



ARBITRATORS' AND MEDIATORS'
INSTITUTE OF NEW ZEALAND INC
Te Mana Kaiwhakatau, Takawaenga o Aotearoa



Constitution of Arbitrators' and Mediators' Institute of New Zealand Incorporated,

Te Mana Kaiwhakatau,
Takawaenga o Aotearoa

Adopted: August 5, 2021



CONTENTS

PART ONE – INTRODUCTORY RULES	1
1. NAME AND REGISTERED OFFICE	1
2. DEFINITIONS AND INTERPRETATION	1
3. PURPOSES OF THE SOCIETY	4
4. POWERS	5
PART TWO - MEMBERSHIP	6
5. MEMBERS	6
6. CLASSES.....	7
7. CESSATION OF MEMBERSHIP	7
PART THREE – GENERAL MEETINGS.....	9
8. GENERAL MEETINGS	9
9. PROCEDURE AT GENERAL MEETINGS	10
10. APPOINTMENT OF PROXIES	12
11. RESOLUTION IN LIEU OF MEETING.....	12
PART FOUR - MANAGEMENT.....	14
12. COUNCIL	14
13. BYLAWS	16
14. COMMITTEES	16
15. INDEMNITY AND INSURANCE	17
16. INTERESTS OF OFFICERS.....	18
PART FIVE – ADMINISTRATIVE AND OTHER MATTERS	20
17. RECORDS	20
18. DISPUTE RESOLUTION	20
19. METHOD OF CONTRACTING	21
20. FINANCE.....	21
21. LIQUIDATION, WINDING UP AND DISTRIBUTION OF SURPLUS ASSETS	21
22. AMENDMENTS TO THE CONSTITUTION	22

RULES AND CONSTITUTION

OF

ARBITRATORS' AND MEDIATORS' INSTITUTE OF NEW ZEALAND INCORPORATED,

TE MANA KAIWHAKATAU, TAKAWAENGA O AOTEAROA

PART ONE – INTRODUCTION

1. NAME AND REGISTERED OFFICE

- 1.1 **Name:** The registered name of the society is Arbitrators' and Mediators' Institute of New Zealand Incorporated. It may also be known as Te Mana Kaiwhakatau, Takawaenga o Aotearoa or AMINZ ("the Institute").
- 1.2 **Registered office:** The registered office of the Institute shall be at such place in Aotearoa New Zealand as the Council may determine from time to time.

2. DEFINITIONS AND INTERPRETATION

- 2.1 **Definitions:** In this Constitution, unless the context otherwise requires:

"**Act**" means the Incorporated Societies Act 1908 and any successor legislation that applies to the Institute.

"**Annual General Meeting**" means a meeting of the Members of the Institute held once per year, which, among other things, will receive and consider reports on the Institute's activities and finances.

"**Associate**" means a Member who has been admitted to the Associate Class.

"**Bylaws**" means the bylaws of the Institute, as constituted or amended from time to time by the Council under clause 13.1.

"**Class**" means a class of membership to the Institute as determined by the Council under clause 6.

"**Chief Executive Officer**" means a person appointed under clause 12.2

"**Committee**" means a Committee established by the Council under clause 14.

"**Constitution**" means these rules and constitution, as amended from time to time.

"**Council**" means the Institute's governing body, as established by clause 12.1.

"**Council Member**" means an Officer of the Institute other than the President or Vice-President.

"**Dispute Resolution**" and "**Dispute Resolution Procedure**" is a reference to adjudication, arbitration, conciliation, conflict coaching, expert determination, facilitation, mediation, and other forms of dispute resolution.

"**Eligible Person**" is a person who meets the criteria in clause 12.11.

"**Fellow**" means a Member who has been admitted to the Fellow Class.

"**General Meeting**" means either an Annual General Meeting or a Special General Meeting of the Institute.

"**Indemnified Person**" means a person who has been indemnified by the Institute under clause 15.

"**Interested**" means, in respect of an Officer, an Officer who has an interest in a matter under the Act, and "**Interest**" has a corresponding meaning.

"**Institute**" means Arbitrators' and Mediators' Institute of New Zealand Incorporated, Te Mana Kaiwhakatau, Takawaenga o Aotearoa.

