

## Constitution of the Elevating Work Platform Association of New Zealand (Inc) (EWPA)

### 1. Name

The name of the Society is the Elevating Work Platform Association of New Zealand (in this constitution referred to as the **Association**).

### 2. Charitable Status

The **Association** is not and does not intend to be registered as a charitable entity under the Charities Act 2005.

### 3. 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** or any Act which replaces it (including amendments to it from time to time), and any regulations made under the Act or under any Act which replaces it.

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

**‘Association’** means the same as **Society** as defined by the **Act** and means the **Elevating Work Platform Association of New Zealand**.

**‘Board’** means the same as Committee as defined by section 45 of the Act and means the **Association’s** governing body.

**‘Constitution’** means the rules in this document.

**‘Contested Vote’** means a vote at a General Meeting where the Chairperson is unable to make a clear determination of the outcome of a vote by a simple majority for or against a motion.

**‘General Meeting’** means either an **Annual General Meeting** or a **Special General Meeting** of the **Members** of the **Association**.

**‘Interested Member’** means a **Member** who is interested in a matter for any of the reasons set out in section 62 of the **Act**.

**‘Interests Register’** means the register of interests of **Officers**, kept under this **Constitution** and as required by section 73 of the **Act**.

**‘Matter’** means—

- the **Association’s** performance of its activities or exercise of its powers; or
- an arrangement, agreement, or contract (a transaction) made or entered into, or proposed to be entered into, by the **Association**.

**‘Notice’** to **Members** includes any notice given by email, post, or courier.

**‘Officer’** means

- a natural person who is a member of the **Board**, or
- occupying a position in the **Association** that allows them to exercise significant influence over the management or administration of the **Association**, including any Secretary, Returning Officer and/or Chief Executive.

**‘President’** means the Chairperson as defined by the Act and means the **Officer** responsible for chairing **General Meetings** and **Board Meetings**, and who provides leadership for the **Association**.

**‘Register of Members’** means the register of **Members** kept under this Constitution as required by section 79 of the Act.

**‘Secretary’** means the **Officer** responsible for the matters specifically noted in this Constitution.

**‘Special General Meeting’** means a meeting of the Members, other than an Annual General Meeting, called for a specific purpose or purposes.

**‘Vice President’** means the **Officer** elected or appointed to deputise in the absence of the **President**.

**‘Working Days’** means as defined in the Legislation Act 2019. Examples of days that are not Working Days include, but are not limited to, the following — 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.

### **3.2 Definition of Members and Directors**

**‘Member’** means an Individual, Person, Company or Body Corporate (including but not limited to a registered business, company, incorporated society, body corporate, sole proprietorship or partnership) who has consented to become a Member of the Association and who has been properly admitted to the Association who has not ceased to be a Member of the Association.

**‘Members’** means all of the Members, being both individuals and Body Corporates (including but not limited to a registered business, company, incorporated society, body corporate, sole proprietorship or partnership).

**‘Company Member’** means the equivalent of a Body Corporate as referred to in the **Act** and means a registered business, company, incorporated society, body corporate, sole proprietorship or partnership who has been properly admitted to the **Association** who has not ceased to be a **Member** of the **Association**. An Officer or Director of the **Company Member** shall consent on behalf of the **Company Member** to join the **Association**.

## **4. Purposes**

### **4.1. Primary Purpose**

The primary purpose of the Association is to represent the best interests of its members in line with the Associations Code of Ethics and its strategic plan, and as allowed by the Act.

#### **4.2. Prohibited Activity**

As defined by Section 22 of the Act, the Association must not operate for the purpose of, or with the effect of:

- 4.2.1. Distributing, any gain, profit, surplus, dividend, or other similar financial benefit to any of its Members (whether in money or in kind); or
- 4.2.2. Having capital that is divided into shares or stock held by its Members; or
- 4.2.3. Holding, property in which its members have a disposable interest (whether directly, or in the form of shares or stock in the capital of the Association or otherwise).

The Association will not operate for the financial gain of Members simply if the Association:

- 4.2.4. Engages in trade; or
- 4.2.5. Pays a Member for matters that are incidental to the purposes of the Association, and the Member is a not-for-profit entity; or
- 4.2.6. Distributes funds to a Member to further the purposes of the Association, and the Member:
  - 4.2.6.1.1. Is a not-for-profit entity, and
  - 4.2.6.1.2. Is affiliated or closely related to the Association, and
  - 4.2.6.1.3. Has the same, or substantially the same, purposes as those of the Association; or
- 4.2.7. Reimburses a Member for reasonable expenses legitimately incurred on behalf of the Association or while pursuing the Association's purposes; or
- 4.2.8. Provides benefits to members of the public or of a class of the public and those persons include Members or their families; or
- 4.2.9. Provides benefits to Members or their families to alleviate hardship; or
- 4.2.10. Provides educational scholarships or grants to Members or their families; or
- 4.2.11. Pays a Member a salary or wages or other payments for services to the Association on arm's length terms (terms reasonable in the circumstances) if the parties were connected or related only by the transaction in question, each acting independently, and each acting in its own best interests; or are terms less favourable to the Member than those terms and the payment for services, or other transaction, does not include any share of a gain, profit, or surplus, percentage of revenue, or other reward in connection with any gain, profit, surplus, or revenue of the Association); or
- 4.2.12. Provides a Member with incidental benefits (for example, trophies, prizes, or discounts on products or services) in accordance with the purposes of the Association; or
- 4.2.13. On removal of the Association from the Register of Incorporated Societies having its surplus assets distributed under subpart 5 of Part 5 of the Act to a Member that is a not-for-profit entity.

