**Constitution Template – Club Version B with guidance**

**Committee is elected by members. Members elect people to specific positions on the Committee (eg President, Treasurer, Secretary). See guidance at clause 6.2.**

**INTRODUCTORY NOTES**

VERSION UPDATE: This template has been updated as at June 2024. A summary of the updates to the template can be found on the [Incorporated Societies Resources page](https://sportnz.org.nz/resources/incorporated-societies-act-2022-and-regulations/). It will be useful to look at that summary if you were part-way through updating your constitution based on the earlier version.

* This is a template constitution suitable for a club that is an incorporated society. To maintain incorporated status, your club must re-register on the [Incorporated Societies Register](https://is-register.companiesoffice.govt.nz/) under the [Incorporated Societies Act 2022](https://www.legislation.govt.nz/act/public/2022/0012/latest/LMS100809.html) (Inc Soc Act) by April 2026 with a constitution that complies with the Act and the [Incorporated Societies Regulations 2023](https://www.legislation.govt.nz/regulation/public/2023/0240/latest/LMS891513.html) (Inc Soc Regulations).
* This template constitution is only a starting point. You may need to seek advice to ensure your constitution is suitable for your requirements.
* Before seeking legal advice reach out to your national or regional organisation as they may have a legal advisor already identified with the right skill and experience.
* Legal advisors would ideally have sport and recreation specific knowledge and experience as well as a deep understanding of the new Inc Soc Act 2022 and Inc Soc Regulations.
* If they do not already have sport and recreation specific constitutional templates this template along with guidance notes and the check list have been designed to avoid duplication of error and cost.
* A club should also check in with their national organisation and regional organisation to understand if either will provide assistance or a template constitution that is customised to their code and its structure. Clubs should wait to see if this or other assistance may be available to save your club significant time and cost.
* The constitution should set out the purposes and rules by which the club will operate. Details for the day-to-day management of the club or the procedures by which the purposes are to be implemented can be included in bylaws.
* If your club is a member of another incorporated society (for example if you are in a sport network and you are a member of your regional sport body), you should check if that society requires anything specific to be included in your constitution.
* This template includes the roles of President, Secretary and Treasurer being on the Club’s Committee.

**HOW TO USE THIS DOCUMENT**

GUIDANCE NOTES

* Words in purple are GUIDANCE notes to assist you with drafting your constitution. Remove these before you finalise your constitution.

MANDATORY REQUIREMENTS

* Words in red indicate that the related clause is a MANDATORY REQUIREMENT. It must be in your constitution to meet the requirements of the Inc Soc Act.

CLUB SPECIFIC

* Words in green means you need to insert your CLUB SPECIFIC wording.

OPTIONAL WORDING

* Wording in blue is OPTIONAL WORDING. You can include these if they apply to your club’s circumstances.

CHARITY

* Consider words in orange if your club is, or is seeking to be, a CHARITY. Your constitution must comply with registration requirements under the Charities Act 2005.
* Check the cross referencing of clauses is correct before you finalise your constitution.
* Check the table of contents numbering is correct.

CONSTITUTION

OF

[FULL CLUB REGISTERED NAME] INC.

[club name]

Constitution

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[club name] Constitution

# Definitions and interpretation

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

### **Act** means the Incorporated Societies Act 2022, including any amendments, and any regulations made under that Act.

### **AGM** or **Annual General Meeting** means a meeting of the Members held once a year convened under this Constitution.

 **Bylaws** means any bylaws, policies, regulations and codes of the Club made under clause 14.

### **Casual Vacancy** is a vacancy which arises when a Committee Member does not serve their full term of office.

### **Committee** means the Club’s governing body. [Guidance: The Inc Soc Act uses ‘committee’ to refer to the governing body of the society, but it can be described however you like e.g. Executive, Board etc.]

### **Committee** **Member** means a member of the Committee.

### **Constitution** means this Constitution, including any amendments and any schedules to this Constitution.

### **Contact Details** means a physical or an electronic address and a telephone number.

### **Diversity, Equity and Inclusion** means ensuring fair and equitable opportunities are available to everyone to participate in sport and recreation irrespective of age, ability, ethnicity, gender, national origin, race, religion, sexual orientation, beliefs, or socio-economic status.

### **General Manager** means the person in the highest-ranking management position in the Club. [Guidance: Change position title as appropriate.]

### **General Meeting** means an AGM or SGM of the Club.

### **Interested** has the meaning given in section 62 of the Act. [Guidance: Section 62, Inc Soc Act states that an officer (**A**) is **interested** in a matter if A:

### may obtain a financial benefit from the matter; or

### is the spouse, civil union partner, de facto partner, child, parent, grandparent, grandchild, sibling, nephew, niece, uncle, aunt, or first cousin of a person who may obtain a financial benefit from the matter; or

### may have a financial interest in a person to whom the matter relates; or

### 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

### is interested in the matter because the society’s constitution so provides.

### However, A is not interested in a matter:

### merely because A receives an indemnity, insurance cover, remuneration, or other benefits authorised under the Inc Soc Act; or

### if A’s interest is the same or substantially the same as the benefit or interest of all or most other members of the society due to the membership of those members; or

### if A’s interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence A in carrying out A’s responsibilities under the Inc Soc Act or the society’s constitution; or

### if A’s interest is of a kind that is specified in the society’s constitution.]

### **Matter** has the meaning given in section 62(4) of the Act. [Guidance: Section 62(4), Inc Soc Act states that **matter** means a society’s performance of its activities or exercise of its powers; or an arrangement, an agreement, or a contract (a transaction) made or entered into, or proposed to be entered into, by the society.]

### **Member** means each person who for the time being is a member of the Club and includes all classes of members described in clause 4.3.

### **Officer** means a Committee Member and any natural person occupying a position in the Club that allows the person to exercise significant influence over the management or administration of the Club.

### **Ordinary Resolution** means a resolution passed by a majority of votes cast.

### **SGM** or **Special General Meeting** means a meeting of the Members, other than an AGM, called for a specific purpose or purposes.

### **Special Resolution** means a resolution passed by a 75% majority of votes cast. [Guidance: Normally a special resolution is passed by a 75% majority, but you may specify a higher percentage.]

### **Working Day** has the meaning given to that term under the Legislation Act 2019 and excludes the day observed as the anniversary in [province where registered office is]. [Guidance: **working day** under the Legislation Act means a day of a week other than:

### a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign’s birthday, Te Rā Aro ki a Matariki/Matariki Observance Day, and Labour Day;

### a day in the period commencing with 25 December in a year and ending with 2 January in the following year;

### if 1 January falls on a Friday, the following Monday; or

### if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday;

### if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday.]

### **Interpretation:** Unless the context otherwise requires:

#### Words referring to the singular include the plural and vice versa.

#### Clause headings are for reference only.

#### Expressions referring to writing include references to words visibly represented, copied, or reproduced, including by email.

#### Reference to a person includes any other entity or association recognised by law and vice versa and any reference to a particular entity includes a reference to that entity’s successors.

#### A reference to any legislation includes any secondary legislation, statutory regulations, rules, orders or instruments made or issued pursuant to that legislation and any amendment to, re-enactment of, or replacement of, that legislation.

#### All periods of time or notice exclude the days on which they are given.

### **Notices**:Subject to any other notice requirements in this Constitution, any notice or other communication given under this Constitution must be in writing and will be given to:

#### a Member if delivered by hand to the Member or sent to the address set out in their Contact Details;

#### the Club if sent to [email address] or by post to the Club’s registered office set out on the Register of Incorporated Societies. [Guidance: Recommend including a generic email address so it is not affected by people leaving the club e.g. admin@sport.co.nz.]