"**Member**" means a person properly admitted as a member of the Institute under this Constitution, who has not ceased to be a member.

"**Notice**" means notice delivered to the Members by the Institute using each Member's contact information provided to the Institute in accordance with this Constitution.

"**Officer**" means an Officer of the Institute, elected under clause 12.4.

"**Ordinary Resolution**" means a resolution that is approved by a simple majority of the votes of those Members entitled to vote and voting on the question.

"**President**" means an Officer of the Institute currently serving as president of the Institute.

"**Returning Officer**" means a person appointed under clause 9.8.

"**Special General Meeting**" means a meeting of the Members, other than an Annual

General Meeting, called for a specific purpose or purposes.

"Unfinancial Member" has the meaning given to it in clause 5.7.

"Vice-President" means an Officer of the Institute currently serving as vice-president of the Institute.

"Voting Member" means a Member admitted to the Fellow or Associate Class who is not an Unfinancial Member.

2.2 **Interpretation:** In this Constitution, unless the context otherwise requires or specifically states otherwise:

- (a) the table of contents, headings and descriptions relating to sections of the Act, are inserted for convenience only and shall be ignored in construing this Constitution;
- (b) the singular includes the plural and vice versa;
- (c) reference to a statute or other law includes regulations, rules, orders and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of adoption of this Constitution);
- (d) "written" and "in writing" include any means of reproducing words, figures and symbols in a tangible and visible form;
- (e) words and expressions defined or explained in the Act (unless expressly defined or explained in this Constitution) have the same meaning in this Constitution;
- (f) any word or expression equivalent with a definition in this Constitution has a meaning corresponding or construed to that definition; and
- (g) references to clauses and sub-clauses are references to clauses and sub-clauses in this Constitution, unless stated otherwise.

2.3 **Constitution not to prevail over Act:** This Constitution has no effect to the extent that it contravenes the Act, or is inconsistent with it, provided that if there is any conflict between:

- (a) a provision in this Constitution and a provision in the Act which is expressly permitted to be altered by this Constitution; or
- (b) a word or expression defined or explained in the Act and a word or expression defined or explained in this Constitution,

the provision, word or expression in this Constitution prevails.

2.4 **Commencement date:** This Constitution will come into effect on 1 January 2022.

3. PURPOSES OF THE SOCIETY

3.1 The primary purposes of the Institute are to:

- (a) promote, advocate for, encourage and facilitate the practise and theory of Dispute Resolution;
- (b) promote, advocate for and facilitate the expression of tikanga and other cultural values and norms in the practise and theory of Dispute Resolution;
- (c) promote, advocate for and facilitate diversity in the practise and theory of Dispute Resolution;
- (d) develop, maintain and uphold professional standards of practice in all of the fields of Dispute Resolution;
- (e) develop, maintain and uphold ethical standards for the conduct and practice of its Members;
- (f) support, safeguard and promote the status and interests of the professions and practitioners engaged in Dispute Resolution;
- (g) develop, enable, assist with and promote excellence and thought-leadership in Dispute Resolution and Dispute Resolution Procedures;
- (h) provide training and education at introductory through to advanced levels for those practising or wishing to practise in the field of Dispute Resolution, and to promote the study of the law and practise relating to Dispute Resolution and Dispute Resolution Procedures,
- (i) provide means for testing the qualifications of candidates for admission to professional membership of the Institute by examination or otherwise including recognition of relevant Aotearoa New Zealand and international qualifications;
- (j) provide a facility for testing, classification, accreditation, certification and grading of arbitrators, mediators and other Dispute Resolution practitioners;

- (k) provide for the establishment of lists and panels of qualified and/or accredited arbitrators and mediators and other Dispute Resolution practitioners, and for admission to and removal from such lists and panels;
- (l) be an appointing authority under the Arbitration Act 1996 or the Construction Contracts Act 2002, any rules of the Institute and any law, regulation or agreement which provides for the Institute to appoint a Dispute Resolution practitioner to undertake Dispute Resolution Procedures;
- (m) afford opportunities for communication among the Members, including the arrangement of social functions; and
- (n) do all things reasonably incidental or conducive to attaining the above purposes.