#### **5. Act and Regulations**

Nothing in this Constitution authorises the Association to do anything which contravenes or is inconsistent with the Act, any regulations made under the Act, or any other legislation.

#### **6. Restrictions on Association powers**

The Association must not be carried on for the financial gain of any of its Members.

The Association's capacity, rights, powers, and privileges are subject to the following restrictions:

- 6.1.** The Association shall only be allowed to borrow money for the sole purpose of providing benefits to members, as defined by this Constitution and the Act.

## **7. Registered office**

The registered office of the Association shall be at such place in New Zealand as the Board from time to time determines.

Any Changes to the Registered Office shall be notified to the Registrar of Incorporated Societies at least 5 working days before the change of address for the registered office is due to take effect, and in a form and as required by the Act. It shall be the responsibility of the Association Secretary to ensure any such notification is made.

## **8. Contact Person**

The Association shall have at least 1 but no more than 3 contact person(s) whom the Registrar can contact when needed.

As required by the Act the Association's contact person(s) shall be at least 18 years of age, and ordinarily resident in New Zealand.

The primary Contact Person shall be the Association Secretary, unless otherwise appointed by the Board. If the position of Association Secretary is vacant, the Primary Contact Person shall be the Association President, unless otherwise appointed by the Board.

Each contact person's name must be provided to the Registrar of Incorporated Societies, along with their contact details, including a physical address or an electronic address, and a telephone number.

Any change in that contact person or that person's name or contact details shall be advised to the Registrar of Incorporated Societies within 20 Working Days of that change occurring, or the Association becoming aware of the change. It shall be the responsibility of the Association Secretary to ensure any such notification is made.

## **9. Minimum number of Members**

The Association shall maintain a minimum of 20 Members (where a member is defined in section 10 of the Constitution) or such other number as is required from time to time by section 74 of the **Act**.

## **10. Company Member**

As defined in section 3.2, a Company Member shall be a registered business, company, incorporated society, body corporate, sole proprietorship or partnership which is related to, dependent on or connected with the business of hiring out goods or services to customers for commercial gain or reward.

A Company Member shall only apply to the Association for Membership by providing a written membership application signed by an Officer or Director of the Company.

## **11. Becoming a Member**

Every applicant for Membership must consent in writing to becoming a Member.

An applicant for Membership must complete and sign the Membership Application Form.

The Board may accept or decline an application for membership at its sole discretion, notifying the applicant of the decision without needing to disclose the reasons behind it.

The signed written consent of every Member to become a Member of the Association shall be retained in the Association's membership records.

## **12. Members' obligations and rights**

All Members shall promote the interests and purposes of the Association and shall do nothing to bring the Association into disrepute.

Only Members listed in section 10 of the constitution are entitled to exercise the rights of membership (including attending and voting at General Meetings, accessing or using but not restricted to the Association's website, facilities, equipment, resources, templates and other property, and participating in Association activities) if all subscriptions and any other fees have been paid to the Association by their respective due dates.

All Members agree to respect the copyright of the Association's Intellectual Property and agree to keep up to date all resources provided by the Association and remove from use any obsolete documentation.

Every Member shall provide the Association in writing with that Member's name and contact details (namely, physical or email address and a telephone number) and promptly advise the Association in writing of any changes to those details.

## **13. Subscriptions and Fees**

### **13.1. Annual Subscription**

The subscription year shall commence on the first day of April in each year and shall end on the last day of March in the following year. Members shall be invoiced for all sums due to the Association on the 1st day in April following the general meeting or ballot at which those sums are approved, and shall be required to pay on an annual, or other basis as the Board may determine.

Unless the Board determines otherwise, a Member joining the Association at any time during a current subscription year shall be required to pay a pro-rata proportion of the annual subscription calculated on a monthly basis, and any additional or special levies payable in respect of that subscription year.

### **13.2. Failure to pay Subscription**

Any Member failing to pay the annual subscription (including any periodic payment), any levy, or any capitation fees, within 2 calendar month(s) of the date the same was due for payment shall be considered as unfinancial and shall (without being released from the obligation of payment) have no membership rights and shall not be entitled to participate in any Association activity or to access or use the Associations premises, facilities, equipment, resources and other property until all the arrears are paid. If such arrears are not paid within 2 calendar months of the due date for payment of the subscription, any other fees, or levy the Board may terminate the Member's membership (without being required to give prior notice to that Member).

### **13.3. Additional Funding**

In addition to the annual subscription, the Board may decide that the Association requires extra funds to take advantage of some opportunity, or to ward off some threat, or to otherwise achieve the objects of the Association for the benefit of one or more of the Members or the Industry in general.

In that event, the Board shall propose a special levy to the members and shall submit it to a vote of the Members either at an Annual General Meeting or a Special General Meeting. To become binding the proposal must be

approved by more than 50% of the Members who are required to contribute the extra funding and who vote on the proposal.

