**MEMORANDUM TO MEMBERS**

**Changes to Constitution of Dunedin Kindergartens Incorporated**

**Background**

The Incorporated Societies Act 2022 modernised the law governing incorporated societies which had changed very little since 1908. Some of the provisions of the 2022 Act are mandatory which require changes to the constitution and all societies must re-register prior to April 2026.

The DKA board has engaged Marks & Worth Lawyers to review the current constitution, advise on mandatory changes and suggest further changes which may enhance the governance of Dunedin Kindergartens. Below is a summary of the suggested changes with an explanation of which changes are mandatory and which ones are merely recommended to improve governance. A marked up version of the constitution is attached showing the changes. Where the changes have been highlighted in green, these changes are required by the new legislation. Changes highlighted in blue are recommendations only.

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| **Clause no.** | **Comment** |
| 1.1 | Updating to the new Act. |
| 4.1(a) | Ensuring that the objects of Dunedin Kindergartens meets the requirements of the requirements of the Charities Act to retain charitable status. |
| 5.1 | The constitution currently has parents or caregivers with a child on the roll or waiting list of a kindergarten as members. This has created problems in the past due to the constant change of parents and caregivers as children move through the kindergartens. It is suggested that the kindergartens themselves should be members, which is permissible under the Act. |
| 5.1(b) | Life members will continue to be members but will not have the right to vote as is currently the case. |
| 5.1(c) | Interested persons over the age of 18 years may also apply for membership of Dunedin Kindergartens but will not have the right to vote. |
| 5.3 | Employees of Dunedin Kindergartens are not eligible to become members unless they are life members. |
| 5.4 | Rather than the **person** appointed by a Kindergarten being the ‘Member’ entitled to vote at meetings of Dunedin Kindergartens, we have changed the wording so that the **Kindergarten** is a member and appoints a representative to attend meetings and vote on its behalf. We have called this nominee an **eligible caregiver** (which is defined as a parent or caregiver who has a child on the roll or waiting list of that kindergarten). The eligible caregiver will attend meetings and vote on behalf of the kindergarten appointing them. |
| 5.5 | Each Member must consent to become a member as required by the Act. In the case of each Kindergarten member, consent may be given by the Kindergarten Representative appointed in accordance with clause 5.3 above. |
| 5.6 | A Member may at any time resign from membership of Dunedin Kindergartens by giving written notice to the Board. A resignation shall not be effective until receipt of the notice by the Board and the Board accepting the resignation. Resignation shall not extinguish any liabilities of that Member which arose during that Member’s membership of Dunedin Kindergartens. |
| 5.7 | Where a Kindergarten Representative no longer has a child enrolled at the Kindergarten which has nominated them as a Kindergarten Representative, they may continue as Kindergarten Representative until the commencement of the next Annual General Meeting of Dunedin Kindergartens. If they are an elected Board Member, they can finish their current Board term (which will increase to a three year term. |
| 7.1 | Two representatives of the teaching staff shall be elected by a simple majority of currently appointed teaching staff by secret ballot (“Teacher Representatives”).This is an increase from one. |
| 8.3 | Only an Eligible Caregiver who has been nominated for the Board by that Kindergarten, and Kindergarten Representatives shall be eligible for election as **Elected Board Members**. |
| 8.4 | The Elected Board Members shall be elected at the Annual General Meeting for a term of office of three years commencing from the time during the Annual General Meeting that they are appointed and terminating at the time that new Board Members are appointed at the third Annual General Meeting following their election. |
| 8.6 | At the first full Board meeting following each Annual General Meeting the Board shall elect from the Elected Board Members; |
| 8.9 | The Board may meet by way of conference call using audio and/or audio-visual technology and may act by resolution approved during such call or through a written ballot conducted by email, electronic voting system, or post, and any such resolution shall be recorded in the minutes of the next Board meeting. |
| 8.10 | Other than as prescribed by the Act or this Constitution, the Committee or any sub-committee may regulate its proceedings as it thinks fit. |
| 8.14 (a) | The Board shall have the power to:  (a) co-opt additional persons or appoint consultants with specific skills to assist in the attainment of the objects of Dunedin Kindergartens; |
| 10.1 | Deletes reference to honorary positions |
| 10.3 | General Meetings may be held at one or more venues by Members present in person and/or using any real-time audio, audio and visual, or electronic communication that gives each Member a reasonable opportunity to participate. |
| 12.1 (a)-(c) | The Board shall notify Members of the Annual General Meeting and any Extraordinary General Meetings by:    (a) sending written notice to each Kindergarten by post and/or email requesting such notice to be displayed on the Kindergarten notice board and/or emailed to parents and caregivers; and  (b) advertising details in at least one newspaper circulating in the greater Dunedin area or such other area as is covered by Dunedin Kindergartens;  (c) emailing Life members and other Members where email addresses are held for those Members. |
| 13.1 | Any person may attend an Annual General Meeting or Extraordinary General Meeting, whether or not they are Members. |
| 13.2 (a) | Members shall:    (a) be entitled to attend all Annual General Meetings and Extraordinary General Meetings through their Kindergarten Representatives; |
| 13.3 | Each Kindergarten Representative shall have the right to cast 1 vote on every matter to be voted on in an Annual General Meeting or Extraordinary General Meeting. |