3.2 **Te Tiriti:** The purposes of the Institute operate to enable the Institute, its Members, and other parties, to give effect to the principles of Te Tiriti o Waitangi/Treaty of Waitangi.

3.3 **No financial gain:** It is not a purpose of the Institute to operate for the financial (or pecuniary) gain of its Members.

4. **POWERS**

4.1 **Powers:** The Institute has all the rights, powers and privileges of a natural person otherwise conferred onto it by the Act and by law, including the power to borrow money and incur debt.

4.2 **Furtherance of purposes:** The Institute may only exercise its powers to achieve or further its purposes.

4.3 **Actions permitted by Act:** The Institute may undertake an action that results in a financial benefit being provided to a Member only if the Act provides that in undertaking that action:

- (a) the Institute does not have a purpose of financial (or pecuniary) gain; and
- (b) the Institute is not being carried on for the financial gain of any of its Members.

PART TWO - MEMBERSHIP

5. MEMBERS

- 5.1 **Number of Members:** The Institute must maintain the minimum number of Members required by the Act. The maximum number of Members is unlimited.
- 5.2 **Eligibility of Membership:** The Council will determine the eligibility criteria of membership to the Institute and must publish such criteria in the Bylaws.
- 5.3 **Admission of Members:** The process for admission is as follows:
- (a) any applicant must complete an application form, supply information or attend an interview, each as required by the Council;
 - (b) the Council may approve the admission of any Member to the Institute;
 - (c) a Member will not be admitted to the Institute unless they have provided written consent to becoming a Member.¹
- 5.4 **Obligations and rights of Members:** Every Member:
- (a) must comply with this Constitution and the Bylaws, including any ethical standards of the Institute;
 - (b) must promote the interests and purposes of the Institute and do nothing to bring the Institute into disrepute;
 - (c) must provide the Institute with that Member's name and contact details (as required by the Act) and promptly advise the Institute of any changes to those details;
 - (d) may only exercise the rights of membership (including attending and, where applicable, voting at General Meetings) if all subscriptions, levies and any other fees have been paid to the Institute by the relevant due date.
- 5.5 **Annual subscriptions:** The Council will determine the annual subscription amount for membership to the Institute. The Council may set a different subscription amount for each Class of Membership.
- 5.6 **Other fees or levies:** From time to time the Council may:

¹ See section 26(c) and 70 of the Incorporated Societies Bill.

- (a) impose additional levies on the Members or a Class of Members; or
- (b) charge fees in connection with a Member's involvement with specific Institute events or activities.

5.7 **Non-payment of subscriptions, fees or levies:** If a Member fails to pay any subscription, fee or levy imposed against it by the relevant due date, they will be deemed an "**Unfinancial Member**". Unfinancial Members have no voting rights at a General Meeting and will not be counted when determining the quorum at a General Meeting.

6. CLASSES OF MEMBERSHIP

6.1 **Classes:** The Council will divide the Members into two or more Classes, which must always include a Fellow and Associate Class. The Council must specify the name of each Class and any rights, obligations, incidentals or criteria of membership to each Class in the Bylaws.

6.2 **Affiliate Classes:** The Council may establish additional Classes other than Fellow and Associate, provided that any additional Classes will have no voting rights at General Meetings of the Institute.

6.3 **Membership to a Class:** Each Member may only belong to one Class. The Council may make a determination to which Class of membership a particular Member belongs.

7. CESSATION OF MEMBERSHIP

7.1 **Cessation:** A Member ceases to be a Member:

- (a) immediately on death or bankruptcy;
- (b) by resignation by written notice to the Institute;
- (c) by resolution of the Council, providing that the Council may only remove a Member if that Member:
 - (i) no longer meets, or is belatedly found to not have met, any applicable membership eligibility criteria;
 - (ii) has failed to pay any fee, levy or charge by its due date and has not remedied that failure within 10 working days of receiving notice from the Institute to do so; or

- (iii) having been subject to a dispute resolution process under this Constitution and following the disputes resolution process the Council resolves that the Member's membership be terminated; or
- (iv) may otherwise be removed in accordance with the Constitution or Bylaws.