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

### **14.1 A Member ceases to be a Member:**

- 14.1.1. By resignation from that Member's class of membership by written notice to the Association; or
- 14.1.2. The Association confirms by written notice of a member's verbal resignation; or
- 14.1.3. The Member has failed to pay a subscription, levy or other amount due to the Association within 90 Working Days of the invoice date; or
- 14.1.4. On termination of a Member's membership following a dispute resolution process under this Constitution; or
- 14.1.5. If the Member Company or other similar entity goes into liquidation or deregistration; or
- 14.1.6. If a partnership on dissolution of the partnership; or
- 14.1.7. In the case of an honorary or life member, a Member ceases to be a member of the Association upon the death of the member.

### **14.2. A Member ceases to be a Member by resolution of the Board where:**

- 14.2.1. In the opinion of the Board the Member has brought the Association into disrepute; or
- 14.2.2. The Member ceases to meet the relevant criteria for membership in the opinion of the Board at its absolute discretion.

### **14.3. Effect**

A member ceases to be a Member with effect from:

- 14.3.1. The date of receipt of the Member's notice of resignation by the Board (or any subsequent date stated in the notice of resignation); or
- 14.3.2. The date of termination of the Member's membership under this Constitution; or
- 14.3.3. The date the Member entered liquidation or deregistration, or if a partnership from the date of its dissolution; or
- 14.3.4. The date specified in a resolution of the Board and when a Member's membership has been terminated, the Board shall promptly notify the former Member in writing.

## **15. Obligations once membership has ceased**

A Member who has ceased to be a Member under this Constitution:

- 15.1.** Remains liable to pay all subscriptions and other fees to the Association's next balance date; and
- 15.2.** Shall cease to hold themselves out as a Member of the Association; and
- 15.3.** Shall cease to use any intellectual property provided by the Association including but not limited to legal templates, technical resources, health & safety resources, training information, and return to the Association all material provided or available to Members by the Association; and
- 15.4.** Shall cease to be entitled to any of the rights of an Association Member.

## **16. Becoming a Member again**

Any former Member may apply for re-admission in the manner prescribed for new applicants and may be re-admitted only by resolution of the Board, including any former Member's whose membership was terminated following a disciplinary or dispute resolution process. A Member may only be readmitted to the Association by paying any

outstanding debts to the Association.

## **17. General Meetings**

### **17.1. Procedure for all General Meetings**

The Board shall give all Members at least 28 Calendar Days' written Notice of any General Meeting and of the business to be conducted at that General Meeting.

That Notice will be notified via email to the Member at the contact email address notified to the Association and recorded in the Association's register of members, and it will be published on the Association's website. The General Meeting and its business will not be invalidated simply because one or more Members do not receive the Notice of the General Meeting.

All Members may attend and speak at a General Meeting but only financial Members as listed in section 10.1- 10.3 of this constitution may vote at General Meetings either in person, or by a signed Association proxy form sent to the Association by email at least 48 hours before the commencement of the General Meeting, or by electronic means.

No General Meeting may be held unless at least 10 eligible financial Members attend throughout the meeting, and this will constitute a quorum.

If, within half an hour after the time appointed for a meeting a quorum is not present, the meeting – if convened upon request of Members – shall be dissolved. In any other case it shall stand adjourned to a day, time and place determined by the President of the Association, and if at such adjourned meeting a quorum is not present those Members present in person or by proxy shall be deemed to constitute a sufficient quorum.

General Meetings may be held at one or more venues by Members present in person and/or using any real-time audio, audio and visual, or electronic communication that gives each Member a reasonable opportunity to participate.

Unless otherwise required by this Constitution, all motions shall be decided by a simple majority of votes by those in attendance in person or electronically and any proxy votes duly received.

Any decisions made when a quorum is not present are not valid.

### **17.2. Voting**

Resolutions shall be voted upon in the first instance by a simple majority of a show of hands of those members present in person or electronically. A Member is entitled to exercise one vote by voice, electronic means or by a show of hands.

### **17.3. Casting Vote**

The Chairperson as convenor shall have a casting vote when the representatives are equally divided in opinion, such vote to be in addition to the Chairpersons original deliberative vote.

### **17.4. Written Resolution in lieu of an Annual General Meeting**

The Association may pass a written resolution in lieu of an Annual General Meeting, and a written resolution is as valid for the purposes of the Act and this Constitution as if it had been passed at an Annual General Meeting if it is approved by no less than 75 percent of the eligible financial Members voting on the resolution. A written resolution may consist of 1 or more documents in similar form (including letters, electronic mail, or other similar means of communication) each proposed by or on behalf of 1 or more Members. A Member may give

their approval to a written resolution by signing the resolution or giving approval to the resolution in any other manner permitted by the Constitution (for example, by electronic means).

#### **17.5. Chairing a General Meeting**

All General Meetings shall be chaired by the President. If the President is absent, the meeting shall elect another member of the Board to chair that meeting.

Any person chairing a General Meeting has a deliberative and, in the event of a tied vote, a casting vote.

Any person chairing a General Meeting may, with the consent of a simple majority of Members present at any General Meeting, adjourn the General Meeting from time to time and from place to place but no business shall be transacted at any adjourned General Meeting other than the business left unfinished at the meeting from which the adjournment took place.

Any person chairing a General Meeting, at their sole discretion, may direct that any person not entitled to be present at the General Meeting, or obstructing the business of the General Meeting, or behaving in a disorderly manner, or being abusive, or failing to abide by the directions of the chairperson be removed from the General Meeting.

In the absence of a quorum or in the case of emergency, any person chairing a General Meeting, at their sole discretion, may adjourn the General Meeting or declare it closed.

