

Constitution of Ngā Tamariki Puāwai o Tāmaki | Auckland Kindergarten Association 2019

Adopted by the members of the Auckland Kindergarten Association
at its Annual General meeting on 30th October 2019 and
signed by the Chairperson of the meeting.



Chairperson
October 2019



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Preface

A legal definition of an Association is:

“... two or more persons bound together for one or more common purposes, not being business purposes, by mutual undertakings, each having mutual duties and obligations, in an organisation which has rules which identify in whom control of it and its funds rests and upon what terms and which can be joined or left at will.”¹

This Constitution is a set of rules that embodies all of those elements.

Part A sets out the purposes of Ngā Tamaraki Puāwai o Tāmaki | Auckland Kindergarten Association (AKA), its charitable and not-for-profit status, and the powers it needs to fulfil its purposes.

Part B contains rules for Membership of the Association. Members are elected by parents and caregivers of children who are enrolled at AKA services, or on a waiting list to be enrolled.

Part C contains rules for how Members come together at General Meetings to make decisions about the Association, and to elect and/or appoint a Board of Directors. These are the core mutual undertakings, duties and obligations (as well as rights) of the Members.

Parts D and E identify who will control the Association and its funds (a Board of Directors, and a CEO), and may place specific limits on the extent of their control.

This Constitution has been drafted on the principle that Ngā Tamaraki Puāwai o Tāmaki | Auckland Kindergarten Association is essentially a democracy.

- The parents and caregivers of our AKA Services children are *citizens*, or constituents.
- They are grouped together in *electorates*, defined by the AKA Services their children are enrolled at.
- Each electorate has an *elected representative*, who is formally a Member of the Association.
- The Members come together in a *parliament* at Annual and Special General Meetings.
- Those meetings form a *government*, by electing a Board of Directors. They are also a *legislature*, responsible for adopting and amending these rules.
- The Board of Directors directs a *Chief Executive Officer (CEO)*, who is responsible for managing *public servants*; the staff of the Association.

In accordance with the political philosophy on which Westminster democracies are founded, the “citizens” of the Association are its ultimate source of authority, legitimacy and power. This Constitution is intended to create a clear process by which those powers are delegated to a responsible and competent government.

Also, because this is a democracy located in Aotearoa/New Zealand, the Treaty of Waitangi is accepted as a founding document of our nation, and Tangata Whenua are accordingly recognised in the Association’s governance structure.

¹ Lord Justice Lawton in the English trust law case *Conservative and Unionist Central Office v Burrell* (1981)

Definitions

In this Constitution, unless the context demands otherwise, the following words and acronyms have these defined meanings:

AGM means Annual General Meeting.

AKA Service means any early childhood service, including any kindergarten, which the Association owns and/or manages.

Appointed Director means a Director appointed pursuant to Section 28.

Compare: *Elected Director*

Association means Ngā Tamaraki Puāwai o Tāmaki | Auckland Kindergarten Association.

Board means the Board of Directors of Ngā Tamaraki Puāwai o Tāmaki | Auckland Kindergarten Association, elected and/or appointed in accordance with this Constitution.

CEO means the Chief Executive Officer (CEO) of the Association.

Chairperson is the Director who is Chairperson of the Board from time to time, pursuant to Rule 24.1.

Community Director means a Director elected pursuant to Section 26.

Constitution means this Constitution.

Deputy Chairperson is the Director who is the Deputy Chairperson of the Board from time to time.

Director means a person elected or appointed Director of the Board.

Elected Directors means a Member of the Board who is either; a *Community Director* elected pursuant to Section 26, or a *Teacher Director* elected pursuant to Section 27.

Compare: *Appointed Director*

Elector means a parent/caregiver who may vote for a *Representative Member* of the Association, as defined in Rule 8.1.

General Meeting means an Annual General Meeting or Special General Meeting.

Life Member means a person on whom the status of “Life Member” has been conferred in accordance with Section 9 and includes any person on whom that status has been conferred prior to the date this Constitution is adopted.

Compare: *Representative Member*

Member (or Members) refers collectively to Life Members, Representative Members, and to Directors acting in their capacity as Members at a General Meeting.

Objects means the objects of the Association set out in Rule 2.1.

Ordinary Resolution means a resolution passed at a General Meeting or a meeting of the Board by a simple majority (50% or more) of the votes of persons entitled to vote at the meeting, either personally or by proxy.

Compare: *Special Resolution*

Parent Whānau Group means a group constituted by the whānau, parents, guardians, or regular caregivers of one or more children enrolled at, or on a waiting list to be enrolled, or have attended an AKA Service.

Representative Member means a person who has been elected into that role as a Member of the Association in accordance with Section 8 of this Constitution (i.e. a Member who is not a Life Member).

Compare: *Life Member*

Rule means a single rule, designated by a number with decimal places, including all parts within the rule designated with letters (a) to (z), or lowercase Roman numerals (i), (v) and (x), or some combination thereof. For avoidance of doubt: unless the context demands otherwise, every such reference to a Rule refers to a Rule in this Constitution.