### **Receipt of notices:** A notice is deemed to have been received:

#### if delivered by hand, at the time of delivery;

#### if given by post, when left at the address of that party or five Working Days after being put in the post; or

#### if given by email, upon production of a physical copy of the email detailing the time and the date the email was sent (provided that the sender does not receive any "out of office" auto-reply or other indication of non-receipt),

#### provided that any notice or communication received or deemed received after 5pm on a Working Day, or on a day which is not a Working Day, will be deemed not to have been received until the next Working Day.

# Club details

### **Name:** The name of the society is [full legal name of club] [Incorporated / Inc / Manatōpū] (**Club**). [**MANDATORY CLAUSE:** Name of society is required to be in your constitution – sections 26(1)(a) and 11, Inc Soc Act. Name must end with Incorporated, Inc or Manatōpū.] [GUIDANCE: Check name on cover page is consistent]

### **Charitable status:** The Club is already, or intends after incorporation to be, registered as a charitable entity under the Charities Act 2005. [Guidance: Include if your club is or intends to be registered as a charitable entity.]

### **Registered office:** The registered office of the Club is at the place the Committee decides. [Guidance: This is not required to be in your constitution. If you wish to include it, it is recommended you leave out reference to a specific place and leave this to the Committee to determine as it may change.]

### **Contact person:** At its first Committee meeting following an AGM, the Committee must appoint or reappoint at least one, and a maximum of three, persons to be the contact person, subject to those persons meeting the eligibility criteria set out in the Act. The Committee must advise the Registrar of Incorporated Societies of any change in the contact person or their Contact Details. [**MANDATORY CLAUSE:** How the contact person(s) will be elected or appointed is required to be in your constitution – sections 26(1)(g) and 113, Inc Soc Act.] [Guidance: This template suggests the Committee appoints a contact person, but this position could be elected, or be part of another established position e.g. the secretary.]

# Purpose and powers

### **Purpose:** The [charitable] purposes of the Club are to: [**MANDATORY CLAUSE:** Purposes of your society are required to be in your constitution – section 26(1)(b) and 12, Inc Soc Act.][Guidance: This list of purposes is an example, amend the list of purposes to set out what your club has been established to do. The purposes are not the vision, mission, goals or powers of your club. You may already have a well-established set of purposes that you wish to retain. If your club is, or wants to become, a charity, the purposes in your constitution must reflect a charitable purpose, e.g. advancement of education or a matter beneficial to the community. The wording is critical and you should seek specific legal and tax advice.]

#### be a member of [insert if your club is a member of a regional and/or national organisation];

#### promote, develop, foster and administer [sport], mainly as an amateur sport for the well-being, benefit and recreation of the general public in New Zealand/Aotearoa; [Guidance: The reference to amateur sport is relevant to satisfying the requirements for income tax exemption for amateur sport bodies under [section CW46, Income Tax Act 2007](https://www.legislation.govt.nz/act/public/2007/0097/latest/DLM1513279.html).]

#### promote opportunities and facilities to enable, assist and enhance the participation, enjoyment and performance of [sport/recreation/play];

#### lead, promote and enable Diversity, Equity and Inclusion across the whole Club including governance of the Club and participation in [sport/recreation/play]; [Guidance: Diverse and balanced leadership brings breadth of perspective, better decision making and creates stronger clubs. If this is not included, remove definition of Diversity, Equity and Inclusion in clause 1.1.]

#### promote, develop and co-ordinate [sport/recreation] competitions;

#### protect the integrity of [sport/recreation] and the Club by developing and enforcing standards of conduct, ethical behaviour and implementing good governance;

#### support the development of Members, including the relevant training, education and development of the Members, including officials, coaches, team managers and volunteers.

### **Tikanga:** The tikanga, kawa, culture or practice of the Club is as follows: [insert], and this Constitution must be interpreted having regard to that tikanga, kawa, culture or practice.

### **Capacity and powers:** The Club has, both within and outside New Zealand, full capacity, rights, powers and privileges to carry on or undertake any activity, do any act, or enter into any transaction, subject to this Constitution, the Act, any other legislation, and the general law. [Guidance: Section 18, Inc Soc Act provides that societies have the capacity and powers stated above. If there are any restrictions on your club’s capacity and powers, e.g. on a power to borrow or sell/acquire assets, you may include these here or elsewhere in your constitution.]

# Members

### **Application:** An application to become a Member (**Application**) must be in the form required by the Committee. All Applications are decided by [insert e.g. the Committee or by a delegated person/committee], which may accept or decline an Application in its absolute discretion. A person becomes a Member when their Application has been accepted and they have [paid the required membership fees and] satisfied any other preconditions. [**MANDATORY CLAUSE:** How a person becomes a member of your society is required to be in your constitution – sections 26(1)(c) and 76, Inc Soc Act.][Guidance: Amend to reflect how a person becomes a member. Sometimes there is no formal approval process and the membership is accepted by default by completing the form and submitting it (for example, online). If this is the case there should always be a mechanism to decline membership. If you have different application processes for different categories of members, specify these here.]

### **Member consent:** A person or entity consents to become a Member by [insert, e.g. by submitting an Application to the Club or paying fees], unless otherwise specified in this Constitution. [**MANDATORY CLAUSE:** A requirement that a person must consent to be a member of your society is required to be in your constitution – sections 26(1)(c) and 76, Inc Soc Act.] [Guidance: Existing members (those who joined before your club reregisters under the Inc Soc Act) will not be required to confirm their consent. For more guidance on obtaining member consent and what may or may not constitute consent see [here](https://is-register.companiesoffice.govt.nz/law-changes-for-societies/whats-changing-for-members/).]

### **Members:** The Members of the Club are:

#### [insert different member categories, e.g. competitive, recreational/social, senior, junior member etc.]; and

#### any other categories of member as the Committee determines.

### **Life Members:** Life Membership may be granted in recognition and appreciation of outstanding service by an individual to the Club. Any Member may nominate an individual to become a Life Member by giving notice to the Committee setting out the grounds for the nomination. The Committee must then determine whether the nomination should be forwarded to a General Meeting for determination by the Members. A person may only be elected as a Life Member by [an Ordinary / a Special] Resolution at a General Meeting. A person consents to becoming a Life Member on acceptance of their life membership. Life Members have such rights and benefits as determined by the Committee. [Guidance: Example only. Amend to reflect the nomination process e.g. you may have a Life Member subcommittee.]

### **Member rights and obligations:** Members acknowledge and agree that:

#### they are bound by, and will comply with, this Constitution and the Bylaws, and to the extent they apply, the rules, procedures or policies of [regional / national organisation that the club is a member of]; [Guidance: Check with your national / regional organisation that you are a member of to understand if there are any rules you need to comply with and include in your constitution.]

#### they are entitled to all rights and entitlements granted by this Constitution or as determined by the Committee;

#### to receive, or continue to receive or exercise member rights, they must meet all the member requirements set out in this Constitution and the Bylaws or as otherwise set by the Committee, including payment of any membership or other fees within the required time period;

#### if they fail to comply with sub-clause (c) the Committee may terminate their membership, but the Member continues to be bound by this Constitution;

#### they do not have any rights of ownership of, or the automatic right to use, the Club’s property; and

#### they will promote the interests and purposes of the Club and must not do anything to bring the Club into disrepute. [Guidance: Members have rights to request information held by your club which are set out in sections 80 – 83, Inc Soc Act. This is not required to be in your constitution so this template does not include these, but you should be aware of your club’s rights and obligations if you receive such a request and ensure you comply with the Inc Soc Act and, if relevant, the Privacy Act 2020.]

### **Suspension of Member:** If a Member is, or may be, in breach under clause 4.5, and the Committee believes it is in the best interests of the Club to do so, the Committee may suspend the Member until final determination of the matter under the dispute resolution process applicable to the matter. Before imposing any suspension, the Member must be given notice of the suspension.

