

# CONSTITUTION OF HOE TONGA WAKA AMA ASSOCIATION INCORPORATED



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# CONSTITUTION OF HOE TONGA WAKA AMA ASSOCIATION INCORPORATED

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## Section One: CORE PROVISIONS

### 1. Name and Region

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- 1.1 The name of the Society is Hoe Tonga Waka Ama Association Incorporated also commonly referred to as Hoe Tonga or Waka Ama Wellington.
- 1.2 In this Constitution the Society is referred to as **Hoe Tonga**.
- 1.3 Hoe Tonga has been established to assist and implement the Purposes of Waka Ama Aotearoa NZ within the region

### 2. Registered Office and Contact Person

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- 2.1 The registered office of Hoe Tonga shall be at such place as the Board determines.
- 2.2 At its first meeting following an AGM, the Board shall appoint a contact person from the Board and advise the Registrar of Incorporated Societies of their contact details. The Board will advise the Registrar of Incorporated Societies of any change in the contact person or their contact details.

### 3. Definitions and Interpretation

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- 3.1 In this Constitution:

**Act** means the Incorporated Societies Act 2022, including any amendments, and any regulations made under the Act.

**Affiliated Individuals** means people who are affiliated to Hoe Tonga Members and who are currently recorded as affiliated individuals on the Waka Ama Aotearoa NZ database.

**Affiliation Fee** means the fee as determined by the Board set out in Rule 14.3.

**Annual General Meeting** or **AGM**; **General Meeting**; and **Special General Meeting** or **SGM** all mean as set out in Rule 11.

**Board Member** means as set out in Rule 10.

**Board** means the governing body of Hoe Tonga.

**Bylaws** means any bylaws, policies, regulations and codes of Hoe Tonga made under Rule 17

**Chairperson** means Chairperson of the Board

**Club** means a group of individuals with an interest in Waka Ama that meets the requirement for membership set out in Rule 7.

**Constitution** means this Constitution, including any amendments and any schedules to this Constitution

**Contact Details** means a physical or an electronic address and a telephone number.

**Diversity, Equity and Inclusion** means ensuring fair and equitable opportunities are available to everyone to participate in sport and recreation irrespective of age, ability, ethnicity, gender, national origin, race, religion, sexual orientation, beliefs, or socio-economic status.

**Financial Year** means as set out in Rule 14.

Matter has the meaning given in section 62(4) of the Act.

**Member** means a Member of Hoe Tonga under Rule 7.

**Officer** means a Board Member and any natural person occupying a position in Hoe Tonga that allows the person to exercise significant influence over the management or administration of Hoe Tonga.

**Ordinary Resolution** means a resolution requiring a simple majority of valid votes for approval;

**Purposes** means the purposes of Hoe Tonga described in Rule 4.1.

**Region** means the geographical area as determined by Waka Ama Aotearoa NZ to be the region represented by Hoe Tonga and within which the primary base of activities of Hoe Tonga is located and is at the date of adoption of this Constitution such geographical area defined by Waka Ama NZ.

**Rules** means the rules in this Constitution, or rules made pursuant to powers granted by it;

**Special Resolution** means a resolution requiring a two thirds majority of valid votes for approval.

**Suspend** means to halt membership and participation in regional activities as referred to in Rule 6.1f, 8.5, 8.6.

**Waka Ama** means the sport and culture of Waka Ama also known in other parts of the world as Outrigger Canoe, Va'a, Oe Vaka and Wa'a.

**Waka Ama Aotearoa NZ** the National Body for Waka Ama in Aotearoa New Zealand.

**Values** means the values of Hoe Tonga as set out in Rule 4.3.

3.2 In this Constitution the following interpretations apply:

- a. The plural includes the singular and vice versa.
- b. Any reference to any Act, regulation, by-law, policy, deed, charter, procedure or document includes any amendment to it and any replacement passed in substitution for it.
- c. References to a person includes an individual, incorporated body, partnership, joint venture, association, Marae committee, iwi, trust, national and local government and territorial authority and any other unincorporated group or entity; and
- d. Any approval, decision, requirement or action by Hoe Tonga refers to an approval, decision, requirement or action of the Board (and/or as appropriate to such persons to whom the Board has delegated the authority to exercise such power).

## **4. Purposes and Values**

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4.1 The Purposes of Hoe Tonga are to:

- a. Maintain a mutually beneficial relationship with Waka Ama Aotearoa NZ.
- b. Lead the development, practice and promotion of Waka Ama within the Region and to do so in a manner that is consistent with the requirements of Waka Ama Aotearoa NZ.
- c. Seek inclusion of Waka Ama in regional sport events and to have representation at such events.
- d. Promote opportunities and facilities for participation, enjoyment and performance of members in Waka Ama and to assist members to provide similar benefits for their members.
- e. Educate those involved in Waka Ama (primarily), but also the general public, about the Values of Waka Ama; the importance of water safety; and the unique culture of Waka Ama.
- f. Promote, develop and coordinate competitions for all Waka Ama-related activities in the Hoe Tonga Region, and to assist Waka Ama Aotearoa NZ with the same purpose nationally and Members with the same purpose at the local level.
- g. Establish and enforce regulations for Waka Ama racing competitions within the Region in a manner consistent with the requirements of Waka Ama Aotearoa NZ.
- h. Establish and enforce regulations for the selection of individuals and teams representing Hoe Tonga and/or the Region.
- i. Support regional, national and international Waka Ama competitions in association with Waka Ama Aotearoa NZ.
- j. Support the development of Members, including the relevant training, education and development of their members, including officials, coaches, team managers and volunteers.

- 4.2 Hoe Tonga shall pursue its Purposes in a way that:
- a. Recognises and acknowledges Māori as Tangata Whenua, the indigenous people of the land.
  - b. Honours the ancestral and contemporary connections between Māori and Pasifika peoples.
  - c. Te Tiriti o Waitangi is enacted in all that we do.
  - d. Demonstrates, maintains and promotes the organisation's Values and cultural identity.
  - e. Creates and fosters friendship among all peoples who participate in Waka Ama.
  - f. Promotes the well-being, health and safety of all paddlers and of others involved in our sport.
- 4.3 The Values of Hoe Tonga are:

**Manaaki:** Showing kindness - We value inclusiveness, behaving positively and acting in a spirit of generosity and fair play. This means sharing resources and making a genuine effort to help each other.

