

**THE INCORPORATED SOCIETIES ACT ~~1908~~2022**

**CONSTITUTION AND RULES  
of**

**HORTICULTURE NEW ZEALAND INCORPORATED**

**As amended at the Annual General Meeting held on 22 September 2022**

**1. NAME**

The name of the society is "Horticulture New Zealand Incorporated" ("the society").

**2. REGISTERED OFFICE**

The registered office of the society is at Level 4, Kiwi Wealth House, 20 Ballance Street, Wellington, Wellington, or at such other place as the board of the society ("the board") may from time to time determine.

**3. OBJECTS**

The principal object of the society is to provide benefits to the horticulture industry in New Zealand by creating a positive industry profile and business environment for grower members. This includes:

- (a) Promoting to the general public, the media, policy makers and Members of Parliament, horticulture as a vital and growing sector of major social and economic significance to New Zealand.
- (b) Representing to the general public, the media, policy makers and Members of Parliament, the common views of the horticultural sector on generic issues, including, but not limited to, the issues listed under paragraph (f) below.
- (c) Providing information services to product groups and district associations on legislative and regulatory initiatives from central and local government, and distributing information received from product groups and district associations that is of wider interest.
- (d) Providing coordination services to product groups and district associations where there are agreed common public policy issues and interests.
- (e) Acting as a distributor of information to product groups and district associations on offshore regulatory initiatives and receiving and considering information received by the society from product groups and district associations.

- (f) Actively engaging and participating in the following areas of activity, as they relate to the interests of members and the horticultural industry generally:
- (i) taxation law;
  - (ii) general regulatory policy and resulting compliance costs;
  - (iii) resource management and the environment, including but not limited to making appropriate submissions on local government plans in key production areas;
  - (iv) education, training and leadership;
  - (v) labour and employment issues (including seasonal labour);
  - (vi) border security;
  - (vii) high-level trade policy, including the lobbying of central government on important trade issues; and
  - (viii) crisis management.
- (g) Contracting for the provision of services, upon request, to product groups and district organisations.
- (h) Affiliating with and accept affiliation from any organisation whether established in New Zealand or elsewhere having objects in every respect wholly or in part similar to the objects of the society.
- (i) Publishing, printing, circulating or editing any newspaper, magazine, publicity or pamphlet relating to the affairs or objects of the society, including, for so long as the board determines, the "Grower" and "Orchardist" magazines.
- (j) Holding or arranging lectures, exhibitions, public meetings, classes or conferences calculated directly or indirectly to be of benefit to the society or its members.
- (k) Fostering the organisation and development of provincial, district or specialised groups of growers of horticultural products within New Zealand.
- (l) Generally doing all other things necessary for or incidental or ancillary to the protection fostering or advancement of the interests of growers of horticultural products within New Zealand and the attainment of the above mentioned objects or any of them.

The objects set out in clause 3 are separate and distinct objects and no object shall be in any way limited or circumscribed by reference to any other object.

#### 4. POWERS

In order to attain the above objects, the society has all the powers set out in any statute applicable to incorporated societies, and in addition the society:

- (a) May use such of its funds to pay the costs and expenses of furthering or carrying out its objects, and for that purpose may employ such people as may seem expedient;
- (b) May purchase, lease, hire or otherwise acquire, may exchange, and may sell, lease or otherwise dispose of property, rights or privileges to further or carry out its objects as may seem expedient;
- (c) May invest in any investment in which a trustee might invest;

- (d) Shall have the power to borrow or raise money by any means, with or without security, including by way of levying subscriptions on members in such manner as may from time to time be set out in by-laws made for such purpose; and
- (e) May act as the collection and distribution agency in respect of any levies from time to time payable by or available for the benefit of growers of horticultural products under any statute, regulation, Order in Council or otherwise.

5. MEMBERSHIP

- (a) There shall be different categories of membership as follows:

- (i) **Active Grower Member**

Persons eligible for membership of the society as "Active Grower Members" shall be those persons actively engaged in the commercial production of horticultural crops who, in the 12 month period preceding the date of application for membership, have paid a levy, directly or indirectly, to the society and who have consented in writing to becoming an Active Grower Member. Active Grower Members shall have full voting rights.

A person will cease to be entitled to be an Active Grower Member if:

- A. in the board's reasonable view, the person has ceased to be a grower of horticultural products; or
- B. the person has not, in the 12 month period preceding the relevant date, paid a levy, directly or indirectly, to the society;

and the board will have all powers necessary to audit membership qualifications for this purpose.

- (ii) **Associate Members**

Persons eligible for membership of the society as "Associate Members" shall be persons other than Active Grower Members who are associated with the horticultural industry and who have consented in writing to becoming an Associate Member. The criteria for eligibility shall be set out from time to time in by-laws adopted by the board for this purpose. Associate Members must pay subscriptions as determined by the board but will not have voting rights.

- (iii) **Life Members**

The society may, by such process and in accordance with such criteria as are set out in by-laws adopted by the board for this purpose, elect to the status of Life Member any person who in the opinion of the society has rendered distinguished and honorable services to the society or in respect of the objects for which it is established and whether or not such person is or has been a member of the society. The person must consent in writing to becoming a Life Member. Life membership shall continue for the life of the recipient without payment of any fees. Life Members will not have voting rights unless the Life Member remains an Active Grower Member.