Section means a group of one or more Rules, designated by a section heading numbered with no decimal places. For avoidance of doubt; unless the context demands otherwise, every such reference to a Section refers to a Section of this Constitution.

SGM means Special General Meeting.

Special Resolution means a resolution passed at a General Meeting or a meeting of the Board by a super majority (75% or more) of the votes of persons entitled to vote at the meeting, either personally or by proxy.

Compare: *Ordinary Resolution*

Teacher Director means a Member of the Board of Directors elected pursuant to Section 27.

Teaching Staff (for the purposes of electing a Teacher Director), means all persons employed in an AKA Service who are registered teachers.

Part A: The Association

1. Name and Status

- 1.1 The name of the Association is Ngā Tamaraki Puāwai o Tāmaki | Auckland Kindergarten Association.
- 1.2 The Association is a “society incorporated as a Board” pursuant to the provisions of the Charitable Trusts Act 1957 and registered as a charitable entity pursuant to the Charities Act 2005.
- 1.3 The registered office of the Association shall be at the place determined by the Board.
- 1.4 The common seal of the Association shall be kept in the control of the Board and may be affixed to any document only by resolution of the Board and in the presence of and with the accompanying signatures of the Chairperson and another Director.

2. Objects

- 2.1 The Association is a charitable business organisation and its objects are:
 - (a) To provide facilities for and undertake early childhood education and care within New Zealand; and
 - (b) To promote and encourage early childhood education and care within New Zealand.
- 2.2 Any profits generated by the Association’s activities shall be retained exclusively to further these charitable objects within New Zealand.

3. Powers

- 3.1 The Association has the power, subject to this Constitution to:
 - (a) Purchase, lease, hire or otherwise acquire, hold, manage, maintain, insure, sell or otherwise deal with property and other rights, privileges and licences;
 - (b) Control and raise money including borrow, invest, loan or advance monies and secure the payment of such money by way of mortgage or charge over all or part of any of its property and enter into guarantees;
 - (c) Sell, lease, mortgage, charge or otherwise dispose of any property of the Association and grant such rights and privileges over such property as it considers appropriate;
 - (d) Determine, raise and receive money by subscriptions, donations, fees, levies, entry or usage charges, sponsorship, government funding, community funding or otherwise;
 - (e) Produce, develop, create, license and otherwise use and protect the intellectual property of the Association;
 - (f) Make, alter, rescind, enforce this Constitution, and any rules, by-laws, regulations, policies and procedures for the governance, management and operation of the Association;

- (g) Determine, implement and enforce disciplinary, disputes and appeals procedures, including rules, regulations and policies for such and, conduct hearings and impose sanctions;
- (h) Consider and settle disputes between Members;
- (i) Determine who are its Members and withdraw, suspend or terminate membership;
- (j) Enter into, manage and terminate contracts or other arrangements with employees, sponsors, Members and other persons and organisations;
- (k) Assign functions to and/or enter into agreements with national bodies representing the interests of AKA Services, kindergartens, and the broader early childhood sector;
- (l) Delegate powers of the Association to the Board, CEO, committee, or to any other group, or any person;
- (m) Amalgamate the Association with one or more existing kindergarten associations to form a larger association, or subdivide the Association into one or more smaller associations, incorporated societies, trusts or companies;
- (n) Create, own and operate one or more associations, incorporated societies, trusts or companies whose activities are conducive to the attainment of the objects of the Association, provided that any profits, dividends or other benefits obtained from owning and operating such entities contribute to the charitable purposes of the Association;
- (o) Purchase or otherwise acquire all or any part of the property, assets and liabilities of any one or more associations, incorporated societies, trusts, companies or other organisations whose activities or objects are similar to those of the Association, or for any purpose intended to assist the Association in pursuit of its Objects;
- (p) Apply the funds of the Association to the business of the Association even when such application might entail business risks that the general requirement at law for trust funds to be applied prudently might otherwise prevent the Board from undertaking, in the absence of express authority.
- (q) Do any other acts or things which are incidental or conducive to the attainment of the Objects of the Association.

3.2 The powers listed in Rule 3.1 must only be used to further the charitable Objects of the Association.

4. Finances

4.1 Unless otherwise determined by the Board, the financial year of the Association shall end on the 30th day of June each year.

4.2 Statement of financial position and financial performance shall be audited each year and the audited accounts shall be submitted to the AGM.

4.3 The auditors shall be appointed at each AGM.

5. Alteration of Constitution

- 5.1 This Constitution may only be altered, added to or rescinded by Special Resolution passed at a General Meeting.
- 5.2 No alteration may be made which would deprive the Association of its character or nature as a charitable trust with the charitable objects specified in Rule 2.1
- 5.3 This Section 5 must not be removed from the Constitution and must be included in any alteration of, addition to, or replacement of the Constitution.

