



Friday, 30 August, 2024

Attention: Cathy Veninga, CEO

Designers Institute of New Zealand Inc  
PO Box 109423  
Newmarket  
AUCKLAND 1149

By email

Dear Cathy

## PROPOSED NEW CONSTITUTION

We understand that a new Constitution has been proposed by the Board to replace the existing Constitution. The amendments in the new Constitution are designed to comply with the Incorporated Societies Act 2022 ("the new Act"), including additions and changes relating to the following items:

**(a) Objects and powers of the Institute, specifically:**

- to adopt the Pou and associated principles into the Constitution;
- to include a broad range of powers and authority for the Board (set out in clause 6.6);
- to allow the Institute to effect and pay for insurance to cover the risks associated with running the Institute.

Specifically, the addition of clause 4.2(g) is as follows:

(g) Arrange insurance cover, including public liability insurance, Board and officer insurance, and indemnity insurance, for all risks associated with the operation of the Institute;

And the addition of clause 6.6(ii)(g):

(g) effect and pay for insurance to cover all risks associated with the Institute's operation, including (to the extent permitted by the Act) insurance cover for Board members;

Under section 98 of the new Act, a society can only arrange, effect and pay for insurance to cover Board members if it is expressly authorised by the Constitution. Therefore, these amendments are necessary to enable the Institute to arrange insurance that covers Board members.

**(b) Obtaining consent from members to be nominated to become a Board member of the Institute.**

The change to clause 6.5 is as follows:

**6.5 Consent to be a Board Member**

Prior to election or appointment, a nominated Member must consent in writing to be a Board member and certify in writing that they are not disqualified from being appointed or holding office as a Board member by this Constitution or under section 47(3) of the Act. Written consent and certification documents shall be retained by the Institute's records.

It is a requirement under the new Act, that all nominated officers give their consent to become an officer (section 47).

**(c) Grounds for officer removal.**

These grounds for removal reflect the grounds set out in section 50 of the new Act. Therefore, this addition is consistent with the new Act for reregistration.

**(d) New duties for officers including:**

- Duty to act in good faith and in the best interests of the Institute;
- Duty to exercise the care and diligence that reasonable person would in the circumstances; and
- Other duties.

These duties are consistent with the new Act.

**(e) The requirement that Annual General Meetings are held within 15 months after the previous AGM.**

This is a new requirement set out in section 84 of the new Act, therefore, the change is appropriate.

**(f) Allowing resolutions in lieu of meetings.**

Specifically, the inclusion of clause 9.7 as follows:

**9.7 Resolution in lieu of meeting**

A resolution in writing signed by not less than 75% of the Members who would be entitled to vote on that resolution at a General Meeting is as valid as if it had been passed at a General Meeting of those Members.

A Member may give their approval by:

- (a) Signing the resolutions; or
- (b) Giving their approval to resolution by email.

A resolution in writing in lieu of a meeting may consist of several documents (including letters, emails or other written means of communication) in similar form each approved by or on behalf of 1 or more of the Members entitled to vote.

The inclusion of this amendment is consistent with the new Act (section 89).



**(g) Disclosure of interests for officers and consequences for being interested.**

Specifically, clause 12 has been inserted to cover self-interested transactions as below:

**12. SELF-INTERESTED TRANSACTIONS**

**12.1 Interests Register**

An Officer, after becoming aware of the fact that they are interested in a transaction or proposed transaction with the Institute, must disclose the details and nature of the interest to the Board and an interests register must be kept.

An Officer of the Institute may inspect the interests register at any reasonable time.

If the Institute becomes aware of an Officer's interest in a transaction that has already completed, which was not disclosed or entered on the interests register, the Institute must notify the Members as soon as becoming aware of the failure.

A transaction entered into by the Institute in which an Officer of the Institute is interested may be avoided by the Institute at any time before the expiration of three months after the transaction is notified to the Members, provided however that the Institute cannot avoid the transaction if the Institute receives fair value under it.

**12.2 Consequences of being interested**

An Officer of the Institute who is interested in a transaction entered into, or to be entered into, by the Institute:

- (a) Must not vote or take part in any decision of the Board related to the matter (unless all uninterested Elected Officers consent to the interested Officers participation);
- (b) Must not sign any document in relation to the matter (unless all uninterested Elected Officers consent to the interested Officers participation);
- (c) May take part in the discussion of the matter and be present during the decision on the matter (unless the Board decides otherwise); and
- (d) May be counted for the purposes of determining whether there is a quorum at any meeting where the transaction is considered.