7.2 **Obligations on resignation or termination:** A Member who ceases to be a Member under this Constitution:

- (a) remains liable to pay all subscriptions, levies or fees imposed upon the Member before the date of their resignation or termination;
- (b) must return to the Institute all material or property provided to them or their related parties; and
- (c) ceases to be entitled to any membership rights stipulated by this Constitution or the Bylaws.

PART THREE – GENERAL MEETINGS

8. GENERAL MEETINGS

8.1 **Annual General Meetings:** The Annual General Meeting will be held once a year no later than 30 September on a date and at a location determined by the Council, and consistent with any requirements in the Act.

8.2 **Annual General Meeting business:**

(a) The business of the Annual General Meeting must include:

- (i) confirmation of the minutes of the previous General Meetings;
- (ii) receipt of the Institute's annual report and the financial statements for the Institute's previous accounting period;
- (iii) confirming the election of vacant Officer positions in accordance with clause 12.4; and
- (iv) consideration of any motions validly proposed by the Council or a Member.

(b) The Council must, at each Annual General Meeting, present the following information:

- (i) an annual report on the affairs of the Institute during the most recently completed accounting period;
- (ii) the reviewed financial statements for that period; and
- (iii) notice of any disclosures of conflicts of interest made by Officers during that period (including a brief summary of the matters, or types of matters, to which those disclosures relate)²; and
- (iv) any other matters required by the Act.

8.3 **Special General Meetings:** The Council may resolve to call a Special General Meeting at any time, at a date and location fixed by the Council. The Council must call a Special General Meeting within 21 days of receiving a written request signed by 10 Voting Members, to be held at a date and location fixed by the Council in accordance with clause 9.5.

² See section 58 of the Incorporated Societies Bill.

8.4 **Special General Meetings' business:** The Council resolution or Members' request to call a Special General Meeting must state the business that the Special General Meeting is to deal with. A Special General Meeting may only consider and deal with the business specified in the Council resolution or Members' request.

9. PROCEDURE AT GENERAL MEETINGS

9.1 **Notice:** The Council must give all Members at least 14 days' Notice of any General Meeting and the business to be conducted at the General Meeting. The General Meeting and its business will not be invalidated simply because one or more Members did not receive Notice.

9.2 **Quorum:** No General Meeting may be held unless at least 15 Voting Members attend. This will constitute a quorum. If within half an hour after the time appointed for a meeting a quorum is not present the meeting must be adjourned to a day, time and place determined by the Council, and if at such adjourned meeting a quorum is not present, those Voting Members present will be deemed to constitute a sufficient quorum.

9.3 **Voting etc:**

- (a) Members may attend, speak and vote at General Meetings in person or through a validly appointed Proxy;
- (b) Each Voting Member shall have one vote each;
- (c) The method of voting may be by voices, hands or poll as determined by the chairperson of the General Meeting;
- (d) Unless otherwise required by this Constitution, all motions at a General Meeting will be decided by Ordinary Resolution;
- (e) The chairperson of the General Meeting, with assistance from the Returning Officer (as required), shall determine whether any motion has passed.

9.4 **Motions at General Meetings:**

- (a) The Council may put forward motions for the Members to vote on at a General Meeting, which must be notified to the Members with the Notice of the General Meeting.
- (b) Voting Members may request that a motion be voted on ("**Member's Motion**") at a General Meeting by providing notice to the Council at least 10 working days before

that meeting. The Council must provide notice of any Member's Motions received seven days before the meeting is to be held.