6. Winding Up and Dissolution

- 6.1 On the winding up of the Association, all surplus assets after the payment of all costs, debts and liabilities shall be paid, applied or appropriated to, or for, charitable purposes.

Part B: The Membership

7. Members

7.1 The following persons shall be Members of the Association:

- (a) Each Representative Member from each AKA Service, elected by the Electors specified in Rule 8.1 of this Constitution.
- (b) Each Life Member as specified in Section 9.
- (c) Each Director on the Board.

8. Representative Members

8.1 Representative Members will be the Chair or Co-Chair of an AKA Services's Parent Whānau Group, elected by the electors specified in Rule 8.3, subject to the provisions of Rule 8.4. If a Parent Whānau Group elects Co-Chairs, these Co-Chairs will have the rights and duties of Representative Members but only one of them is permitted to vote at a General Meeting.

8.2 Representative Members must be nominated and elected by the electors identified in Rule 8.3 but they need not be electors themselves. Any person whom the electors consider suitable may hold this role.

8.3 The electors of Representative Members of the Association shall be:

- (a) Each adult identified on an Association enrolment form as the parent, guardian, or regular caregiver of a child (or children) enrolled at one or more AKA Service, shall be an elector for a Representative of that AKA Service.
- (b) Each adult who is identified on an Association enrolment form as the primary caregiver or a child or children who are on a waiting list to be enrolled at an AKA Service shall be an elector for a Representative of that AKA Service.

8.4 The CEO will make all reasonable efforts to ensure that elections for Representative Members are to be held no later than 30 June each year, to provide Representative Members sufficient time and opportunity to prepare for the Annual General Meeting, providing that:

- (a) If the AKA Service has a Parent Whānau Group in place, and they have elected a Chair or Co-Chairs for their group, that Chair or Co-Chairs is/are the Representative Member(s) by default, and no election may be required.
- (b) If an AKA Service does not have a Parent Whānau Group, the CEO will call a meeting of the Electors at that Service, to elect a person who will be the Representative Member for that service at the next General Meeting of the Association.

8.5 The CEO must ensure that every Representative Member is provided with a copy of this Constitution, and shall be informed of:

- (a) The Rights and Duties of Members in Section 10;
- (b) The purpose of General Meetings of the Association, including the role of a Representative Member at those meetings, and the standing orders that guide proceedings at General Meetings.

8.6 No person shall become or remain a Representative Member who is, or becomes, ineligible to hold the office of Director of the AKA Board pursuant to Section 31 of this Constitution.

9. Life Members

9.1 Any person who is considered by the Association to have made a substantial contribution to the objects of the Association may be conferred with the honour and status of Life Member.

9.2 Any Member, including any Life Member, may nominate a person to be appointed a Life Member of the Association, provided that the nomination is first submitted to the Board in writing, setting out the grounds for the nomination, no more than 30 days before an AGM.

9.3 The Board must then determine, in its discretion, whether the nomination should be forwarded to an AGM for determination by the Members.

9.4 Life Membership of such a nominee may only be conferred by Special Resolution passed at an AGM.

9.5 The name of every life Member shall be entered into the Register of Members, in a section devoted to Life Members. The name of a Life Member may be removed from the Register of Members only when they pass away, or their membership is terminated pursuant to the Rules in Section 11.

10. Rights and Duties of Members

10.1 Representative Members have a right to advocate to the Board for the interests of the AKA Service which they represent.

10.2 All Members have a right to receive an up-to-date copy of the Register of Members, on request.

10.3 All Members have both a right and duty to attend General Meetings of the Association, and to participate in the proceedings of those meetings.

10.4 All Members have a duty to act in the best interests of the Association as a whole, and are bound by this Constitution and by all regulations, by-laws, policies and procedures of the Association pertaining to their role.

11. Resignation and Termination of Membership

11.1 Any Member may resign by notice in writing to the Board.

11.2 Membership may also be withdrawn, suspended or terminated by the Board if a Member fails to comply with this Constitution and all regulations, by-laws, policies and procedures of the Association, or if a Member acts in a manner which is considered by the Board to be harmful to the Association or inconsistent with the standards of behaviour expected of a Member.

11.3 A Member whose membership is withdrawn, suspended or terminated by the Board may apply for the matter to be reviewed by such process as may be specified in any regulations, policies or procedures of the Association or, in the absence of such provisions, by a General Meeting of the Association.

11.4 If the matter is put before a General Meeting then the decision of the Board shall stand except to the extent it is varied by or overturned by a Special Resolution passed at such a General Meeting.

12. Register of Members

- 12.1 The CEO shall keep and maintain a Register of Members in which shall be entered the full name, address and other contact details, type of membership, the date of entry and exit of each Member, and any other details about each Member as agreed by that Member.
- 12.2 In collecting personal information from individuals for the Register, the CEO will seek the consent of the individual concerned and at all times comply with the Privacy Act 1993.
- 12.3 The CEO shall keep the Register of Members up to date at all times, and must check it for accuracy not more than fourteen (14) days and not less than seven (7) days, prior to issuing the notice of any General Meeting of the Association.