### **Suspension of Member rights:** Unless otherwise determined by the Committee, while a Member is suspended the Member is not entitled to attend, speak or vote at a General Meeting or to any other rights or entitlements as a Member and is not entitled to continue to hold office in any position within the Club, until such time as the alleged breach is resolved or determined.

### **Ceasing to be Member:** A Member ceases to be a Member: [**MANDATORY CLAUSE:** How a person ceases to be a member of your society is required to be in your constitution – section 26(1)(d), Inc Soc Act.] [Guidance: It is important to have a clear record of when a person ceases to be a member because it impacts on their right to e.g. enter competitions, represent the club and vote. The list below are examples that you may wish to adapt.]

#### on death;

#### by giving notice to the Committee of their resignation;

#### if their membership is terminated under clause 4.5(d);

#### if their membership is terminated following a dispute resolution process or such other process set out or referred to in this Constitution.

### **Consequences of ceasing to be a Member:** A Member who ceases to be a Member:

#### remains responsible to pay all their outstanding membership and other fees to the Club;

#### must return all the Club’s property if required;

#### ceases to be entitled to any rights of a Member.

### **Membership fees:** [insert how membership and other fees are set e.g. The Committee will decide any membership and other fees payable by Members and the due date for those fees. The Committee may determine different levels of membership fees and other fees for different types of Members.] [Guidance: Best practice is for the Committee to set membership fees after undertaking consultation as it sees fit. If your club has a different process, you may include this here.]

### **Member register:** The Committee will keep an up-to-date Member register, which includes each Member’s name, Contact Details and the date they became a Member. A Member must provide notice to the Club of any change to their Contact Details. The Member register will be updated as soon as practicable after the Committee becomes aware of changes of the information recorded in the Member register. The Committee will keep a record of those who have ceased to be a Club member within the previous 7 years and the date on which they ceased to be a member. [**MANDATORY CLAUSE:** Arrangements you have for keeping your society’s register of members up to date is required to be in your constitution – sections 26(1)(e) and 79, Inc Soc Act and clause 13, Inc Soc Regulations.] [Guidance: When collecting personal information you must comply with the Privacy Act 2020. See Sport New Zealand Ihi Aotearoa template [privacy policy](https://sportnz.org.nz/resources/privacy-policy/).]

# General Meetings

### **AGM:** An AGM must be held once a year at the time, date and place as the Committee decides, but not more than 6 months after the balance date of the Club and not more than 15 months after the previous AGM. [**MANDATORY CLAUSE:** Intervals between AGMs are required to be in your constitution – sections 26(1)(k)(i) and 84, Inc Soc Act.]

### **Notice of AGM:** The Members must be given at least [time period] notice of the AGM. Notice to Members of an AGM may be given by posting on the Club’s website. [**MANDATORY CLAUSE:** Manner of calling general meetings is required to be in your constitution – section 26(1)(k)(iv), Inc Soc Act. The time within which, and manner in which, notices of general meetings and notices of motion must be notified is required to be in your constitution – section 26(1)(k)(vi), Inc Soc Act.] [Guidance: Ability to give notice of the AGM on your website may be useful to include if you have hundreds of members.]

### **Business of AGM:** The following business will be discussed at the AGM: [**MANDATORY CLAUSE:**Information that must be presented at general meetings is required to be in your constitution – sections 26(1)(k)(ii) and 86, Inc Soc Act. Section 86, Inc Soc Act requires the items (b)(i), (ii) and (iv) to be presented at each AGM.]

#### confirmation of the minutes of the previous AGM;

#### the Committee’s presentation of the following information during the most recently completed accounting period:

##### the annual report;

##### the annual financial statements;

##### the auditor’s report to members on the financial statements audited by a qualified auditor *or* the review report of the financial statements; [Guidance: Include if the financial statements are required to be audited or reviewed by law, or the Committee requires it. Section 106, Inc Soc Act requires the auditor to report to members on the audited financial statements. The audit requirement arises for:

##### a non-charity, if in each of the 2 preceding accounting periods, the total operating payments of the club and all entities it controls (if any) is $3m or more – clause 16, Inc Soc Regulations;

##### a charity if it is ‘large’, if in each of the 2 preceding accounting periods, the total operating expenditure of the club and all entities it controls (if any) is $1.1m or more. If it is not ‘large’ but in each of the 2 preceding accounting periods the total operating expenditure of the club and all entities it controls (if any) is $550,000 or more, the charity is ‘medium’ and must have their financial statements audited or reviewed by a qualified auditor. See sections 42C, 42D, Charities Act 2005.]

##### notice of any disclosures of conflicts of interest made by Officers (including a brief summary of the Matters, or types of Matters, to which those disclosures relate);

#### the election of the President, Secretary, Treasurer and other Committee Members;

#### consideration of any motions proposing to amend this Constitution that have been properly submitted for consideration at the AGM;

#### consideration of any other items of business that have been properly submitted for consideration at the AGM.

### **Notice of proposed motions:** Members must give notice of any proposed motions and other items of business to the Club at least [time period] before the date of the AGM. [**MANDATORY CLAUSE:** Time within which, and manner in which, notices of motion must be notified is required to be in your constitution – section 26(1)(k)(vi), Inc Soc Act.]

### **Notice of agenda:** Notice of the agenda containing the business to be discussed at the AGM must be sent to all persons entitled to attend the AGM at least [time period] before the date of the AGM. [**MANDATORY CLAUSE:** Time within which, and manner in which, notices of motion must be notified is required to be in your constitution – section 26(1)(k)(vi), Inc Soc Act.] No additional items of business can be voted on other than those set out in the agenda, but the Members present may agree [insert by Special Resolution or unanimously] to discuss any other items.

### **Calling of SGM:** The Committee must call a SGM if it receives a written request stating the purpose of the SGM from the Committee itself or by [percentage]% of Members. [**MANDATORY CLAUSE:** Manner of calling general meetings is required to be in your constitution – section 26(1)(k)(iv), Inc Soc Act.] [Guidance: Consider carefully how many members are required to call a SGM. It is useful to use a percentage rather than a specific number of members so that if member numbers change significantly the percentage is still proportionate to the overall membership. The percentage should not be too easy nor too hard to meet to avoid SGMs being called often or too difficult to call.]

### **Notice of SGM:** Members must be given at least [time period] notice of the SGM, unless the Committee, in its discretion, decides that the nature of the SGM business is of such urgency that a shorter period of notice is to be given to Members. A SGM may only consider and deal with the business specified in the request for the SGM. [**MANDATORY CLAUSE:** Time within which, and manner in which, notices of general meetings must be notified is required to be in your constitution – section 26(1)(k)(vi), Inc Soc Act.]

[Guidance: Arrangements and requirements for SGMs under section 64(3), Inc Soc Act (relating to a situation where 50% or more of committee members have a conflict of interest and cannot vote and section 64(3) has not be negated) are required to be in your constitution – section 26(1)(k)(vii), Inc Soc Act. This template does not include any specific requirements for this type of SGM and the clauses above relating to SGMs would apply to that situation.]

### **Method of holding meeting:** A General Meeting may be held by a quorum of people being assembled at the time and place appointed for the meeting, participating by audio link, audio-visual link or other electronic communication or by a combination of those methods. [Guidance: Section 87, Inc Soc Act allows for this, subject to your constitution so if you wish to prohibit attendance by some of these methods, do so here.]

