

# CONSTITUTION OF NEW ZEALAND INTELLECTUAL PROPERTY ATTORNEYS INCORPORATED

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## GENERAL

### 1. Name

The name is “NEW ZEALAND INTELLECTUAL PROPERTY ATTORNEYS INCORPORATED” (the “NZIPA”).

#### 1.1. Definitions and interpretation

In this constitution, unless the context otherwise requires;

1.1.1. Act means the Incorporated Societies Act 2022.

1.1.2. Approval means the right to use the designation Trade Mark Attorney (NZ) as set out in clause 3.

- 1.1.3. Board means the Trans-Tasman IP Attorneys Board as referred to in section 269 of the Patents Act 2013.
- 1.1.4. Candidate means an applicant for approval.
- 1.1.5. Code of Conduct has the meaning referred to in section 269 of the Patents Act 2013.
- 1.1.6. Council means an elected body of Fellows, who manage the affairs of the NZIPA on behalf of the Members of the NZIPA.
- 1.1.7. Not-for-profit entity means an entity defined in section 5(3) of the Incorporated Societies Act 2022.
- 1.1.8. Ordinary Resolution means a resolution passed by a majority of votes cast.
- 1.1.9. New Zealand Law Society means the society continued in being by section 63(1) of the Lawyers and Conveyancers Act 2006.
- 1.1.10. Trade Marks Attorney (AU) has the meaning assigned in Part 20 of the Australian Trade Marks Act 1995.
- 1.1.11. Trade Marks Attorney (NZ) has the meaning assigned as set out in Clause 3.
- 1.1.12. Trade Mark Practise means the provision of advice relating to the selection, clearance, monitoring, registration, protection, licensing, sale, assignment, watching, exploitation and enforcement of trade marks; opposition and non-use proceedings; legal services relating to the negotiation and drafting of contracts relating to intellectual property rights; advisory and consultancy services relating to branding and trade mark rights.
- 1.1.13. Trans-Tasman IP Attorney Board means the body continued in existence under section 227A of the Australian Patents Act 1990.
- 1.1.14. Special Resolution means a resolution passed by a two thirds majority of votes cast.
- 1.1.15. A reference to any legislation includes any 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.
- 1.1.16. Working Day has the meaning given to that term under the Legislation Act 2019 and excludes the day observed as the anniversary in the Wellington province.

## **1.2. Purposes**

The purposes of the NZIPA are to:

- 1.2.1. Maintain a representative group of registered patent attorneys as defined in section 269 of the Patents Act 2013, registered Australian Trade Marks Attorneys (AU) and Trade Marks Attorney (NZ).
- 1.2.2. Promote the interests of Fellows of the NZIPA.
- 1.2.3. Assist in developing, promoting and maintaining the integrity of the laws and regulations relating to intellectual property matters.
- 1.2.4. Preserve and maintain the integrity and status of the patent and trade marks attorney profession by inter alia setting and administering rules.
- 1.2.5. Provide means for the settlement of professional differences between Members of the NZIPA, and between Members of the public and Members of the NZIPA.
- 1.2.6. Arrange and promote opportunities for the acquisition and diffusion of knowledge relating to the intellectual property profession.
- 1.2.7. Generally, do such things as are in the opinion of Council conducive to the attainment of any of these purposes or in the best interests of the intellectual property profession.

## **1.3. Use of Income**

- 1.3.1. The income and property of the NZIPA, will be applied solely towards the promotion of the purposes of the NZIPA as set out in this constitution and no part will be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise, or by way of profit to the Members of the NZIPA.

This will not preclude the payment or transfer of any proceeds of any conferences, seminars or the like held jointly with other parties to such parties (including Members) as the Council of the NZIPA sees fit.

- 1.3.2. The NZIPA can however undertake the following which is not to be considered as acting for financial gain:
  - (a) pay a Member for matters that are incidental to the purposes of the NZIPA.
  - (b) reimburses the Member for reasonable expenses legitimately incurred on behalf of the NZIPA or while pursuing the NZIPA's purposes.

- (c) pay a Member salary or wages or other payments for services to the NZIPA on arm's length terms.

#### **1.4. Liability of Members**

If any Member of the NZIPA pays or receives any dividend, bonus, or other profit in contravention of clause 1.3 of this constitution, the liability of every Member of the Council of the NZIPA who has concurred in or authorised such profit is unlimited, and the liability of every Member of the NZIPA who has received any such profit, is also unlimited.

#### **1.5. Situation of Office**

The Office of the NZIPA will be situated wherever the Council determines.

## **MEMBERS**

### **2. Membership**

Members of the NZIPA will comprise all those whose names are entered as a Member of the NZIPA. Every applicant for Membership must consent in writing to becoming a Member.

The NZIPA will maintain the minimum number of Members required by the Act.

#### **2.1. Admission as a Member**

2.1.1. Admission as a Member of the NZIPA is by a resolution of the Council passed by an Ordinary Resolution of Council Members present at a Council meeting.

2.1.2. The signed written consent of every Member to become a Member of their specific class of the NZIPA will be retained in the NZIPA's Membership records.

#### **2.2. Membership Rights not Transferable**

The rights and privileges of every Member of the NZIPA will be personal to that Member and are not transferable.