- 9.5 **Method of holding the General Meeting:** General Meetings may be held at one or more locations using any real-time audio, audio and visual, or electronic communication that gives each Member a reasonable opportunity to participate.
- 9.6 **Chairperson:** All General Meetings must be chaired by the President, the Vice President or an Officer appointed by the Council. If all Officers are absent from the meeting, the meeting must elect a Voting Member to chair the meeting. A person chairing a General Meeting will have a casting vote.
- 9.7 **Powers of the chair:** Any person chairing a General Meeting may:
- (a) with consent of the General Meeting, adjourn the General Meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place;
 - (b) direct that any person not entitled to be present at the meeting, obstructing the business of the meeting, behaving in a disorderly manner, being abusive or failing to abide by the directions of the chairperson be removed from the General Meeting;
 - (c) in the absence of a quorum or in the case of emergency, adjourn the meeting or declare it closed.
- 9.8 **Returning Officer:** Prior to a General Meeting occurring, the Council must appoint a Returning Officer. The Returning Officer must not be a nominee running for the Council. The role of the Returning Officer is:
- (a) to supervise the counting of any votes cast in relation to a motion conducted by poll and assist in determining whether such a motion has passed;
 - (b) to receive votes cast in accordance with clause 12.4 and to confirm the results of the election of the Officers;
 - (c) receive completed Proxy Forms and determine whether a Proxy has been validly appointed by a Voting Member; and
 - (d) be available to be appointed as a Proxy by the Voting Members, and vote in accordance with all received instructions.

10. APPOINTMENT OF PROXIES

- 10.1 **Proxy Form:** The Council must publish a Proxy Form to enable Voting Members to appoint a Proxy in relation to any General Meeting at least 15 working days before the Meeting. The Proxy Form must enable the appointee to instruct their Proxy to vote for, against or abstain on any motion.
- 10.2 **Eligibility of Proxies:** Only another Voting Member or the Returning Officer may be appointed as a Proxy.
- 10.3 **No-Discretionary votes:** If a Voting Member has appointed the Returning Officer as their Proxy and the Member has not instructed the Returning Officer how to vote on a particular motion, the Returning Officer must abstain from voting on that motion.
- 10.4 **Receipt by Returning Officer:** Voting Members must deliver completed Proxy Forms to the Returning Officer, who will determine whether a Proxy has been validly appointed by the Member. Proxy Forms must be received at least two working days before the General Meeting.

11. RESOLUTION IN LIEU OF MEETING

- 11.1 **Resolution in lieu of meeting:** The Institute may exercise any powers that would be exercised at a General Meeting by a written resolution signed by no less than 75% of the number of current Voting Members. Any such resolution may consist of several documents (including electronic communication such as by email) in similar form, each signed or assented to by one or more Members (whose assent may be given by electronic communication, including email).³
- 11.2 **Proposed resolution to be circulated to Members:** The Institute must ensure:
- (a) the proposed resolution is dated with the date that it is first circulated to a Voting Member for the purpose of signing (the "**circulation date**");
 - (b) the proposed resolution is sent to every current Member of the Institute, as far as is reasonably practical, on the circulation date; and
 - (c) that the proposed resolution will lapse within three months of the circulation date, and a statement to this effect is contained in the notice circulating the resolution.⁴

³ See section 83 of the Incorporated Societies Bill.

⁴ See section 84 of the Incorporated Societies Bill.

11.3 **Institute to send passed resolution:** Within five working days after a resolution has passed under clause 11.1, the Institute must send a copy of the resolution to each Member who did not sign the resolution.

PART FOUR - MANAGEMENT

12. COUNCIL

- 12.1 **Establishment:** The Institute will be governed by Council, which will exercise all powers of the Institute in between General Meetings.
- 12.2 **Chief Executive Officer:** The Council may appoint a Chief Executive Officer to manage the day to day operations of the Institute. The Chief Executive Officer may exercise all powers of the Institute, unless those powers are explicitly reserved to be exercised by the Council or a Committee by this Constitution or the Bylaws.
- 12.3 **Composition:** The Council will consist of a minimum of five and a maximum of seven Officers comprised of the President, the Vice-President and up to five other Council Members.
- 12.4 **Election of Officers:** The election of Officers must be conducted as follows:
- (a) 90 days before the Annual General Meeting the Council must call for nominations for any positions on the council that will become vacant;
 - (b) nominations must be in writing and delivered to the Institute no less than 60 days before the Annual General Meeting;
 - (c) the Institute must send a list of the candidates seeking election, together with instructions for the method of voting, to each Voting Member no later than 50 days before the Annual General Meeting;
 - (d) each Voting Member may then cast their vote(s) in accordance with the voting instructions; and
 - (e) in the event any nominees receive equal votes, the tie shall be decided by lot.
- 12.5 **Term:**
- (a) The term of office for all Officers will be two years, expiring at the end of the Annual General Meeting in the year corresponding with the last year of each Officer's term of office.
 - (b) Members may serve not more than 3 terms as an ordinary Council member, plus an additional term as each of President and/or Vice President.
- 12.6 **Rotation of Officers:**