- (iv) **Other categories**

The board may from time to time by by-law create further classes of membership and stipulate the criteria for admission to such classes of membership. The board may also disestablish classes of membership (other than the Active Grower Member class) by by-law. Upon any such disestablishment, a person formerly a member of

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that disestablished class shall cease to be a member of the society, unless such person continues to qualify as an Active Grower Member pursuant to clause 5(a)(i), in which case such person shall revert to Active Grower membership of the society.

- (b) For the avoidance of doubt, every person who, at the date of incorporation of the society, was a grower member of the New Zealand Vegetable & Potato Growers Federation (Incorporated) or of the New Zealand Fruitgrowers Federation or of The New Zealand Berryfruit Growers Federation Incorporated, shall automatically be entitled to become an Active Grower Member upon their names and contact details being provided to the society.
- (c) Any member may at any time by notice in writing addressed to the board resign from membership of the society.
- (d) The board may at any time expel from membership of the society any person who in the board's reasonable view has ceased to be entitled to be an Active Grower member pursuant to clause 5(a)(i).
- (e) The board may at any time by a two-thirds majority expel from membership of the society any member who or which in the opinion of the board is or has been guilty of wilful disobedience of these rules or any by-laws made under these rules, or of conduct inconsistent with the character and interests of the society or repugnant to any of its objects.
- (f) A Member ceases to be a Member on termination of the Member's membership following a dispute resolution process under the Dispute Procedures.
- (g) Any person who wishes to become a Member (other than a Life Member) must complete the society's membership application form for the class or classes of membership for which that person qualifies (which shall include the consent of the applicant to becoming a Member, as required by the Act) and must provide such details and information as the board may require.
- (h) The society shall keep a register of its members, in accordance with the Act.
- (i) The register of members must contain:
  - (i) the name of each Member;
  - (ii) the Member's membership class;
  - (iii) the last known contact details of each Member;
  - (iv) the date on which each person became a Member;
  - (v) the name of each person who has ceased to be a Member of the society within the previous 7 years and the date on which each person ceased to be a Member; and
  - (vi) any other information required by the Act.
- (j) A Member shall notify the society in writing of any changes to the information recorded on the register in relation to that Member.
- (k) The society must ensure that the register of members is updated as soon as practicable after becoming aware of changes to the information recorded on the register.
- (l) The society may delegate its duties under this clause to the Chief Executive.

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## 6. AFFILIATED ORGANISATIONS

- (a) In these rules:
- (i) "product group" means a differentiated part of the horticulture industry, which determines to organise itself as a separate group;
  - (ii) "district association" means any collective or organisation established in New Zealand comprising commercial growers of horticulture products and/or product groups or any combination of these from a particular district or area, purporting or intended to advance or protect the interests of its members.
- (b) Product groups and district associations are eligible for affiliated membership of the society pursuant to clause 7(a) provided the requirements of clauses 6(c) and (d) and any by-laws made under these rules for the purposes of affiliation are met.
- (c) Product group and district associations that are separately incorporated may apply for affiliation to the society provided that the aims and objectives of the relevant entity shall not be in conflict with those of the society as set out in these rules from time to time. For the avoidance of doubt, the rules or constitutions of such entities shall govern the operation of those entities.
- (d) A product group that is not incorporated may apply for affiliated membership of the society, in which case:
- (i) it may organise itself as an autonomous product group under these rules; and
  - (ii) it must develop its own operational and procedural rules, which must be submitted to the board for approval as by-laws of the society pursuant to clause 22. Approval will not be withheld provided that the aims and objectives of the rules are not in conflict with those of the society as set out in these rules from time to time.
- (e) All product groups, sector groups, district associations and regional groups recognized by the following organisations shall be deemed to have been granted affiliated membership of the society with effect from the date of incorporation of the society for a period of 6 months:
- (i) the New Zealand Vegetable and Potato Growers Federation (Incorporated);
  - (ii) the New Zealand Fruitgrowers Federation; and
  - (iii) The New Zealand Berryfruit Growers' Federation Incorporated;
- however, all such organisations must formally apply for affiliated membership pursuant to clause 7 within 6 months of the date of incorporation of the society if they wish to remain affiliated.

## 7. APPLICATION FOR AFFILIATED MEMBERSHIP

- (a) Any product group or district association eligible for affiliated membership of the society pursuant to clause 6 may apply in writing to the board to be admitted as an affiliated organisation.
- (b) Each application shall be accompanied by:
- (i) a copy of the rules or constitution of the product group or district association (if any); and

- (ii) a list of its grower members duly certified by an officer of the applicant setting out the contact details of those grower members.
- (c) The board shall as soon as reasonably practicable investigate the right of the applicant to affiliated organisation status and if it is satisfied that the applicant meets the requirements of the society as set out in these rules and any by-laws made under these rules, it shall grant such application.
- (d) Notwithstanding anything in this clause 7 but subject to the provisions of any statute, regulation or Order in Council the board may, without giving any reason, refuse any application for affiliated organisation status.
- (e) Notice of any change in the list of persons forming the grower membership of any affiliated organisation shall be given annually to the board.
- (f) Any affiliated organisation may at any time by notice in writing addressed to the board resign from membership of the society.
- (g) If any affiliated organisation shall in the opinion of the board cease to be a product group or district association or cease to be engaged in the furtherance of the objects of the society then by resolution to that effect the board may determine the membership of such affiliated organisation and the board shall be the sole judge as to whether or not such affiliated organisation has ceased to conform to these rules or be engaged in the furtherance of the society's objects.