#### **2.3. Classes of Membership**

Membership of the NZIPA is composed of the following classes:

##### *2.3.1. Fellows*

- (a) Fellows are Members whose names are entered as Fellows of the NZIPA in the Register of Members who have not ceased to be Fellows.
- (b) Every candidate for admission, or transfer, into the class of Fellow will be:

- (i) registered as a patent attorney under the Patents Act 2013, registered as Trade marks Attorney (AU) , or is approved to use Trade Marks Attorney (NZ) as set out in Clause 3 of this constitution, and;
  - (ii) entitled to practise as a patent attorney or a trade marks attorney in New Zealand or Australia, and
  - (iii) of good repute, and
  - (iv) resident in New Zealand.
- (c) Any Member having the necessary qualifications may, on the proposal of two Fellows, be transferred to the class of Fellow, provided such proposal is first submitted to and approved by the Council, and signed by the President.
- (d) A person cannot remain a Fellow after they ceases to satisfy any of the requirements of clause 2.3.1.(b).
- (e) For the purpose of this constitution, a person will not be resident in New Zealand unless that person has:
- (i) ordinarily resided in New Zealand for a continuous period of six months, and
  - (ii) is at the material time residing in New Zealand.

#### 2.3.2. *Honorary Member*

- (a) Honorary Members are distinguished individuals (including former Members of the NZIPA) who, from their past contribution to advancing the purposes of the NZIPA are deserving of the highest honour of the NZIPA.
- (b) The Council will admit as Honorary Members persons who qualify for Membership in accordance with clause 2.3.2.(a) as it thinks fit.

#### 2.3.3. *Student Members*

- (a) Student Members are Members whose names are entered as Student Members in the Register of Members.
- (b) Every candidate for admission, or transfer, into the class of Student Member will be:
  - (i) of good repute;
  - (ii) not qualified to practise the profession of a patent attorney;
  - (iii) studying for qualifications as a patent attorney or as a **Trade Marks Attorney (AU)**; and
  - (iv) resident in New Zealand.
- (c) The Council may admit as Student Members persons (including Members transferring from other classes) who qualify for Membership in accordance with clause 2.3.3.(b) as it thinks fit.
- (d) A person cannot remain a Student Member after ceasing to satisfy the requirements of clause 2.3.3.(b), or while being a Student Member fails to enrol in and sit at least one examination/course/paper to qualify as a registered patent attorney or as a registered **Trade Marks Attorney (AU)** in the preceding two year period.

#### 2.3.4. *Non-Resident Members*

- (a) Non-resident Members are Members whose names are entered as Non-resident Members in the Register of Members.
- (b) Non-Resident Members will be:

- (i) Intellectual Property practitioners established in practise in territories outside New Zealand, and neither having an office, nor practising, in New Zealand, or
- (ii) Persons who are not resident in New Zealand but who would otherwise qualify for admission as a Fellow including persons who have previously been admitted as Fellows.
- (c) The Council will admit as Non-resident Members persons (including Members transferring from other classes) who qualify for Membership in accordance with clause 2.3.4.(b) as it thinks fit.
- (d) Any Fellow who ceases to be resident in New Zealand, but who would otherwise qualify to remain as a Fellow, will cease to remain as a Fellow and will automatically be transferred to the class of Non-Resident Member from the date when that person ceases to be resident in New Zealand.
- (e) Any person who has previously been a Fellow, and who has been transferred to the class of Non-Resident Member, and who subsequently qualifies under clause 2.3.1.(b), may be proposed for transfer to the class of Fellow in the manner prescribed in clause 2.3.1.(c).

#### 2.3.5. *Associate Members*

- (a) Associate Members are Members whose names are entered as Associate Members in the Register of Members.
- (b) A candidate for admission into the class of Associate Member will be of good repute, and come within one of the following definitions:
  - (i) Although not following the profession of a patent attorney or Trade Marks Attorney (NZ), they will, by reason of their connection with law, science, business, innovation or the arts, in New Zealand be in the opinion of the Council qualified to advance the objects of the NZIPA; or,
  - (ii) Although not practising on their own account the profession of a patent attorney or Trade Marks Attorney (NZ) they will have been for at least two years an employee involved in intellectual property work in the business of a registered patent attorney or a patent attorney firm or a trade mark attorney firm or the Intellectual Property Office of New Zealand or an Intellectual Property Law firm.
  - (iii) Employees of law firms or companies that undertake Intellectual Property related work where they do not fall within either (a) or (b) above.
- (c) An Associate Member who becomes entitled to practise on their own account as a patent attorney or Trade Marks Attorney (NZ) will cease to remain an Associate Member.
- (d) The Council may admit as Associate Members persons (including Members transferring from other classes) who qualify for Membership in accordance with clause 2.3.5.(b) as it thinks fit.
- (e) The Council at its absolute discretion may cancel the Membership of any Associate Member and strike their name from the Register of Members.

#### 2.3.6. *Retired Fellows*

- (a) Retired Fellows are Members who are duly admitted or transferred into the class of Retired Fellow.
- (b) Every candidate for admission or transfer into the class of Retired Fellow will:

- (i) Have been a Fellow of the NZIPA at the time of their retirement;
  - (ii) Have been a Member of the NZIPA for not less than 10 years; and
  - (iii) Be no longer practising as a patent attorney or Trade Marks Attorney (NZ).
- (c) The Council may admit as Retired Fellows such persons (including Members transferring from other classes) who qualify for Membership in accordance with clause 2.3.6.(b) as it thinks fit.
- (d) A person cannot remain a Retired Fellow after resuming practise as a patent attorney, whether in New Zealand or elsewhere.

#### **2.4. FNZIPA – Use of**

- 2.4.1. Only Fellows may be designated as Members of the NZIPA in abbreviated form viz: F.N.Z.I.P.A. or FNZIPA. Other classes of Members will not use corresponding abbreviated forms.
- 2.4.2. With the exception of Fellows and Honorary Members, Members in other classes may not refer to their Membership in any written form.
- 2.4.3. Fellows may refer to the Membership of their employees in written form.