- (a) At least one Officer must retire at the Annual General Meeting each year.
 - (b) All retiring Officers will be eligible for re-election as a Council Member provided that no Council Member may serve more than three terms.
- 12.7 **Removal:** An Officer must be removed from office immediately if they:
- (a) are no longer an Eligible Person under clause 12.11;
 - (b) provide written notice to the Council of their resignation;
 - (c) are removed by resolution of the Council; or
 - (d) are no longer able to perform the functions of their office.
- 12.8 **Casual Vacancies:** If at any time there are fewer than five Council Members, the Council may, at any time, appoint an Eligible Person as a Council Member. Any Council Members appointed under this clause 12.8 must retire at the end of the Annual General Meeting following their appointment, however, will only be eligible to serve two further consecutive terms in accordance with 12.6(b).
- 12.9 **Vacancy of President and Vice-President:** In the event that the position of President or Vice-President becomes vacant, the Council must appoint a Council Member to serve as President or Vice-President (as applicable) for the remainder of that term.
- 12.10 **Too few Council members:** If at any time there are fewer than three Officers, the Council may only act:
- (a) to appoint Officers under clause 12.8 or 12.9;
 - (b) to convene a Special General Meeting; or
 - (c) to reasonably respond to any emergency.
- 12.11 **Eligible Persons:** An Officer must be an Eligible Person. An Eligible Person is a person who is:
- (a) a natural person who is at least 18 years of age;
 - (b) ordinarily resident in Aotearoa New Zealand;
 - (c) a Fellow or Associate Member who is not an unfinancial member; and
 - (d) not disqualified from being an officer of an incorporated society under the Act or disqualified from being a director of a company under the Companies Act 1993.

- 12.12 **Quorum:** A quorum of the Council is a majority of currently appointed Officers.
- 12.13 **Chairperson:** The President (or in their absence the Vice-President, or any other Officer appointed by the Council as chairperson of that meeting) will serve as chairperson of the Council. In the event of an equality of votes, the chairperson will have a casting vote.
- 12.14 **Exercise of powers:** The powers of the Council are exercisable by:
- (a) resolution passed at a meeting of the Council at which a quorum is present; or
 - (b) written resolution signed by a majority of Officers.
- 12.15 **Delegation of powers:** The Council may delegate to a Committee, an Officer, an employee of the Society, or to any other person, any one or more of its powers.
- 12.16 **Contact officer:** If required to have a contact officer by the Act, the Council must appoint an Officer or employee to act as contact officer.

13. BYLAWS

- 13.1 **Bylaws:** The Council, from time to time, may make and amend Bylaws and policies for the conduct and control of the Institute's activities and code of conduct applicable to Members, providing that any Bylaws are not inconsistent with the Act or this Constitution.
- 13.2 **Bylaws to be binding:** The Bylaws will be binding on all Members, Officers and employees of the Institute.

14. COMMITTEES

- 14.1 **Establishment:** The Council may establish one or more Committees on any basis that the Council determines. The Council may disestablish a Committee at any time.
- 14.2 **Membership:** The Council may appoint or remove Committee members by resolution.
- 14.3 **Reporting:** Each Committee must report to, and be under the supervision of, the Council.
- 14.4 **Powers:** No Committee may, without express approval of the Council:
- (a) commit the Institute to any financial expenditure or bind the Institute to any legal obligation; or
 - (b) further delegate any of its powers, including to any subcommittee.

15. INDEMNITY AND INSURANCE

15.1 **Indemnity of Officers:** Subject to clause 15.2, every Officer, Member or employee of the Institute may be indemnified by the Institute:

- (a) in respect of liability to any person other than the Institute for any act or omission in their capacity as an Officer, Member or employee, and costs incurred by them in defending or settling any claim or proceeding relating to any such liability; and
- (b) for any costs incurred by them in any proceeding that relates to liability for any act or omission in their capacity as an Officer, Member or employee in which judgment is given in their favour, or in which they are acquitted, or which is discontinued,

and this indemnity will continue in force, despite any subsequent revocation or amendment of this clause, in relation to any liability which arises out of any act or omission by an Officer, Member or employee prior to the date of such revocation or amendment, but will be subject to any limitations contained in any deed or agreement from time to time in force between the Institute and the Indemnified Person relating to indemnities.