#### **17.6. Association Motions**

The Board may propose motions for the Association to vote on ('Association Motions'), which shall be notified to Members with the notice of the General Meeting.

#### **17.7. Members Motions**

Any Member may request that a motion be voted on ('Member's Motion') at a General Meeting, by giving notice to the Secretary or Association at least 14 Calendar Days before that meeting. The Member may also provide information in support of the motion ('Member's Information') limited to 1 x A4 page. If notice of the motion is given to the Secretary or Board before written Notice of the General Meeting is given to Members, notice of the motion shall be provided to Members with the written Notice of the General Meeting.

#### **17.8. Minutes**

The Association must ensure that minutes of all General Meetings are kept.

#### **17.9. Schedule of Annual General Meetings**

The Annual General Meeting must be held no later than the earlier of either 6 months after the balance date of the Association or no later than 15 months after the previous annual meeting.





## **17.10. Annual General Meeting business**

The business of an Annual General Meeting shall be to:

- 17.10.1. Confirm the minutes of the last Annual General Meeting and any Special General Meeting(s) held since the last Annual General Meeting; and
- 17.10.2. Adopt the annual report on the operations and affairs of the Association; and
- 17.10.3. Adopt the Boards report on the finances of the Association, and the annual financial statements; and
- 17.10.4. Set any subscriptions for the next financial year; and
- 17.10.5. Consider any motions of which prior notice has been given to Members with notice of the Meeting; and
- 17.10.6. Consider any general business.

The Board must, at each Annual General Meeting, present the following information:

- 17.10.7. An annual report on the operation and affairs of the Association during the most recently completed accounting period; and
- 17.10.8. The annual financial statements for that period, and
- 17.10.9. The current strategic plan, and
- 17.10.10. Notice of any disclosures of conflicts of interest made by Officers during that period (including a summary of the matters, or types of matters, to which those disclosures relate).

## **18. Special General meetings**

A Special General Meeting may be called at any time by the Board by resolution.

The Board must call a Special General Meeting if it receives a written request signed by at least 10 percent of Members.

Any resolution or written request must state the business that the Special General Meeting is to deal with.

The rules in this Constitution relating to the procedure to be followed at General Meetings shall apply to a Special General Meeting.

A Special General Meeting shall only consider and deal with the business specified in the Boards resolution or the written request by Members for the Meeting.

## **19. Board**

### **19.1. Board Composition**

The Board shall consist of no less than 3 and no more than 5 elected Officers.

The Board Members shall be Members of the Association, representing/reflecting different sectors involved in the industry.

### **19.2. Functions of the Board**

From the end of each Annual General Meeting until the end of the next, the Association shall be managed by, or under the direction or supervision of, the Board, in accordance with the Incorporated Societies Act 2022, any Regulations made under that Act, and this Constitution.



### **19.3. Powers of the Board**

The Board has all the powers necessary for managing and for directing and supervising the management of the operation and affairs of the Association, subject to such modifications, exceptions, or limitations as are contained in the Act or in this Constitution.

### **19.4. Subcommittees**

The Board may appoint sub-committees consisting of such persons (whether or not Members of the Association) and for such purposes as it thinks is fit.

Unless otherwise resolved by the Board:

- 19.4.1. The quorum of every sub-committee is half the members of the sub-committee but not less than 2; and
- 19.4.2. No sub-committee shall have power to co-opt additional members; and
- 19.4.3. A sub-committee must not commit the Association to any financial expenditure without express authority from the Association; and
- 19.4.4. A sub-committee must not further delegate any of its powers.

### **19.5. General Matters**

The Board and any sub-committee may act by resolution approved during a conference call using audio and/or audio-visual technology or through a written ballot conducted by email, electronic voting system or post, and any such resolution shall be recorded in the minutes of the next Board or sub-committee meeting.

Other than as prescribed by the Act or this Constitution, the Board or any sub-committee may regulate its proceedings as it thinks fit.

## **20. Board Meetings**

### **20.1. Quorum**

The quorum for Board Meetings is at least 60% of the number of members of the Board in attendance for the duration of the Board Meeting.

### **20.2. Meeting Format**

A meeting of the Board may be held either:

- 20.2.1. By a number of the members of the Board who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- 20.2.2. By means of audio, or audio and visual, communication by which all members of the Board participating and constituting a quorum can simultaneously hear each other throughout the meeting; or
- 20.2.3. A combination of both of the above.

A resolution of the Board is passed at any meeting of the Board if a majority of the votes cast on it are in favour of the resolution. Every Officer on the Board shall have one vote.

### **20.3. President**

The members of the Board shall elect one of their number as President of the Board as soon as practicable following the election of Officers. The President will by default become the Chairperson of all meetings and has a casting vote in the event of a tied vote.

If at a meeting of the Board, the President is not present, the Board members present may choose one of their number to be chairperson of the meeting. The chairperson does have a casting vote in the event of a tied vote on any resolution of the Board for the duration of that meeting.

Except as otherwise provided in this Constitution, the Board may regulate its own procedure.

#### **20.4. Frequency of Board Meetings**

The Board shall meet at least quarterly at such times and places and in such manner (including by audio, audio and visual, or electronic communication) as it may determine and otherwise where and as convened by the President or Secretary.

The Secretary, or other Board member nominated by the Board, shall give to all Board members not less than 5 Working Days' notice of Board meetings, but in cases of urgency a shorter period of notice shall suffice.