### **Quorum:** No business may occur at any General Meeting unless a quorum is present at the meeting’s start time. The quorum for a General Meeting is [percentage]% of the Members who are entitled to vote, including Members present by casting votes by electronic means [or by proxy]. The quorum must always be present during the General Meeting. [**MANDATORY CLAUSE:** Quorum for general meetings is required to be in your constitution – section 26(1)(k)(vii), Inc Soc Act.] [Guidance: If you allow voting by proxy, post or electronic means, it is mandatory to include whether the quorum takes into account members present by proxy or casting postal votes or votes by electronic means. The quorum is the minimum number of percentage of members who must attend a General Meeting. To cater for fluctuating numbers of members consider using a dual assessment. For example, x number of members or y% of members eligible to vote, whichever is the lower so it defaults to the easiest threshold to fulfill.]

### **No quorum at AGM:** If a quorum is not met within 30 minutes of the AGM’s scheduled start time, the AGM is adjourned to a day, time and place set by the chair of the AGM. If no quorum is met at the further AGM, the Members present, in person or through audio, audio visual link or other electronic communication, 15 minutes after the further AGM’s scheduled start time are deemed to constitute a valid quorum.

### **No quorum at SGM:** If a quorum is not met within 30 minutes of the scheduled start time of the SGM, the SGM is cancelled.

### **Control of General Meetings:** [insert] chairs General Meetings. If that person is unavailable, another Committee Member (appointed by the Committee) will preside. In the absence of both of those persons, the Members present will elect a person to chair the General Meeting. [Guidance: If members have searching questions of the committee a person who is not a committee member may be in a better position to ensure good control of the meeting. If the chair of the meeting is standing for re-election, another person should chair that part of the meeting.]

### **Omissions and irregularities:** The General Meeting and its business will not be invalidated if one or more Members do not receive notice of the meeting. The General Meeting and its business will not be invalidated by an irregularity, error or omission in notices, agendas and papers of the meeting or notice within the required time frame or the omission to give notice to all Members and any other error in the organisation of the meeting if:

#### the chair of the meeting in their discretion determines that it is still appropriate for the meeting to proceed despite the irregularity, error, or omission; and

#### a motion to proceed is put to the meeting and a majority, of two-thirds of votes cast, is obtained in favour of the motion to proceed.

### **Attendance:** Members and any other persons invited by the Committee are eligible to attend and speak at General Meetings. [Guidance: Other persons may be e.g. auditor/reviewer, Patrons etc. All Members have a right to attend an AGM unless, if your club has 1,000 or more members at the time that an AGM is called, your constitution may restrict that to delegates or other representatives of Members – clause 14, Inc Soc Regulations. There is also a 5-year exemption if, as at 4 Oct 2023, your current constitution included a restriction on attendance at AGMs to delegates or other representatives of Members – clause 7 of schedule 1, Inc Soc Regulations. That 5-year exemption runs until 5 Oct 2028.]

### **Voting:** A Member is entitled to exercise one vote on any motion at a General Meeting in person [or by proxy]. [**MANDATORY CLAUSE:** Voting procedures of your society is required to be in your constitution – section 26(1)(k)(vii), Inc Soc Act.]

### **Voting by electronic means:** Voting by electronic means is permitted. [Guidance: Members are permitted to vote by electronic means if your constitution allows it, section 93(2), Inc Soc Act. It doesn’t define ‘electronic means.’ This template does not include postal voting but it is permitted if your constitution allows it.]

### **Voting by proxy:** Proxy voting is permitted. The chair of the General Meeting must receive notice of the proxy signed by the Member prior to the start of the meeting. The form of the proxy is: *I [insert name] of [insert address] being a member of the Club appoint [insert name of proxy] as my proxy to speak [and vote] for me at the General Meeting to be held on [insert date] and at any adjournment of that General Meeting. I direct my proxy to vote in the following manner [insert resolutions and whether the proxy is to vote for or against].* [**MANDATORY CLAUSE IF PROXIES ARE PERMITTED:** If you allow proxy voting, it is mandatory to include procedures for proxies in your constitution – section 26(1)(k)(vii), Inc Soc Act.] [Guidance: Proxy votes allow members who can’t attend an ability to appoint another member to speak / vote on their behalf. Virtual meetings are increasingly used so the inclusion of proxies may not be necessary. Allowing proxies invites the risk of people collecting proxies and using them to leverage the vote in a certain way. It is not usual for proxies to be used in small societies. Ideally you want people to be present and to have the benefit of any discussion before exercising a vote. If proxy voting is permitted you will need to specify whether the quorum includes proxy voting in clause 5.8. There are two types of proxies – a general, where the person you appoint can act in their discretion when voting on resolutions, and a specific, where you direct the person to vote on resolutions in a specific way for you. Include the last sentence in this clause if it is a specific proxy.]

### **Conduct of voting:** Voting is conducted by voices or a show of hands as determined by the chair of the meeting, unless a secret ballot is called for and approved by the chair or [number] Members or as otherwise required under this Constitution. [**MANDATORY CLAUSE:** Voting procedures of your society are required to be in your constitution – section 26(1)(k)(vii), Inc Soc Act.]

### **Minutes:** Minutes must be kept of all General Meetings. [**MANDATORY CLAUSE:** When minutes are required to be kept is required to be in your constitution – section 26(1)(k)(iii), Inc Soc Act. A society must ensure minutes of its AGM are kept – section 84(3)(b), Inc Soc Act.]

### **Resolution:** An Ordinary Resolution of Members at a General Meeting is sufficient to pass a resolution, except as specified in the Act or this Constitution. [**MANDATORY CLAUSE:** Voting procedures of your society are required to be in your constitution – section 26(1)(k)(vii), Inc Soc Act.]

### **Resolution passed in lieu of meeting:** A resolution in writing signed or consented to by email or other electronic means by a [percentage that is 75 or higher (75% is required under the Inc Soc Act)]% majority of Members is valid as if it had been passed at a General Meeting provided the requirements under sections 89 to 92 of the Act are complied with. Any resolution may consist of several documents in the same form each signed by one or more Members. [**MANDATORY CLAUSE IF WRITTEN RESOLUTIONS PERMITTED:** If written resolutions can be passed in lieu of a general meeting, it is mandatory to include how written resolutions may be passed in lieu of a general meeting for the purposes of section 89 in your constitution – sections 26(1)(k)(v) and 89, Inc Soc Act.] [Guidance: Section 90, Inc Soc Act requires that the proposed resolution under section 89:

* is dated with the date on which the proposed resolution is first sent to a person entitled to vote for the purpose of approval (the circulation date); and
* is sent to an address for each person who is entitled to vote; and
* as far as is reasonably practicable, is sent on the circulation date; and
* states that the proposed resolution lapses if it is not passed within 3 months (or any shorter period provided in the constitution) after the circulation date.

### Section 91, Inc Soc Act provides that an accidental omission to send a proposed resolution or statement under [section 90](https://www.legislation.govt.nz/act/public/2022/0012/latest/whole.html#LMS246458) to a person entitled to vote does not invalidate a resolution passed under [section 89](https://www.legislation.govt.nz/act/public/2022/0012/latest/whole.html#LMS238718). Section 92, Inc Soc Act provides the society must send a copy of the resolution to all those entitled to vote who did not approve the resolution and on whose behalf the resolution was not approved within 5 working days after a resolution is passed.]

# Committee

### **Functions and powers:** Subject to any modifications, exceptions, or limitations contained in the Act or in this Constitution the Committee must manage, direct or supervise the operation and affairs of the Club and has all the powers necessary for managing, and for directing and supervising the management of, the operation and affairs of the Club. [**MANDATORY CLAUSE:** Functions and powers of the committee is required to be in your constitution – sections 26(1)(f)(iv) and 46, Inc Soc Act.]

### **Composition:** The Committee consists of the President, the Secretary, the Treasurer and up to [insert number] other persons elected at the AGM. [**MANDATORY CLAUSE:** Number of members that must or may be on the committee is required to be in your constitution – sections 26(1)(f)(i) and 45, Inc Soc Act.] [Guidance: You must have a minimum of 3 committee members. Section 45(3), Inc Soc Act provides that a majority of your committee members must be members or representatives of bodies corporate who are members, unless an exemption applies.]