#### 8. ANNUAL GENERAL MEETINGS

- (a) A general meeting of all members of the society, called the "AGM", shall be held in each year:
  - (i) not later than 6 months after the balance date of the society;
  - (ii) not later than 15 months after the previous AGM,
 by a quorum of members:
  - (iii) being assembled together at the time and place appointed for the meeting; or
  - (iv) participating in the meeting by means of audio link, audiovisual link, or other electronic communication; or
  - (v) by a combination of both of the methods described in paragraphs (iii) and (iv).
- (b) All members shall have the right to attend the AGM.
- (c) The business to be conducted at the AGM shall include:
  - (i) Consideration of the annual report and financial statements of the society;
  - (ii) Appointment of auditors; and
  - (iii) Such general matters as the board, any member, or any affiliated organisation may by notice in writing require to be included, pursuant to the notice of motion process set out in clause 9(c). Matters affecting the general policy of the society or its members as a whole shall be available for discussion and decision at the AGM.

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(d) The annual report shall contain the following matters:

- (i) an annual report on the operations and affairs of the society during the preceding financial year;
- (ii) audited financial statements of the society for the preceding financial year; and
- (iii) notice of the disclosures, or types of disclosures, made under section 63 of the Act (disclosure of interests) during the preceding financial year (including a brief summary of the matters, or types of matters, to which those disclosures relate).

9. MATTERS RELATING TO THE OPERATION OF CONFERENCES

- (a) **Initial notice:** The Chief Executive shall notify all members and affiliated organisations of the date and place of the AGM and the general nature of the business proposed to be conducted at the AGM, not less than 70 days prior to the date fixed for the AGM.
- (b) **Entitlement to vote:** Voting entitlements for an AGM will be determined at 5 pm on the date 28 days prior to the date fixed for the AGM. Persons whose name and address are recorded in the membership lists of the society at that time as Active Grower Members will be the only persons entitled to vote at the AGM. The board may audit the membership lists in order to verify the entitlement to membership status and the right of any person to vote.
- (c) **Notices of motion:** In the event that the board, any member or any affiliated organisation wishes to have a certain matter considered at an AGM pursuant to clause 8(c)(iii) of these rules ("a notice of motion"), then the relevant person ("the proposer") shall give notice in writing to the Chief Executive of the notice of motion not less than 49 days prior to the date fixed for the AGM.
- (d) **Notice to members:** If the notice referred to in clause 9(c) is received by the Chief Executive not less than 49 days prior to the date fixed for the AGM, the Chief Executive must give notice of the notice of motion and the text of any proposed resolution to all members entitled to receive notice of the AGM not less than 42 days prior to the date fixed for the AGM.
- (e) **Written proposal:** If the board intends that members may vote on a notice of motion by proxy or by postal vote, it must give the proposer the right to include in or with the notice referred to in clause 9(c) a statement of not more than 1,000 words prepared by the proposer in support of the notice of motion, together with the name and address of the proposer.
- (f) **Statement:** The Chief Executive will not be required to include in or with the notice of a notice of motion a statement prepared by a proposer which the Chief Executive considers to be defamatory, frivolous or vexatious.
- (g) **Dual Voting:** If the board, or not less than 50 Active Grower Members, so require, and give the Chief Executive not less than 28 days' notice prior to the date fixed for the AGM, a specific issue may be required to be put to the AGM on the basis of a dual vote, rather than one vote per Active Grower Member. Any notice of motion, other than an alteration to these rules, may be subject to a dual vote. Any change to the commodity levy rate during the term of a Horticulture New Zealand commodity levy order must be subject to a dual vote. If the notice referred to in this clause 9(g) is received by the Chief Executive not less than 28

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days prior to the date fixed for the AGM, the Chief Executive must give notice of the call for the dual vote, the notice of motion to which it relates and the text of any proposed resolution, to all members entitled to receive notice of the AGM not less than 21 days prior to the date fixed for the AGM. Dual voting will only apply to the specified notices of motion identified by the board or the 50 Active Grower Members. For the avoidance of doubt, all other matters to be considered at the meeting will be voted on as set out in clause 9(j)(i).