Part C: General Meetings

13. Annual General Meetings

- 13.1 The Association must hold an Annual General Meeting (AGM) once every year at such time, date and place as the Board determines but not more than 15 months after the previous AGM. Any other General Meetings shall be Special General Meetings (SGMs).
- 13.2 The following business shall be discussed at the AGM:
- (a) Approval of the Minutes of the previous AGM or SGM;
 - (b) The receipt from the Board of an audited annual financial report for the preceding financial year;
 - (c) Answers from the Board to written questions submitted by Members of the Association;
 - (d) Appointment of an Auditor;
 - (e) The appointment of scrutineers for the meeting;
 - (f) The election of any vacancies arising in the positions of Community Directors;
 - (g) Any motion(s) proposing to alter the Constitution; and
 - (h) Any other items of business that have been properly submitted for consideration at the AGM.
- 13.3 The Board must give at least 90 days written notice of the AGM, including the proposed date, time and venue of the meeting to each Member at their last known contact address (postal, email or other), as recorded on the Association's Register of Members.
- 13.4 Nominations for Community Directors must be received not less than 60 days before the date set for the AGM.
- 13.5 Not less than 30 days before the date set for the AGM, proposed motions (including alterations to the Constitution), written questions, and other items of business must be received in writing by the CEO from the Members and/or the Board.
- 13.6 No later than 21 days before the date of the AGM the CEO shall send an agenda to the Board and all the Members containing:
- (a) The business to be discussed at the AGM in accordance with Rule 13.2; and
 - (b) If Directors are to be elected, information about nominees for Board positions, provided by the nominees or their nominators; and
 - (c) Instructions for appointing proxies in accordance with Rule 18.8.
- 13.7 Additional items of business not listed on the agenda may be discussed if they are accepted by the Chairperson. However, no matter may be voted on or decided by the meeting if it was not included on the agenda prior to the meeting.

13.8 For the avoidance of doubt, only Special Resolutions shall be binding on the Board, and the motion to pass a binding resolution must specify that it is intended to be binding, and that intention must be clearly identified on the Agenda.

14. Special General Meetings

14.1 The Board must call a Special General Meeting (SGM) upon a written request from:

- (a) The Board; or
- (b) Such number of Members as are entitled to exercise 15% or more of the voting rights of the Association.

14.2 The written request for an SGM must state the purpose for which the SGM is requested.

14.3 The SGM must only discuss and make decisions on matters pertaining directly to the purpose for which the SGM is requested.

14.4 If the Board receives two or more requests for SGMs, which can reasonably be held together at a single meeting, the Board may decide to hold them together.

14.5 No later than 21 days before the date of the SGM the CEO shall send an agenda to the Board and all the Members containing:

- (a) The proposed date, time and venue of the meeting; and
- (b) The written request for the SGM pursuant to Rule 14.2; and
- (c) Any further information about matters pertaining directly to that request, deemed appropriate by the Board; and
- (d) In the case where an SGM has been called to consider a resolution under Section 33, any submissions made by persons affected by the resolution, allowed by Rule 33.4

15. Minutes

15.1 Full minutes shall be kept of all General Meetings. The Chairperson of the meeting shall sign these as correct and then circulate them to attendees of the meeting and all other Members no later than 60 days after the date of the meeting.

15.2 Minutes that have been signed correct by the Chairperson of the meeting shall be *prima facie* evidence of the proceedings, subject to their ratification by Members at the next subsequent General Meeting.

15.3 Any irregularity, error or omission in notices, agendas and relevant papers of General Meetings or the omission to give notice within the required timeframe or the omission to give notice to all Members and any other error in the organisation of the meeting shall not invalidate the meeting not prevent the meeting from considering the business of the meeting provided that:

- (a) The Chairperson in his or her discretion determines that it is still appropriate for the meeting to proceed despite the irregularity, error or omission; and
- (b) A motion to proceed is put to the meeting and a majority, of two-thirds of votes cast, is obtained in favour of the motion to proceed.

16. Quorum

- 16.1 No business may be transacted at a General Meeting if a quorum is not present.
- 16.2 A quorum for every General Meeting, other than an adjourned meeting called under Rule 16.3(b) shall be:
- (a) 15% of the Members who are on the Register of Members seven (7) days prior to a notice being issued for that General Meeting, except that;
 - (b) Life Members, and Members who are Directors of the Association, shall not be included among the number of Members on the Register for determining whether a quorum is present.
- 16.3 If there is no quorum within 30 minutes after the time appointed for the meeting:
- (a) In the case of a meeting called by the Board on the written request of Members pursuant to Rule 14.1(b), the meeting is dissolved; or
 - (b) In the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such later date, time and place as the Board may appoint.
 - (c) Each Member not present at the initial meeting must be sent notice of the adjourned meeting. If a quorum is not present at the adjourned meeting within 30 minutes after the time appointed for the meeting those Members that are present are the quorum.