**Pono:** Acting with Integrity - We value having a professional approach, being open about the way we make decisions and behave, being accountable and having sound consultation processes.

**Hauora:** Wellbeing - We value the wellbeing of all waka ama participants as members of a larger paddling community that shows respect for people, equipment and the environment.

## 5. Status - Hoe Tonga

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- a. Is incorporated (for example but not limited to a society incorporated under the Incorporated Societies Act).
- b. The regional association for Waka Ama and related activities in the Region.
- c. Shall observe the rules of Waka Ama Aotearoa NZ.

## 6. Powers

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- 6.1 Hoe Tonga has full powers, jurisdiction and authority and (except as restricted by this Constitution), may do all and any things to carry out its Purposes and the Purposes of Waka Ama Aotearoa NZ. By way of example of some specific powers, but not by limitation, Hoe Tonga has power to:
- a. Acquire, obtain or in any way receive the benefit of any property and to deal with property in any way;
  - b. Acquire or have interests in incorporated entities, trusts or other entities and to utilise the assets of Hoe Tonga in, through or with them;
  - c. Control and raise money, including borrow, invest, loan or advance monies and secure the payment of such money by way of security obtained over the property of others or given over all or part of its property and give or receive the benefit of guara

- d. Determine, raise and receive money by subscriptions, donations, fees, levies, grants, bequests, entry or user charges, sponsorship, government funding, community funding or otherwise;
  - e. Produce, develop, create, license and otherwise exploit, use and protect intellectual property;
  - f. Determine who are its Members and others involved in Hoe Tonga and their entitlements, and withdraw, suspend, terminate or otherwise restrict membership and other benefits on any terms;
  - g. Determine the methods and structures to deliver regional and local benefits and to obtain national, regional and local coverage;
  - h. Assist Waka Ama NZ to establish and maintain a drug and dope testing programme in accordance with the applicable requirements of the World Anti-Doping Code, Drug Free Sport New Zealand and the International Va'a Federation;
  - i. Make, alter, rescind and enforce by-laws, regulations, policies, charters and procedures of every type and subject matter for the governance, management and operation of the affairs of Hoe Tonga and those involved (or seeking to be involved) in it;
  - j. Determine, implement and enforce disciplinary, disputes and appeal procedures and including to make decisions and conduct hearings and impose sanctions and penalties and to refer matters to Waka Ama NZ;
  - k. Engage and dismiss employees and contractors and put in place agreements with the them;
  - l. Delegate powers of Hoe Tonga to any person, Committee or sub-committees (the composition of which is not limited to persons involved in Members) and for that purpose to establish, fund and set the terms of reference and structure;
  - m. Contract, engage or otherwise make any arrangements with any person (including for example Marae Committees in relation to Regatta water courses) to fulfil the Purposes of Hoe Tonga;
  - n. Produce, publish and distribute any communications, newsletters or publications; and
  - o. Do any other acts or things which are incidental to or conducive to the attainment of the Purposes.
- 6.2 The powers of Hoe Tonga must never be exercised in a manner which is contrary to this Hoe Tonga Constitution.

## Section Two: Hoe Tonga MEMBERS

### 7. Members

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- 7.1 **Application:** An application must be submitted to the Hoe Tonga Board. All applications are decided by the Hoe Tonga Board, which may accept or decline an application, based on its absolute discretion. Clubs become a member when their application has been accepted via formal written notification from the Hoe Tonga Board and they have paid their membership fee and satisfied all other key conditions in 7.3. A declined application will also be notified in writing by the Hoe Tonga Board.
- 7.2 **Member consent:** A club consents to become a member by submitting an application to Hoe Tonga.
- 7.3 **The Members of Hoe Tonga** are local Waka Ama clubs. A club that wishes to be a member must make an application under Rule 7.1. In addition to the obligations as a member under Rule 8, each Club that is a member must:
- a. Administer, promote, and develop Waka Ama in the club in a manner that is consistent with the Purposes, this constitution and any bylaws.
  - b. Maintain registration as an incorporated society under the Incorporated Societies Act.
  - c. Ensure its constitution is not inconsistent with this Constitution and provide Hoe Tonga with a copy of its constitution and all proposed amendments to it. The Board may require a Club to amend its constitution if it, or any proposed amendment, is inconsistent or in conflict with this Constitution and any bylaws.
  - d. Lead, promote and enable Diversity, Equity and Inclusion across the whole club, including governance of the club and participation in Waka Ama.
  - e. Act in good faith, with loyalty to Hoe Tonga, to ensure the maintenance and enhancement of Hoe Tonga and Waka Ama, and its reputation.
  - f. Reside or have the primary base of their activities located within the Region.
  - g. Have paid the required Affiliation Fee to Hoe Tonga within the period required by Hoe Tonga
  - h. Administer, promote and develop Waka Ama in the Region in accordance with the purposes, this constitution, race rules and any bylaws of Hoe Tonga and Waka Ama Aotearoa NZ.
  - i. Not be suspended or expelled under Rule 8; and
  - j. Have not less than ten (10) Registered Individuals as members; and
  - k. Maintain an updated register of members and, on request, provide Hoe Tonga with full access to that register, in compliance with the privacy laws.
- 7.4 Any dispute about membership is determined by Hoe Tonga.

Affiliated Individuals are not Members but may have benefits attached to that status as may be determined by the Board (for example such status may, if determined by the Board, be a pre-condition to eligibility to compete in events or for selection to represent Hoe Tonga).

## **8. Rights and Obligations of Members**

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- 8.1 The benefits and obligations of a Member are determined by Hoe Tonga or by this Constitution (for example for voting rights see Rule 13). All Members acknowledge and agree that they:
- a. Are bound by this Constitution and by all regulations, by-laws, policies, charters and procedures of Hoe Tonga and by decisions made by Hoe Tonga; and
  - b. Must promote and support the Purposes of Hoe Tonga and the activities of Hoe Tonga.
  - c. Must not do anything that is detrimental to or inconsistent with the purposes or brings discredit to any of: Hoe Tonga, its Members or the Board.
  - d. Must engage with Hoe Tonga including but not limited to meetings and correspondence of importance to Waka Ama in the Hoe Tonga region.
  - e. Are subject to the jurisdiction of Hoe Tonga; and
  - f. Understand that to receive, or continue to receive or exercise member rights, they must meet all the member requirements set out in this Constitution and the Bylaws, or as otherwise set by the Board, including payment of any membership or other fees, within the required time period.
- 8.2 Hoe Tonga shall keep an up-to-date Member Register, which includes each Member's name, contact details and the date they became a Member. A Member must provide notice to Hoe Tonga of any change to their contact details. The Member register will be updated as soon as practicable after the Board becomes aware of changes of the information recorded in the Member register. The Board will keep a record of those who have ceased to be a Club member within the previous seven (7) years and the date on which they ceased to be a Member.
- 8.3 A Member ceases to be a Member:
- a. By written resignation addressed to Hoe Tonga.
  - b. By liquidation or dissolution.
  - c. By failure to meet the requirements of membership for a period of 3 months after any such obligation (for example payment of Affiliation Fee) is due.
  - d. Subject to Rules 8.4, 8.5 and 8.6, during the term of any suspension or expulsion.
- 8.4 **Consequences of Ceasing to be a Member**