### **Role of President:** The President will engage in activities agreed with the Committee which may include activities to promote the Club, good relations and communications between Members and the reputation and best interests of the Club, and to preside at Club events. [Guidance: Amend to suit the role.]

### **Role of Secretary:** The Secretary will: [Guidance: Amend to suit the role.]

#### attend to all correspondence and keep minutes of General Meetings and Committee meetings and ensure that any subcommittee keeps minutes; and

#### keep all records and generally perform all the secretarial work of the Club. With the written approval of the Committee these tasks may be varied or delegated but the Secretary remains responsible for their performance.

### **Role of Treasurer:** The Treasurer will: [Guidance: Amend to suit the role.]

#### receive all money paid to or received by the Club and pay all accounts approved by the Committee. The Committee may delegate levels of payment to the Treasurer by written authority;

#### invest all funds of the Club in the manner directed by the Committee; and

#### keep the Club’s financial accounts, submit appropriate financial statements at the AGM and undertake other tasks required by the Committee.

### **Election of Committee Members:** Committee Members are elected as follows: [**MANDATORY CLAUSE:** Election or appointment of officers is required to be in your constitution – section 26(1)(f)(ii), Inc Soc Act.] [Guidance: This template sets out election of committee members at the AGM, but other options are possible. Refer to the regional organisation constitution template for sections on the appointment of committee members using an appointments panel.]

#### the Committee must call for nominations for any Committee Member positions that are to be vacated at an AGM at least [number e.g. 90] days before the AGM; [Guidance: You may wish to include the option for people to apply at the meeting if it is not uncommon for there to be an insufficient number of applicants.]

#### nominations are made in the form decided by the Committee and must be received by the date set by the Committee and if no date is set, at least [number e.g. 60] days before the AGM; [Guidance: We recommend the form is sufficiently detailed and includes a requirement for disclosure of any actual or potential conflicts of interests or if the person is involved/closely connected with a person or activity which has or may bring the club or the sport/recreation into disrepute or which may be prejudicial to the purposes or the interests of the club and/or the sport/recreation if they become a Committee Member.]

#### the Committee must give notice of the nominations to all Members at least [number e.g. 21] days before the AGM;

#### at the AGM, if there are more nominees than number of positions available, the election is by secret ballot, unless otherwise decided by the Chair of the General Meeting and approved by a Special Resolution of Members. If a secret ballot is held, two scrutineers must be appointed at the General Meeting to count the votes;

#### those nominees who have the highest number of votes in their favour to fit the number of vacant positions are declared elected; [Guidance: This is an example only, other voting options are possible.]

#### if the number of votes for one or more nominees is equal to another nominee, a further vote will be held between the tied nominees;

#### if there is only one nominee for a vacant position, that person is declared to be elected without the need for a vote.

### **Qualification:** Every Committee Member must, in writing:

#### consent to be a Committee Member; and

#### certify that they are not disqualified from being elected or holding office as a Committee Member by this Constitution or under section 47 of the Act or under section 36B of the Charities Act 2005. [Guidance: Include wording in orange if your club is a charity. Section 47, Inc Soc Act sets out disqualifying factors e.g. under 16 years old, an undischarged bankrupt, a person who is prohibited from being a director under other legislation, a person who is disqualified from being an officer of a charity etc.]

### **Disqualification:** The following persons are disqualified from being elected or holding office as a Committee Member:

#### A person who is an employee of, or independent contractor to, the Club.

#### A person who is disqualified from being elected or holding office as a Committee Member under section 47 of Act or under section 36B of the Charities Act 2005. [Guidance: Include wording in orange if your club is a charity.]

#### A person who has been removed as a Committee Member following a process under this Constitution or any Bylaw.

### If an existing Committee Member becomes or holds any position in (a) above then upon their appointment to such a position, they are deemed to have vacated their office as a Committee Member. If any of the circumstances listed in (b) above occur to an existing Committee Member, they are deemed to have vacated their office upon the relevant authority making an order or finding against them of any of those circumstances.

### **Term of office:** The term of office for all Committee Members is [number] years, expiring at the end of the relevant AGM. A Committee Member may be re-elected to the Committee for a maximum of [number] consecutive terms of office. The term of any period served to fill a Casual Vacancy is disregarded for the purposes of calculating the total term served. [**MANDATORY CLAUSE:** Term of office of officers is required to be in your constitution – section 26(1)(f)(iii), Inc Soc Act.] [Guidance: Amend depending on when the terms expire. You can choose whether to include a maximum term, as we understand the challenges of getting committee members, but it is a good idea to have a maximum term to promote succession. Best practice indicates not more than 6 or 8 consecutive years are served. A person could serve at a later date if they don’t serve consecutive terms.]

### **Casual Vacancy:** If a Casual Vacancy arises, the remaining Committee Members may:

#### appoint a person of their choice to fill the Casual Vacancy until the expiry of the term of the person they replace; or

#### appoint a person of their choice to fill the Casual Vacancy only until the next AGM, at which a person is elected to fill the remainder of the term of the Casual Vacancy; or

#### may leave the Casual Vacancy unfilled until the next AGM, at which a person is elected to fill the remainder of the term of the Casual Vacancy.

### **Suspension of Committee Member:** If any Committee Member is or may be the subject of an allegation, notice or charge described under clause 6.8 or any circumstances arise in relation to a Committee Member which are or may be of concern to the Committee, the remaining Committee Members may by Special Resolution suspend the Committee Member from the Committee and set conditions as it requires pending the final determination of the allegation, notice, charge or circumstances. Before imposing any suspension, the Committee Member must be given notice of the suspension.

### **Removal of Committee Member:**

#### The Committee may, by Special Resolution, remove any Committee Member from the Committee before the expiry of their term of office if the Committee considers the Committee Member concerned:

##### has seriously breached duties under this Constitution or the Act; or

##### is no longer a suitable person to be a Committee Member.

#### The Committee Member who is the subject of the motion is counted for the purpose of reaching a quorum but will not participate in the vote on the motion.

#### Before considering a motion for removal, the Committee Member who is the subject of the motion must be given:

##### notice that a Committee meeting is to be held to discuss the motion to remove the Committee Member; and

##### adequate time to prepare a response; and

##### the opportunity prior to the Committee meeting to make written submissions; and

##### the opportunity to be heard at the Committee meeting.

### **Committee Member ceasing to hold office:** A person ceases to be a Committee Member if: [**MANDATORY CLAUSE:** Grounds for removal from office of officers is required to be in your constitution – sections 26(1)(f)(v) and 50(1)(b), Inc Soc Act.]

#### their term expires;

#### the person resigns by delivering a signed notice of resignation to the Committee;

#### the person is removed from office under this Constitution;

#### the person becomes disqualified from being an officer under section 47(3) of the Act or section 36B of the Charities Act 2005; [Guidance: Include wording in orange if your club is a charity.]

#### the person dies.

# Committee meetings

### **Calling meetings:** Committee meetings may be called at any time by the Chair or by [number] Committee Members, but generally the Committee meets [frequency]. [**MANDATORY CLAUSE:** Procedure for committee meetings is required to be in your constitution – section 26(1)(f)(vii), Inc Soc Act.]

### **Meeting procedure:** Except to the extent specified in the Act or this Constitution, the Committee may regulate its own procedure. [**MANDATORY CLAUSE****:** Procedure for committee meetings is required to be in your constitution – section 26(1)(f)(vii), Inc Soc Act.]