15.2 **Exceptions:** An indemnity conferred by clause 15.1(a) will not apply in respect of:

- (a) any criminal liability; or
- (b) in respect of an Officer, a liability that arises in respect of a breach out of the duty to act in good faith and in the best interests of the Institute; or
- (c) in respect of an employee or Member, a liability that arises in respect of a breach of any fiduciary duty owed to the Institute.

An indemnity conferred by clause 15.1 will not apply in respect of any liability or costs in respect of which an indemnity is prohibited by any legislation or law.

15.3 **Insurance:** The Institute may, with the prior approval of the Council, effect insurance for an Officer, Member or employee of the Institute, in respect of:

- (a) liability, not being criminal or regulatory liability, for any act or omission in such capacity;
- (b) costs incurred by them in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by them in defending any criminal or regulatory proceedings that have been brought against the Officer or employee in relation to any act or omission in his or her capacity as an Officer or employee and in which they are acquitted.

15.4 **Definitions:** In this clause 15, words given extended meanings in the Act have those extended meanings.

16. INTERESTS OF OFFICERS

16.1 **Disclosure of Interests:** An Officer must comply with the Act (relating to disclosure of interest of officers) but failure to comply with that section does not affect the operation of clause 16.2.

16.2 **Personal involvement of Officers:** Notwithstanding any rule of law or equity to the contrary, but subject to the Act (relating to avoidance of transactions in which an Officer is Interested) and section 36(4)(a) of the Financial Reporting Act 2013 (prohibiting a director from acting as auditor of a specified entity), an Officer may:

- (a) contract with the Institute in any capacity;
- (b) be a party to any transaction with Institute;
- (c) have any direct or indirect personal involvement or Interest in any transaction or arrangement to which the Institute is a party or in which it is otherwise directly or indirectly interested or involved;
- (d) become a director or other officer of, or otherwise Interested in, any corporation promoted by the Institute or in which the Institute may be directly or indirectly Interested; and
- (e) retain any remuneration, profit or benefits in relation to any of the foregoing,

and no contract or arrangement of any kind referred to in this clause may be avoided by reason of an Officer's Interest.

16.3 **Interested Officers may not vote:** An Officer who is Interested in a transaction entered into, or to be entered into, by the Institute may not:

- (a) vote on any matter relating to the transaction; or
- (b) sign a document relating to the transaction on behalf of the Institute; however,

an Officer who is Interested in a transaction may attend a meeting of the Council at which any matter relating to the transaction arises and be included among the Officers present at the meeting for the purposes of a quorum.

16.4 **Council to call Special General Meeting:** If, in respect of a matter, 50% or more Officers are prevented from voting under clause 16.3, the Council must call a Special General Meeting to determine that matter.

PART FIVE – ADMINISTRATIVE AND OTHER MATTERS

17. RECORDS

- 17.1 **Register of Members:** The Council must keep an up-to-date register of Members, recording for each Member their name, contact details and any other information required by this Constitution, the Bylaws or prescribed by the Act.
- 17.2 **Register of interests:** The Council must at all times maintain an up-to-date register of interests disclosed by Officers, as required by the Act.
- 17.3 **Member access to records:** At any time, a Member may make a written request to the Institute for information held by it in accordance with the Act. The Council may provide that information or refuse to provide that information, in each case, in accordance with the Act.