A Member who ceases to be a Member:

- a. Remains responsible for all their outstanding membership and other fees to Hoe Tonga.
  - b. Must return all Hoe Tonga's property if required.
  - c. Ceases to be entitled to any rights of a member.
- 8.5 If at any time a Member, in the opinion of the Board, has breached any Rule in this Constitution or has acted contrary to any other requirement of Hoe Tonga referred to in Rule 8.1, the Board must first notify the Member and endeavour to address the issue with the Member. But if the matter is not resolved, then the Board may give notice in writing to the Member that the Member take actions as required by the Board to cease or remedy the situation, and/or that the Member respond with reasons as to why it should not be suspended from Membership.

- 8.6 Before deciding to suspend a Member, the Board must give the Member a reasonable opportunity to be heard and must consider any oral and/or written submissions received from the Member. Upon suspension, the Member is suspended from membership of Hoe Tonga for such period not exceeding 6 months, and on such other conditions as determined by the Board. Unless otherwise determined by the Board, while a Member is suspended, the Member is not entitled to attend, speak or vote at a General Meeting, or to any other rights or entitlements as a Member, and is not entitled to continue to hold office in any position within Hoe Tonga until such time as the alleged breach is resolved or determined.
- 8.7 A Member can be expelled but only by Special Resolution of a General Meeting, where the issue of expulsion for that Member has been notified as a separate item of business.

## **9. Regional and Local Accountability**

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- 9.1 The Purposes of Hoe Tonga shall be assisted and implemented locally by the operations of Members.
- 9.2 Each Member shall operate in its local area in a manner that is consistent with the requirements of Hoe Tonga.
- 9.3 Hoe Tonga reports to and is accountable for its performance to its Members.
- 9.4 Each Member reports to and is accountable for its performance to both the Board of Hoe Tonga and its members.

## **Section Three: GOVERNANCE**

### **10. Board**

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- 10.1 **Function and Powers:**  
Subject to any modifications, exceptions, or limitations contained in the Act or in this Constitution, the Board must manage, direct or supervise the operation and affairs of Hoe Tonga and has all the powers necessary for managing, and for directing and supervising the management of, the operation and affairs of Hoe Tonga. The governance of Hoe Tonga and the exercise of all powers of Hoe Tonga (except those that are restricted by this Constitution) are delegated without further restriction, to be undertaken by the Board, which may then delegate to others under Rule 6.
- 10.2 The role and responsibilities of the Board shall be to provide good governance to Hoe Tonga including the following (and any other matters covered by any policies set by the Board):
- a. Ensuring that Hoe Tonga has a strategic plan and that it is consistent with the strategic plan of Waka Ama Aotearoa NZ (as applicable).
  - b. Monitoring and reviewing the performance of Hoe Tonga against its strategic plan.
  - c. Creating, reviewing and approving the annual business plan and financial budget.
  - d. Monitoring Hoe Tonga performance against the annual business plan and financial budget.
  - e. Approving annual financial statements.
  - f. Addressing the ongoing viability and sustainability of Hoe Tonga.
  - g. Monitoring regulatory compliance for Hoe Tonga.

- h. Establishing, reviewing, monitoring and amending policies for the good governance and guidance of Hoe Tonga.
  - i. Fostering interaction and communication across those involved in or with Hoe Tonga and those involved in or with Waka Ama Aotearoa NZ.
  - j. Appointing, monitoring and reviewing the performance and payment (if any) for Hoe Tonga employees (if any).
  - k. Adopting and communicating a continual best practice performance culture and supporting programmes across the Region; and
  - l. Having full insight and understanding of all significant transactions across Hoe Tonga.
  - M. Holding meetings with Members no less than once per annum.
- 10.3 The Board comprises at least 4 and no more than 7 Board members. There shall be no fewer than 3 elected members and a maximum of 2 appointed members.
- 10.4 The elected Board members shall be elected as determined by the Board from two choices, being either a Electronic Vote prior to the AGM/SGM or a secret ballot conducted at the AGM and in each case the results are announced at the AGM/SGM, or following any election under Rule 10.8. In the event of a tie for any position, a tie breaker ballot shall be held by those present at the AGM/SGM and eligible to vote regardless of whether the tied vote occurred in a Electronic Vote. If still tied, the Chair will have the casting vote.
- 10.5 To be eligible for election as a Board member:
- a. The candidates for election must be nominated in writing by a Member and such nomination must have a brief written personal statement from the nominee as required by Rule 13.6.
  - b. Candidates for election do not have to be a member of the Member who nominated them.
  - c. If the candidate is not present at the AGM, he/she must give written notice to Hoe Tonga of their willingness to accept the nomination; and
  - d. The nominations and the material in this Rule 10.5 must be received by Hoe Tonga not less than 40 days before the date set for the AGM.
  - e. Nominations must be notified to Members by such means as determined by the Board as for General Meeting notices (see Rule 12).
- 10.6 **Appointed Board Members Process**
- a. The Appointed Board Members shall be appointed by an Appointments Panel comprising the elected Board members and an additional person nominated by Waka Ama Aotearoa New Zealand. This panel shall decide on the process for appointment.
  - b. An Appointed Board Member must be a person who, at the time of their appointment, is determined by the Appointments Panel to be capable of providing areas of competency that the Board seeks to fill, and capable of adding value to Hoe Tonga and to the Board through their skills and background (which may include, but is not limited to, experience in: governance, strategic planning, health, sport or Māori sector leadership, financial, accounting,

commercial, information technology, legal, marketing, commercial expertise or not-for-profit experience. Appointed Members will preferably have an affinity with the Not-for-Profit sector).