#### **2.5. Admission and Registration of Members**

- 2.5.1. A person will not be admitted as a Fellow, unless the person has been proposed in writing by a Fellow of the NZIPA and recommended in writing by two other Fellows one of whom must certify to a personal knowledge of the candidate and their qualifications. Each proposal must be delivered to the Secretary of the NZIPA who will submit it to the Council.
- 2.5.2. Any person wishing to be admitted to any other class of Membership of the NZIPA must meet the requirements for the class and be proposed in writing by a Fellow of the NZIPA whom must certify to a personal knowledge of the candidate and their qualifications. Each proposal must be delivered to the Secretary of the NZIPA who will submit it to the Council.

#### **2.6. Members must comply with the Constitution**

Every Member of the NZIPA is bound by the constitution and must comply with it and with any by-laws of the NZIPA. Members must not act in a manner that is likely to bring the NZIPA or any of its Members into disrepute, and must comply with any codes of conduct adopted by the NZIPA which apply to the Member.

#### **2.7. Register of Members**

- 2.7.1. The NZIPA will keep a Register of Members and will enter in it:
- (a) The names, addresses and descriptions of the Members.
  - (b) The Membership class of each Member.
  - (c) The date the person was entered in the Register as a Member.
  - (d) If a Member is reclassified, the date of the reclassification, and

- (e) The date a person ceases to be a Member.

## **TRADE MARKS ATTORNEY (NZ) – USE OF**

### **3. Trade Marks Attorney (NZ)**

Trade Mark Attorney (NZ) is a designation for those who have attained appropriate levels of experience and education and been approved in accordance with this Constitution.

Use of the designation Trade Mark Attorney (NZ) certifies that the Candidate has experience and expertise in Trade Mark Practise and law in New Zealand.

#### **3.1. Approval Requirements**

**3.1.1.** In order to be approved pursuant to this Constitution and be entitled to use the designation TRADE MARKS ATTORNEY (NZ), the Candidate must:

- (a) complete a Bachelor of Laws Degree (LLB) (or equivalent legal qualification recognised by the New Zealand Council of Legal Education) and hold a current practising certificate issued by the New Zealand Law Society;

OR

- (b) be a registered patent attorney as defined in section 269 of the Patents Act 2013 or be a Trade Marks Attorney (AU) under Part 20 of the Australian Trade Marks Regulations 1995.

**3.1.2.** the Candidate must:

- (a) provide a statutory declaration from the Candidate declaring:
  - (i) details of the duration and nature of their employment;
  - (ii) a description of the type of Trade Marks Practise work they perform;
  - (iii) they have a minimum of three (3) years' Trade Marks Practise experience at the time of applying including a description of the type of work the Candidate has performed in sufficient detail to show that they have expertise and experience in a range of Trade Mark Practise;
  - (iv) are of good repute; and
  - (v) are resident in New Zealand; and
- (b) provide a declaration from another Fellow verifying the candidate's bona fides, identity and experience.

**3.1.3.** The Candidate must apply in writing and submit the application to NZIPA.

**3.1.4.** NZIPA may at its discretion request further information before approving the Candidate.

**3.1.5.** If the Candidate is not already a Fellow of NZIPA the Candidate must apply for admission as a Fellow Member of NZIPA and pay the annual subscription fee as set by NZIPA.



### **3.2. Maintenance**

3.2.1. In order to maintain the right to use the designation Trade Mark Attorney (NZ) the Candidate must:

- (a) maintain their NZLS practising certificate and/or registrations as a registered patent attorney or registered Trade Marks Attorney (AU) ;
- (b) remain a Fellow Member of NZIPA by paying the annual Membership fee; and
- (c) complete five (5) hours continuing professional education in respect of trade mark law and practise and one (1) hour of ethics each year (being the 12 months immediately before the date on which the Candidate applies for renewal as a Fellow Member NZIPA).

3.2.2. In the event that the Candidate does not comply with clause 3.2.1, the Candidate will have their entitlement to use the designation Trade Mark Attorney (NZ) suspended by notice in writing until such time as they resume compliance with clause 3.2.1

### **3.3. Use of the designation TRADE MARKS ATTORNEY (NZ)**

A successful Candidate may use the designation Trade Mark Attorney (NZ) by placing it after their name represented as follows and in no other manner: TRADE MARKS ATTORNEY (NZ).

### **3.4. Supervision**

Candidates may be audited by sample selection on an annual basis. The audit process requires the selected Candidates to verify that they are meeting the annual continuing professional education requirement.

## **ENTRANCE FEES AND SUBSCRIPTIONS**

### **4. Fees & Subscriptions**

With the exception of Honorary Members, all Members of the NZIPA will pay the following fees:

- (a) an entrance fee,
- (b) an annual subscription; and
- (c) other levies as prescribed by Council.

All Members are required to pay the annual subscription for the current year within two months after the date of notification of their Memberships annual subscription. If the entrance fee has not been paid within two months, the Membership will become void, unless the Council in its sole discretion extends the time.

#### **4.1. Notification of Fees**

Council will no later than 31 March in any year prescribe and notify Members of the entrance fee and annual subscription due on or after 1 July but in default, the entrance fee and annual subscription will be as in the previous year.

#### **4.2. Annual Subscriptions – Due**

All annual subscriptions will be due on 1 July of the year then commencing and must be paid before 31<sup>st</sup> August of that year. Any Member whose subscription is in arrears beyond the latter date is not entitled to any privileges of Membership. Unless otherwise determined by the Council, no publications by the NZIPA will be forwarded to a Member in arrears.

#### **4.3. Subscription for Part Year – Due**

The subscription of any Member admitted in the months of April, May or June, must be paid within two months, but will apply to the remainder of the year (ending 30 June) in which they are elected or admitted, and to the following financial year of the NZIPA. To avoid doubt, payment for any Member admitted in April, May or June in any year is through to 30 June of the year immediately following the year of admission.

