of a meeting of the Board is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Such a resolution may consist of

several duplicated documents, each signed by one or more of the Board Members, and may be sent by electronic transmission.

7.5 A resolution of the Board may be rescinded or varied by the Board in the same manner as it was passed.

## **8 Minutes**

8.1 The Board must ensure that minutes are taken of every Board meeting and are made available to any Board Member on request. The minutes shall record, for each and every meeting of the Board:

- (a) the names of those present;
- (b) all decisions taken; and
- (c) any other matters discussed at the meeting.

8.2 A minute of a Board meeting which has been signed correct by the chairperson of that meeting, or by the chairperson of the next succeeding meeting, shall be *prima facie* evidence of the matters referred to in the minute having been approved by the Board, unless they are shown to be inaccurate.

8.3 Decisions recorded in the minutes shall be read in conjunction with this Constitution and are binding on all persons connected with the Society.

## **9 Interests Register**

9.1 The Board must keep and maintain an Interests Register, being a register of disclosures made by Officers under rule 10 of this schedule.

9.2 The Interests Register must be made available for inspection by the Officers of the Society.

9.3 The Interests Register may, subject to the requirements of the Privacy Act 1993 and at the Board's discretion, be made available for inspection by Members.

## **10 Duty to disclose conflicts of interest**

10.1 As soon as an Officer becomes aware of the fact that they are, or may be, in any capacity whatsoever, Interested in a Matter relating to the Society, they must, as soon as practicable, disclose all relevant details of the interest to the Board, including:

- (a) the nature and monetary value of that interest (if the monetary value of the Officer's interest is able to be quantified); or
- (b) if the monetary value of the Officer's interest cannot be quantified, the nature and extent of that interest.

10.2 After considering the views of the other Board Members, the chairperson may rule that the affected Officer is not conflicted in relation to a disclosure, where no conflict in fact exists.

10.3 A disclosure by an Officer, and the chairperson's ruling in respect of that disclosure, must be recorded in the minutes.

10.4 If the Officer is determined to be Interested in the Matter, all relevant details of the Interest must be recorded in the Interests Register.

## **11 Voting by Interested Officers**

11.1 An Officer who is Interested in a Matter relating to the Society:

- (a) must not vote or take part in any decision of the Board relating to the Matter; and
- (b) must not sign any document relating to the Matter; but
- (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); and
- (d) may be counted for the purposes of determining whether there is a quorum at any meeting at which the Matter is considered.

11.2 Despite rule 11.1(d) of this schedule, if 50% or more of the Board Members are prevented from voting on the Matter under rule 11.1(a), a Special General Meeting must be called to consider and determine the matter.

## **12 Consequences of failing to disclose interest**

The Board must notify the Members of a failure to comply with rules 10 or 11 of this schedule, and of any Matter affected, as soon as practicable after becoming aware of the failure.

## **13 Validity of proceedings**

13.1 All acts carried out by any meeting of the Board, by a subcommittee, or by any person acting as a Board Member shall, notwithstanding that it is afterwards discovered that any of them were not properly appointed, or were disqualified from holding office, shall be as valid as if every such person had been duly appointed and was qualified to be a Board Member.

13.2 The Board Members may continue to act notwithstanding any vacancy in their number, but if the number of Board Members is reduced below the minimum number as stated in this Constitution, the continuing Board Member(s) may act for the purpose of increasing the number of Board Members to that minimum but for no other purpose.

## **14 Board may regulate other proceedings**

Except as otherwise set out in this Constitution, the Board may regulate its own procedures in such manner as it sees fit to efficiently govern the Society.