#### 10.7 **Term of Office – Rotation**

Elections and appointments of Board members shall be conducted on a 2 yearly basis.

At the first AGM following adoption of this Constitution and at every second AGM after that, two Board Members shall retire from the Board. Subject to this Rule 10.6 the persons to retire shall be those who have been longest on the Board from the date of their most recent appointment to the Board and in the case of persons appointed on the same day then as agreed between them or if they do not agree then by lot between them. A retiring Board member is eligible for re appointment but no Board member can serve more than 8 consecutive years on the Board. A person who has vacated their Board membership to cause the vacancy in Rules 10.8 is deemed to be a person retiring by rotation at the next AGM at which Board members are due to retire.

#### 10.8 **Board Member ceasing to hold office:**

A Board member is deemed to have vacated the Board upon:

- a. Being adjudicated Bankrupt.
- b. Being declared of unsound mind or being the subject of a property order under the Protection of Personal and Property Rights Act 1988.
- c. Resigning or retiring from the Board or their term of appointment expiring.
- d. Being convicted of a criminal offence or being sentenced to imprisonment.
- e. Dying.
- f. Failing to attend 3 consecutive Board meetings; or
- g. Where a Board member has, in the opinion of the other Board members, failed on more than one occasion to properly comply with their responsibilities as a Board member (by way of example, such failures may include, but are not limited to: bad behaviour, breach of Board confidentiality, lack of preparation for Board meetings and failure to disclose conflicts of interest) and all the other Board members vote in favour of a motion for removal of the Board member from the Board.
- h. A person who is disqualified from being elected, appointed or holding office as a Board Member under section 47 of Act or under section 36B of the Charities Act 2005.

#### 10.9 **Vacancy**

If a vacancy occurs on the board other than rotation under Rule 10.7,

- a. The 'elected' vacancy occurs less than 6 months after the last AGM, a new Board member shall be elected as soon as reasonably possible in accordance with Rule 10.4 (as applicable) to fill the vacant position; or
- b. The vacancy occurs 6 months or more after the last AGM, the Board shall carry on with a lesser number of Board members until the next AGM at which time a new Board member shall be elected to fill the vacant position.
- c. The 'appointed' vacancy occurs less than 6 months after the last AGM, a new Board member shall be appointed as soon as reasonably possible in accordance with Rule 10.6 (as applicable) to fill the vacant position; or

d. The 'appointed' vacancy occurs 6 months or more after the last AGM the Board shall carry on with a lesser number of Board members until after the next AGM at which a new Board member shall be appointed to fill the vacant position.

#### **10.10 Disqualification**

The Following persons are disqualified from being elected or appointed or holding office as a board member.

- a. A person who is an employee of, or independent contractor to Hoe Tonga
- b. A person who is disqualified from being elected or appointed or holding office as a Board Member under section 47 of the Act.
- c. A person who has been removed as a Board member following a process under this Constitution or any Bylaw.

#### **10.11 Chair Election**

The Board shall elect a Chair from among its Board Members. The role of the Chair is to chair meetings of the Board. If the Chair is unavailable, another Board Member must be appointed by the Board to undertake the Chair's role during the period of unavailability. The Chair will also chair Annual and Special General Meetings.

#### **10.12 Election of Secretary and Treasurer**

The Board shall appoint a Secretary and Treasurer from among its Board Members, or may delegate these responsibilities to agreed individual(s) from outside of the Board for one or both of these roles.

#### **10.13 Consent and Certification to be a Board Member**

Every Board Member must, in writing:

- a. Consent to be a Board Member
- b. Certify that they are not disqualified from being elected, appointed or holding office as a Board Member by this Constitution or under section 47 of the Act.

#### **10.14 Board Meetings, Policies and Procedures**

The Board shall determine and regulate its own rules and procedures in a policy adopted by the Board which shall include that:

- a. The quorum for a Board meeting is Three (3) Board members.
- b. There must be at least four (4) Board meetings each year.
- c. Board meetings may be held in person or by teleconference or by other means by which those participating may hear each other simultaneously.
- d. A resolution signed by all Board members is as effective as a resolution passed at a meeting.
- e. A Board meeting may be called by the Chairperson, the Deputy Chairperson or by request of four (4) Board members.
- f. Decisions shall be by Ordinary Resolution (unless otherwise required by these Rules) by voice, or if requested by the Chairperson by show of hands, and/or if requested by any Board member, by secret ballot;
- g. Each Board member has one vote, and the Chairperson shall have an additional

casting vote in the event of a tied vote. Voting is by voices or on request of any Board Member by a show of hands or by a ballot. Proxy and electronic votes in Board meetings are not permitted. Voting by electronic means is permitted.

h. The Board shall ensure minutes are kept of all Board meetings; and

#### 10.15 **Officer (Board Member) Duties**

An Officer:

- a) when exercising powers or performing duties as an Officer, must act in good faith and in what the Officer believes to be the best interests of Hoe Tonga.
- b) must exercise a power as an Officer for a proper purpose.
- c) must not act, or agree to Hoe Tonga acting, in a manner that contravenes the Act or this Constitution.
- d) when exercising powers or performing duties as an Officer, must exercise the care and diligence that a reasonable person with the same responsibilities would exercise in the same circumstances, considering but without limitation the nature of Hoe Tonga, the nature of the decision and the position of the Officer and the nature of the responsibilities undertaken by them.
- e) must not agree to the activities of Hoe Tonga being carried on in a manner likely to create a substantial risk of serious loss to Hoe Tonga's creditors, or cause or allow the activities of Hoe Tonga to be carried out in a manner likely to create a substantial risk of serious loss to Hoe Tonga's creditors.
- f) must not agree to Hoe Tonga incurring an obligation unless the Officer believes at that time, on reasonable grounds, that Hoe Tonga will be able to perform the obligation when it is required to do so; and
- g) when exercising powers or performing duties as an Officer, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:
  - an employee whom the Officer believes, on reasonable grounds, to be reliable and competent in relation to the matters concerned.
  - a professional advisor or expert in relation to matters that the officer believes on reasonable grounds to be within the person's professional or expert competence; or
  - any other Officer or subcommittee of Officers on which the Officer did not serve in relation to matters within the Officer's or subcommittee's designated authority, if the Officer acts in good faith, makes proper inquiry where the need for inquiry is indicated by the circumstances, and has no knowledge that the reliance is unwarranted.