- (h) **Discussion:** Notwithstanding anything else in this clause 9, any matter raised without proper notice may, with the consent of a majority of those present at an AGM, be accepted for discussion at that AGM, but shall not be put to a resolution.
- (i) **Quorum:** Thirty-five (35) members present in person, or participating in the meeting by means of audio link, audiovisual link, or other electronic communication, or present by proxy shall form a quorum at all AGMs and other general meetings of the society.
- (j) **Voting:**
  - (i) Voting at the AGM and at all other general meetings of the society will be on the basis of one vote per Active Grower Member, unless a dual vote is required pursuant to clause 9(g).
  - (ii) In the event that a dual vote is required or requested in accordance with clause 9(g), in order for the amended levy rate or motion to be approved the specific decision will require both a majority of votes by number of Active Grower Members and a majority by weighted vote. For the weighted voting part of this process each Active Grower Member will be entitled to 1 vote for every \$100 (or part thereof) of levy paid. The weighting of each Active Grower Member's vote will be based on the dollar value of levy paid, directly or indirectly, to the society during the Active Grower Member's previous full financial year prior to the notice given in clause 9(b). In order to be entitled to a weighted vote, each Active Grower Member must complete and return to the Chief Executive within 7 days of the date of the meeting a declaration setting out the amount of levy paid to the society in the Active Grower Member's previous full financial year prior to the notice given in clause 9(b). Such declaration may be subject to audit and/or a requirement to provide a statutory declaration before being accepted.
- (k) **Casting Vote:** The chairperson of any AGM shall be entitled to a casting as well as a deliberative vote.
- (l) **Extraordinary resolution:** An extraordinary resolution is a resolution passed at an AGM or general meeting of the society by a majority of not less than 75% of those present and entitled to vote and of which notice has been duly given at the time and by the notice calling such meeting.
- (m) **Proxies:** If any Active Grower Member is unable to attend at any AGM, that member may by notice in writing delivered to the Chief Executive not later than 48 hours prior to the time fixed for such AGM appoint any other person entitled to attend any such AGM and vote to be the proxy of that member and any proxy so appointed shall be entitled to exercise the vote available to that Active Grower Member under these rules.
- (n) ~~**Exclusion from attendance:** Notwithstanding clause 8 of these rules, members present at an AGM may by resolution duly passed by a majority of not less than two-thirds of the members present and voting, exclude from attendances at and participation in the meetings and discussions of the AGM any person who, in the opinion of the members, is or has been guilty of wilful disobedience of the rules of the society or of any by-laws made under these rules or of conduct inconsistent with the character and interests of the society or of any affiliated member of the society, or of conduct repugnant to the objects of the society or of its members.~~



## 10. EXTRAORDINARY GENERAL MEETINGS

- (a) One hundred (100) members may by requisition addressed to the Chief Executive demand that an extraordinary general meeting of the society be called to consider any matter set out in such requisition and upon receipt of such requisition the Chief Executive shall proceed to call such a meeting with not less than 21 days notice to members entitled to attend the same.
- (b) [The board must convene an extraordinary general meeting if 5 or more directors are prevented from voting on a matter under section 64\(1\) of the Act and clause 13\(o\) of this Constitution.](#)
- ~~(b)~~(c) All provisions relating to operation of AGMs contained in these rules shall, to the fullest extent possible, apply to any extraordinary general meeting called pursuant to clause 10(a).

## 11. REVENUE

- (a) The revenue of the society shall be funded equitably, based on product value and shall consist of moneys receivable by way of a commodity levy imposed upon all growers of horticultural products made payable to the society and or any subscription payable to the society in terms of these rules.
- (b) Where a particular product group elects to do so, it may incorporate the society's levy into its own product levy or other income **provided that:**
  - (i) the product group undertakes to pay the society's levy owing by each and every member of that particular product group,
  - (ii) the product group can demonstrate to the board certainty of funding over the 6-year period of a commodity levy order; and
  - (iii) the levy is imposed at the same level across all products.
- (c) The revenue, expenditure and reserves of the board shall be accounted for separately.
- (d) All moneys received may be expended by the society for any purpose for the time being authorised by any statute, regulation or Order in Council.
- (e) The financial year of the society shall end on the 31st day of March in each year.
- (f) At the end of each financial year any surplus in the board's account shall be credited to the board's reserves, and any deficit in the board's account shall be debited to the reserves of the board.
- (g) The expenditure of all existing reserves and amounts set aside to reserves under clause 11(f) are at the total discretion of the board.

## 12. MANAGEMENT OF THE SOCIETY

- (a) The management and control of the affairs and business of the society shall be vested in a board ("the board") which shall comprise 9 directors, as follows:

- (i) Seven elected directors; and
  - (ii) Two appointed directors, appointed pursuant to clause 12(f).
- (b) The following provisions relate to the entitlement to hold office as director:
- (i) Any person holding the office of director shall be entitled to hold office for a period not exceeding 3 years. At the end of the term that person shall stand down, but will be eligible for re- election for up to 2 further consecutive 3 year terms pursuant to clause 12(e). For the avoidance of doubt, no elected director shall hold office for more than 3 consecutive terms of up to 3 years each, but that person may seek re- election after standing down for at least one year. Any appointed director shall hold office for such term determined by the board from time to time but not exceeding 3 years. At the end of the term that person shall be eligible for reappointment for a further term, but no appointed director shall hold office for more than 6 consecutive years.
  - (ii) Prior to the first director elections following the adoption of the amendments to these rules proposed at the 2014 AGM, the board will determine a binding mechanism, to be used as soon as practicably possible to reduce the number of elected directors to 7 from 8.
  - (iii) A retiring director shall be eligible for re-election and shall act as a director until the conclusion of the next AGM. The election or re-election of new directors shall take effect from the conclusion of the next AGM.
  - (iv) A director retiring by rotation shall, if standing for re-election, be deemed to have been re-elected unless some other person is elected to fill the vacated office.
- (c) The following persons shall be eligible for election as a director:
- (i) Any Active Grower Member who is a natural person; or
  - (ii) Any director or shareholder of an Active Grower Member that is a company; or
  - (iii) Any partner of an Active Grower Member that is a partnership; or
  - (iv) Any trustee of an Active Grower Member that is a trust; or
  - (v) any employee of an Active Grower Member;
- being the person nominated as the principal representative of that member in respect of dealings with the society.
- (d) Both members and non-members will be eligible to be appointed directors pursuant to clause 12(a).
- (e) The election of directors will take place as follows:
- (i) Each year the board will fix the date for the election of directors.
  - (ii) Prior to the date fixed by the board for the election of directors, the Chief Executive shall give at least 28 days' notice to members and affiliated organisations calling for nominations for the office of director, and advising which of the directors is retiring by rotation.
  - (iii) Active Grower Members or affiliated organisations may nominate candidates for a director's position. Each candidate shall receive at least 2 nominations.

