

2025

Summary of external professional advice for Constitutional review

Background

InternetNZ has received a range of legal and governance advice on the Drafting Guidelines and the Proposed Constitution from:

- Sue Barker, Director, Charities Law - advice to ensure compliance with the Incorporated Societies Act 2022 (2022 Act) in the development of our Constitution
- Natalie Coates, Barrister, Thorndon Chambers - guidance on incorporating Te Tiriti o Waitangi and tikanga-based practice into our Constitution
- Boardworks - advice on governance approaches and modernising our Constitution with current best practices (see separate document).

InternetNZ sought advice over many months, including broad advice on best practice, interpretations, or clarifications on specific questions. Below is a summary of relevant feedback that we have received and considered.

This summary document has been reviewed by the relevant advisors and is an accurate reflection of their overall advice.

Summary of feedback received

Part One: Introductory provisions and about InternetNZ

Objects

InternetNZ is a registered charity (CC30982). As such, Sue pointed out that it is important that the objects remain charitable so that the Society is able to retain its

registered charitable status. The purpose of the Society must be charitable and activities must be carried out in furtherance of those charitable purposes.

In particular, Sue asked us to consider whether the object around upholding the Society's commitment to centering Te Tiriti o Waitangi was a "purpose" of the organisation, or whether it was more appropriately part of the tikanga and culture of the Society.

Natalie suggested strengthening the object in relation to Te Tiriti o Waitangi to make it more clear how we are upholding our commitment to centring Te Tiriti o Waitangi. Additionally, she suggested adding in 'respecting tikanga' to align with other sections on tikanga, kawa, culture and practice.

Additionally, Natalie suggested including Māori as a listed group that collaboration and co-ordination should occur with. This would further illustrate that the commitment extends throughout all aspects of InternetNZ and not just a Te Tiriti clause.

Te Tiriti o Waitangi

Natalie noted the language used of centring Te Tiriti o Waitangi, rather than more commonly used terms like 'honouring'. Additionally, she noted that use of te reo Māori in the Constitution is another way to affirm the commitment to Te Tiriti o Waitangi. This use acknowledges that te reo Māori is a taonga under Te Tiriti o Waitangi, as per the Waitangi Tribunal's finding.

Tikanga and culture

Sue referred to s28(1)(b) of the 2022 Act which expressly provides that the Constitution may provide for the Society to express its tikanga, kawa, culture or practice. This section is intended to encourage societies to think about their culture and how that culture will influence the way it operates. Further Sue pointed out that, as the Law Commission notes, tikanga is a word in common usage, encompassing the cultural understanding underpinning the way a society operates. The expression of tikanga is not limited to Māori organisations: any society will have its own underlying cultural principles. Further the Law Commission also notes that: "societies can describe their tikanga or culture in whatever way they wish, but one such method is for a rule to describe the relevant principles and state that the Constitution must be interpreted in light of those principles". This express recognition of tikanga or culture in the statute will encourage the Courts to give greater weight to it when they are interpreting constitutions.

Natalie supported the inclusion of tikanga, kawa, culture and practice in the Constitution. However, more thought was needed as to how this is drafted. Natalie's view was that "if tikanga is to be given such centrality and respect then a generic statement on this should be woven somewhere else into the Constitution" (see advice on Objects). She also noted that a strengthened approach would be to draw on key

principles and values from tikanga Māori rather than the generic approach that was taken in the Drafting Guidelines. Practically, this would look like naming principles and values that guide the Society (i.e. manaakitanga, haumarutanga etc).

Part Two: Membership

Diversity and representation

Natalie noted that one of the recommendations in the Systemic Racism Review was to consider membership models to address issues including diversity and representation and current imbalances of power. Her suggestion was to include a clause that encouraged diverse membership including Māori.

