

# Explanatory Note

## Background

The Incorporated Societies Act 2022 replaces the Incorporated Societies Act 1908. From April next year all incorporated societies must be registered under the Incorporated Societies Act 2022 (2022 Act). We must apply to reregister before 5 April 2026.

In order to reregister we need to update our constitution to comply with the 2022 Act.

## Registration Sub-committee

The Club resolved to reregister under the 2022 Act and appointed a sub-committee to lead the process. The members of the sub-committee are:

- Pravin Laloo – Convenor
- Dipak Bhana
- Rajesh Chhana
- Hansa Parbhu
- Kiran Parbhu
- Shivum Patel

The subcommittee met a number of times over the last few months to revise the constitution to comply with the 2022 Act to enable reregistration.

## Approach to redrafting the Constitution

The proposed constitution incorporates all of the mandatory changes and mandatory clauses required by the 2022 Act. In most cases we have tried to carry over the old clauses, updating them with more modern language.

We have taken the opportunity to update some clauses to reflect current practice and have also proposed a small number of material changes.

Each of the changes is explained below.

## Key Changes

### *Summary of new required clauses*

- Members will have to give their consent to being members (clause 5).
- Officers' duties and qualifications are specified, and officers must give their consent to be officers (clauses 7.9).
- Conflict of interest management processes, registers, and what is and is not a conflict are specified (Definitions, clauses 7.12, and 8.2).
- The procedure for resolving disputes must be included in every constitution (clause 10 and schedule).

- Use of “working days” rather than “days”, “weeks”, and “months” (Definitions and various clauses).

### *Summary of material changes*

- Ordinary and Special resolutions (Definitions)
- Committee composition (clause 7)
- Quorum for committee meetings (clause 7.7)
- Term limit for President (clause 7.9.4)
- Changing the constitution (clause 12)

## **Category of Changes**

The changes are categorised into the following:

- Current clause – no changes/ drafting modernised
- Current clause – material change recommended by subcommittee
- Current clause – changes required by the Act
- New clause – required by the Act
- New clause – recommended as best practice

The document provides a brief explanation of each clause

## Clause by clause commentary

### Clause 1 – Club Information

#### *Current clause – drafting modernised*

This clause includes the Club's name, contact details, and registered address. This information is all in the current constitution but is brought together in one place to make it easier to find and the drafting has been modernised.

#### *New clause – required by the Act*

We currently appoint and notify the Registrar who our contact people are under the current Act. Under the new Act the constitution must have a clause covering this process. We have included the recommended standard clause.

### Clause 2 – Definitions

The definitions have been updated to meet the requirements of the 2022 Act. Many key definitions remain unchanged or have only had their drafting modernised (highlighted in draft).

Some new definitions have been added to support the operation of new mandatory clauses.

The definitions of **Interested member**, **Interests register**, and **Matter** have been inserted consistent with the new conflict of interest management clauses. A definition of **Officer** has also been inserted consistent with the new requirements about officers. Please see the clauses relating to these definitions for further explanation.

We have also recommended new definitions of **Ordinary Resolution** (a resolution which requires more than a 50% majority) and **Special Resolution** (a resolution which requires a 75% majority). This means we do not need to refer to higher majorities in each clause when they are required.

### Clause 3 – Purposes

#### *Current clause – drafting modernised*

The purposes from the current constitution are carried over with some updates to the drafting. One change of note is adding that we are an “amateur sports club”, which is important when applying for funding.

### Clause 4 – Restriction on Club Powers

#### *New clause – recommended as best practice*

The Club must always act in accordance with the law and the constitution. This clause makes this explicitly clear.

Under the new Act the Club cannot operate with the purpose of generating financial benefits for any of its Members. Clauses 4.1 and 4.2 are new recommended standard

clauses to clarify what does not constitute things for the financial gain for members based on the 2022 Act. They are a useful addition given paying people to do things is now more common.

## **Clause 5 – Members**

### *Current clause – changes required by the Act*

The constitution must set out how a person becomes a member of the Club. The clause is based on the current clause and there are no changes to the current categories and types of members.

The one change that we must include is the requirement that members must consent to be a member (clause 5.3). The Club will need to set up a process to obtain and record members' consent.