18. DISPUTE RESOLUTION

- 18.1 **Raising disputes:** Any Member may raise a dispute, grievance or complaint against another Member, the Council or the Institute, in respect of that Member's involvement in the Institute's activities occurring after this Constitution comes into force. For the avoidance of doubt, any disputes, grievances or complaints of professional misconduct in progress or laid before this Constitution comes into force shall be dealt with using the procedures from the rules of the Institute as they previously applied.
- 18.2 **Professional Misconduct:** All Members are required to adhere to professional standards and a professional code of conduct as provided for in the Bylaws. Any breach of these provisions may constitute professional misconduct requiring resolution in accordance with the Bylaws.
- 18.3 **Dispute procedure:** The Institute must conduct any process intended to resolve a dispute raised with the Institute under 18.1, in accordance with the principles of natural justice and any minimum requirements imposed by the Act.⁵ The Bylaws must provide for a dispute resolution procedure for disputes brought under 18.1 and 18.2, respectively.
- 18.4 **Other remedies:** Nothing in this Constitution shall affect a person's right to pursue other remedies.

⁵ See Schedule 2 of the Incorporated Societies Bill.

19. METHOD OF CONTRACTING

- 19.1 **Deeds:** A deed which is to be entered into by the Institute may be signed on behalf of the Institute, by:
- (a) two or more Officers; or
 - (b) an Officer, or any person authorised by the Council, whose signature must be witnessed; or
 - (c) one or more attorneys appointed by the Institute.
- 19.2 **Other written contracts:** An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Institute, may be signed on behalf of the Institute by a person acting under the express or implied authority of the Institute.
- 19.3 **Other obligations:** Any other obligation or contract may be entered into on behalf of the Institute in writing or orally by a person acting under the express or implied authority of the Institute.
- 19.4 **Common seal:** If the Act requires the Institute to have a common seal, that common seal shall be in custody of the Council or any person authorised by the Council and may only be affixed to any document in accordance with the Act. Notwithstanding this clause 19.4, the Institute may execute or enter into any obligation or contract in accordance with Subpart 1, Part 2 of the Property Law Act 2007.

20. FINANCE

- 20.1 **Balance date:** The balance date and end of financial year of the Institute shall be 31 March each year.
- 20.2 **Financial records:** The Council must cause to be maintained proper financial records, including producing annual financial statements.

21. LIQUIDATION, WINDING UP AND DISTRIBUTION OF SURPLUS ASSETS

- 21.1 **Removal from the register:** If the Institute has ceased operating, discharged its debts and liabilities to its known creditors and distributed its surplus assets in accordance with this Constitution, the Council may apply to the Registrar of Incorporated Societies to remove the Institute from the register.

21.2 **Obligations during liquidation etc:** If the Institute is placed into liquidation, each Member's liability to the Institute will be limited to the balance of any annual subscription, fee or levy unpaid at the time the order for the appointment of a liquidator is made.

21.3 **Distribution of assets:** If the Institute is wound up, liquidated or removed from the Register of Incorporated Societies, or a resolution to do so is passed by the Members at a General Meeting, no distribution of surplus assets may be made to any Members but instead must be made to a not-for-profit entity that has a similar purpose to the Institute as determined by the Council or as specified in a resolution of the Members passed at a General Meeting.

22. AMENDMENTS TO THE CONSTITUTION

22.1 **Amendment at General Meeting:** The Institute may amend or replace this Constitution at a General Meeting by a resolution passed by a two thirds majority of those Voting Members present and voting.

22.2 **Proposed motions to amend the Constitution:** Any proposed motion to amend or replace this Constitution must:

- (a) be signed by 10 Voting Members and given in writing; or
- (b) be approved by the Council.

22.3 **Accompanying information:** Any motion to amend the Constitution must be accompanied by a written explanation for the reasons for the proposal, and any recommendations the Council has.

22.4 **Minor technical amendments:** The Council may, by unanimous resolution, amend this Constitution if the amendment has no more than a minor effect, corrects errors or makes similar technical amendments:

- (a) The Council must provide written notice to every Voting Member of the Institute stating the text of the amendment and that the Voting Member has a right to object to the amendment.
- (b) If no objection is received within 20 working days after the date the notice is served, the Council may make the amendment.

22.5 **Updates to the Act:** If, following replacement or amendment of the Act, this Constitution is no longer consistent with the Act, the Council may, by unanimous resolution, amend this Constitution to the extent required to make it consistent with the Act.

22.6 **Notice to be provided to Members:** If the Constitution is amended in accordance with clause 22.4 or 22.5, the Institute must, as soon as is practical, send a copy of the amended Constitution to every Member.