## **RESIGNATION AND NON-PAYMENT OF FEES**

### **5. Resignation and Removal**

#### **5.1. Resignation**

A Member, having made all payments due may resign their Membership upon giving to the Council written notice of their intended resignation, and, so resigning, their name will be removed from the Register of Members.

#### **5.2. Removal**

If any Member ceases to remain a Member of a class under clause 2.3, and fails to transfer to another class within three months after notice in writing has been sent to him or her by the Secretary, their name may be struck off the Register of Members by Council.

#### **5.3. Non-payment of Fees etc.**

5.3.1. If any Member is in arrears with any payments due to the NZIPA or fails to pay the arrears within three months after a written request has been sent to him or her by the Secretary, their name may be struck off the Register of Members by the Council.

5.3.2. A Member who is struck off ceases to have any rights as a Member of the NZIPA; but continues to be liable to pay the arrears of any payments due at the time of

being struck off. This clause does not compel the Council to remove any name if the Council is satisfied the name should be retained.

## **DISCIPLINE AND EXPULSION**

### **6. Discipline**

**6.1.** The Council may:

- 6.1.1. censure any member either privately or by way of a censure published to Members generally, or
- 6.1.2. expel any Member from the NZIPA;

if clause 6.3 applies.

### **6.2. Grounds**

This clause applies to a Member if:

- 6.2.1. the Board determines that that Member has engaged in professional misconduct, or unsatisfactory professional conduct, as defined in section 269 of the Patents Act 2013;
- 6.2.2. any committee or tribunal established under the Lawyers and Conveyancers Act 2006 determines that the Member has engaged in misconduct or unsatisfactory conduct, as defined in that Act; or
- 6.2.3. It is determined after following the process in clause 14 that the Member has acted in a manner that is likely to bring the NZIPA or any of its Members into disrepute.

### **6.3. Procedure**

Except where censure of the Member by the NZIPA or expulsion of the Member from the NZIPA is a sanction already imposed on the Member by any of the processes in clause 6.2, before deciding upon and taking any action under clause 6.1 on the basis recorded in clause 6.2., the Council must put to the Member in writing the matters with sufficient details which fairly enable the Member to prepare a response and which in the view of the Council entitle the Council to act under clause 6.1, and give that Member the opportunity to be heard in a manner consistent with a respondent's rights to be heard under clause 14.2.

### **6.4. Expulsion**

In the event of a Member being expelled the Council will remove that Member's name from the Register of Members.

6.4.1. Any person so expelled will cease to be a Member of the NZIPA and must return any property belonging to the NZIPA, including their Certificate of Membership of the NZIPA.

6.4.2. Any person expelled will not be entitled to a refund of monies paid as an entrance fee, subscription or otherwise.

### **6.5. Reinstatement of Members**

The Council may reinstate on such terms as it thinks fit any Member of the NZIPA removed from the Register if Council is satisfied there is good cause for reinstatement.

## **MEETINGS OF THE NZIPA**

### **7. General Meetings**

7.1. The Annual General Meeting and all Special General Meetings of the NZIPA will take place when and where determined by the Council.

7.2. The interval between Annual General Meetings of the NZIPA must not be later than 6 months after the NZIPA's balance date, and no later than 15 months after the previous Annual General Meeting of the NZIPA.

7.3. Any Member can request that a motion be voted on at a General Meeting, by giving notice to the Secretary or Council at least ten Working Days before the Meeting. The Member may also provide information in support of the motion. If notice of the motion is given to the Secretary or Council before written Notice of the Meeting is given to Members notice of the motion will be provided to Members with the written Notice of the Meeting.

7.4. Only Fellows can move and vote on any motions put forward at a General Meeting.

### **7.5. Notice of Meetings**

7.5.1. A written Notice of Meeting will be sent to all Members at least 10 Working Days before the time appointed by the Council for any General Meeting. The non-receipt by any Member of a Notice of Meeting sent to him or her will not invalidate the proceedings of the meeting.

7.5.2. The Notice of Meeting will specify the nature of the business to be transacted at the General Meeting. No business which has not been stated in the Notice of Meeting sent to Members will be transacted at the meeting.

7.5.3. The agenda for any general meeting must be sent to Members at least 5 Working Days prior to the date of the Meeting.

- 7.5.4. Irregularity in calling meetings, errors or omissions in notices, agendas, or papers to be tabled at General Meetings; or the accidental omission to give notice of a meeting within the required timeframe or to give notice to all Members of the NZIPA will not invalidate the General Meeting nor prevent the General Meeting from discussing the business of the meeting, if:
- (a) the Chair in their discretion determines that it is still appropriate for the General Meeting to proceed despite the irregularity, error, or omission; and
  - (b) a motion to proceed is put to the General Meeting and such motion is passed by a Special Resolution.

## **7.6. Annual General Meetings – business of**

- 7.6.1. The business of the Annual General Meeting is to:
- 7.6.2. Confirm the minutes of the last Annual General Meeting;
- 7.6.3. Present the annual report on the operations and affairs of the NZIPA during the most recently completed accounting period;
- 7.6.4. Present the financial statements of the society for that period;
- 7.6.5. Present notices of any disclosures of conflicts of interest made by Officers during that period (including a brief summary of the matters, or types of matters, to which those disclosures relate).
- 7.6.6. Receive and to deliberate upon the report of the Council on the state of the NZIPA and the annual statement of accounts,
- 7.6.7. Elect the President and Vice President;
- 7.6.8. Elect Councillors for the next twelve months; and
- 7.6.9. Discuss any motion of which due notice has been given.