#### 10.16 **Interests**

##### **a) Register of interests:**

The Board must keep a Register of Interest disclosures made by Officers.

##### **b) Duty to disclose interest:**

An Officer who is interested in a Matter relating to Hoe Tonga, must disclose details of the nature and extent of the interest (including any monetary value of the interest if it can be quantified) to the Board, as soon as practicable after the officer becomes aware that they are interested in the Matter, and include it in the Register of Interests.

##### **c) Consequences of being interested:**

A Board Member who is interested in a Matter:

- must not vote or take part in a decision of the Board relating to the matter, unless all non-interested Board Members consent;
- must not sign any document relating to the entry into a transaction or the initiation of the matter, unless all non-interested Board Members consent;
- must not take part in any Board discussion relating to the matter or be present at the time of the Board decision, unless all non-interested Board Members consent;

- may be counted for the purpose of determining whether there is a quorum at any meeting at which the Matter is considered.

**d) Calling of SGM:**

Despite clause 10.14 (c), if 50% or more Board Members are Interested in a matter, an SGM must be called to consider and determine the matter.

**e) Notice of failure to comply:**

The Board must notify Members of a failure to comply with section 63 or 64 of the Act, and of any transactions affected, as soon as practicable after becoming aware of the failure.

**10.17 Role and Expectations of Members in Board Policy**

The role and expectations that Hoe Tonga has of a Board member shall be set out in a Board Policy. Such a policy shall include any additional criteria for eligibility to be a Board member.

10.18 The Board shall periodically review all Board Policies.

## **Section Four: General Meetings, Elections and Voting**

### **11. General Meetings**

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- 11.1 A General Meeting of Hoe Tonga shall be either the Annual General Meeting (AGM) or a Special General Meeting (SGM). All Member Clubs are eligible to attend a General Meeting which shall be held at a place and time as determined by the Board. Members can be represented by up to two delegates present or can grant a proxy to a person attending. The names of delegates and other attendees must be notified in advance if so, required by Hoe Tonga. A Board Member cannot be a delegate of a Member club and cannot hold a proxy.
- 11.2 The AGM shall be held once every year and no later than the expiration of 6 months after the end of the Financial Year and not later than 15 months after the previous AGM.
- 11.3 The AGM shall consider the following business:
- The Board's Annual Report, including the annual Financial Report.
  - The reviewed Statement of Accounts.
  - Elections, if applicable; and the announcement of Board members for the next period.
  - Notice of any disclosures of conflicts of interest made by Officers (including a brief summary of the Matters, or types of Matters, to which those disclosures relate).
  - The appointment of the reviewing accountant; and
  - Any other motion or item of business that is properly notified by the Board or a Member to the Board as an item of business for the AGM.
- 11.4 The Board must call a SGM if it receives a written request stating the purpose of the SGM from the Board itself, or by half of the member clubs. The SGM shall only consider the items of business for which the SGM has been called.
- 11.5 The quorum for a General Meeting shall be 50% of Members (by a delegate attending in person or by the Member granting a proxy to a person attending) provided that if a quorum is not achieved within half an hour the meeting shall be adjourned to another day, time and place and shall be notified to all persons who are to be given notice under Rule 12. If no quorum is present at the start of the re-convened meeting then the Members attending are deemed to constitute a valid quorum for the AGM but not for a SGM.

- 11.6 All General Meetings shall be chaired by the Chairperson. If that person is unavailable, a Board Member (appointed by the Board) will preside. In the absence of both of those persons, the Members present will elect a person to chair the General Meeting.
- 11.7 All Members are entitled to speak at a General Meeting through their Member delegates. In addition, those persons who are not delegates may also speak if they are a Board member, or if agreed, either prior to the General Meeting by the Board or at the General Meeting, by the Chairperson of the General Meeting.
- 11.8 Any other matters not provided for that occur at the meeting, or are in relation to a General Meeting, shall be determined in such manner or by such process as required by the Chairperson of the General Meeting.
- 11.9 The Board shall ensure that minutes are kept of each General Meeting.
- 11.10 Any irregularity, error or omission in notices, agendas and relevant papers for the General Meeting, or the omission to give notices within the required timeframe, or the omission to give notice to all Members entitled to receive notice, and any other error in the organisation of the General Meeting, shall not invalidate nor prevent the General Meeting from proceeding provided that:
- a. The Chairperson, at his or her discretion, determines that it is still appropriate for the General Meeting to proceed, despite the irregularity, error or omission; and
  - b. A motion to proceed is put to the General Meeting, and such motion is passed by Special Resolution.

## **12. Notices for General Meetings**

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- 12.1 Notices and other items referred to in this Rule 12 in relation to a General Meeting must be given to all Members, Board Members and such other persons as determined by the Board.
- 12.2 The notice of the date, time and place of a General Meeting must be given:
- a. For the AGM not less than 60 days prior to the date of the AGM; and
  - b. For a SGM not less than 30 days prior to the date of the SGM unless the Board in its discretion, decides the nature of the SGM is of such urgency that a shorter period of notice is required to be given to members.
- 12.3 The agenda for a General Meeting and the documents referred to in, or determined by the Board to be necessary for consideration of the items of business at the General Meeting (including information referred to in Rule 13.6) must be given:
- a. For the AGM not less than 30 days prior to the date of the AGM; and
  - b. For a SGM not less than 25 days prior to the date of the SGM.
- No additional items of business can be voted on other than those set out in the agenda, but the Members present may agree unanimously to discuss any other items.
- 12.4 Any notice to be given by Hoe Tonga in relation to a General Meeting may be given by such means (including but not limited to post, email, notification on a website or by any other means) as determined by the Board.
- 12.5 Any proposed motion or other items of business to be considered under Rule 11.3.f. must be notified to the Board by email to Hoe Tonga not less than 45 days prior to the AGM.