#### **20.5. Policies**

The Board from time to time may make and amend policies for the conduct and control of Association activities and codes of conduct applicable to Members, but no such policies or codes of conduct applicable to Members shall be inconsistent with this Constitution, the Act, regulations made under the Act, or any other legislation.

### **21. Officers' duties**

#### **21.1. Qualifications of Officers**

Every Officer must be a natural person who:

- 21.1.1. Has consented in writing to be an Officer of the Association, and
- 21.1.2. Certifies that they are not disqualified from being elected or appointed or otherwise holding office as an Officer of the Association as specified under section 47(3) of the Act, and
- 21.1.3. Fulfils one of the roles as specified in section 19.1, and
- 21.1.4. Is a Director, Officer, Employee or Proprietor of a Member Company, and
- 21.1.5. Is a person aged 18 years or older.

#### **21.2. Prior Consent and certification**

Prior to election or appointment as an Officer a person must:

- 21.2.1. Consent in writing to be an Officer, and
- 21.2.2. Certify that they are not disqualified from being elected or appointed as an Officer either by this Constitution or section 47(3) of the Act
- 21.2.3. The written consent and certification shall be kept on record by the Association.

#### **21.3. Officers' duties**

At all times each Officer:

- 21.3.1. Shall act in good faith and in what he or she believes to be the best interests of the Association; and,
- 21.3.2. Must exercise all powers for a proper purpose; and
- 21.3.3. Must not act, or agree to the Association acting, in a manner that contravenes the Act or this Constitution; and
- 21.3.4. 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 Association, the nature of the decision, and the position of the Officer and the nature of the responsibilities undertaken by him or her; and



- 21.3.5. Must not agree to the activities of the Association being carried on in a manner likely to create a substantial risk of serious loss to the Association or to the Associations creditors, or cause or allow the activities of the Association to be carried on in a manner likely to create a substantial risk of serious loss to the Association or to the Associations creditors; and
- 21.3.6. Must not agree to the Association incurring an obligation unless he or she believes at that time on reasonable grounds that the Association will be able to perform the obligation when it is required to do so.

#### **21.4. Election of Board Members**

Board Members shall be elected by remote ballot in accordance with the procedures for giving Notice:

- 21.4.1. At least three months prior to the proposed Election Date, the Board shall:
  - 21.4.1.1. Set the Election Date for elections to the Board, and
  - 21.4.1.2. Appoint a Returning Officer for those elections to the Board.
- 21.4.2. Within 5 Clear Days of determining the Election Date the Secretary shall give Notice to all financial Members calling for nominations for Board positions requiring to be filled, and such Notice shall include a nomination form and shall specify the date such nominations must be in the hands of the Returning Officer appointed under section 21.4.1.2. above, such date being not less than 35 Clear Days prior to the Election Date.
- 21.4.3. Nominees must be financial Members, and a Nominees written nomination shall be accompanied by the written consent of the nominee with a certificate that the nominee is not disqualified from being appointed or holding office as a Board Member by this Constitution or the Act.
- 21.4.4. A Nominee may add a signed biography not exceeding one A4 page.
- 21.4.5. At least 28 Calendar Days prior to the Election Date the Secretary shall give Notice to all financial Members of the nominations received for Board positions and, in the event that there are a greater number than required for specific positions, forwarding a voting paper accompanied by the biographies of the candidates for election. Such voting paper shall specify the latest date (not less than 3 Clear Days prior to the Election Date) and it must be in the hands of the Returning Officer appointed by the Board to be counted as a valid vote.
- 21.4.6. Members shall only vote for the Nominees for Board Positions as stated in 19.1.
- 21.4.7. In the event of a ballot being required under sub-paragraph (v) 21.4.5 above the candidate/s polling the highest number of votes of financial Members shall be declared elected by the Returning Officer.
- 21.4.8. The failure for any reason of any financial Member to receive such Notice shall not invalidate the election.
- 21.4.9. In the event of any vote being tied the tie shall be resolved by the incoming Board (excluding those in respect of whom the votes are tied).

#### **21.5. Term**

Without excluding an Officer's Fiduciary obligations, the term of office for all Officers elected to the Board shall be a maximum of 3 years, expiring at the Annual General Meeting in their third year. An Officer may wish to offer his or herself for re-election.

#### **21.6. Removal of Officers**

An Officer shall be removed as an Officer by resolution of the Board or the Association where in the opinion of the Board or the Association:

- 21.6.1. The Officer elected to the Board has been absent from 2 Board meetings without leave of absence from the Board: or

- 21.6.2. The Officer has brought the Association into disrepute; or
- 21.6.3. The Officer has failed to disclose a conflict of interest; or
- 21.6.4. The Board passes a vote of no confidence in the Officer.

The removal of the Officer shall take effect from the date specified in a resolution of the Board or Association.

#### **21.7. Ceasing to hold office**

An Officer ceases to hold office when they resign (by notice in writing to the Board), are removed, die, or otherwise vacate office in accordance with section 50(1) of the Act.

Each Officer shall within 28 Calendar Days of submitting a resignation or ceasing to hold office, deliver to the Secretary all books, papers and other property of the Association held by such former Officer.

Should an Officer cease to hold office within three months of the Annual General Meeting, the Board shall continue to operate with the remaining directors and seek nominations for the vacant position to be elected at the Next Annual General Meeting as detailed in Section 21.4. Any new Director appointed to the Board shall commence their three year term from the date of his or her appointment to the Board.