## **Clause 5.8(b) – Subscriptions and fees**

### *New clause – recommended as best practice*

This clause is new based on best practice to set out what happens when a member fails to pay their fees.

## **Clause 5.11 – Becoming a member again**

### *New clause – recommended as best practice*

This clause is new based on best practice to set out what happens when a former member would like to become a member again. The main proposal is that if a person's membership was terminated for disciplinary reasons, they can only become a member again if approved by a special resolution (majority of more than 75%) of the Committee.

## **Clause 6 – General Meetings**

Overall, clause 6 carries over the requirements in the current constitution. However, there are some changes and additions required by the 2022 Act, and we have recommended some which are considered best practice.

### **Clause 6.1(j)**

#### *New clause – recommended as best practice*

This clause allows resolutions to be passed in writing instead of at a General Meeting. This would allow for situations like we faced with COVID-19 and a significant decision needed to be made but a General Meeting could not be convened.

The clause has a very high threshold (75% majority of members entitled to vote), which would guard against any inappropriate use. It would likely be used very rarely, but it is useful to have it in case of emergency situations.

### **Clause 6.1(k)**

*New clause – recommended as best practice*

This clause allows remote participation in General Meetings. This is recommended after the experience of COVID-19, and also the greater availability and reliability of remote participation technology. We do not have to provide this option at General Meetings, but if we want to be able to use it in the future we need to allow it in the constitution.

**Clause 6.1(n)(ii)**

*New clause – recommended as best practice*

This clause sets out the powers of the General Meeting chair to remove people who are being disorderly, abusive, and disruptive. While there is an implicit power to manage the meeting, it is best practice to specify what happens in those circumstances.

**Clause 6.3 – Annual General Meetings**

*Current clause – changed required by the Act*

Currently the AGM must be held no later than 3 months after our balance date. Under the Act, this is now 6 months. However, we have stated that the preference is to do it within 3 months (clause 6.3(b)).

*Current clause – drafting modernised*

The current spending limit clause is updated to remove specific references to what limits can be set for and instead refer to limits on expenditure outside of day to day operations. This better aligns with the structure of the Act while maintaining the ability of the AGM to set limits where appropriate (clause 6.3(c)(iv)).

**Clause 6.4 – Special General Meetings**

*Current clause – drafting modernised*

The current constitution has clauses setting out the procedures for SGMs. Those clauses in essence repeat the procedures used for AGMs. Consistent with best practice we have deleted those provisions and instead provided that SGMs will be run the same way as AGMs.

**Clause 7 – Committee**

*Current clause – material changes recommended*

The new Act requires every Club to have a committee and sets out some minimum requirements (need at least 3 committee members and how committee members are elected). The current constitution meets these requirements, and we have carried over the structure of the executive and subcommittees. We have also made some drafting changes to modernise the language

In addition, we recommend the following changes:

- Disestablish the Club Captain role – The duties are now part of the jobs of other roles on the committee.
- Change the Gymnasium Manager to Facilities Manager – the title change is to reflect that the role is now more about managing the facility overall and the facility is also leased.
- Change the Social Convenor to Events Coordinator – the title change is to reflect that the role is about organising and delivering a range of events for the Club.
- Change Secretary and two Assistant Secretaries to three Secretaries – the secretary responsibilities are now more evenly shared between the three people who take on the roles, rather than having one lead and assistants. This change reflects this practice.

We have also recommended that the minimum size of the committee be set at 8 members, which must include at least 2 of the following roles – President and the 3 Vice Presidents. This change is to ensure that we have at least 2 of the leadership positions filled and a sufficient number of people to run the Club.

The current quorum requirement is 10 committee members. We recommend changing that to be the more standard approach of at least half the number of the members of the Committee, or at least 6 members. A minimum of 6 has been set as the minimum number that should be involved in making decisions.

We have also included an amendment to allow meetings to be held remotely, which will also allow the quorum requirements to be more easily met.

## **Clause 7.2 Assistants**

*Current clause – changes required by the Act*

Assistants to Committee members changed so that they no longer can attend meetings in the absence of the Committee member and do not have voting rights in any circumstances. This change is to ensure consistency with the new Officer accountabilities.