### **Quorum:** The quorum for a Committee meeting is [number] Committee Members. [**MANDATORY CLAUSE:** Quorum for committee meetings is required to be in your constitution – section 26(1)(f)(vii), Inc Soc Act.] Any Committee Member may be counted for the purposes of a quorum, participate in any and vote on any proposed resolution at a Committee meeting without being physically present. This may only occur at Committee meetings by audio or audio-visual link or other electronic communication provided that all persons participating in the Committee meeting can hear each other effectively and simultaneously.

### **Chair:** The Committee will elect the Chair from amongst the Committee Members. The Chair will chair Committee meetings. If the Chair is unavailable, another Committee Member must be appointed by the Committee to undertake the Chair’s role during the period of unavailability. [**MANDATORY CLAUSE:** How the chair (if any) is elected or appointed.] [Guidance: Best practice from a governance perspective is to allow the committee to elect the chair from among themselves (as opposed to electing them at a general meeting). Amend this clause if your president is the chair of the committee.]

### **Voting:** Each Committee Member has one vote. Voting is by voices or on request of any Committee Member by a show of hands or by a ballot. Proxy and postal votes are not permitted. Voting by electronic means is permitted. [**MANDATORY CLAUSE:** Voting procedures for committee meetings is required to be in your constitution – section 26(1)(f)(vii), Inc Soc Act.] If there is an equality of votes, the Chair does not have a casting vote. [**MANDATORY CLAUSE:** If the Chair has a casting vote if there is an equality of votes, it is mandatory to include this in your constitution – section 26(1)(f)(vi), Inc Soc Act.] [Guidance: Best practice is for a chair not to have a casting vote as if something does not gain the required support to pass, it should not pass.]

### **Resolution in writing:** A resolution in writing signed or consented to by email or other electronic means by a majority of Committee Members is valid as if it had been passed at a Committee meeting. Any resolution may consist of several documents in the same form each signed by one or more Committee Members.

# Officers’ Duties

### [Guidance: This clause includes a succinct statement of the officers’ duties in sections 54 – 59, Inc Soc Act. It is optional to include, but it is worthy of inclusion as a ready reference for officers without them needing to look at the Act or other guidance material.]

### An Officer:

#### when exercising powers or performing duties as an Officer, must act in good faith and in what the Officer believes to be the best interests of the Club;

#### must exercise a power as an Officer for a proper purpose;

#### must not act, or agree to the Club acting, in a manner that contravenes the Act or this Constitution;

#### when exercising powers or performing duties as an Officer, must exercise the care and diligence that a reasonable person with the same responsibilities would exercise in the same circumstances, taking into account, but without limitation the nature of the Club, the nature of the decision and the position of the Officer and the nature of the responsibilities undertaken by them;

#### must not agree to the activities of the Club being carried on in a manner likely to create a substantial risk of serious loss to the Club’s creditors or cause or allow the activities of the Club to be carried on in a manner likely to create a substantial risk of serious loss to the Club’s creditors;

#### must not agree to the Club incurring an obligation unless the Officer believes at that time on reasonable grounds that the Club will be able to perform the obligation when it is required to do so; and

#### when exercising powers or performing duties as an Officer, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:

##### an employee whom the Officer believes on reasonable grounds to be reliable and competent in relation to the matters concerned;

##### 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; or

##### any other Officer or subcommittee of Officers on which the Officer did not serve in relation to matters within the Officer’s or subcommittee’s designated authority,

#### if the Officer, acts in good faith, makes proper inquiry where the need for inquiry is indicated by the circumstances, and has no knowledge that the reliance is unwarranted.

# Interests

### [Guidance: A conflicts of interests regime under the Inc Soc Act applies to your club by default, but certain sections can be modified, negated or limited (sections 63, 64, 65(1) and 73). This is an example of an interests regime. It is optional to include, but it is worthy of inclusion as a ready reference for when an interest arises.]

### **Register of interests:** The Committee must keep a register of interest disclosures made by Officers.

### **Duty to disclose interest:** An Officer who is Interested in a Matter relating to the Club must disclose details of the nature and extent of the interest (including any monetary value of the interest if it can be quantified) to the Committee, as soon as practicable after the officer becomes aware that they are interested in the Matter and include it in the register of interests.

### **Consequences of being Interested:** A Committee Member who is Interested in a Matter:

#### must not vote or take part in a decision of the Committee relating to the Matter, unless all non-interested Committee Members consent; [Guidance: Default position under sections 64(1)(a) and 64(2), Inc Soc Act.]

#### must not sign any document relating to the entry into a transaction or the initiation of the Matter, unless all non-interested Committee Members consent; [Guidance: Default position under sections 64(1)(b) and 64(2), Inc Soc Act.]

#### must not take part in any Committee discussion relating to the Matter or be present at the time of the Committee decision, unless all non-interested Committee Members consent; [Guidance: Default position in section 64(1)(c), Inc Soc Act is that an interested committee member may take part in discussions unless the committee decides otherwise. This clause modifies that position so an interested committee member cannot take part in discussions unless the committee agrees.]

#### may be counted for the purpose of determining whether there is a quorum at any meeting at which the Matter is considered. [Guidance: Default position under section 64(2)(a), Inc Soc Act.]

### **Calling of SGM:** Despite clause 9.3, if 50% or more CommitteeMembers are Interested in a Matter, an SGM must be called to consider and determine the Matter. [Guidance: Default position under section 64(3), Inc Soc Act, but can be modified or negated. It may be a rare occurrence for more than half of committee members to be interested, so the requirement to call a SGM in those circumstance would be appropriate.]

### **Notice of failure to comply:** The Committee must notify Members of a failure to comply with section 63 or 64 of the Act, and of any transactions affected, as soon as practicable after becoming aware of the failure. [Guidance: Default position under section 65(1), Inc Soc Act.]

# Patrons

### A person may be invited by the Committee to be a Patron to show their support for the Club and to help establish or maintain public credibility of the Club. A Patron is entitled to attend and speak at General Meetings but has no right to vote. [Guidance: A patron does not have to be approved by members at a general meeting, although this is traditionally the practice. A patron must accept this position so it is preferable for the committee to be empowered to invite a person to fill this role.]

# General Manager

### **Role of General Manager:** A Committee may engage a General Manager. The General Manager is under the direction of the Committee and is responsible for the day-to-day management of the Club under this Constitution and the Bylaws and within any delegated authority from the Committee.

### **Committee involvement:** The General Manager may attend Committee meetings when required by the Committee but has no voting rights. [Guidance: Best practice is for a general manager not to be part of the committee to ensure the separation of governance and management.]

# Finances

### **Control and management of finances:** The funds and property of the Club are controlled, invested and disposed of by the Committee, subject to this Constitution and devoted solely to the promotion of the purposes of the Club set out in clause 3. [**MANDATORY CLAUSE:** How the society will control and manage its finances is required to be in your constitution – section 26(1)(h), Inc Soc Act.]

### **Balance date:** The Club’s balance date is [date] or on the date as the Committee decides.

### **[Audit *or* Review] of financial statements:** The Club’s financial statements must be [audited *or* reviewed] each year and the [audited *or* reviewed] financial statements must be submitted to the AGM. The [auditor *or* reviewer] will be appointed by the Committee. [Guidance: See guidance at clause 5.3(b)(iii) regarding whether financial statements are required to be audited or reviewed at law. Include/amend this clause as applicable.]

### **No personal benefit:** The Officers and Members may not receive any distributions of profit or income from the Club. This does not prevent Officers or Members:

#### receiving reimbursement of actual and reasonable expenses incurred, or

#### entering into any transactions with the Club for goods or services supplied to or from them, which are at arms’ length, relative to what would occur between unrelated parties,

### provided no Officer or Member is allowed to influence any such decision made by the Club in respect of payments or transactions between it and them, their direct family or any associated entity. [Guidance: This clause is required by the IRD for sports clubs and charities seeking an income tax exemption. See [IRD Guidance](https://www.ird.govt.nz/roles/not-for-profits-and-charities/before-you-start/rules-wording).]