| 13.4 | A Kindergarten Representative shall not be entitled to vote unless the Kindergarten being represented has notified the Board in writing of their Kindergarten Representative at least 3 days prior to the Annual General Meeting or any Extraordinary General Meeting to be held. |
| 13.5 | If a Kindergarten Representative is unable to attend the Annual General Meeting or an Extraordinary General Meeting a replacement person may attend and vote in place of the Nominated Representative, provided a Proxy Form is completed in the form attached to this Constitution as Schedule 1 and provided to the Board prior to the commencement of the Annual General Meeting or an Extraordinary General Meeting. |
| 13.7 | Voting on matters other than the election of Elected Board members shall be determined by voice, a show of hands or by ballot. A ballot shall be taken at the discretion of the chairperson or at the request of 3 or more Kindergarten Representatives. |
| 13.8 | A ballot shall be used for the election of each Elected Board Member. |
| 13.9 | Prior to any ballot being taken at least 2 independent scrutineers shall be appointed by the Kindergarten Representatives present. |
| 13.11 | In circumstances where the voting is such that 1 further vote would achieve the majority required the Chairperson shall open the matter up to enable further discussion before putting the matter to a vote for a second time. The Chairperson shall not have a casting vote. |
| 13.12 | Resolutions may only be passed in the manner described in this Clause 13, and not in any other manner. |
| 14.1 | The quorum for all Annual General Meetings and Extraordinary General Meetings shall be 50 percent (50%) of all the Kindergarten Representatives appointed to vote on an issue at that Annual General Meeting or Extraordinary General Meeting (as the case may be). |
| 14.2 | The quorum for all Board meetings shall be at least 50 percent (50%) of the Elected Board members. |
| 16.2 | The power conferred on the Board in clause 16.1 shall be subject to the approval of not less than 66% of Members having the right to vote at a General Meeting where the proposed exercise of power involves a transaction or transactions which on aggregate exceeds 35 % of the value of the assets of Dunedin Kindergartens. |
| 16.3 | The Board shall be authorised to exercise all of the powers of Dunedin Kindergartens, including the power to frame such policies as may from time to time be deemed necessary for the purpose of regulating the affairs of Dunedin Kindergartens. All policies framed in accordance with this clause shall be binding until rescinded by resolution of the Board. The Board must make policies available to Members on request. |
| 21.1 | 21.1 Documents, contracts and enforceable obligations of Dunedin Kindergartens shall be executed on behalf of Dunedin Kindergartens pursuant to a resolution of the Board and in accordance with the following: |
| 21.1 (a) | (a) an obligation that, if entered into by a natural person, would, by law, be required to be by deed may be entered into on behalf of Dunedin Kindergartens in writing signed under its name by:  (i) 2 or more Board Members;  (ii) 1 or more attorneys appointed by Dunedin Kindergartens under section 124 of the Act:  This replaces the Common Seal |
| 21.1 (b) | (b) an obligation that, if entered into by a natural person, is, by law, required to be in writing may be entered into on behalf of Dunedin Kindergartens in writing by a person acting under its express or implied authority. |
| 21.1 (c) | (c) an obligation that, if entered into by a natural person, is not, by law, required to be in writing may be entered into on behalf of Dunedin Kindergartens in writing or orally by a person acting under Dunedin Kindergartens’ express or implied authority. |
| 23.1 | Dunedin Kindergartens shall keep an up-to-date Register of Members. |
| 23.2 | For each current Member, the information contained in the Register of Members shall include —  (a) Their name, and  (b) The date on which they became a Member (if there is no record of the date they joined, this date will be recorded as ‘Unknown’), and  (c) Their contact details, including —  • A physical address or an electronic address, and  • A telephone number;  • The type of Member. |
| 23.3 | Every current Member shall promptly advise Dunedin Kindergartens of any change of the Member’s contact details. |
| 24.1 | The Board shall nominate the person who shall act as the contact person for the Registrar of Incorporated Societies, but in the absence of a nominee, the contact person shall be the chairperson of the Board. |
| 26.1 | Dunedin Kindergartens may, but shall not be required to, affiliate to a peak body advocating for interests in the early childhood education sector. Any proposal to create or end such affiliation must be considered at an Annual General Meeting or Extraordinary General Meeting and to succeed must be supported by 51 percent (51%) of the Kindergarten Representatives present in person or by proxy and entitled to vote at the meeting. |
| 27.1 | A dispute is a disagreement or conflict involving Dunedin Kindergartens and/or its Members in relation to specific allegations set out below. |
| 27.2 | The disagreement or conflict may be between any of the following persons:  (a) 2 or more Members;  (b) 1 or more Members and Dunedin Kindergartens;  (c) 1 or more Members and 1 or more Board Members;  (d) 2 or more Board Members;  (e) 1 or more Board Members and Dunedin Kindergartens;  (f) 1 or more Members or Officers and Dunedin Kindergartens. |
| 27.3 | The disagreement or conflict relates to any of the following allegations:  (a) a Member or Board Member has engaged in misconduct;  (b) a Member or Board Member has breached, or is likely to breach, a duty under the Constitution or bylaws or the Act;  (c) Dunedin Kindergartens has breached, or is likely to breach, a duty under the Constitution or bylaws or the Act;  (d) A Member's rights or interests as a Member have been damaged or Member's rights or interests generally have been damaged. |
| 27.4 | Dunedin Kindergartens adopts the process for resolution of disputes set out in clauses 2 to 8 inclusive of Schedule 2 to the Act. |
| 29.3 | “Eligible Caregiver” in relation to a Kindergarten means a parent or caregiver who has a child on the roll or waiting list of that Kindergarten; |
| SCHEDULE ONE | Proxy Appointment Form |