## **7.7. Special General Meetings**

- 7.7.1. A Special General Meeting for a specific matter may be convened at any time at the call of the Council, or by any three Fellows, in accordance with clauses 7.1, 7.2, 7.3, 7.4, 7.5.1 and 7.5.2.
- 7.7.2. By making a written request to Council, any three Fellows of the NZIPA may require Council to convene a Special General Meeting for a specified matter. If that meeting is not convened within 10 Working Days of the request, the Special General Meeting may be convened by any three Fellows whether or not they signed the original request.

- 7.7.3. A Special General Meeting may be called or requisitioned in accordance with clause 7.7.1 and 7.7.2 only if the specified matter(s) of the meeting relate to matters properly of concern to the NZIPA.
- 7.7.4. The clauses in this constitution relating to the procedure to be followed at General Meetings will apply to a Special General Meeting, and a Special General Meeting will only consider and deal with the matter specified for the Special General Meeting. Only Fellows can vote on the specified matter put forward at the Special Meeting.

## **7.8. Referendums**

- 7.8.1. Instead of a Special General Meeting or Annual General Meeting, a written resolution in lieu of a meeting may be passed, provided it is related to any matter properly of concern to the NZIPA.
- 7.8.2. Such resolution will be carried by an affirmative vote of at least 75% of the Fellows who are entitled to vote.
- 7.8.3. Conduct of Referendums: If a referendum is called, all Fellows will be given one month's notice before the day on which voting will begin, which notice will include the resolutions to be put to the vote.
- 7.8.4. The NZIPA must ensure that the proposed resolution is dated with the date on which the proposed resolution is first sent to Fellows entitled to vote for the purpose of approval, and that the proposed resolution is sent to an address for each Fellow entitled to vote.
- 7.8.5. Votes must be in writing and may be forwarded to the Secretary by any convenient means. For the avoidance of doubt, this includes by post or electronic means. The name (legibly written) and signature of the voter must accompany each vote.
- 7.8.6. Votes will be received and counted from the date set by the Council until 10 Working Days later when the referendum will close.
- 7.8.7. The decision of the Council or any scrutineers appointed by the Council, as to the formality of the votes in terms of clause 7.8.5 will be final.

## **PROCEEDINGS AT MEETINGS**

### **8. Meetings**

#### **8.1. Attendance**

All Members are entitled to be present at every General Meeting of the NZIPA, except Special General Meetings of Fellows.

## **8.2. Quorum**

- 8.2.1. Fifty percent (50%) of Fellows entitled to vote will constitute a quorum for the purpose of any Annual General Meeting or any Special General Meeting of Fellows. This includes Fellows attending by proxy or virtually.
- 8.2.2. If within thirty minutes after the time fixed for holding any meeting a quorum is not present in person or by proxy, or sufficient Fellows are not represented to form a quorum, the meeting will be adjourned by the Chairperson.
- 8.2.3. If an Annual General Meeting has been adjourned to a new time, day and place, and after fifteen minutes at the adjourned Annual General Meeting there is no quorum, those Fellows present both in person and by proxy constitute a valid quorum.
- 8.2.4. If a Special General Meeting does not have a quorum, the Special General Meeting is cancelled, and there is no adjournment.

## **8.3. Chairperson**

The President will be Chairperson at every meeting, and in their absence the Vice-President, and in the absence of the Vice-President a Member of Council will take the chair; and if no Member of Council is present, or if present, is unwilling to take the chair, the meeting will elect a Chairperson.

## **8.4. Proxies**

- 8.4.1. Fellows may be represented at every meeting by proxy, provided that the proxy appointed be a Fellow, and no one Fellow holds more than three proxies. Fellows represented by proxy will be considered as being present.
- 8.4.2. Votes may be given either personally or by proxy as set out in this constitution.
- 8.4.3. The instrument appointing a proxy will be in writing under the hand of the Fellow. No person will be appointed a proxy who is not a Fellow of the NZIPA.
- 8.4.4. The instrument appointing a proxy must be received by the Secretary or Chairperson prior to or at the meeting at which the Fellow named in the instrument proposes to vote. No instrument appointing a proxy will be valid except for the meeting for which it has been granted or for an adjournment of such meeting.
- 8.4.5. Any instrument appointing a proxy will be in the form of, or to the effect following:  
I, ..... of ..... being a Fellow of the NZIPA hereby appoint ..... and in default ..... (alternative if person giving proxy wishes) as my proxy to vote for me and

on my behalf at the Annual (or Special, as the case may be) General Meeting of the NZIPA, to be held on the .... day of .... 20.. and at any adjournment(s) of that meeting.

Signature:

Date:

## **8.5. Voting – Decision Making**

8.5.1. Except where a Special Resolution is required every question submitted to a General Meeting will be determined by an Ordinary Resolution of Fellows. A matter put to a vote does not pass unless it achieves the required majority. Only Fellows who are not otherwise disqualified from voting by the clauses may vote at a General Meeting. To avoid doubt, only Fellows are entitled to vote at all General Meetings.

8.5.2. All Fellows entitled to vote may vote by electronic means.

8.5.3. The decision of a General Meeting will be ascertained by a show of hands by Fellows entitled to vote and/or by electronic voting, unless, after the show of hands and/or tally of electronic votes, a poll of Fellows entitled to vote is called for either by the Chairperson or any two Fellows. The manner of taking a show of hands, a poll, or electronic voting will be at the discretion of the Chairperson, and an entry in the minutes, signed by the Chairperson, will be sufficient evidence of the decision of the meeting. Each Fellow entitled to vote will have only one vote on each question.

## **8.6. Minutes**

The NZIPA must keep minutes of all General Meetings. This includes minutes of Special General Meetings.