- (iv) Upon receipt of nominations, if the number of nominations exceeds the number of positions to be filled, the Chief Executive will forward postal ballots to all Active Grower Members entitled to vote pursuant to clause 9. Such members will have at least 21 days in which to return ballots to the Chief Executive.
- (v) Voting for the election of the board will be on the basis that each Active Grower Member will have one vote.
- (f) **Appointed directors:** The board will establish a "Director Selection Group" comprising the President and 2 other members independent of the board who are appointed by the Horticulture Industry Forum convened pursuant to clause 14A. The Director Selection Group will advertise, screen and recommend to the board persons suitable to be "appointed directors" pursuant to clause 12(a). One director is to be appointed within 12 months of the date of adoption of the amendments to these rules proposed at the 2014 AGM and the second to be appointed within the following 12 month period. No person may be appointed as a director by the board unless he or she has been recommended by the Director Selection Group. The board will consider the recommendations of the Director Selection Group and will have the final decision on who may be appointed as directors pursuant to this clause. Directors appointed pursuant to this clause shall have full voting rights in respect of all board matters.
- (g) At the first meeting of the board following the AGM, the directors will elect one of their number to be chairperson of the board and President of the society, to hold office in both capacities until the conclusion of the next AGM, subject to these rules.
- (h) At the first meeting of the board following the AGM, the directors will also elect one of their number as deputy chairperson and Vice President of the society, to hold office in both capacities until the conclusion of the next AGM, subject to these rules.
- (i) If the President should resign from office, die, become bankrupt, or in some other way become incapable of carrying out his or her duties as President for a period of more than 6 weeks, then the Vice-President shall assume the position of President and hold office until the conclusion of the next AGM.
- (j) The office of director shall be vacated:
  - (i) If the director is absent from two consecutive meetings without special leave; or
  - (ii) If the director is or becomes bankrupt or suspends payment or compounds with the director's creditors; or
  - (iii) If the director dies or becomes mentally incapable as defined in the Protection of Personal and Property Rights Act 1988; or
  - (iv) If the director ceases to be a member of the society.
- (k) Any casual vacancy in the board may be filled by the remaining directors. Any person co-opted to fill such a vacancy shall hold office only until the next board election where the position will be filled by those standing for election. For the purposes of determining future rotation of directors, the highest polling director(s) shall be entitled to hold office for a full term, with the next highest polling director(s) entitled to hold office for the balance of the unexpired term of the director in whose place he or she is appointed.
- (l) The board may continue to act despite not having a full number of directors provided at all times there remains a quorum of 5 directors.

- (m) The society in AGM or general meeting may by an extraordinary resolution remove any director from the board before the expiration of the director's term of office and appoint in that director's place another person duly qualified. The director so appointed shall hold office until such time only as the director in whose place he or she was appointed would have held the same if he or she had not been removed.

(n) In exercising powers or performing duties as a director, each director shall:

- (i) act in good faith and in what the director believes to be the best interests of the society;
- (ii) exercise a power as a director for a proper purpose;
- (iii) not act, or agree to the society acting, in a manner that contravenes the Act or this Constitution;
- (iv) exercise the care and diligence that a reasonable person with the same responsibilities would exercise in the same circumstances taking into account (without limitation):
  - the nature of the society;
  - the nature of the decision; and
  - the position of the director and the nature of the responsibilities undertaken by him or her.

(o) A director must not:

- (i) agree to the activities of the society being carried on in a manner likely to create a substantial risk of serious loss to the society's creditors;
- (ii) cause or allow the activities of the society to be carried on in a manner likely to create a substantial risk of serious loss to the society's creditors; or
- (iii) agree to the society incurring an obligation unless the director believes at that time on reasonable grounds that the society will be able to perform the obligation when it is required to do so.

(p) No part of the income or property of the society will be paid directly or indirectly to any member provided that this clause will not prevent the society making reasonable payments to members for professional or other services rendered.

(n) No director shall be liable for the acts or defaults of any other director board or any loss so occasioned, unless occasioned by their wilful default or by their wilful acquiescence.

(q) The society may, in accordance with subpart 6 of the Act, indemnify a director, officer, a Member, or an employee of the society for:

- (i) liability to any person other than the society for any act or omission in their capacity as an officer, a member, or an employee of that society (not being a liability specified in paragraph (r));
- (ii) subject to paragraph (s), costs incurred by the officer, member, or employee in defending or settling any claim or proceeding relating to that liability.

