

WAIKATO ROWING ASSOCIATION INCORPORATED

Review of Constitution – September 2017

INTRODUCTION

Simpson Grierson has reviewed Waikato Rowing Association's (**WRA**) constitution (last amended 2016) for compliance with the current Incorporated Societies Act 1908 and modern best practice, as well as against the Incorporated Societies exposure draft bill (**Bill**).¹

The first table in this document sets out Simpson Grierson's review of WRA's constitution against the current Incorporated Societies Act and best practice.

The second table in this document sets out Simpson Grierson's review of WRA's constitution against the Bill.

SUMMARY OF FINDINGS

- *Table one*: Simpson Grierson recommends the following:

RECOMMENDATION	SUBJECT MATTER
There are 4 clauses that require amendment	Objects, admission as member, general meetings, finances.
There are 5 clauses that should be added to the constitution	Entering into legal obligations, dispute resolution, member access to information, director/officer duties, conflicts provisions.
There are 2 clauses that requires WRA's further consideration	Indemnity and insurance, innovation and cost control.

- *Table two*: Simpson Grierson recommends the following:

RECOMMENDATION	SUBJECT MATTER
There are 4 clauses that require amendment	Objects, admission as member, finances, manner of calling meetings.
There are 6 clauses that should be added to the constitution	Society's register, access for members to register, contact officer, dispute resolution, minute keeping, conflicts of interest.
There are 3 clauses that require WRA's further consideration	Policies/bylaws/tikanga, interests register inspection, indemnity/ insurance.

¹ To view the Bill see: http://www.mbie.govt.nz/info-services/business/business-law/incorporated-societies/incorporated-societies-bill-exposure-draft/incorporated_societies_bill.pdf

**TABLE 1:
REVIEW AGAINST THE REQUIREMENTS OF THE INCORPORATED SOCIETIES ACT 1908 AND BEST PRACTICE**

KEY	
Item is included and is ok	9
Item is included but needs amending	4
Item is not included	5
Voluntary item – WRA to consider	2

LAW AND BEST PRACTICE	KEY	CORRESPONDING WRA REFERENCE AND COMMENTS
BEST PRACTICE FOR INCORPORATED SOCIETIES	9	See rule 1.1 (name).
	4	See rule 3 (objects). We recommend amending this rule so that it refers to 'purposes' instead of 'objects'. While not strictly necessary, such a change would align the document with the best practice.
	4	See rule 6 (membership). This rule does not expressly state that a prospective member's consent is required in order to become a member.

LAW AND BEST PRACTICE	KEY	CORRESPONDING WRA REFERENCE AND COMMENTS
<p><i>requirement re mode in the Bill, and the Bill also requires a constitution contains requirement that a person must consent to be a member.</i></p>		
<p>(d) the modes in which persons cease to be members of the society:</p>		See rule 7 (termination of membership).
<p>(e) the mode in which the rules of the society may be altered, added to, or rescinded:</p>		See rule 22 (alterations to the constitution).
<p>(f) the mode of summoning and holding general meetings of the society, and of voting thereat:</p> <p><i>It is considered best practice, in regards to how general meetings are run, that the following are covered in constitutions:</i></p> <ul style="list-style-type: none"> • <i>the intervals between general meetings;</i> • <i>the information that will be presented at general meetings;</i> • <i>when minutes are required to be kept;</i> • <i>the manner of calling meetings;</i> • <i>the time within which, and manner in which, notices of general meetings and notices of motion are to be notified;</i> • <i>the quorum and procedure for general meetings; and</i> • <i>voting procedures for general meetings.</i> 		<p>See generally rules 15 and 16.</p> <p>There is no rule specifying when minutes/records of meetings are required to be kept. Further, rules 14.4 and 15.2 generally state that the secretary shall call meetings, but the manner in which this is to be done is unclear.</p>
<p>(g) the appointment of officers of the society:</p>		See rule 9.