If 50% or more of Elected Officers are prevented from voting due to being interested in a transaction, then a Special General Meeting must be called to determine the matter.

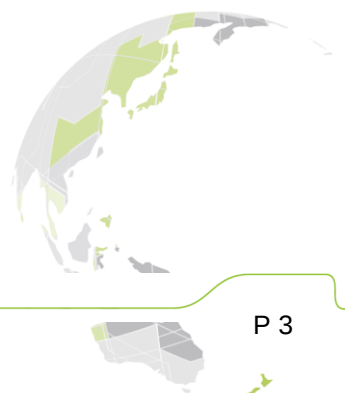
These inclusions are consistent with sections 62 to 64 of the new Act.

**(h) Procedures for dispute resolution.**

The new Act specifies that constitutions of societies registered under the new Act must include a procedure for resolving disputes (section 26(j)). The dispute resolution clauses added to the constitution (clause 13) are consistent with the requirements of the new Act.

**(i) Procedures for members to access information about the Institute.**

The inclusion of clause 14 to the new Constitution is consistent with sections 80 to 83 of the new Act, which describes the process for members to access information.



(j) **Minor and technical amendments to the Constitution.**

The new Act allows minor and technical amendments to be made to the Constitution without approval from 75% of the members present and voting (if there are no objections received from members). The addition of clause 15.1.2 is consistent with the new Act.

(k) **Process for the Institute to be wound up (requiring a 75% majority of all members present and voting).**

The addition to clause 15.5 is as follows:

**15.5 Dissolution or winding up**

The Institute may be wound up, or liquidated, or removed from the Register of Incorporated Societies in accordance with the provisions of the Act.

The CEO shall give notice to all Members of a proposed motion to wind up the Institute, or remove it from the Register of Incorporated Societies and of the General Meeting at which any such proposal is to be considered, of the reasons for the proposal, and of any recommendations from the Board in respect to such notice of motion.

Any resolution to wind up the Institute or remove it from the Register of Incorporated Societies must be passed by a 75% majority of all Members present and voting.

Prior to the dissolution by the Registrar of Incorporated Societies or a resolution by the Members to voluntarily wind up of the Institute, the property, assets and monies shall, after provision for the discharge of all liabilities of the Institute, be paid or transferred to any bodyone or bodies which havemore similar aims toorganisation as the Institute-, no distribution shall be made to any Member.

These changes set out the process that the Institute needs to follow in order to dissolve or wind up the Institute. The new Constitution requires a 75% majority of all the members present and voting in order to wind up the Institute, is consistent with the new Act.

(l) **Other changes.**

There are various other changes in the Constitution which are consistent with the new Act. Specifically, a number of changes relating to pecuniary gain were included to satisfy the legal and IRD requirements to entitle the Institute to the not-for-profit deduction under section DV8 of the Income Tax Act 2007 (see inclusions to clauses 10.4 and 15.1.1(ii) of the new Constitution).

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#### 10.4 Pecuniary gain

The Institute does not have the purpose of making a profit for Members and prohibits distribution of property in any form to Members.

No Member of the Institute shall derive any pecuniary gain from the monies or the financial dealings of the Institute, or from transactions involving the real or personal property of the Institute, except as provided for in Section 24 of the Incorporated Societies Act 2022 and its amendments. Any such payments or transactions permitted by section 24 of the Act must be reasonable and relative to that which would be paid in an arms-length transaction (being open market value).

(ii) There are no changes to the Constitution's pecuniary gain clause (10.4) or the winding up clause (15.5), and no other changes are proposed which would allow personal pecuniary profits to be given to any Members. The provisions and effect of this clause 15.1.1(ii) shall not be removed from this Constitution and shall be included and implied into any replacement Constitution; and

#### Summary

The new Act sets out a number of new requirements for societies intending to reregister under the new Act (section 26). If a society does not reregister under the new Act, then it will cease to be an incorporated society. The changes expressly discussed in this letter and other changes included in the proposed new Constitution will enable the Institute to reregister under the new Act.

The changes can be lawfully passed, and the proposed new Constitution adopted, by the Annual General Meeting.

We note that under clause 10.1.1 of the existing 2010 Constitution, alterations of the Constitution can only come into effect if adopted by a special resolution at a general meeting. Therefore, the new Constitution will need to be approved by 75% of the members attending or voting by proxy at the Annual General Meeting.

Yours faithfully  
CLENDONS



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Principal

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