17. Control of General Meetings and Voting

- 17.1 The Chairperson of the Association shall preside at the General Meeting.
- 17.2 If the Chairperson is unavailable then another Member of the Board (appointed by the Board) shall preside.
- 17.3 In the absence of both of those persons, or if neither is present within 10 minutes of the time notified for the start of the meeting, then the Members present shall elect (by simple majority) a person to preside at the General Meeting.
- 17.4 Only Members of the Association, as specified in Rule 7.1 of this Constitution, and their proxies if allowed by Rule 18.8, are permitted to vote at General Meetings. If a Parent Whānau Group has elected more than one Representative Member, only one of those Representative Members is permitted to vote at General Meetings.
- 17.5 Only the following persons are eligible to attend and speak at a General Meeting:
- (a) Members of the Association;
 - (b) The Board;
 - (c) The Auditor;
 - (d) The CEO;
 - (e) One or more interpreters, if requested by another attendee; and

- (f) Any other person approved by the Board and accepted by Ordinary Resolution of the Members present at the meeting.

18. Method of Voting

- 18.1 On any given motion at a General Meeting, the Chairperson shall in good faith determine whether to vote by voices, show of hands or secret ballot.
- 18.2 However, if three (3) Members request a secret ballot before a vote of voices or show of hands has begun, voting must be by secret ballot.
- 18.3 Elections of Community Directors at an AGM must be undertaken by secret ballot.
- 18.4 In the event that a secret ballot is called, two scrutineers must be appointed at the General Meeting to count the votes.
- 18.5 In the event of an equality of votes, by show of hands or secret ballot, the person presiding at the Meeting shall have an additional or casting vote.
- 18.6 Those applicants for the vacant Community Director positions who have the highest number of votes in their favour will be declared elected.
- 18.7 Postal voting is not permitted.
- 18.8 Proxy votes are allowed only for Members who are unable to attend a General Meeting. The absent Member must appoint another Member to be their proxy by notice in writing, which must be produced before the start of the Meeting. The notice of proxy shall be valid for only for the meeting specified in that notice.
- 18.9 A notice of proxy shall allow a Member to instruct their proxy to vote either for or against any resolution, to the extent that the subject matter of the relevant resolution reasonably permits.
- 18.10 For the avoidance of doubt: an Ordinary Resolution at a General Meeting shall be sufficient to pass a resolution except where a Special Resolution is specified in this Constitution.

Part D: The Board

19. Role of the Board

19.1 The governance of the Association shall be vested in the Board, which may exercise all the powers of the Association, subject only to the restrictions specified in Section 22.

20. Duties of Directors

20.1 The duties of each Director are to:

- (a) Regularly attend Board meetings and General Meetings of the Association;
- (b) Provide good governance for the Association;
- (c) Exercise the powers of the Board for proper purpose;
- (d) Regularly monitor and review the performance of the Association;
- (e) Act in good faith and the best interests of the Association at all times;
- (f) Act, and ensure the Association acts, in accordance with this Constitution;
- (g) Formulate such by-laws, regulations, policies and procedures as are appropriate for the Association;
- (h) Where appropriate, engage in activities to promote, market, represent and fundraise for the Association;
- (i) Disclose to the Board the nature and extent of any interest in a transaction or proposed transaction as soon as the Director becomes aware of the fact that s/he has such interest;
- (j) Take such other steps as determined by the Board in respect of any interest specified in Rule 20.1(i) which may include, without limitation, abstaining from deliberations and/or vote regarding such interest.
- (k) Not disclose, to any person, information that the Director would not otherwise have available other than in his or her capacity as a Director, or make use of or act on the information except:
 - (i) As agreed by the Board for the purposes of the Association;
 - (ii) As required by law; or
 - (iii) To persons, or for reasons identical to those specified in Sections 145(2) and 145(3) of the *Companies Act 1993*;
- (l) Do such other things within these rules as the Board agrees to promote the Objects of the Association.

21. Powers of the Board

21.1 The Board shall have the power to:

- (a) Appoint the CEO, and define delegations of authority from the Board to the CEO;
- (b) Adopt and review the strategic plan for the Association;

- (c) Adopt and review the annual budget for the Association;
- (d) Establish committees, or other groups to carry out any work of the Board by its delegated authority;
- (e) Subject to this Constitution, fill vacancies on the Board, and any committees or other groups which are established by the Board;
- (f) Control expenditure and raise funds to fulfil the Objects of the Association;
- (g) Open and operate in the name of the Association such bank accounts as it deems necessary;
- (h) Make, repeal or amend any regulations, policies and procedures as it thinks appropriate, provided that such policies and procedures are not inconsistent with this Constitution;
- (i) Engage, contract or otherwise agree to obtain the assistance or advice of any person or organisation for the Board;
- (j) Establish such corporate and other entities to carry on and conduct all or any part of the affairs of the Association, subject to the Specific Restrictions listed in Rule 22.1;
- (k) Resolve and determine any disputes or matters not provided for in this Constitution; and
- (l) Do all other acts and things which are within the powers of the Association and which the Board considers are appropriate to fulfil and pursue the Objects of the Association.