# **COUNCIL AND OFFICERS**

## **9. Composition and role of Council**

The operation and affairs of the NZIPA are managed by and are under the direction and supervision of, and are the responsibility of a Council. The Council will be chosen from Fellows only, and will consist of the President, the Vice-President, and at least six Fellows.

### **9.1. Term of Council**

At each Annual General Meeting the President, Vice-President and all members of the Council will retire but, subject to the provisions of clause 9.4, will be eligible for re-election.

### **9.2. Casual Vacancies**



The Council may fill any casual vacancy in the Council (including any casual vacancy in the office of President or Vice-President), which may occur between one Annual General Meeting and another. The President, Vice-President, or member of Council filling a casual vacancy will retire at the succeeding Annual General Meeting, but be eligible for re-election. Vacancies not filled at any meeting are casual vacancies.

### **9.3. Nomination of Council Members**

- 9.3.1. Not less than five Working Days prior to the Annual General Meeting, the Council will forward to each Fellow a list of persons nominated by the Council to fill the offices of President, Vice-President and members of the Council for the ensuing year. The Council members, unless they agree among themselves, will decide Council's nominations by ballot.
- 9.3.2. Further candidates may be nominated for these offices by any Fellow, provided further nominations are in the hands of the Secretary not less than four Working Days prior to the Annual General Meeting.
- 9.3.3. A list of all further nominations will be prepared by the Secretary and will be mailed, e-mailed or delivered to all Fellows not less than three Working Days before the meeting.
- 9.3.4. If the number of persons nominated is greater than the number required to fill all such offices, the Council will cause a ballot paper to be prepared and a ballot to be held at the ensuing Annual General Meeting.

### **9.4. Term of President**

- 9.4.1. No person will be nominated to fill the office of President for more than two consecutive 12 month periods provided however, that if by an Ordinary Resolution of Council it is decided to extend a President's term in office beyond two years (but not by more than 12 months) the President's term may be extended.
- 9.4.2. At the expiry of a President's term as President, the President will not, for a period of one year, be eligible for re-election to that office.

### **9.5. Election of Council Members**

Prior to the commencement of balloting for the President, Vice-President, and members of the Council pursuant to clause 9.3, the Meeting may choose two or more scrutineers, who will receive and count the votes. Fellows only will be entitled to vote.

### **9.6. Officers**

- 9.6.1. The Council may appoint as Officers a Secretary and/or a Treasurer, and the Council may at its discretion appoint one person to fill both roles. The Secretary and/or Treasurer may be a member of Council. If the Council does not appoint a

specific person to be the Secretary or Treasurer anything in this constitution that is to be done by the person will instead be undertaken by a person or in a manner determined by Council.

9.6.2. Prior to election, Councillors, the President, Vice-President, and any other Officers must provide written consent to becoming an Officer and must certify in writing that they are not disqualified from becoming an Officer under the Act or the constitution.

9.6.3. The Secretary

It will be the duty of the Secretary, under the direction of the Council, to undertake the following (including but not limited to):

- (i) keep the Register of Members,
- (ii) conduct the correspondence of the NZIPA;
- (iii) attend all meetings of the NZIPA, the Council, and any Committees, and to take minutes of the proceedings at those meetings;
- (iv) superintend the publication of such papers, journals or other publications, as the Council may direct;
- (v) take charge of documents of the property of the NZIPA; and
- (vi) generally conduct the ordinary business of the NZIPA.

9.6.4. The Treasurer

It will be the duty of the Treasurer, under the direction of the Council, to undertake the following (including but not limited to):

- (i) direct the collection of the subscriptions and the preparation of the account of the expenditure of the funds; and
- (ii) present all accounts to the Council for inspection and approval, together with current bank statements (or other investment statements if any).

## **9.7. Appointment of Officers**

Except as prescribed by this constitution, all the Officers and employees of the NZIPA will be appointed by the Council.

## **9.8. Duties of Officers**

At all times each Officer:

- (a) will act in good faith and in what they believes to be the best interests of the NZIPA;
- (b) must exercise all powers for a proper purpose;
- (c) must not act, or agree to the NZIPA acting, in a manner that contravenes the Act or the constitution;
- (d) 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 NZIPA, the nature of the decision, and the position of the Officer and the nature of the responsibilities being undertaken by the Officer;

- (e) must not agree to the activities of the NZIPA being carried on in a manner likely to create a substantial risk of serious loss to the NZIPA or to the NZIPA's creditors, or cause or allow the activities of the NZIPA to be carried on in a manner likely to create a substantial risk of serious loss to the NZIPA or to the NZIPA's creditors; and
- (f) must not agree to the NZIPA incurring an obligation unless they believe at that time on reasonable grounds that the NZIPA will be able to perform the obligation when it is required to do so.

### **9.9. Interests of Council Members**

An Officer who has an interest in any matter being considered by the NZIPA must disclose the details of the nature and extent of the interest (including any monetary value of the interest if quantifiable):

- (a) to the Council; and
- (b) in an interests register kept by the Council.
- (c) An Officer is required to disclose an interest in a matter as soon as practicable after the Officer becomes aware they are interested in the matter.
- (d) An Officer who has an interest in a matter:
  - (e) must not vote or take part in a decision of the committee relating to the matter; and
  - (f) must not sign any document relating to the entry into a transaction or the initiation of the matter; but
  - (g) may take part in any discussion of the Council relating to the matter and be present at the time of the decision of the Council (unless the Council decides otherwise).
- (h) An Officer who cannot vote on a matter can still be counted for the purposes of determining whether there is a quorum at any meeting at which the matter is considered.
- (i) If 50% or more of Officers are interested in a matter and prevented from voting, a Special General Meeting of the Council must be called to consider and determine the matter, unless all non-interested Officers agree otherwise.
- (j) This clause 9.9 is also applicable to any sub-committees that are created by Council.