(r) The liabilities for which the society may not indemnify a director, officer, a Member, or an employee of the society are:

- (i) criminal liability; and
- (ii) a liability that arises out of a failure to act in good faith and in what the director, officer, Member, or employee believes to be the best interests of the society when acting in their capacity as a director, officer, a Member, or an employee of the

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society.

(s) The society may indemnify a director, officer, a Member, or an employee of the society for any costs incurred by them in defending or settling a proceeding that relates to liability of a kind referred to in paragraph (q)(i) if:

(i) judgment is given in their favour or if they are acquitted; or

(ii) the proceeding is discontinued.

(t) The society may, with the prior approval of the board, effect insurance for a director, officer, a Member, or an employee of the society in respect of:

(i) liability (other than criminal liability) of a kind referred to in section 94 of the Act; or

(ii) costs incurred by the director, officer, Member, or employee in defending or settling any claim or proceeding relating to that liability; or

(iii) costs incurred by the director, officer, Member, or employee in defending any criminal proceedings:

- that have been brought against the director, officer, Member, or employee in relation to any alleged act or omission in their capacity as a director, officer, Member, or employee; and

- in which they are acquitted.

(u) The directors who vote in favour of authorising the insurance under paragraph (t) must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the society.

(v) For the purposes of section 98 of the Act, the society is expressly authorised to indemnify a director or officer, or to effect insurance for a director or officer, for the following matters:

(i) liability (other than criminal liability) for a failure to comply with:

- a duty under sections 54 to 61 of the Act (officers' duties); or

- any other duty imposed on the director or officer in their capacity as an officer; and

(ii) costs incurred by the director or officer for any claim or proceeding relating to that liability.

(e) The directors shall be indemnified by the society for all liabilities and costs incurred by them in the proper performance of their functions and duties, other than as a result of their wilful default.

### 13. PROCEEDINGS OF THE BOARD

(a) Meetings of the board shall be held at such intervals as may be deemed necessary.

(b) Not less than 7 days' notice of a meeting of the board shall be given by the Chief Executive to each director.

(c) Two directors may at any time request a meeting of the board and the Chief Executive upon the request of two directors shall convene such a meeting.

(d) Each director will have one vote. The chairperson of the board may exercise a casting as well as a deliberative vote at any meeting of the board.

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(g) No member of the society or any person associated with a member shall participate or materially influence any decision made by the society, in respect of the payment to or on behalf of that member or associated person of any income, benefit or advantage whatsoever. Any such income shall be reasonable and relative to that which would be paid in an arm's length transaction (being open market value).

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#### 14. SUB COMMITTEES

- (a) The board may delegate any of their respective powers to sub- committees consisting of such member or members as is thought fit. Any sub-committee shall in the exercise of the powers so delegated conform to any regulations that may from time to time be imposed upon it by the board.
- (b) The meetings and proceedings of any such sub-committee shall be governed by the provisions of these rules for regulating the meetings and proceedings of the board so far as the same are applicable and are not superseded by any regulations made under these rules.

#### 14A HORTICULTURE INDUSTRY FORUM

- (a) The society will, by its Chief Executive, convene a meeting, to be called the "Horticulture Industry Forum" ("the Forum"), at least 3 times per year.
- (b) The Chief Executive will invite to the Forum the board of the society and representatives of affiliated product groups and affiliated district associations.
- (c) In developing the agenda for each Forum the Chief Executive will seek input from the board and affiliated product groups and district associations.
- (d) Relevant external organisations and speakers may be invited to attend a Forum but will have no voting rights in respect of matters under consideration at the Forum.
- (e) The Forum may make recommendations for consideration by the board. Nothing in this clause requires the board to take any action in respect of such recommendations, and the board remains the governing body of the society subject to these rules.
- (f) Decisions at the Forum will be made by consensus or, if required, will be put to a vote. Voting will be based on one vote per affiliated product group or district association present at the Forum. Individual directors will have no personal voting rights and there will be no proxy votes permitted.

#### 15. REMUNERATION OF BOARD AND SUB-COMMITTEES

- (a) No part of the income or property of the society will be paid directly or indirectly to any member **provided that** this clause will not prevent the society making reasonable payments to members for professional or other services rendered.
- (b) Directors and members of sub-committees may be paid such remuneration by way of honorarium as may be determined by the society in general meeting and may also be paid travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the board or any sub-committee or any general meetings of the society or in connection with the business of the society and in addition may be paid such sum as may be determined by prior resolution of the society in respect of any extra service performed by any such member within New Zealand or elsewhere either in respect of attendance at any meeting or in respect of any special exertions in going or residing abroad or otherwise for any of the purposes of the society.

16. CHIEF EXECUTIVE OFFICER

- (a) The board shall appoint a Chief Executive, who shall hold office for such period and upon such terms as to salary or otherwise as the board shall from time to time determine.
- (b) The board will determine and agree the responsibilities and duties of the Chief Executive.

17. BANK ACCOUNTS

The society shall open an account or accounts with one or more trading banks operating within New Zealand and all cheques or other negotiable instruments drawn upon such Bank or Banks shall be signed by such person or persons as the board shall from time to time determine.

18. AUDITOR

The society shall at each AGM appoint an auditor to audit the financial statements of the society prior to their presentation to the AGM and such auditor shall be a member of the Institute of Chartered Accountants of New Zealand.