21.2 If any situation arises that, in the opinion of the Board is not provided for in the Constitution, any regulations, or the policies or procedures of the Association, the matter will be determined by the Board.

22. Specific Restrictions

22.1 The Board may not exercise the following powers of the Association unless it is approved to do so by a Special Resolution at a Special General Meeting called for that purpose:

- (a) **Rule 3.1(m):** “Amalgamate the Association with one or more existing kindergarten associations to form a larger association, or subdivide the Association into one or more smaller associations, incorporated societies, trusts or companies”;
- (b) **Rule 3.1(n):** “Create, own and operate one or more associations, incorporated societies, trusts or companies whose activities are conducive to the attainment of the Objects of the Association, provided that any profits, dividends or other benefits obtained from owning and operating such entities contribute to the charitable purposes of the Association”;
- (c) **Rule 3.1(o):** “Purchase or otherwise acquire all or any part of the property, assets and liabilities of any one or more associations, incorporated societies, trusts, companies or other organisations whose activities or objects are similar to those of the Association, or for any purpose intended to assist the Association in pursuit of its Objects”;

- (d) Enter into any transaction or series of linked transactions which would result in or have the effect of the Association acquiring or disposing of assets or incurring obligations the value of which is more than one-quarter of the book value of the total tangible assets, less the value of liabilities, of the Association before the transaction occurs.

22.2 In every case where the Board seeks approval to exercise one of these restricted powers, it will provide Members with a proposal, which (at least):

- (a) Outlines the costs, benefits and risks of the proposed action; and
- (b) Includes a statement of how the proposal is intended to fulfil the Objects of the Association; and
- (c) Includes a legal opinion confirming that the proposal would not conflict with the charitable purposes of the Association.

23. Governance Manual

23.1 The Board shall have and maintain at all times a Governance Manual containing policies, plans, delegations, rules and regulations that the Board makes to interpret and give effect to the Board's Powers and Duties listed in Section 20 and Section 21 of this Constitution.

23.2 Copies of the Governance Manual shall be made available to all Members of the Association, and Members shall be provided with updates as soon as possible after each time the Governance Manual has been amended.

24. Board Meetings and Procedure

24.1 Except to the extent specified in this Constitution, the Board shall regulate its own procedure.

24.2 At its first meeting following the AGM, the Board must elect a Chairperson and Deputy Chairperson.

24.3 The role of a Chairperson is to chair meetings of the Board and to represent the Board. The role of a Deputy Chairperson is to act as chair in the absence of the Chairperson. In the event of the unavailability of a Chairperson or Deputy Chairperson for any reason, then another Director appointed by the Board shall undertake the Chairperson's role during the period of unavailability.

24.4 Board meetings may be called at any time by the Chairperson or two Directors but generally the Board shall meet at regular intervals agreed by the Board.

24.5 The quorum for a Board meeting shall be 50% of the number of Directors, plus one (1), or three (3) Directors, whichever is the greater number.

24.6 Each Director shall have one vote. The person having the Chairperson's role, pursuant to Rule 24.3 shall have an additional casting vote.

24.7 Voting shall be by voices or, upon request of any Director, by a show of hands or by a ballot.

24.8 Proxy and postal voting are not permitted.

- 24.9 A resolution in writing, signed or consented to by email, facsimile or other forms of visible or other electronic communication by a majority of the Board shall be valid as if it had been passed at a meeting of the Board.
- 24.10 Any such resolution may consist of several documents in the same form each signed by one or more Directors.
- 24.11 Any Director may participate in any meeting of the Board and vote on any proposed resolution at a meeting of the Board without being physically present. This may only occur at meetings by telephone, through video conferencing facilities, or by other means of electronic communication, provided that prior notice of the meeting is given to all Directors and all persons participating in the meeting are able to hear each other effectively and simultaneously. Participation by a Director in this manner at a meeting shall constitute the presence of that Director at that meeting.
- 24.12 The Board shall establish a policy for payments to the Chairperson, Deputy Chairperson, and Directors of the Association. The policy shall be approved by an ordinary resolution of the Members at an Annual General Meeting, for the following financial year. The policy may include the payment of:
- (a) Honoraria for the Chair and Deputy Chair, and/or
 - (b) Meeting fees for Directors attending Board and Committee meetings, and/or;
 - (c) Reasonable travelling, accommodation and other expenses incurred by Directors in connection with attendance at meetings and other business undertaken by a Director in relation to the business of the Association.
- 24.13 The Board may establish a policy for indemnifying Directors against the risk of personal loss as a result of their dutiful and proper service to the Association. Any such policy shall be approved by an ordinary resolution of the Members at an Annual General Meeting, for the following financial year.