### **9.10. Remuneration of Officers**

Council may remunerate Officers and employees of the NZIPA at a rate determined by Council.

### **9.11. Removal of Officers**

An Officer ceases to hold office if the person:

- (a) resigns from office; or
- (b) is removed as an Officer in accordance with the constitution; or
- (c) becomes disqualified from being an Officer under the Act; or

- (d) dies; or
- (e) otherwise vacates office in accordance with the constitution; or
- (f) is removed following dispute resolution procedures.

#### **9.12. Contact Person**

- 9.12.1. The NZIPA will have at least 1 but not more than 3 contact person(s) whom the Registrar can contact when needed.
- 9.12.2. The contact person(s) must be:
  - (a) at least 18 years of age; and
  - (b) ordinarily resident in New Zealand.
- 9.12.3. Each contact person's name must be provided to the Registrar of Incorporated Societies, along with their contact details, including a physical address or electronic address, and a telephone number.
- 9.12.4. Any change in that contact person or that person's name or contact details will be advised to the Registrar of Incorporated Societies within 20 Working Days of that change occurring, or of the NZIPA becoming aware of that change.

## **THE FUNDS OF THE NZIPA**

### **10. Investment of Funds**

Council may from time to time invest any of the monies belonging to the NZIPA not immediately required for any of its purposes.

#### **10.1. Accounts Payable**

- 10.1.1. No sum of money payable on account of the NZIPA will be paid unless paid by electronic transfer approved by any two members of Council or by one member of Council and countersigned and approved by the Secretary or Treasurer.
- 10.1.2. All payments on account of the NZIPA will be reported to the Council meeting immediately following the payment.

## **POWER AND PROCEDURE OF COUNCIL**

### **11. Procedure of Council**

- 11.1. The Council will meet as often as the business of the NZIPA requires and may regulate its own mode of procedure.
- 11.2. Four members of Council will form a quorum. Members of Council may be represented by a proxy, who is a member of the Council, and vote in the name of such

person so represented. Electronic voting for the purposes of decision-making is also permitted. The Council may appoint committees for special purposes to report to the Council.

### **11.3. Decision Making Procedure**

All questions, unless otherwise specially provided, will be decided in the Council by Ordinary Resolution of those present at the meeting, including those by proxy or voting by electronic means.

### **11.4. Statement of Accounts**

A statement of the accounts of the NZIPA, and of the receipts and payments during the past year terminating on 30 June will be made under direction of the Council; and, will be laid before the Annual General Meeting.

### **11.5. Yearly Report**

The Council will draw up a yearly report on the state of the NZIPA, which will be presented at the Annual General Meeting.

### **11.6. Management of NZIPA**

The Council has all powers necessary for the management and for directing and supervising the management of the operations and affairs of the NZIPA. This includes, the publication and dissemination of information, and the provision of non-confidential information to keep Members of the NZIPA adequately informed.

### **11.7. Calling Council Meetings**

A meeting of the Council may be called at any time by the President or by the Vice-President, by two members of the Council, or by the Secretary.

### **11.8. Chair**

The President will take the Chair at all Meetings of the Council, and the committees at which they may be present, and is responsible for regulating and maintaining order in the proceedings. In the absence of the President, the Vice-President will preside, and in the absence of the Vice-President, such other persons determined at the meeting.

## **THE CONSTITUTION**

### **12. Enforcement**

The Council is charged with the responsibility for ensuring compliance by the Members and Officers of the NZIPA with the constitution.

## **12.1. Alterations and Additions**

12.1.1. This constitution may be altered, added to or rescinded:

- (a) by a Special Resolution of Fellows present or represented at a Special General Meeting of Fellows convened in accordance with the constitution, or
- (b) by a 75% majority of Fellows (as qualified by clause 7.8.2), who vote in a referendum held in accordance with this constitution.

12.1.2. Minor or technical amendments can be made to this constitution if the amendment has no more than a minor affect or corrects errors or make similar technical alterations. If minor or technical amendments are made, written notice of these amendments must be sent to every Member of the NZIPA. Members have 20 Working Days to object to the amendment before the amendment is confirmed.

12.1.3. The amended constitution must be provided to the Registrar within 20 Working Days after the amendment has been approved or made, in accordance with section 33 of the Act.

## **DISSOLUTION**

### **13. Dissolution or liquidation of the NZIPA**

**13.1.** The NZIPA may be liquidated in accordance with the provisions of Part 5 of the Act.

**13.2.** The Council will give 20 Working Days written notice to all Members of the proposed resolution to put the NZIPA into liquidation.

**13.3.** The Council will also give written notice to all Members, of the General Meeting at which the proposed resolution is to be considered. The notice will include all information as required by section 228(4) of the Act.

**13.4.** Any resolution passed to put the NZIPA into liquidation must be passed by a Special Resolution of all Members present and voting.

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

**13.6.** The Council will give 20 Working Days notice to all Members of the proposed resolution to remove the NZIPA from the Register of Incorporated Societies.

**13.7.** Any resolution to remove the NZIPA from the Register of Incorporated Societies must be passed by a Special Resolution of all Members present and voting.

**13.8.** If, upon the liquidation or dissolution of the NZIPA there remains, after satisfaction of all its debts and liabilities, any property whatsoever, such property will

not be paid to, or distributed among, the Members of the NZIPA, but will be given or transferred to some other not-for-profit entity having objects similar to the objects of the NZIPA, to be determined by the Members of the NZIPA before the time of the dissolution or in default by any Judge of the High Court, which has jurisdiction in the matter.