[Guidance: Sections 94 to 98, Inc Soc Act regulate indemnities and insurance for officers, members and employees. The committee may wish to consider the use of specific indemnity insurance and seek specialist advice on the suitability and extent of insurance cover.]

# Amendments

### **Amendments:** This Constitution may only be amended or replaced by Special Resolution of Members at a General Meeting.[**MANDATORY CLAUSE:** Method by which the constitution may be amended is required to be in your constitution – sections 26(1)(i) and 30, Inc Soc Act.] [Guidance: If the amendment would have no more than a minor effect or is to correct errors or makes similar technical alterations then your club can instead follow the process that allows you to do this set out in section 31, Inc Soc Act. The process is for the committee to ensure that written notice of the amendment is sent to every member. The notice must state the text of the amendment and the right of the member to object to the amendment. If no objection from a member is received within 20 working days after the date on which the notice is sent, the committee may make the amendment. However, if an objection is received, the society may not make the amendment under section 31.]

### **No amendment:** No addition to, deletion from or alteration of this Constitution may be made which would allow personal pecuniary profits to any individuals. [Guidance: This clause is required by the IRD for sports club and charities seeking an income tax exemption. See [IRD Guidance](https://www.ird.govt.nz/roles/not-for-profits-and-charities/before-you-start/rules-wording).]

# Bylaws and Integrity

### **Bylaws:** The Committee may make and amend Bylaws for the conduct and control of the Club’s activities and codes of conduct applicable to Members. Any Bylaw must be consistent with the this Constitution, the Club’s purposes set out in clause 3, the Act and any other laws. All Bylaws are binding on the Club and the Members. The making, amendment, revocation, or replacement of a Bylaw is not an amendment of this Constitution. [Guidance: Section 28(2), Inc Soc Act provides that a Bylaw purportedly made by a society has no effect to the extent that it contravenes, or is inconsistent with, the Act, any other legislation or the society’s constitution.]

[Guidance: As background, the [Integrity Sport and Recreation Act 2023](https://legislation.govt.nz/act/public/2023/0048/latest/whole.html#LMS787103) (**ISRA**) provides for a new Integrity Sport and Recreation Commission (**Commission**), which comes into force no later than 1 July 2024. The Commission will issue the Code of Integrity for Sport and Recreation (**Integrity** **Code**) after 1 July 2024.

Your national organisation may choose to adopt an integrity code. If it does, the code will bind its members automatically. Clauses 14.2 to 14.4 are provided as an example to enable the effective application of an integrity code across a sport or recreation. Check with your national organisation to see if the clauses need to be adjusted before you re-register.

Include clause 14.4 if your club is part of a federated or hybrid structure, and all of your club members are not directly members of the national organisation. If all your members are directly members of the national organisation, clause 14.4 is not required, but you can still include it if you want to reiterate to your members that they are bound.

### **Definition:** In this clause 14.2 **Integrity Code** means an integrity code issued by the Integrity Sport and Recreation Commission under section 19 of the Integrity Sport and Recreation Act 2023.

### **Integrity Code binding:** If [national organisation] adopts an Integrity Code, the Club agrees to the application of the Integrity Code to it and agrees to be bound by it. [Guidance: Section 21(2)(b)(i), ISRA.]

### **Application to Members:** If [national organisation] adopts an Integrity Code, all Members of the Club agree to the application of the Integrity Code to them and agree to be bound by it.

# Dispute resolution

[**MANDATORY CLAUSE:** Procedures for resolving disputes, including providing for how a complaint may be made, are required to be in your constitution – sections 26(1)(j), 38 to 44.] [Guidance: Dispute resolution procedures must be consistent with the rules of natural justice. Sch 2, Inc Soc Act contains optional dispute resolution procedures. It is recommended that you firstly check with your national / regional organisation to understand if they are able to assist with a process that is suitable for club-level in your sport/recreation. Check if any organisations that you are a member of have any requirements in relation to disputes. Consider any policies and regulations that sit outside of your constitution that currently contain dispute resolution procedures.
The following clauses provide an example of how an organisation might manage disputes and other matters arising that are dealt with under policies or regulations, while ensuring that it complies with the Inc Soc Act requirements, as well as providing a dispute resolution procedure which is largely based on Sch 2 of the Act. The flow chart below helps to determine the correct procedure for handling a certain dispute or other matter.]



### **Definitions:** In this clause 15:

#### **Dispute** means a disagreement or conflict between and among any one or more Members, any one or more Officers and the Club, that relates to an allegation that:

##### a Member or an Officer has engaged in misconduct; or

##### a Member or an Officer has breached, or is likely to breach, a duty under this Constitution or the Act; or

##### the Club has breached, or is likely to breach, a duty under this Constitution or the Act; or

##### a Member’s rights or interests as a member have been damaged or Members’ rights or interests generally have been damaged; [Guidance: Section 38(1), Inc Soc Act.]

#### **DisputesProcedure** means the procedure for resolving a Dispute set out in clauses 15.5 to 15.13;

#### a **Member** is a reference to a Member acting in their capacity as a Member; [Guidance: Section 38(3)(a), Inc Soc Act.]

#### an **Officer** is a reference to an Officer acting in their capacity as an Officer. [Guidance: Section 38(3)(b), Inc Soc Act.]

### **Application of other legislation to a Dispute:** The Disputes Procedure will not apply to a Dispute to the extent that other legislation requires the Dispute to be dealt with in a different way. The Disputes Procedure will have no effect to the extent that it contravenes, or is inconsistent with, that legislation. [Guidance: Section 42(2), Inc Soc Act. As examples, the Employment Relations Authority has exclusive jurisdiction to make determinations about employment relationships problems.]

### **Application of other procedures under this Constitution or in a Bylaw:**

#### If the Dispute is dealt with by a separate procedure under this Constitution or in a Bylaw (**Other Procedure**), that Other Procedure applies to the exclusion of the Disputes Procedure. If any part of the Other Procedure is inconsistent with the rules of natural justice, that part will not apply, but the remainder of the Other Procedure will continue to apply together with adjustments as determined by the Committee in its discretion so that the Other Procedure is consistent with the rules of natural justice. [Guidance: For example, there is a separate procedure in this Constitution for removing a Committee Member at clause 6.12. You must make it clear to your Members where these Other Procedures are found and ensure that they are easy to access. Bylaws is an umbrella term used to cover bylaws, policies, regulations and codes that your organisation might have e.g. code of conduct and rules of the game.]

#### If the conduct, incident, event or issue does not meet the definition of a Dispute and is managed by any Other Procedure, that Other Procedure applies to the exclusion of the Disputes Procedure.

### **Application of the Disputes Procedure:** If the Dispute is not required by other legislation to be dealt with in a different way and it is not dealt with by any Other Procedure, the Disputes Procedure applies to the Dispute.

*Disputes Procedure*

### **Raising a complaint:**

#### A Member or an Officer may start the Disputes Procedure (a **Complaint**) by giving written notice to the Committee setting out:

##### the allegation to which the dispute relates and who the allegation is against; and

##### any other information reasonably required by the Club.

#### The Club may make a Complaint involving an allegation against a Member or an Officer by giving notice to the person concerned setting out the allegation to which the Dispute relates.

#### The information given must be enough to ensure a person against whom the Complaint is made is fairly advised of the allegation concerning them, with sufficient details given to enable them to prepare a response. [Guidance: Section 38(2) and cl 2, Sch 2, Inc Soc Act.]