## **Clauses 7.3 Functions and 7.4 Powers of the Committee**

*Current clauses – changes required by the Act*

Under the 1908 Act committees only had the powers and functions set out in their constitutions. This meant long clauses to make sure nothing was missed. Under the 2022 Act committees have all the powers and functions necessary to operate the club but that can be limited by the constitution.

These clauses have been updated to reflect the approach in the 2022 Act. We have not recommended any additional restrictions on the committee.

## **Clause 7.5 Sub-committees**

### *Current clause - updated best practice*

The current constitution provides for sub-committees and the Club has appointed a number over the years to work on various matters, to share the workload and bring in people with relevant skills and experience. We have updated the clause to reflect best practice that sub-committees only have those powers and functions as approved by a General Meeting or the Committee.

## **Clause 7.6 General Matters**

### *New clause – recommended as best practice*

This clause allows the Committee and subcommittees to meet and pass resolutions remotely. This is recommended after the experience of COVID-19 and the greater availability of reliable remote participation technology.

## **Clause 7.7 Committee Meetings**

### *Current clause – material changes recommended*

Usual practice is for the quorum to be at least half the number of elected members. The current quorum is fixed at 10 committee members. Over the last few years not all the committee positions have been filled which has made it difficult to make a quorum and hold meetings. In light of this, we recommend the quorum be changed to at least half the number of elected Officers. However, we have added a minimum number of 6 Officers as a reasonable number to be present to make decisions (clause 7.7(a)).

### *New clause – recommended as best practice*

This clause allows remote participation in meetings. This is recommended after the experience of COVID-19, and the greater availability and reliability of remote participation technology (clause 7.7(b)).

## **Clause 7.9 Officers**

### *New clause – required by the Act*

The new Act sets out who can be an officer of the Club, and the duties of those officers. These clauses are the standard recommended clauses based on the 2022 Act.

A person is disqualified from being an officer if they are —

- currently bankrupt
- prohibited from being a director or promoter of a company. Learn about director prohibitions
- disqualified from being an officer of a charitable entity
- convicted and sentenced for certain offending within the last 7 years for example, crimes involving dishonesty, tax evasion, and money laundering.
- subject to particular orders in New Zealand and overseas.

Each officer must, in writing, consent to being an officer and certify to the Club that they are not disqualified from being an officer.

The duties are that you must:

- Act in good faith and in the best interests of the society.
- Exercise powers for proper purposes only.
- Comply with the Act and your society's constitution.
- Exercise reasonable care and diligence.
- Not create a substantial risk of serious loss to creditors.
- Not incur an obligation the officer does not reasonably believe the society can perform.

These duties have always existed, but they have now been set out clearly in the new Act.

### **Clause 7.9.3(a)(iii)**

*New clause – recommended as best practice*

We recommend, consistent with best practice, adding a clause that explicitly addresses what happens if there is a tied vote.

### **Clause 7.9.4(b) Terms**

*New clause – material change recommended*

A term limit for the President is proposed. A person will not be able to serve more than 3 consecutive terms. However, if there is no other candidate and the AGM agrees by special resolution (majority of more than 75%) then a person can serve a fourth term.

This clause is about encouraging a refresh of the leadership of the Club. A person could come back and be nominated for the role after a break of at least a year.

### **Clause 7.10 – Removal of officers**

*New clause – required by Act and recommended as best practice*

The current constitution refers to committee members missing meeting without apologising and the general disciplinary provisions also apply. With the 2022 Act setting out the qualification of Officers, the constitution needs to cover what happens if an elect officer fails to meet the qualifications during their term, for example if they are convicted of one of the specified offences or goes bankrupt.

We have also included what happens if an elect officer is absent without giving apologies or become unable to fulfill their duties.

### **Clause 7.12 – Conflicts of interest**

*New clause – required by the Act*

Conflicts of interest had to be appropriately managed and declared previously consistent with good governance and decision-making practices.

The 2022 Act sets out in detail how conflicts of interest need to be managed. This new clause reflects those requirements and works alongside the register of interests in clause 8.1. Having a clear process should make it easier to identify when there is and isn't a conflict and how to manage them effectively.

## **Clause 8 – Records**

### **Clause 8.1 – Register of members**

*Current clause – changes required by Act*

The current constitution requires a register of members to be kept. The new Act requires us to have a more detailed clause setting out what information must be kept, including things like email addresses. This clause is the standard clause recommended by the Registrar.