	LAW AND BEST PRACTICE	KEY	CORRESPONDING WRA REFERENCE AND COMMENTS
	(h) the control and use of the common seal of the society:		See rule 20 (common seal).
	(i) the control and investment of the funds of the society: <i>It is considered best practice that a constitution states how the society will control and manage its financial resources and other assets, including how it will keep financial records, how it will pay expenses and how authority to make decisions will be given.</i>		See rule 19 (finances). This rule is brief and WRA may wish to consider including a more comprehensive provision around the control and management of its finances.
	(j) the powers (if any) of the society to borrow money:		See rule 4.1.2.
	(k) the disposition of the property of the society in the event of the society being put into liquidation: <i>It is recommended best practice that given the basic prohibition against distributions to members, societies wishing to distribute surplus assets should be required to form some other kind of entity or arrangement that can legally make such distributions.</i>		See rule 21 (winding up).
	(l) such other matters as the Registrar may require to be provided for in any particular instance.	n/a	n/a
ADDITIONAL BEST PRACTICE RECOMMENDATIONS	How committees function, including: <ul style="list-style-type: none"> • The election and appointment of committee members; • The terms of office of committee members • Qualifications for appointment of committee members; 		See generally rules 10 – 13.

LAW AND BEST PRACTICE	KEY	CORRESPONDING WRA REFERENCE AND COMMENTS
<ul style="list-style-type: none"> The functions and powers of the committee; Grounds for removal from office of committee members; How the statutory/contact officer will be elected and appointed 		
<ul style="list-style-type: none"> How the society will enter into legal obligations 		There is no specific provision that covers how WRA will enter into legal obligations.
<p>A procedure for resolving disputes, including the grievances of members and the conduct or discipline of members:</p> <p><i>It is a new requirement under the Bill that every constitution contains dispute resolution procedures. The Law Commission is of the view that as long as the procedures satisfy the minimum requirements of natural justice, societies are free to design their own procedures.</i></p>		There do not appear to be any specific dispute resolution provisions in the constitution. If these are separately contained in by laws or policies these should be referred to here.
<p>What information members can ask from the society and how access will be provided</p> <p><i>Right to the minimum information, i.e. the annual financial statements and the minutes of previous annual general meeting</i></p>		The constitution does not appear to provide for members' access to information.
<p>Indemnity and insurance</p> <p><i>The Law Commission recommends that the new legislation provides that a society may:</i></p> <ul style="list-style-type: none"> <i>indemnify its members who act in good faith in pursuance of the purposes of the society; and</i> 		Insurance and indemnity provisions are not included in the constitution.

LAW AND BEST PRACTICE	KEY	CORRESPONDING WRA REFERENCE AND COMMENTS
<ul style="list-style-type: none"> • <i>arrange insurance to cover that indemnity.</i> <p><i>The Law Commission also recommends that a society ought to be able to indemnify its officers against liability to anyone other than the society, because exposing individuals to personal liability when they are acting for the society in good faith may make it difficult to attract quality candidates into such roles.</i></p>		
Plain English		We consider the constitution uses sufficiently plain English. However it does not use completely gender-neutral language (e.g. Chairman).
Consolidated form		We consider the constitution is satisfactory in this regard.
Innovation and cost control		We suggest the constitution is updated in this regard.
<p>Clear description of director/officers duties:</p> <ul style="list-style-type: none"> • to act in good faith and in the best interests of the society, and use powers for a proper purpose; • to comply with the Incorporated Societies Act and with the society's constitution, except where the constitution contravenes the Act; • to exercise the degree of care and diligence that a reasonable person with the same responsibilities within the society would exercise in the circumstances applying at the time; • to not allow the activities of the society to be carried on recklessly or in a manner that is likely to create a substantial risk of serious loss to the society's 		We suggest that a clear description of director duties is included.

	LAW AND BEST PRACTICE	KEY	CORRESPONDING WRA REFERENCE AND COMMENTS
	creditors; and <ul style="list-style-type: none"> to not allow the society to incur obligations that the officer does not reasonably believe will be fulfilled. 		
	Fulsome conflicts management provisions for directors		We recommend this is added.

**TABLE 2:
INCORPORATED SOCIETIES DRAFT EXPOSURE BILL COMPLIANCE REVIEW**

KEY	
Item is included and is ok	15
Item is included but needs amending	4
Item is not included	6
Voluntary item – WRA to consider	3

BILL REFERENCE <i>(Clause number)</i>	REQUIREMENT IN THE BILL	KEY	CORRESPONDING WRA REFERENCE AND COMMENTS
24(1)(a)	(1) The Constitution must contain rules regarding the following: a) the name of the society; and	15	See rule 1.1.
24(1)(b)	b) the purposes of the society; and	4	See rule 3. We recommend amending this rule so that it refers to 'purposes' instead of 'objects'. While not strictly necessary, such a change would align the document with the Bill.
24(1)(c)	c) how a person becomes a member of the society, including a requirement that a person must consent to be a member; and	4	See rule 6. This rule does not expressly state that a prospective member's consent is required in order to become a member.
24(1)(d)	d) how a person ceases to be a member of the society; and	15	See rule 7.
24(1)(e)	e) arrangements for keeping the society's register of members up to date; and	6	We did not locate an article that discusses arrangements for keeping WRA's register up to date.