Members consent

The first draft of the Proposed Constitution provided that a Member would need to provide consent to becoming a member at the time at which they apply to become a Member, and from time to time as requested by the Society. This was to allow the Society to renew any consents, if necessary. However, Sue pointed out that once a Member consents to being a Member, they would remain a Member until they cease to be a Member in accordance with the Society's constitution.

Membership activation

The Proposed Constitution provides that a person or organisation becomes a Member when the Society receives the membership application, consent and any applicable Subscription Fee. Sue provided that commonly the Board would consider each application for membership and subject to any specific criteria the Board (in its sole discretion) would be able to accept, decline or defer an application. However, it is also possible to have automatic membership.

Member rights

The Drafting Guidelines and the first draft of the Proposed Constitution referred to Members may have other rights as a result of other provisions in the Constitution, e.g. participation in General Meetings. Sue provided that the right to participate in General Meetings would imply a right to vote. Further Sue advised that it is preferable to be clear as to what rights Members have to reduce the scope for misunderstanding. Based on this advice Member's rights have been detailed under clause 2.6.2.

Ceasing Membership

Clause 2.9.1(b) regarding the ceasing of Memberships has been drafted in line with Sue's advice that the law would require natural justice to be followed (unless expressly excluded by the rules) before a Membership could be terminated by the

Board, i.e. there would be a requirement that a dispute resolution process has been undertaken.

Part Three: The Board (Council) and Officers of the Society

Role of sub-committees

In accordance with Sue's advice we have included that the role and functions of sub-committees shall be governed by the Constitution (including the charitable purposes), and not just Terms of Reference.

Removal of Board Members

Sue advised that under s26(1)(f)(v), the Constitution must include the grounds for removal of Board Members, i.e. on what grounds would a dispute resolution process or a general meeting resolution find that a Board Member should be removed.

Bringing effect to Te Tiriti o Waitangi through governance

In her assessment Natalie noted that the proposed structure in the Drafting Guidelines is thorough in seeking to integrate Māori representation, co-leadership, and requisite skills/knowledge. She also noted that:

- we include a statement that Governance should have knowledge of Te Tiriti and support our goal to be a Te Tiriti centric organisation,
- we clarify the position on co-leadership through consistent language and provide for transition periods where this is not possible, and
- include specific expertise in respect of Te Tiriti o Waitangi in governance.

Part Four: General Meetings

General advice

Overall, Sue provided advice on what is required under s26(1)(k) of the 2022 Act in relation to General Meetings, e.g. the intervals at which meetings need to be held and how to deal with irregularity in calling General Meetings (in accordance with s85(1) of the 2022 Act).

Part Six: Dispute resolution

Natalie noted to ensure we have clarity over the role of tikanga in the Disputes resolution process. She suggests that we break down the Disputes Resolution Process into two parts:

1. developing guiding tikanga for all disputes, and
2. clearly set out a tikanga-based approach.

One approach suggested by Natalie was to include in the Drafting Guidelines as follows:

- the Society encourages tikanga based dispute resolutions processes where appropriate
- if a party requests that tikanga forms part of the dispute resolution process, all parties will work together to agree on a tikanga based approach, and
- If agreement cannot be reached on the process, a reputable disputes resolution provider (with experience in tikanga) may be called in to assist in respect of both process and substance.

Part Seven: Additional Process Provisions

Change in Member details

Sue referred to s26(1)(e) which provides that the Constitution must contain arrangements for keeping the Society's register of members up to date. Section 79(3) provides that every society must update its register of members as soon as practicable after becoming aware of changes to the information recorded on the register. Clause 8.1.2 was updated to reflect this advice.

Insurance & Indemnity

Clause 7 has been drafted to reflect Sue's advice that the 2022 Act limits the extent to which indemnity and insurance may be provided to the Society's employees and Board Members.

Disclaimer

Information in this document is for general information purposes only and specific to advice InternetNZ has received for its purposes. The information should not be used for any other purpose and does not constitute legal advice for any other person.