### **Clause 8.2 – Interests register**

*New clause – required by the Act*

All officers have a duty to disclose interests to the committee. They must make this disclosure as soon as they become aware they have an interest in any matter being considered by the committee.

The committee must keep and maintain a register of these disclosures in an interests register.

### **Clause 8.3 – Access to information by members**

*Current clause – changes required by the Act*

The current constitution has a general reference to members being able to access information (such as minutes and other records). The new Act sets in more detail how access should be granted and when access can be withheld. This clause is the standard recommended clause that reflects the requirements of the Act.

## **Clause 9 – Finances**

*Current clause – drafting modernised*

The constitution needs to set out how the finances must be managed. The current provisions are largely carried over with some modernisation of the drafting. We have updated the clauses to reflect current best practice about managing finances.

We have also added that any moneys received must be banked within 10 working days, consistent with best practice.

### **Clause 9.3 – Balance date**

### *Current clause – drafting modernised*

The Club's balance is 1 January. No change is being made but the drafting of this clause has been updated to reflect the language used in the 2022 Act.

### **Clause 10 – Dispute resolution**

#### *New clause – required by the Act*

All societies must have its dispute resolution processes documented in its constitution. The process must cover:

- Meanings of dispute and complaint.
- How a complaint is made.
- The person who makes the complaint has a right to be heard.
- The person who is the subject of the complaint has a right to be heard.
- Investigating and determining dispute.
- The grounds for deciding not to proceed further with the complaint.
- Who the society may refer a complaint to and how.
- Who may or may not be a decision maker.

We can either adopt the processes contained in sections 38 to 44 and Schedule 2 of the 2022 Act or alternatively we can develop our own dispute resolution processes.

We recommend adopting the processes contained in the new Act to ensure we comply with all the new requirements. The detailed requirements are set out in the schedule.

### **Clause 11 – Liquidation and removal from register**

#### *Current clause – changes required by the Act*

All constitutions need to set out what happens if the Club is wound up and closed. The current constitution has a winding up clause, which largely meets the requirements of the Act. We have made some minor drafting changes to ensure compliance with the Act (clauses 11.3 (a) and (b)).

#### *Current clause – material change recommended by subcommittee*

The current constitution requires 2 meetings to be held at least 30 days apart to pass a motion to liquidate the Club. This approach is unusual in modern incorporated society constitutions. The more common approach is to require a majority greater than 50% to approve liquidation.

We recommend adopting this approach, and that liquidation can only be made by the proposed Special Resolution (a majority of at least 75%) at a General Meeting where 30 days notice has been given for the meeting (clauses 11.3 (c) and (d)).

### **Clause 12 – Alterations to the constitution**

#### *Current clause – material change recommended by subcommittee*

Constitutions typically contain clauses that provide special procedures to make a change to the constitution. This is to ensure that significant changes cannot be made without proper consideration and significant support from the membership.

The current constitution requires 2 meetings to be held within 3 months of each other to pass a motion to change the constitution. This is the process being adopted to make the changes to enable reregistration. This approach is unusual in modern incorporated society constitutions. More common is to have a special majority of more than 50% to make a change at a single meeting.

We recommend adopting this approach, and that changes to the constitution can only be made by the proposed Special Resolution – a majority of at least 75%.

The amount of notice that must be given for any change is not currently specified. Consistent with other notice requirements we recommend that any change must be notified to members at least 20 working days before it is considered at a General Meeting.

### **Clause 13 – Other**

#### **Clause 13.1 – Common seal**

*Current clause – drafting modernised*

No change is recommended. Clubs do not have to have a common seal, however we currently have one under our constitution and have carried the clause over.

#### **Clause 13.2 - Bylaws**

*Current clause – drafting modernised*

This clause allows the Club to make additional rules and policies, such as Codes of Conduct. No changes are required or proposed but once the new constitution is adopted it would be useful to refresh all of the current bylaws.

#### **Clause 13.3 – Indemnities**

*Current clause – drafting modernised*

If indemnities are to be provided to club members and officers, they must be set out in the constitution. We have carried over the clause from the current constitution and modernised the language.