BILL REFERENCE (Clause number)	REQUIREMENT IN THE BILL	KEY CORRESPONDING WRA REFERENCE AND COMMENTS
24(1)(f)	f) whether, and if so how, the society will provide access for members to the register of members; and	See above comment.
24(1)(g)	g) the composition, roles, and functions of the committee of the society, including –	See rule 9.
	i. the number of members that must or may be in the committee; and	See rule 10.
	ii. the election or appointment of committee members; and	See rule 11.
	iii. the terms of office of the committee members; and	See rule 13.
	iv. the functions and powers of the committee; and	See rules 11 and 12.
	v. grounds for removal from office of committee members; and	Under the Bill every society must at all times have a "contact officer" whom the Registrar can contact when needed. Among other things, the contact officer must be on the board/committee.
vi. how the contact officer will be elected or appointed; and		
24(1)(h)	h) how the society will control and manage its finances; and	See rule 19. This rule is brief and WRA may wish to consider including a more comprehensive provision around the control and management of WRA's finances.

BILL REFERENCE (Clause number)	REQUIREMENT IN THE BILL	KEY CORRESPONDING WRA REFERENCE AND COMMENTS
24(1)(i)	i) the control and use of the society's common seal (if it has one); and	See rule 20.
24(1)(j)	j) procedures for resolving disputes between members (in their capacity as members) and between members and the society, including procedures for investigation and dealing with – i. the grievances of members relating to their rights and interests as members; and ii. complaints concerning the misconduct or discipline of members; and	There are no specific dispute resolution provisions in the constitution.
24(1)(k)	k) arrangements and requirements for general meetings, including – i. the intervals between general meetings; and	See rules 15 and 16.
	ii. the information that must be presented at general meetings; and	See rule 15.3.
	iii. when minutes are required to be kept; and	There are no rules specifying when minutes/records of meetings are required to be kept.
	iv. the manner of calling meetings; and	Rule 15.2 generally states that the secretary shall call meetings, but the manner in which this is to be done is unclear.
	v. the time within which, and manner in which, notices of general meetings and notices of motion must be notified; and	See rule 15.4.

BILL REFERENCE (Clause number)	REQUIREMENT IN THE BILL	KEY CORRESPONDING WRA REFERENCE AND COMMENTS
	vi. the quorum and procedure, including voting procedures, for general meetings; and	See rules 14.4 and 18.
24(1)(l)	l) the method by which the constitution may be amended; and	See rule 22.
24(1)(m)	m) the nomination of a not-for-profit entity, or a class or description of not-for-profit entities, to which any surplus assets of the society should be distributed on a liquidation of the society or the removal of the society from the register.	See rule 21. Please note our review specifically excludes considering any tax implications or charitable status implications that may arise from rule 21 as drafted. These are matters that should be carefully considered when the constitution is amended/re-written.
24(2)	(2) The constitution must not purport to confer on any member any right, title, or interest (legal or equitable) in the property of the society	
24(3)	(3) The arrangements and requirements under subsection (1)(l) must include arrangements and requirements for special general meetings under section 58(3). Section 58(3) refers to the need to call a special general meeting if more than 50% of the members of the committee are conflicted.	The constitution does not appear to deal with conflicts of interest.
25	A society's constitution may contain rules providing for: <ul style="list-style-type: none"> • whether and how a society can make bylaws • the society to express its tikanga and culture; 	

BILL REFERENCE (Clause number)	REQUIREMENT IN THE BILL	KEY CORRESPONDING WRA REFERENCE AND COMMENTS
	<ul style="list-style-type: none"> reasonable policies to be imposed on any member (and for the consequences of the non-payment of any subscription or penalty) any other matter relevant to the society's affairs 	
65(3)	A society's constitution may provide for whether (and, if so, the extent of which) the interests register is to be made available for inspection by other members of the society	The constitution does not appear to provide for this.
77-79 77-80	<p>Permitted indemnities for certain liabilities and costs for officers, members and employees</p> <p>Permitted insurance for certain liability or costs for officers, members and employees</p> <p>Indemnity or insurance for breach of officers' duties must be expressly authorised by society's constitution</p>	Insurance and indemnity provisions are not included in the constitution.