### **Investigating and determining Disputes:** Unless otherwise provided, the Club must as soon as is reasonably practicable after receiving or becoming aware of a Complaint, ensure the Dispute is investigated and determined. Disputes must be dealt with in a fair, efficient, and effective manner. [Guidance: Cl 5, Sch 2, Inc Soc Act.]

### **Decision to not proceed with a matter:** Despite the contents of the Disputes Procedure, the Club may decide not to proceed with a matter if:

#### the Complaint is trivial; or

#### the Complaint does not appear to disclose or involve any allegation of the following kind:

##### any material misconduct; or

##### any material breach or likelihood of material breach of a duty under this Constitution or the Act; or

##### any material damage to a Member’s rights or interests or Members’ rights or interests generally; or

#### the Complaint appears to be without foundation or there is no apparent evidence to support it; or

#### the person who makes the Complaint has an insignificant interest in the matter; or

#### the conduct, incident, event, or issue giving rise to the Complaint has already been investigated and dealt with under this Constitution; or

#### there has been an undue delay in making the Complaint. [Guidance: Cl 6, Sch 2, Inc Soc Act.]

### **Complaint may be referred:** The Club may refer a Complaint to:

#### a hearing body or person authorised, delegated or appointed by the Committee to hear and resolve Disputes, and includes an arbitral tribunal (**Hearing Body**); or

#### a subcommittee or an external person to investigate and report; or

#### any type of consensual dispute resolution with the consent of all parties to the Complaint. [Guidance: Cl 7, Sch 2, Inc Soc Act, modified. Examples are mediation, facilitation or a tikanga-based practice.]

### **Hearing Body:** The Committee may determine the composition, jurisdiction, functions and procedures of, and any sanctions which can be imposed by, any Hearing Body. Each Hearing Body has delegated authority by the Committee to resolve, or assist to resolve, Complaints.

### **Bias:** An individual may not be part of a Hearing Body in relation to a Complaint if two or more members of the Committee or of the Hearing Body consider there are reasonable grounds to believe that the individual may not be:

#### impartial; or

#### able to consider the matter without a predetermined view. [Guidance: Cl 8, Sch 2, Inc Soc Act.]

### **Complainant’s right to be heard:**

#### The Member or Officer has a right to be heard before the Complaint is resolved or any outcome is determined. If the Club makes a Complaint, the Club has a right to be heard before the Complaint is resolved or any outcome is determined, and a Committee Member may exercise that right on behalf of the Club.

#### A Member or Officer or the Club must be taken to have been given the right if:

##### the Member or Officer or the Club has a reasonable opportunity to be heard in writing or at an oral hearing, if one is held; and

##### an oral hearing is held if the Hearing Body considers that an oral hearing is needed to ensure an adequate hearing; and

##### an oral hearing, if any, is held before the Hearing Body; and

##### the Member’s or Officer’s or the Club’s written statement or submission, if any, are considered by the Hearing Body. [Guidance: Cl 3, Sch 2, Inc Soc Act.]

### **Respondent’s right to be heard:** The Member or Officer who, or the Club which, is the subject of the Complaint (**Respondent**) has a right to be heard before the Complaint is resolved or any outcome is determined. If the Respondent is the Club, a Committee Member may exercise the right on behalf of the Club. A Respondent must be taken to have been given the right if:

#### the Respondent is fairly advised of all allegations concerning the Respondent, with sufficient details and time given to enable the Respondent to prepare a response; and

#### the Respondent has a reasonable opportunity to be heard in writing or at an oral hearing, if one is to be held; and

#### an oral hearing is held if the Hearing Body considers that an oral hearing is needed to ensure an adequate hearing; and

#### an oral hearing, if any, is held before the Hearing Body; and

#### the Respondent’s written statement or submissions, if any, are considered by the Hearing Body. [Guidance: Cl 4, Sch 2, Inc Soc Act.]

### **Appeals:** There is no right of appeal or right of review of a decision unless specified. [Guidance: Your constitution may provide for whether and, if so, how a decision made under the procedures for resolving disputes may be subject to an appeal or review, section 44, Inc Soc Act. Consider what rights of appeal or review are available (if any) and to what body they may be appealed to or reviewed by. Check in with your national and/or regional organisation to see if there are any rights of appeal or review. In short, a right of appeal allows a party to apply to a different or higher body to determine whether the original decision was correct. A right of review is a more confined right where a reviewer looks at whether the way the original decision was made was lawful, reasonable and procedurally correct. The reviewer usually won’t decide whether the decision was the ‘right decision’. This clause is optional to include.]

# Liquidation and removal

### **Notice:** The Committee must give notice to all Members at least 20 Working Days of a proposed motion:

#### to appoint a liquidator;

#### to remove the Club from the Register of Incorporated Societies; or

#### for the distribution of the Club’s surplus assets.

### The notice must comply with section 228 of the Act and include details of the General Meeting at which the proposed motion is to be considered. [Guidance: Section 228 requires the committee send written notice of the resolution to every member at least 20 working days before the general meeting at which the resolution is to be submitted. The notice must state:

### the time and place of the meeting;

### the nature of the business to be transacted at the meeting in sufficient detail to enable a member to form a reasoned judgement in relation to it;

### the text of the resolution;

### the right of a member to appoint a proxy or to cast a vote by post or electronic means (in all cases, if the society’s constitution allows); and

### for a resolution under [section 216(1)﻿(c)](https://www.legislation.govt.nz/act/public/2022/0012/latest/whole.html#LMS101110) (disposing surplus assets), a statement confirming that the committee has had regard to the society’s purposes.]

### **Special Resolution:** Any resolution for a motion set out in clauses 16.1(a) to (c) must be passed by a Special Resolution of Members.

### **Surplus assets:** The surplus assets of the Club, after the payment of all costs, debts and liabilities, must be disposed of to [not-for-profit entity(ies) name(s) *or* organisation(s) with charitable status] or any other not-for-profit entity [which are exclusively charitable and] that shares similar purposes to the Club. [**MANDATORY CLAUSE****:** Nomination of a not-for-profit, or class/description of not-for-profit entities to which surplus assets should be distributed to on a wind-up is required to be in your constitution – section 26(1)(i), Inc Soc Act.] [Guidance: A not-for-profit entity is defined in section 5(3), Inc Soc Act as: (a) a society incorporated under the Inc Soc Act; (b) a charitable entity (defined in section 4(1), Charities Act 2005); (c) any other society, institution, association, organisation or trust that is not carried on for the private benefit of an individual and whose funds are applied entirely or mainly for benevolent, philanthropic, cultural, charitable, sporting or public purposes in NZ and whose rules require that on winding up, any surplus assets must be given to other not-for-profits within the meaning of section 5(3), Inc Soc Act. Include the wording in orange if your club is charitable.]

# Matters not provided for

### If any matter arises that, in the opinion of the Committee, is not provided for in this Constitution or any Bylaws, or if any dispute arises out of the interpretation of this Constitution or the Bylaws, the matter or dispute will be determined by the Committee.

# Transition

### [Guidance: You may need to include a customised transition clause depending on the extent of your changes.] **Transition:** This clause 18 applies to facilitate transition of the Club from the previous [rules/constitution] to this Constitution. If this clause is inconsistent with any other clause in this Constitution, this clause applies to the extent of the inconsistency and the other clause will not.

### **Power of Committee during transition period:** Subject to the Act, the Committee may amend any requirement for and/or the date by which this Constitution requires anything to be done. This clause applies for [time period] and is solely to enable flexibility in the transition of the Club from the previous [rules/constitution] to this Constitution and to correct any unintended consequences occurring through different wording being used.

### **Transition of Committee Members:**

#### [detail if the committee members under the previous rules/constitution continue]

#### [state whether the number of terms served under the previous rule/constitution count towards any maximum number of terms in this constitution]