Should an Officer cease to hold office more than 3 months prior to the next Scheduled Annual General meeting, the Board may decide to:

- 21.7.1. leave the position vacant; or
- 21.7.2. at the Boards discretion, appoint a person as a Director to fill the position until the next scheduled Annual General Meeting; or
- 21.7.3. Seek nominations and call a Special General Meeting to appoint a new Board Member.

Any Officer appointed to the Board under the provisions of 21.7.2 who serves less than 12 months on the Board shall be deemed to have served a full year for the purposes of Section 21.5. and shall offer him or herself for election at the next Annual General Meeting.

#### **21.8. Conflicts of interest**

An Officer or member of a sub-committee who is an Interested Member in respect of any Matter being considered by the Association, must disclose details of the nature and extent of the interest:

- 21.8.1. to the Board and or sub-committee; and
- 21.8.2. in an Interests Register kept by the Board.

Disclosure must be made as soon as practicable after the Officer or member of a sub-committee becomes aware that they are interested in the Matter.

An Officer or member of a sub-committee who is an Interested Member regarding a Matter—

- 21.8.3. must not vote or take part in the decision of the Board and/or sub-committee relating to the Matter unless all members of the Board who are not interested in the Matter consent; and
- 21.8.4. must not sign any document relating to the entry into a transaction or the initiation of the Matter unless all members of the Board who are not interested in the Matter consent; but
- 21.8.5. may take part in any discussion of the Board and/or sub-committee relating to the Matter and be present at the time of the decision of the Board and/or sub-committee (unless the Board and/or sub-committee decides otherwise).

However, an Officer or member of a sub-committee who is prevented from voting on a Matter may still be counted for the purpose of determining whether there is a quorum at any meeting at which the Matter is considered.

Where 50 per cent or more of Officers are prevented from voting on a Matter because they are interested in that Matter, a Special General Meeting must be called to consider and determine the Matter, unless all non-interested Officers agree otherwise.

Where 50 per cent or more of the members of a sub-Board are prevented from voting on a Matter because they are interested in that Matter, the Board shall consider and determine the Matter.

## **22. Records**

### **22.1. Register of Members**

The **Association** shall keep an up-to-date Register of Members.

For each current Member, the information contained in the Register of Members shall include —

- 1.1.1. Their individual or Company name; and
- 1.1.2. The date on which they became a Member (if there is no record of the date they joined, this date will be recorded as 'Unknown'), and
- 1.1.3. Their Membership Class
- 1.1.4. Their contact details, including:
  - 1.1.4.1.1. A physical and postal address, and
  - 1.1.4.1.2. A telephone number.
  - 1.1.4.1.3. Email address
  - 1.1.4.1.4. Key contact names of the officers, accounts and management.

Every current Member shall promptly advise the Association of any change of the Member's contact details.

The Association shall also keep a record of the former Members of the Association. For each Member who ceased to be a Member within the previous 7 years, the Association will record:

- 1.1.5. The former Member's Company name, and
- 1.1.6. The date the former Member ceased to be a Member.

### **22.2 Interests Register**

The Board shall at all times maintain an up-to-date register of the interests disclosed by Officers and by members of any sub-Board.

### **22.3 Access to information for members**

A Member may at any time make a written request to the Association for information held by the Association.

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

The Association must, within a reasonable time after receiving a request:

- 22.3.1 provide the information, or
- 22.3.2 agree to provide the information within a specified period, or
- 22.3.3 agree to provide the information within a specified period if the Member pays a reasonable charge to the Association (which must be specified and explained) to meet the cost of providing the information, or

22.3.4 refuse to provide the information, specifying the reasons for the refusal.

Without limiting the reasons for which the Association may refuse to provide the information, the Association may refuse to provide the information if:

- 22.2.1 withholding the information is necessary to protect the privacy of natural persons, including that of deceased natural persons; or
- 22.2.2 the disclosure of the information would, or would be likely to, prejudice the commercial position of the Association or of any of its Members; or
- 22.2.3 the disclosure of the information would, or would be likely to, prejudice the financial or commercial position of any other person, whether or not that person supplied the information to the Association; or
- 22.2.4 the information is not relevant to the operation or affairs of the Association; or
- 22.2.5 withholding the information is necessary to maintain legal professional privilege; or
- 22.2.6 the disclosure of the information would, or would be likely to, breach an enactment; or
- 22.2.7 the burden to the Association in responding to the request is substantially disproportionate to any benefit that the Member (or any other person) will or may receive from the disclosure of the information; or
- 22.2.8 the request for the information is frivolous or vexatious; or
- 22.2.9 the request seeks information about a dispute or complaint which is or has been the subject of the procedures for resolving such matters under this Constitution and the Act.

If the Association requires the Member to pay a charge for the information, the Member may withdraw the request, and must be treated as having done so unless, within 10 Working Days after receiving notification of the charge, the Member informs the Association:

- 22.2.10 that the Member will pay the charge; or
- 22.2.11 that the Member considers the charge to be unreasonable.

Nothing in this rule limits Information Privacy Principle 6 of the Privacy Act 2020 relating to access to personal information.

## **23. Finances**

### **23.1. Control and management**

The funds and property of the Association shall be:

- 23.1.1. Controlled, invested and disposed of by the Board, subject to this Constitution, and Association Financial Policy,
- 23.1.2. Devoted solely to the promotion of the purposes of the Association.

The Board shall maintain bank accounts in the name of the Association.