19. COMMON SEAL METHOD OF CONTRACTING

(a) Unless expressly required by law, a contract or other enforceable obligation may be entered into by the society as follows:

(i) An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the society in writing signed under the name of the society by:

- 2 or more directors; or
- a director, whose signature must be witnessed; or
- 1 or more attorneys appointed by the society;

(ii) An obligation which, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the society in writing by a person acting under the society's express or implied authority; and

(iii) An obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the society in writing or orally by a person acting under the society's express or implied authority

A common seal shall be obtained for the society and it shall be kept in the custody of the Chief Executive and shall not be affixed to any instrument except by order of a meeting of the board and be signed by two directors duly authorised in that behalf and by the Chief Executive.

20. POWER TO MAKE AND ALTER RULES

- (a) Subject to the provisions of the Incorporated Societies Act 19082022, the rules of the society may be altered, rescinded or added to by a resolution supported by a majority of at least 75% of all valid votes cast by members present or by proxy at the AGM or a general meeting called for such purpose.

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- (b) Notice of any proposed amendment with the full text of the amendment shall be forwarded to the Chief Executive not later than 49 days prior to the date fixed for the AGM or general meeting and shall be sent by the Chief Executive to each member and affiliated organisation not later than 42 days prior to the AGM or general meeting provided that any new rule or existing rule so to be amended or rescinded may be altered or varied by the AGM or general meeting considering the same.
- (c) No addition or alteration to these rules will be effective if they result, or could result, in the society being dissolved, liquidated or struck off the Register of Incorporated Societies either by the Court, or the Registrar of Incorporated Societies.
- (d) No alteration to these rules will be effective if they result, or could result, in the negating of the objects, clause 15(a) or clause 21(b).

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## 21. LIQUIDATION

(a) The Society may be wound up voluntarily if, at a Meeting, Active Grower Members pass a simple majority resolution:

- (i) requiring the Society to be wound up; or
- (ii) subject to compliance with subpart 6 of the Act, to appoint a liquidator.

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(b) If the Society is wound up, any surplus assets of the Society after the payment of all costs, debts and liabilities shall be disposed of to one or more not-for-profit entities within New Zealand having objectives similar to those of the society in accordance with section 216 of the Act.

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(c) For the avoidance of doubt, no part of any surplus assets may be paid to or distributed amongst the Members or other owners of the Society.

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(a) ~~The society may be put into liquidation if a resolution is passed for the appointment of a liquidator by a majority of members present at an extraordinary general meeting called for the purpose. The resolution must be confirmed at a subsequent extraordinary general meeting called for that purpose and held not earlier than 30 days after the date on which the resolution to be confirmed was passed.~~

(b) ~~The surplus assets of the society shall after all liabilities are paid be distributed in such manner as such meeting shall decide provided that no portion of the surplus assets or funds may be transferred directly to members of the society but must be given or transferred to some other organisation within New Zealand having objectives similar to those of the society, provided that no portion of the assets and funds of that organisation can be transferred directly to its or their members.~~

## 22. BY-LAWS

The board shall have power to make and amend regulations, by-laws and policies for the conduct and control of society activities, but no such regulations, by-laws and policies shall be inconsistent with these rules or to the Incorporated Societies Act 1908.

## 23. DISPUTES

If a Dispute arises, the Dispute Procedures in Schedule 1 shall apply.

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## 24. CONTACT PERSON

For the purposes of the Act, the contact person of the Society shall be the Chief Executive.

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## 23.25. TRANSITIONAL PROVISIONS UNTIL 2007

- (a) Until the first board is elected pursuant to these rules, 10 persons shall hold office as the Foundation Board. The Foundation Board has been appointed by the Federation Council of the New Zealand Vegetable and Potato Growers Federation (Incorporated) and the board of the New Zealand Fruitgrowers Federation after consultation with relevant product groups and The New Zealand Berryfruit Growers' Federation Incorporated.
- (b) The first elections for the new board will be held as soon as practicable by 31 December 2005, as determined by the Foundation Board.

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## 26. EXISTING MEMBERS, AFFILIATED ORGANISATIONS, DIRECTORS AND SUBCOMMITTEE MEMBERS

- 26.1 The persons who were members of the Society at the date these rules came into effect continue to be members of the Society until their membership ends pursuant to these rules.
- 26.2 A product group or district association that was an affiliated organisation of the Society at the date these rules came into effect continues to be an affiliated organization of the Society until their affiliation ends pursuant to these rules.
- 26.3 The persons who were directors of the Society, or who were members of a Board subcommittee, at the date these rules came into effect continue to be directors of the Society or members of those Board subcommittees until their term ends pursuant to these rules.

## 24.27. DEFINITIONS

24.127.1 In these rules, unless the context otherwise requires, the following words have the following meanings:

(a) "Act" means the Incorporated Societies Act 2022;

(a)(b) "affiliated organisation" has the meaning set out in clause 5(a)(iv);

(b)(c) "AGM" means the annual general meeting of the society;

(e)(d) "board" means the board of directors of the society constituted pursuant to clause 12(a);

(d)(e) "Chief Executive" means the chief executive officer of the society appointed pursuant to clause 16;

(f) "Complaint" has the meaning set out in section 38 of the Act;

(g) "Dispute" has the meaning set out in section 38 of the Act;

(h) "Dispute Procedures" means the procedures set out in Schedule 1;

(e)(i) "district association" has the meaning set out in clause 6(a)(ii);

(f)(j) "Foundation Board" means the board responsible for establishing the society described in clause 23(a);

(k) "Interests Register" means the interests register kept by the Society pursuant to section 73 of the Act;

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~~(g)~~(l) "levy" means:

- (i) a commodity levy payable to the society (directly or indirectly) pursuant to a commodity levy order made under the Commodity Levies Act 1990 or any legislation passed in substitution for such legislation;
- (ii) a levy in the nature of a commodity levy voluntarily paid (directly or indirectly) to or for the benefit of the society.