25. Board Composition

- 25.1 The Board shall have a maximum of nine (9) Directors being up to (in each case):
- (a) Five **Community** Directors, elected at a General Meeting by the Members of the Association under Section 26; and
 - (b) One **Teacher** Director, elected by the teaching staff of the Association under Section 27; and
 - (c) One **Māori** Director, appointed under Section 29; and
 - (d) Two **Appointed** Directors, appointed under Section 30.
- 25.2 At every AGM, the Board that is in place when the AGM commences remains in place until midnight of the day when the AGM finishes.

26. Community Directors

- 26.1 Notice of an AGM issued in accordance with Rule 13.3 shall include notification of the number of positions for Community Directors to be filled and shall call for nominations.

- 26.2 Nominees need not be Members of the Association identified in Rule 7.1, or electors identified in Rule 8.1. However, in all cases they must be nominated by a person who is a Member or an Elector, and they must meet the eligibility criteria specified in Section 31.
- 26.3 Written nominations accompanied by the written consent of the nominee and that person's contact details, qualifications and information about the other attributes that would make them suitable to be a Director, must be received by the CEO not less than 60 days before the AGM.
- 26.4 The CEO shall provide the nominee's information to the Board, to ensure the nominee's eligibility and assess their suitability for election to the Board.
- 26.5 The term of office of each Community Director shall be three (3) years. They may be re-elected for a maximum of three (3) terms, being a total of nine (9) years.

27. Teacher Director

- 27.1 One Teacher Director shall be elected by the teaching staff of the Association.
- 27.2 The Teacher Director shall be a registered teacher, employed at an AKA Service.
- 27.3 The election process shall be conducted by the CEO on behalf of the Board, and shall be timed so that the election is completed and results are announced at the AGM, when the election results for Community Directors are announced.
- 27.4 The term of office of the Teacher Director shall be three (3) years. They may be re-elected for a maximum of three (3) terms, being a total of nine (9) years.

28. Director Elections

- 28.1 Prior to each AGM, the Board shall advise the CEO of the schedule of rotation for Directors, and the vacancies arising at that AGM.
- 28.2 Elected Directors shall be elected as follows:
- (a) The CEO shall, at least 90 days prior to the AGM, call for nominations for any Elected Director positions that are to be vacated due to the expiry of their term at the AGM, or have been vacated due to resignation or by becoming ineligible.
 - (b) Nominations for Elected Director positions shall be made in the approved form as determined by the Board and received at the registered office of the Association not less than 60 days before the date set for the AGM.
 - (c) The CEO shall undertake an eligibility check to ensure each nominee is eligible to be a Director, undertaking such enquiries and holding interviews and meetings as they see fit.
 - (d) Upon completing the eligibility check, the CEO shall:
 - (i) Advise ineligible nominees of the results of the check.
 - (ii) In the AGM Agenda, notify the Members of the nominees for Community Director vacancies.
 - (iii) Proceed to conduct an election for a Teacher Director pursuant to Rule 27.3.

28.3 Nominees for positions as Community Directors may not hold, or continue to hold, a position as an employee of the Association after they have been appointed or elected as a Director.

29. Māori Director

29.1 One Director shall be appointed by Ngāti Whātua iwi (Ngāti Whātua) to represent the interests and involvement of Māori on the Board.

29.2 The term of office of the Māori Director shall be three (3) years. They may be re-appointed for a maximum of three (3) terms, being a total of nine (9) years.

29.3 If Ngāti Whātua are unable to appoint a person to this role, or the position is vacated and cannot be re-appointed, the Board may appoint a Director who will represent the interests and involvement of Māori on the Board until a suitable replacement is appointed by Ngāti Whātua.

30. Appointed Directors

30.1 The number of Appointed Directors shall be determined by the Board pursuant to Rule 30.2. However, there shall be no obligation to have any Appointed Directors, and the Board may not appoint or retain Appointed Directors if, by doing so, the number of Community Directors were to be or become less than a majority of the Board.

30.2 Immediately following each Annual General Meeting the Board shall, and at any other time may: identify any skills or attributes needed in the Appointed Directors, using a skills and attributes matrix that shall be included in the Governance Manual and which may be amended by the Board from time to time.

30.3 The Board shall identify and appoint suitably qualified Appointed Directors as soon as practicable after assessing the need for them. Such appointments must be made by a Special Resolution of the Board.

30.4 Appointed Directors shall have full voting positions on the Board.

30.5 Notice of the appointment of Appointed Directors shall be given to all Members of the Association.

30.6 The term of each Appointed Director shall be up to three (3) years, but may be for a shorter period, at the Board's discretion.

30.7 Appointed Directors may be re-appointed for a maximum of three (3) terms, for a total of no more than nine (9) years.