All money received on account of the Association shall be banked within 3 Working Days of receipt.

All budgeted expenses due for payment shall be submitted to a designated Board Member (or Board members) for authorisation of payment.

The Board must ensure that there are kept at all times accounting records that—

- 23.1.3. Correctly record the transactions of the Association; and
- 23.1.4. Allow the Association to produce financial statements that comply with the requirements of the Act; and
- 23.1.5. Would enable the financial statements to be readily and properly audited (if required under any legislation or the Association's Constitution).



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

The accounting records must be kept in written form or in a form or manner that is easily accessible and convertible into written form. The accounting records must be kept for the current accounting period and for the last 7 completed accounting periods of the Association.

### **23.2. Balance date**

The Association's financial year shall commence on the 1<sup>st</sup> of April of each year and end on the 31<sup>st</sup> March (the latter date being the Association's balance date).

## **24. Dispute resolution**

### **24.1. Meanings of dispute and complaint**

A dispute is a disagreement or conflict involving the Association and/or its Members in relation to specific allegations set out below. The disagreement or conflict may be between any of the following persons:

- 24.1.1. 2 or more Members; or
- 24.1.2. 1 or more Members and the Association; or
- 24.1.3. 1 or more Members and 1 or more Officers; or
- 24.1.4. 2 or more Officers; or
- 24.1.5. 1 or more Officers and the Association; or
- 24.1.6. 1 or more Members or Officers and the Association.

The disagreement or conflict relates to any of the following allegations:

- 24.1.7. a Member or an Officer has engaged in misconduct; or
- 24.1.8. a Member or an Officer has breached, or is likely to breach, a duty under the Association's Constitution, Code of Ethics or Policies or the Act; or
- 24.1.9. the Association has breached, or is likely to breach, a duty under the Association's Constitution, Code of Ethics or Policies or the Act; or
- 24.1.10. a Member's rights or interests as a Member have been damaged or Member's rights or interests generally have been damaged.

A Member or an Officer may make a complaint by giving to the Board (or a complaints sub-committee) a notice in writing that:

- 24.1.11. states that the Member or Officer is starting a procedure for resolving a dispute in accordance with the Association's Constitution; and
- 24.1.12. sets out the allegation(s) to which the dispute relates and whom the allegation or allegations is or are against; and
- 24.1.13. sets out any other information or allegations reasonably required by the Association.

The Association may make a complaint involving an allegation against a Member or an Officer by giving to the Member or Officer a notice in writing that:

- 24.1.14. states that the Association is starting a procedure for resolving a dispute in accordance with the Association's Constitution; and
- 24.1.15. sets out the allegation to which the dispute relates.

The information setting out the allegations must be sufficiently detailed to ensure that a person against whom an allegation or allegations is made is fairly advised of the allegation or allegations concerning them, with sufficient details given to enable that person to prepare a response.

A complaint may be made in any other reasonable manner permitted by the Association's Constitution.



All Members (including the Board) are obliged to cooperate to resolve disputes efficiently, fairly, and with minimum disruption to the Association's activities.

The complainant raising a dispute, and the Board, must consider and discuss whether a dispute may best be resolved through informal discussions, mediation, arbitration, or a tikanga-based practice. Where mediation or arbitration is agreed on, the parties will sign a suitable mediation or arbitration agreement.

#### **24.2. How a complaint is made**

A Member or an Officer may make a complaint by giving to the Board (or a complaints sub-committee) a notice in writing that:

- 24.2.1. states that the Member or Officer is starting a procedure for resolving a dispute in accordance with the Association's Constitution; and
- 24.2.2. sets out the allegation or allegations to which the dispute relates and whom the allegation is against; and
- 24.2.3. sets out any other information reasonably required by the Association.

The Association may make a complaint involving an allegation or allegations against a Member or an Officer by giving to the Member or Officer a notice in writing that:

- 24.2.4. states that the Association is starting a procedure for resolving a dispute in accordance with the Association's Constitution; and
- 24.2.5. sets out the allegation to which the dispute relates.

The information given under subclauses 24.1 and 24.2 must be sufficient to ensure that a person against whom an allegation is made is fairly advised of the allegation or allegations concerning them, with sufficient details given to enable that person to prepare a response.

A complaint may be made in any other reasonable manner permitted by the Association's Constitution.

#### **24.3. Person who makes complaint has right to be heard**

A Member or an Officer who makes a complaint has a right to be heard before the complaint is resolved or any outcome is determined.

If the Association makes a complaint:

- 24.3.1. the Association has a right to be heard before the complaint is resolved or any outcome is determined; and
  - 24.3.2. an Officer may exercise that right on behalf of the Association.
- Without limiting the manner in which the Member, Officer, or Association may be given the right to be heard, they must be taken to have been given the right if:
- 24.3.3. they have a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and

- 24.3.4. an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
- 24.3.5. an oral hearing (if any) is held before the decision maker; and
- 24.3.6. the Member's, Officer's, or Association's written or verbal statement or submissions (if any) are considered by the decision maker.



#### **24.4. Person who is subject of complaint has right to be heard**

This clause applies if a complaint involves an allegation that a Member, an Officer, or the Association (the 'respondent'):

- 24.4.1. has engaged in misconduct; or
- 24.4.2. has breached, or is likely to breach, a duty under the Association's Constitution or bylaws or this Act; or
- 24.4.3. has damaged the rights or interests of a Member or the rights or interests of Members generally.

