

## Memo

To: Accountants and Tax Agents Institute of New Zealand Incorporated

From: Steven Moe and Sophie Tremewan

Date: 10 October 2023

Subject: Amendments to Constitution

Accountants and Tax Agents Institute of New Zealand Incorporated (“**ATAINZ**”) has engaged us to provide input on its constitution, specifically in updating its constitution for the new Incorporated Societies Act 2022 (the “**new Act**”). While change is required, this is also a chance to upgrade your documentation and this will also provide greater clarity for governance in the future.

The new Act means that all 24,000 incorporated societies in New Zealand must update their constitutions so they comply with, and then can reregister, under this new Act. The reregistration period runs from October 2023 until April 2026, so there is time to consider and discuss the changes needed for constitutions. ATAINZ will remain incorporated under the current Act until it reregisters under the new Act, as long as it does so before the reregistration period ends.

Section 26 of the new Act sets out what needs to be included in a society’s constitution, with new requirements introduced for membership, governance, general meetings, amendment procedures, dispute resolution procedures, name, purposes and winding up. The ATAINZ constitution already has some of this information but not all.

We have been working with the Board to update your constitution to comply with the new Act. You will find **attached** a copy of your constitution with the changes made, along with some practical updates and tweaks. These changes reflect the following requirements for the new Act and the practical needs of your organisation:

- Paragraph 2.1 (Objects) has been updated to delete what was objects (h)-(r) as these objects set out the powers ATAINZ has rather than being purposes. Under the new Act, a society has full capacity to carry on or undertake any activity, do any act, or enter into any transaction and for these purposes full rights, powers and privileges. We have added such a clause as paragraph 2.2.
- Paragraph 3.1 (Application for Membership) has been amended to reflect the requirement under the new Act that a society’s constitution must contain a clause providing that a member must consent to becoming a member of the society.
- Paragraphs 3.11 and 3.12 (Register of Members) has been amended to reflect the requirements under the new Act that (1) certain details of current and former members

must be included in the register and (2) a society's constitution must include arrangements for keeping its register of members up to date.

- What was paragraph 5 (Registered Office) has been deleted as while a society must have a registered office, it does not need to be included in its constitution.
- Paragraphs 5.1 and 5.5 (General Meetings) has been amended to meet the following requirements of the new Act:
  - that a society's annual general meeting must be held no later than six months after its balance date and no later than fifteen months after the previous annual general meeting; and
  - the information required to be presented at a society's annual general meeting.
- Paragraph 5.6 (Minutes) has been added to provide that minutes are required to be kept for annual general meetings as required by the new Act.
- Paragraph 5.7 (General Meeting Procedures) has been updated to make it clear that only the classes of members who have voting rights and have paid subscription fees for the year that are able to vote at the meeting. To clarify this throughout your constitution, we have included a definition for "Voting Members" in your definitions section. This will help to distinguish between references to all members and references to just voting members throughout your constitution, which is an especially important distinction when it comes to quorum, voting and meeting procedures.
- Paragraph 5.11 (Electronic Means of Voting) has been updated to allow for meetings to be held and votes to be cast online if the Board chooses to.
- Paragraph 6.1 (Amendments to Rules) has been updated to provide that there can be no amendment of the constitution which would allow personal pecuniary profits to any individuals. The reference to the Inland Revenue Department has been removed, as the new provision has the same effect.
- Paragraph 6.2 (Minor or Technical Amendments to Rules) has been added to meet the requirements of the new Act.
- Paragraph 7.1 (The Board) has been updated to require a minimum of three members on the board as required by the new Act.
- Paragraphs 7.2 and 7.4 (Eligibility to be a Member of the Board) have been amended to meet the requirement under the new Act that members must be qualified to be elected or appointed, namely that the member is:
  - a natural person;
  - who has consented in writing to be an officer; and
  - certifies that they are not disqualified from being elected or appointed or otherwise holding office under section 47(3) of the new Act.

- Paragraph 7.12 (Roles and Powers of the Board) has been adjusted to reflect the powers of the board described in the new Act.
- Paragraph 8.4(k) and 8.7 (Contact Persons) has been added to meet the requirement under the new Act that a society's constitution must provide for how a contact person will be elected or appointed. A society must have at least one (and up to three) contact persons at all times, and the contact person(s) must be at least 18 years old and ordinarily resident in New Zealand. The purpose of this requirement is for the society to have someone the Registrar can contact if needed.
- Paragraphs 8.8-8.10 (Indemnity and Insurance) has been updated so that certain types of insurance can be taken out for your officers, employees and members.
- Paragraph 9.5 (Board Meetings) has been amended so it explains what happens when two or more of the board members are prevented from voting on a matter because they have a conflict and when a special general meeting must be called.
- Paragraphs 9.9-9.11 (Removal from Board) have been added as under the new Act, a society's constitution must provide for the grounds for removal of a board member.
- What was paragraph 11 (Common Seal) has been deleted as a common seal is optional under the new Act.
- Paragraph 10 (Contracting Method) has been added to provide that contracts can be entered into by two board members and by any other method approved by the New Act.
- Paragraph 17 (Definitions) has been updated to reflect the terms used in your constitution.
- Schedule one (Dispute Resolution Procedures) has been added to meet the requirement under the new Act that a society's constitution contain dispute resolution procedures. We have explained how these procedures work from the elector's perspective in the guide to dealing with complaints.

We hope this summary has been helpful to clearly outline what the changes are and why they are being made.