- 13.9.** However, in any resolution under this clause, the NZIPA may approve a different distribution to a different not-for-profit entity from that specified above, so long as the NZIPA complies with this constitution and the act in all other respects.

## DISPUTE RESOLUTION

### 14. Meanings of Dispute and Complaint

- 14.1.** A dispute is a disagreement or conflict involving the NZIPA and/or its Members in relation to specific allegations set out below.

- 14.2.** The disagreement or conflict may be between any of the following persons:

- (a) 2 or more Members
- (b) 1 or more Members and the NZIPA
- (c) 1 or more Members and 1 or more Officers
- (d) 2 or more Officers
- (e) 1 or more Officers and the NZIPA.
- (f) 1 or more Members or Officers and the NZIPA.

- 14.3.** The disagreement or conflict relates to any of the following allegations:

- (a) A Member or an Officer has engaged in misconduct
- (b) A Member or an Officer has breached, or is likely to breach, a duty under this constitution or bylaws or the Act
- (c) The NZIPA has breached, or is likely to breach, a duty under this constitution or bylaws or the Act
- (d) A Member's rights or interests as a Member have been damaged or Member's rights or interests generally have been damaged.

- 14.4.** A Member or Officer may make a complaint by giving to the Council a notice in writing that:

- (a) States that the Member or Officer is starting a procedure for resolving a dispute in accordance with the constitution;
- (b) Sets out the allegations to which the dispute relates.

- 14.5.** The information setting out the allegations must be sufficiently detailed 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.

**14.6.** A complaint may be made in any other reasonable manner permitted by the constitution.

**14.7.** All Members (including the Council) are obliged to cooperate to resolve disputes efficiently, fairly, and with minimum disruption to the NZIPA's activities.

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

**14.9. Person who makes complaint has right to be heard**

14.9.1. 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.

14.9.2. If the NZIPA makes a complaint –

- (a) The NZIPA has a right to be heard before the complaint is resolved or any outcome is determined; and
- (b) An Officer may exercise that right on behalf of the NZIPA.

14.9.3. Without limiting the manner in which the member, officer, or society may be given the right to be heard, they must be taken to have been given the right if –

- (a) They have a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
- (b) An oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
- (c) An oral hearing (if any) is held before the decision maker; and
- (d) The Member's, Officer's, or NZIPA's written statements or submissions (if any) are considered by the decision maker.

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

14.10.1. This clause applies if a complaint involves an allegation that a Member, officer, or the NZIPA (the respondent) –

- (a) Has engaged in misconduct; or
- (b) Has breached, or is likely to breach, a duty under the NZIPA's constitution or bylaws of the Act; or
- (c) Has damaged the rights or interests of a Member or the rights or interests of Members generally.



- 14.10.2. The respondent has a right to be heard before the complaint is resolved or any outcome is determined.
- 14.10.3. If the respondent is the NZIPA, an Officer may exercise the right on behalf of the NZIPA.
- 14.10.4. 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 –
- (a) 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
  - (b) The respondent has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
  - (c) An oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
  - (d) An oral hearing (if any) is held before the decision maker; and
  - (e) The respondent's written statement or submissions (if any) are considered by the decision maker.

#### **14.11. Investigating and determining dispute**

- 14.11.1. The NZIPA Council must, as soon as is reasonably practicable after receiving or becoming aware of a complaint made in accordance with the constitution, ensure that the dispute is investigated and determined.
- 14.11.2. Disputes must be dealt with under the constitution in a fair, efficient, and effective manner.

#### **14.12. NZIPA may decide not to proceed further with complaint**

Despite clause 14.11, the NZIPA Council may decide not to proceed further with a complaint if –

- 14.12.1. The complaint is trivial; or
- 14.12.2. The complaint does not appear to disclose or involve any allegation of the following kind:
- (a) That a Member or an Officer has engaged in material misconduct:
  - (b) That a Member, or an Officer, or the NZIPA has materially breached, or is likely to materially breach, a duty under the constitution or bylaws or the Act:
  - (c) That a Member's rights or interests or Member's rights or interests generally have been materially damaged:
- 14.12.3. The complaint appears to be without foundation or there is no apparent evidence to support it; or

- 14.12.4. The person who makes the complaint has an insignificant interest in the matter; or
- 14.12.5. The conduct, incident, event, or issue giving rise to the complaint has already been investigated and dealt with under the constitution; or
- 14.12.6. There has been an undue delay in making the complaint.

#### **14.13. NZIPA may refer complaint**

The NZIPA Council may refer a complaint to:

- 14.13.1. A subcommittee or an external person to investigate and report; or
- 14.13.2. A subcommittee, an arbitral tribunal, or an external person to investigate and make a decision.
  
- 14.13.3. The NZIPA Council 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).

#### **14.14. Decision makers**

A person may not act as a decision maker in relation to a complaint if 2 or more Members of the Council or a complaints subcommittee consider that there are reasonable grounds to believe that the person may not be –

- 14.14.1. Impartial; or
- 14.14.2. Able to consider the matter without a predetermined view.

## **INDEMNITY AND INSURANCE**

### **15. Insurance**

- 15.1. The NZIPA indemnifies its current and former Officers, Members, and employees as permitted by section 96 of the Act.
- 15.2. With the prior approval of the Council, the NZIPA may effect insurance for its current and former Officers, Members, and employees as permitted by section 97 of the Act.
  
- 15.3. The NZIPA is authorised to indemnify an Officer under section 96 of the Act or effect insurance for an Officer under section 97 of the Act for the following matters:
  
- 15.4. Liability (other than criminal liability) for a failure to comply with a duty under sections 54 to 61 of the Act or any other duty imposed on their Officer in their capacity as an Officer; and
  
- 15.5. Costs incurred by the Officer for any claim or proceeding relating to that liability.