~~(h)~~(m) "objects" means the objects of the society set out in clause 3;

~~(i)~~(n) "person" includes an individual, firm, company, corporation, partnership, incorporated or unincorporated body of persons, incorporated charitable trust board, any public, territorial or regional authority, any government, and any agency of any government or of any such authority;

~~(j)~~(o) "product group" has the meaning set out in clause 6(a)(i);

~~(k)~~(p) "rules" means these rules as amended from time to time pursuant to clause 20;

(q) "society" means the incorporated society known as Horticulture New Zealand Incorporated or by such other name as the society adopts from time to time.

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## **SCHEDULE 1**

### **Dispute Procedures**

#### **1 Overview of this schedule**

This Schedule sets out the procedures to be followed relating to Disputes (as defined in section 38 of the Act).

#### **2 How Complaint is made**

2.1 A Member or a Director may make a Complaint by giving to the Board (or a complaints subcommittee, if the Board has established one) a notice in writing that:

- (a) states that the Member or Director is starting a procedure for resolving a Dispute in accordance with this Constitution; and
- (b) sets out the allegation to which the Dispute relates and whom the allegation is against; and
- (c) sets out any other information reasonably required by the Society.

2.2 The Society may make a Complaint involving an allegation against a Member or a Director by giving to the Member or Director a notice in writing that:

- (a) states that the Society is starting a procedure for resolving a Dispute in accordance with this Constitution; and
- (b) sets out the allegation to which the Dispute relates.

2.3 The information given under clause 2.1(b) or clause 2.2(b) must be enough to ensure that a person against whom an allegation is made is fairly advised of the allegation concerning them, with sufficient details given to enable them to prepare a response.

#### **3 Person who makes Complaint has right to be heard**

3.1 A Member or a Director who makes a Complaint has a right to be heard before the Complaint is resolved or any outcome is determined.

3.2 If the Society makes a Complaint:

- (a) the Society has a right to be heard before the Complaint is resolved or any outcome is determined; and
- (b) a Director may exercise that right on behalf of the Society.

3.3 Without limiting the manner in which the Member, Director, 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, Director's, or Society's written statement or submissions (if any) are considered by the decision maker.

#### **4 Person who is subject of Complaint has right to be heard**

**4.1** This clause applies if a Complaint involves an allegation that a Member, a Director, or the Society (the **respondent**)—

- (a) has engaged in misconduct; or
- (b) has breached, or is likely to breach, a duty under this Constitution or bylaws or the Act; or
- (c) has damaged the rights or interests of a Member or the rights or interests of Members generally.

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

**4.3** If the respondent is the Society, a Director may exercise the right on behalf of the Society.

**4.4** 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 8 wsufficient 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.

#### **5 Investigating and determining Dispute**

**5.1** The Society must, as soon as is reasonably practicable after receiving or becoming aware of a Complaint made in accordance with this Constitution, ensure that the Dispute is investigated and determined.

**5.2** Disputes must be dealt with under this Constitution in a fair, efficient, and effective manner.

#### **6 The Society may decide not to proceed further with a Complaint**

**6.1** Despite clause 5, the Society may decide not to proceed further with a Complaint if:

- (a) the Complaint is trivial; or

- (b) the Complaint does not appear to disclose or involve any allegation of the following kind:
  - (i) that a Member or a Director has engaged in material misconduct;
  - (ii) that a member, a Director, or the Society has materially breached, or is likely to materially breach, a duty under this Constitution or bylaws or the Act;  
or
  - (iii) that a Member's rights or interests or Members' rights or interests generally have been materially damaged; or
- (c) the Complaint appears to be without foundation or there is no apparent evidence to support it; or
- (d) the person who makes the Complaint has an insignificant interest in the matter; or
- (e) the conduct, incident, event, or issue giving rise to the Complaint has already been investigated and dealt with under this Constitution; or
- (f) there has been an undue delay in making the Complaint.

## **7 The Society may refer matter**

### **7.1 The Society may refer a Complaint to:**

- (a) a subcommittee or an external person to investigate and report; or
- (b) a subcommittee, an arbitral tribunal, or an external person to investigate and make a decision.

### **7.2 The Society 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).**

## **8 Decision makers**

A person may not act as a decision maker in relation to a Complaint if 2 or more Directors or (if there is a complaints subcommittee) 2 or more members of the complaints subcommittee consider that there are reasonable grounds to believe that the person may not be:

- (a) impartial; or
- (b) able to consider the matter without a predetermined view.

## **9 Time periods and other matters**

Except as set out in this Schedule 3, the Board, or any complaints subcommittee, shall determine the timetable to be followed in any

investigation, including the dates by which any submissions are due, any hearings will be held and any determination will be made.  
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