## 13. Elections and Voting

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- 13.1 Members are entitled to vote on all items of business at a General Meeting for which a vote is called and are entitled to vote on the election of Board members. Each Member shall have one vote.
- 13.2 Members are entitled to exercise their vote:
- a. In person, via their delegates at a General Meeting (but not where another form of vote is required under Rule 13.2); or
  - b. Where an electronic vote is required by these Rules or is allowed by the Board, then by electronic vote in accordance with such requirements as may be set out in this Constitution and/or in a policy adopted by the Board; or
  - c. By proxy, which must comply with the requirements set by the Board.
- Here, the Chair of the General Meeting must receive notice of the proxy signed by the Member prior to the start of the meeting. The form of the proxy is: *I [insert name] of [insert address] being a member of [club] appoint [insert name of proxy] as my proxy to speak [and vote] for me at the General Meeting to be held on [insert date] and at any adjournment of that General Meeting. I direct my proxy to vote in the following manner [insert resolutions and whether the proxy is to vote for or against].*
- 13.3 Voting at a General Meeting, except for elections (which shall be by electronic vote or by secret ballot) shall generally be conducted by voices or by show of hands as determined by the chairperson of the General Meeting unless a secret ballot is called for and approved by Ordinary Resolution.
- 13.4 Motions are passed by Ordinary Resolution unless the motion is required by this Constitution to be passed by Special Resolution.
- 13.5 In the event of an equality of votes at a General Meeting, the chairperson of the meeting shall have a casting vote.
- 13.6 Any person nominated under Rule 10.4.4 for election as a Board member must forward (or their nominator must forward) to the Board at least 30 days prior to the AGM a brief written personal statement about themselves and their reasons for seeking election.
- 13.7 The Board shall adopt a policy to regulate the electronic votes and proxy process and such processes must be notified to Member's at or prior to the issue of Postal Voting or proxy instructions.
- 13.8 A Member cannot exercise its number of votes (calculated under this Rule 13) except in one total (i.e. if a Member has 50 votes it cannot split the 50 votes). On election of the Board members a Member that votes must vote for the number of persons required to be elected (provided that there are sufficient candidates to fill the available positions). For example if there are 4 positions available the Member must vote for not less than 4 people and failure to do so will render that Member's votes invalid on that vote.

## Section Five:

## 14. Finance

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- 14.1 The funds and property of Hoe Tonga are controlled, invested and disposed of by the Board, subject to this Constitution; and devoted solely to the promotion of the Purposes.

- 14.2 The financial year of Hoe Tonga shall, unless otherwise determined by the Board shall be the same as Waka Ama Aotearoa NZ and commence on the first day of July and end on the last day of June the following year.
- 14.3 The Board may require Members to pay an annual Affiliation Fee determined by the Board.
- 14.4 The Board or delegated, contracted or employed person by the Board must keep proper records of Hoe Tonga's financial transactions and must prepare and have reviewed the annual statements of account in the form required by the Board for notification to Members (and others as determined by the Board) in accordance with Rule 12.
- 14.5 The Board must adopt and implement appropriate policies as determined by it for management of Hoe Tonga finances.
- 14.6 The Board must prepare income and expenditure budgets for Hoe Tonga.
- 14.7 Hoe Tonga's funds shall be invested in such manner as determined by the Board.
- 14.8 A reviewing accountant shall be sought by the Board
- 14.9 The Board shall ensure that Hoe Tonga files its annual statements with the Registrar of Incorporated Societies and/or Charities Commission (as applicable).
- 14.9.1

The Officers and Members may not receive any distributions of profit or income from Hoe Tonga. This does not prevent Officers or Members:

- (a) receiving reimbursement of actual and reasonable expenses incurred, or
- (b) entering into any transactions with the organisation for goods or services supplied to or from them, which are at arms' length, relative to what would occur between unrelated parties, provided no Officer or Member is allowed to influence any such decision made by Hoe Tonga in respect of payments or transactions between it and them, their direct family or any associated entity

## **15. Common Seal**

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- 15.1 Hoe Tonga must have a common seal which shall be kept in the custody of the Chairperson or such other person as appointed by the Committee. The common seal shall only be used as directed by the Committee and if affixed to documents this shall occur only in the presence of and accompanied by the signature of the Chairperson and another Committee member.

## **16. Alteration to Rules**

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- 16.1 Subject to Rule 16.3 these Rules can be changed by Special Resolution at a General Meeting.
- 16.2 Notice of any proposed change of Rules must be given by the Board or by a Member in writing to the Committee at least 45 days before the General Meeting at which it is intended to propose such change.
- 16.3 No change to the Purposes (Rule 4), prohibition of personal benefit (Rule 19) or the winding up or dissolution Rules (Rule 18) shall be approved if it would have the effect of causing Hoe Tonga to cease to retain its preferential tax status under New Zealand Law (including Section CW 46 of the Income Tax Act 2007 or any replacement of it).
- 16.4 If an amendment to this Constitution would have no more than a minor effect or is to correct errors or makes similar technical alterations, then the Board may give notice of the amendment to every Member stating the text of the amendment and the right of Members to object to the

amendment. If the Board does not receive any objections from Members within 20 Working Days after the date on which the notice is sent, or any longer period of time that the Board decides, then the Board may make that amendment. If it does receive an objection, then the Board may not make the amendment.

## 17. Bylaws and integrity

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17.1 The Board may make and amend Bylaws for the conduct and control of Hoe Tonga's activities and codes of conduct applicable to Members. Any Bylaw must be consistent with this Constitution, the Purposes, the constitution of [national organisation], the Act and any other laws. All Bylaws are binding on [organisation] and the Members. The making, amendment, revocation, or replacement of a Bylaw is not an amendment of this Constitution.

17.2.1 In this Rule **Integrity Code** means an integrity code issued by the Integrity Sport and Recreation Commission under section 19 of the Integrity Sport and Recreation Act 2023.

17.2.2 If Waka Ama Aotearoa NZ adopts an Integrity Code, Hoe Tonga is bound by the Integrity Code.

17.2.3 If Waka Ama Aotearoa NZ adopts an Integrity Code, all Members of Hoe Tonga agree to the application of the Integrity Code to them and agree to be bound by it and must include a similar Rule in their constitutions to bind their members.

## 18. Disputes

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18.1 **Definitions:** In this Rule 18:

**Dispute** means a disagreement or conflict between and among any one or more Members, any one or more Officers and Hoe Tonga, that relates to an allegation that:

- (i) a Member or an Officer has engaged in misconduct; or
  - (ii) a Member or an Officer has breached, or is likely to breach, a duty under this Constitution or the Act; or
  - (iii) Hoe Tonga has breached, or is likely to breach, a duty under this Constitution or the Act; or
  - (iv) a Member's rights or interests as a member have been damaged or Members' rights or interests generally have been damaged;
- (b) **Disputes Procedure** means the procedure for resolving a Dispute set out in Rules 18.5 to 18.13;
- (c) a **Member** is a reference to a Member acting in their capacity as a Member;
- (d) an **Officer** is a reference to an Officer acting in their capacity as an Officer.