The respondent has a right to be heard before the complaint is resolved or any outcome is determined.

If the respondent is the Association, an Officer may exercise the right on behalf of the Association.

Without limiting the manner in which a respondent may be given a right to be heard, a respondent must be taken to have been given the right if:

- 24.4.4. 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
- 24.4.5. the respondent has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
- 24.4.6. an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
- 24.4.7. an oral hearing (if any) is held before the decision maker; and
- 24.4.8. the respondent's written statement or submissions (if any) are considered by the decision maker.

#### **24.5. Investigating and determining dispute**

The Association must, as soon as is reasonably practicable after receiving or becoming aware of a complaint made in accordance with its Constitution, ensure that the dispute is investigated and determined.

Disputes must be dealt with under the Constitution in a fair, efficient, and effective manner and in accordance with the provisions of the Act.

#### **24.6. Association may decide not to proceed further with complaint**

Despite the 'Investigating and determining dispute' rule above, the Association may decide not to proceed further with a complaint if:

- 24.6.1. the complaint is considered to be trivial; or
- 24.6.2. the complaint does not appear to disclose or involve any allegation of the following kind:
  - 24.6.2.1. that a Member or an Officer has engaged in material misconduct:
  - 24.6.2.2. that a Member, an Officer, or the Association has materially breached, or is likely to materially breach, a duty under the Association's Constitution or Policies or the Act:
  - 24.6.2.3. that a Member's rights or interests or Members' rights or interests generally have been materially damaged:
- 24.6.3. the complaint appears to be without foundation or there is no apparent evidence to support it; or
- 24.6.4. the person who makes the complaint has an insignificant interest in the matter; or
- 24.6.5. the conduct, incident, event, or issue giving rise to the complaint has already been investigated and dealt with under the Constitution; or
- 24.6.6. there has been an undue delay in making the complaint.

#### **24.7. Association may refer complaint**

The Association may refer a complaint to:

- 24.7.1. a sub-committee or an external person to investigate and report; or
- 24.7.2. a sub-committee, an arbitral tribunal, or an external person to investigate and make a decision.

The Association may, with the consent of all parties to a complaint, refer the complaint to any type of consensual dispute resolution (for example, mediation, facilitation, or a tikanga-based practice).

#### **24.8. Decision makers**

A person may not act as a decision maker in relation to a complaint if 2 or more members of the Board or a complaints sub-committee consider that there are reasonable grounds to believe that the person may not be:

24.8.1. impartial; or

24.8.2. able to consider the matter without a predetermined view.

#### **24.9. Board's decision is final**

Having heard from all parties (including any sub-committee and any external person(s) conducting an investigation) all decisions of the Board shall be final and binding on all parties, and without reproach or appeal.

### **25. Liquidation and removal from the register**

#### **25.1. Resolving to put Association into liquidation.**

The Association may be liquidated in accordance with the provisions of Part 5 of the Act.

The Board shall give 28 Working Days written Notice to all Members of the proposed resolution to put the Association into liquidation.

The Board shall also give written Notice to all Members of the General Meeting at which any such proposed resolution is to be considered. The Notice shall include all information as required by section 228(4) of the Act.

Any resolution to put the Association into liquidation must be passed by a simple majority of all Members present and voting.

#### **25.2. Resolving to apply for removal from the register**

The Association may be removed from the Register of Incorporated Societies in accordance with the provisions of Part 5 of the Act.

The Board shall give 28 Working Days written Notice to all Members of the proposed resolution to remove the Association from the Register of Incorporated Societies.

The Board shall also give written Notice to all Members of the General Meeting at which any such proposed resolution is to be considered. The Notice shall include all information as required by section 228(4) of the Act.

Any resolution to remove the Association from the Register of Incorporated Societies must be passed by a simple majority of all Members present and voting.

#### **25.3. Surplus assets**

If the Association is liquidated or removed from the Register of Incorporated Societies, no distribution shall be made to any Member.

On the liquidation or removal from the Register of Incorporated Societies of the Association, its surplus assets, after payment of all debts, costs and liabilities, shall be vested in a not-for-profit entity that aligns with the Elevating Work Platform Association, such as an Association that is involved in Plant and Equipment Rental. The transfer of surplus assets shall be agreed by a simple majority of all Members present and voting at the General Meeting at which any such proposed resolution is tabled.

However, in any resolution under this rule, the Association may approve a different distribution to a different not-for-profit entity from that specified above, so long as the Association complies with this Constitution and the Act in all other respects.

## **26. Alterations to the constitution**

All amendments must be made in accordance with this Constitution. Any minor or technical amendments shall be notified to Members as required by section 31 of the Act.

The Association may amend or replace this Constitution at a General Meeting by a resolution passed by a simple majority of those Members present and voting.

That amendment may be approved by a resolution passed in lieu of a meeting but only if authorised by this Constitution.

Any proposed resolution to amend or replace this Constitution shall be signed by at least 2 per cent of eligible Members and given in writing to the Board at least 5 Working Days before the General Meeting at which the resolution is to be considered and accompanied by a written explanation of the reasons for the proposal.

At least 5 Working Days before the General Meeting at which any amendment is to be considered the Board shall give to all Members notice of the proposed resolution, the reasons for the proposal, and any recommendations the Board has.

When an amendment is approved by a General Meeting it shall be notified to the Registrar of Incorporated Societies in the form and manner specified in the Act for registration and shall take effect from the date of registration.