31. Ineligibility

31.1 A person seeking appointment, election, or to remain in office as a Director shall be eligible to do so whether or not they are a Member of the Association, but the following persons shall not be eligible for appointment, election, or to remain in office as a Director:

- (a) A person who is an employee of, or contractor to the Association, other than a Teacher Director elected under Section 27.
- (b) A person who is the Chair or Co-Chair of a Parent Whānau Group. To be clear; if a Parent Whānau Group Chair or Co-Chair is elected to the Board they must vacate the role of Parent Whānau Group Chair or Co-Chair.

- (c) A person who is an undischarged bankrupt or is subject to a condition not yet fulfilled or any order under the Insolvency Act 1967, or any equivalent provisions under any previous or replacement legislation.
- (d) A person who has been convicted of any offence punishable by a term of imprisonment of two (2) or more years (whether or not a term of imprisonment is imposed) unless that person has obtained a pardon or has served the sentence imposed on them.
- (e) A person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under the *Companies Act* or the *Charities Act* or the *Incorporated Societies Act*.
- (f) A person who is subject to a property order made that the person is lacking in competence to manage their own affairs under the *Protection of Personal and Property Rights Act 1988*.
- (g) A person who would not pass a safety check conducted according to standards set out in the *Children's Act 2014* and safety checking regulations.

31.2 If any of the circumstances listed in Rule 31.1 (above) occurs to a Director, that the Director shall be deemed to have vacated his/her office upon the relevant authority making an order or finding against the Director of any of those circumstances.

31.3 If a Director, other than a Teacher Director elected under Section 27, becomes an employee of, or holds any other paid position with the Association, or is elected Chair or Co-Chair of a Parent Whānau Group then, upon appointment or election to such a position, that Director shall be deemed to have vacated his/her office as a Director.

32. Removal of Directors by Board

32.1 The Board may, by Special Resolution, remove any Community Director or Appointed Director from the Board before the expiry of their term of office if the Board considers the Director concerned has seriously breached their duties as specified in Section 20, such that immediate removal is considered appropriate, provided that before considering such a motion the following procedures shall apply:

- (a) The Director concerned shall be notified that a Board meeting is to be held to discuss the proposed resolution to remove the Director from office; and
- (b) In observance of the principles of natural justice, the notification shall include the reason for the proposed resolution and a statement of the evidence supporting that reason; and
- (c) The Director concerned shall be given an opportunity to make submissions about the proposed resolution to the Board in writing prior to the Board meeting and/or by submission in person at the Board meeting.

33. Removal of Directors or Whole Board by Members

33.1 The Members of the Association may remove specified Members of the Board, or the whole Board, from office by Special Resolution at an SGM called for that purpose.

- 33.2 In observance of the principles of natural justice, the Members' request for an SGM shall include the reason for the proposed resolution and a statement of the evidence supporting that reason.
- 33.3 Upon the CEO receiving a request for an SGM for the purpose of removing one or more Directors from office, the CEO shall send a notice to the Director (or Directors) concerned, including the reason for the proposed resolution and the supporting evidence. The CEO shall also send a notice to the Association's Members, in accordance with the SGM notice provisions in Rule 14.5.
- 33.4 Before the Members of the Association at an SGM vote on a resolution to remove any Director, the Director (or Directors) affected by the motion shall be given the opportunity prior to and at the SGM to make submissions in writing and/or verbally to the Members about the proposed resolution.

34. Vacancies on the Board

- 34.1 In the event there is a vacancy on the Board, whether by resignation or removal, the remaining Directors may appoint a person to fill the vacancy until the next AGM, or they may leave the vacancy unfilled until the next AGM.
- 34.2 If the Board as a whole has been removed, resigns *en masse*, or for any other reason its membership is reduced in number so that it cannot form a quorum, then the CEO shall immediately call a Special General Meeting, to be held within 30 days to elect interim Directors, who shall serve until the following AGM. The election process in Section 28 shall be followed, with timeframes proportionally adjusted to permit the SGM to be held within 30 days.

Part E: Officers of the Association

35. Chief Executive Officer

- 35.1 There shall be a Chief Executive Officer (CEO) of the Association who shall be employed for such term and on such conditions as the Board may determine.
- 35.2 The CEO shall be under the direction of the Board and shall be responsible for the day-to-day management of the affairs of the Association in accordance with the Rules, regulations, by-laws, policies and procedures of the Association and within such delegated authority as may be conferred by the Board.
- 35.3 A CEO may exercise powers independently of the Board only to the extent that specific responsibilities are delegated to them by the Rules in this Constitution.
- 35.4 For the avoidance of doubt; any reference to the CEO in this Constitution includes a person to whom the CEO has formally delegated authority to act on her or his behalf to discharge a responsibility conferred by the Constitution.
- 35.5 The CEO shall attend Board meetings as and when required by the Board but shall have no voting rights.