18.2 **Application of other legislation to a Dispute:**

The Disputes Procedure will not apply to a Dispute to the extent that other legislation requires the Dispute to be dealt with in a different way. The Disputes Procedure will have no effect to the extent that it contravenes, or is inconsistent with that legislation

18.3 **Application of other procedures under this Constitution or in a Bylaw:**

(a) If the Dispute is dealt with by a separate procedure under this Constitution or in a Bylaw (**Other Procedure**), that Other Procedure applies to the exclusion of the Disputes Procedure. If any part of the Other Procedure is inconsistent with the rules of natural justice, that part will not apply, but the remainder

of the Other Procedure will continue to apply, together with adjustments as determined by the Board in its discretion, so that the Other Procedure is consistent with the rules of natural justice

(b) If the conduct, incident, event or issue does not meet the definition of a Dispute and is managed by any Other Procedure, that Other Procedure applies to the exclusion of the Disputes Procedure.

18.4 Application of the Disputes Procedure: If the dispute is not required by other legislation to be dealt with in a different way and it is not dealt with by any other procedure, the Disputes Procedure applies to the dispute.

## **Disputes Procedure**

### **18.5 Raising a complaint:**

- (a) A Member or an Officer may start the Disputes Procedure (a **Complaint**) by giving written notice to the Board setting out:
  - (i) the allegation to which the dispute relates and who the allegation is against; and
  - (ii) any other information reasonably required by [organisation].
- (b) Hoe Tonga may make a Complaint involving an allegation against a member or an Officer by giving notice to the person concerned setting out the allegation to which the Dispute relates.
- (c) The information given must be enough to ensure a person against whom the Complaint is made is fairly advised of the allegation concerning them, with sufficient details given to enable them to prepare a response.

### **18.6 Investigating and determining Disputes:**

Unless otherwise provided, Hoe Tonga must as soon as is reasonably practicable after receiving or becoming aware of a Complaint, ensure the Dispute is investigated and determined. Disputes must be dealt with in a fair, efficient, and effective manner.

18.7 Decision not to proceed with the matter: Despite the contents of the Disputes Procedure, Hoe Tonga may decide not to proceed with a matter if:

- (a) the Complaint is trivial; or
- (b) the Complaint does not appear to disclose or involve any allegation of the following kind:
  - (i) any material misconduct; or
  - (ii) any material breach or likelihood of material breach of a duty under this Constitution or the Act; or
  - (iii) any material damage to a member's rights or interests or members' rights or interests generally; 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; or

### 18.9 Hearing Body:

The Board may determine the composition, jurisdiction, functions and procedures of, and any sanctions which can be imposed by, any Hearing Body. Each Hearing Body has delegated authority by the Board to resolve, or assist to resolve, Complaints.

### 18.10 Bias:

An individual may not be part of a Hearing Body in relation to a Complaint if two or more members of the Board or of the Hearing Body consider there are reasonable grounds to believe that the individual may not be:

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

### 18.11 Complainant's Right to be Heard:

The Member or Officer has a right to be heard before the complaint is resolved or any outcome is determined. If Hoe Tonga makes a complaint, Hoe Tonga has a right to be heard before the complaint is resolved or any outcome is determined, and a Board Member may exercise that right on behalf of Hoe Tonga.

A Member or Officer or Hoe Tonga must be taken to have been given the right if:

- a) the Member or Officer or [organisation] has 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 Hearing Body considers that an oral hearing is needed to ensure an adequate hearing; and
- c) an oral hearing, if any, is held before the Hearing Body; and
- d) the member's or officer's or Hoe Tonga's written statement or submission, if any, are considered by the Hearing Body

### 18.12 Respondent's Right to be Heard:

The member or officer who, or Hoe Tonga which, is the subject of the complaint (**Respondent**) has a right to be heard before the complaint is resolved or any outcome is determined. If the Respondent is Hoe Tonga, a Board member may exercise the right on behalf of Hoe Tonga. A respondent must be taken to have been given the right if:

- (a) the respondent is fairly advised of all allegations concerning the Respondent, with sufficient details and time given to enable the Respondent to prepare a response; and
- (b) the respondent has a reasonable opportunity to be heard in writing or at an oral hearing, if one is to be held; and
- (c) an oral hearing is held if the Hearing Body considers that an oral hearing is needed to ensure an adequate hearing; and
- (d) an oral hearing, if any, is held before the Hearing Body; and
- (e) the respondent's written statement or submissions, if any, are considered by the Hearing Body.

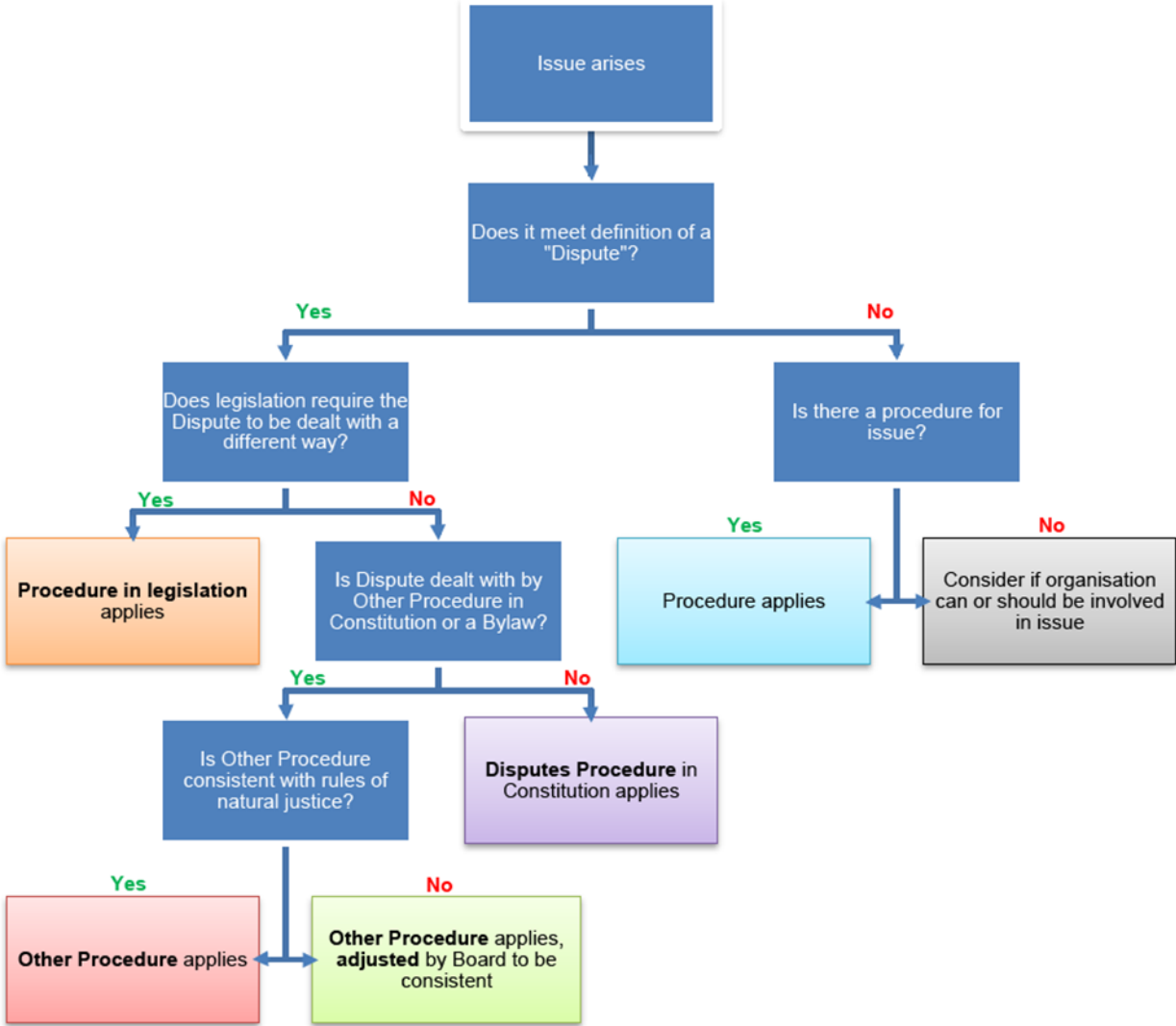
### 18.13 Appeals

If provided for in the Dispute Policy of Waka Ama Aotearoa NZ, a member who is a party to one of the following disputes may appeal to Waka Ama Aotearoa NZ:

- a) A dispute between members that has been determined by a decision of Hoe Tonga;
- b) A decision by Hoe Tonga that the member wishes to dispute.

The appellant must comply with the Dispute Policy of both Hoe Tonga and Waka Ama Aotearoa NZ and must pay any fee as required in such policy/ies (if any). Any decision of Waka Ama Aotearoa NZ is final and binding and is not subject to any further right of appeal.

Hoe Tonga Disputes procedure flow chart.



## 19. Winding Up or Dissolution

- 19.1 Hoe Tonga must be wound up or dissolved if, at a General Meeting, a Special Resolution is passed requiring Hoe Tonga to be wound up or dissolved and the resolution is confirmed by a further Special Resolution passed at a subsequent General Meeting called for that purpose and held not earlier than 60 days nor later than 90 days after the date on which the original resolution was passed
- 19.2 If, upon the winding up or dissolution of Hoe Tonga, there remains, after the satisfaction of all Hoe Tonga debts and liabilities any property whatsoever, the property shall not be paid to or distributed among the Members but shall be given or transferred to one or more not-for-profit Sport organisations having Purposes similar to the Purposes of Hoe Tonga, or to some other charitable organisation or purpose within New Zealand, provided that in every such case the recipient has either the same preferential tax status referred to in Rule 16.3 or is charitable under New Zealand Law.

### 19.3 Notice:

The Board must give notice to all members at least 20 Working Days of a proposed motion:

- (a) to appoint a liquidator;
- (b) to remove Hoe Tonga from the Register of Incorporated Societies; or
- (c) for the distribution of Hoe Tonga's surplus assets.

The notice must comply with section 228 of the Act and include details of the General Meeting at which the proposed motion is to be considered.

## 20. Prohibition of Personal Benefit

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- 20.1 All income, benefit or advantage shall be applied to the Purposes of Hoe Tonga.
- 20.2 No Member or any person associated with a member shall participate in or materially influence any decision made by Hoe Tonga in respect of the payment to or on behalf of that Member or associated person of any income, benefit or advantage whatsoever.
- 20.3 Any payments made must be for goods or services that advance the Purposes and must be reasonable and relative to payments that would be made between unrelated parties.

## 21. Limitation of Liability and Indemnity

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- 21.1 No current or former member of the Board shall have any liability of any nature whatsoever to Hoe Tonga or the members for any act or omission in their capacity as a Board member except in the case of their own fraud, dishonesty, breach of fiduciary duty or the commission of any act known by them to be a breach of duties owed by them at law
- 21.2 As permitted by section 96 of the Act, each current or former member of the Board is hereby indemnified by and out of the assets of Hoe Tonga against:
  - a. Any liability of any nature whatsoever arising out of any act or omission in their capacity as a member of the Board excluding criminal liability arising out of their fraud, dishonesty, breach of fiduciary duty or the commission of any act known by them to be a breach of duties owed by them at law; and
  - b. Costs incurred by them in any proceeding relating to such liability.
- 21.3 This Rule is intended to be enforceable by each current or former member of the Board.

## 22. Transition

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- 22.1 The following Rules shall apply to enable transition of Hoe Tonga from the requirements of its previous constitution to the requirements of this Constitution. If any of this Rule 22 is inconsistent with any other Rule in this Constitution, then Rule 22 shall apply to the extent of the inconsistency and the other Rule in this Constitution shall not:
  - a. All Clubs that were members of Hoe Tonga immediately prior to the date of adoption of this Constitution (except where any of the rules in 7 are not satisfied) are deemed to have satisfied the requirements to be members.
  - b. Previous terms of office as a member of the Board are not counted for calculation of the maximum term that a Board member may serve;

- c. The Board members who are in office as at the date of adoption of this Constitution shall remain in office until the conclusion of the first AGM and then the rotation policy 10.7 applies.
- d. The first election of Board members is guided by rule 10.4.

### **23. Matters Not Provided For:**

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- 23.1 If any matter arises that, in the opinion of the Board, is not provided for in this Constitution or any Bylaws, or if any dispute arises out of the interpretation of this Constitution or the Bylaws, the matter or dispute will be determined by the Board.