



New Zealand Kindergartens Te Putahi Kura Puhou O Aotearoa

Constitution

Revised September 2015

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NEW ZEALAND KINDERGARTENS INCORPORATED

Te Putahi Kura Puhou o Aotearoa

CONSTITUTION

1.0 NAME

- 1.1 The name of the Organisation is **NEW ZEALAND KINDERGARTENS INCORPORATED.**

2.0 REGISTRATION

- 2.1 The registered office of the Organisation shall be at such place as the Board may determine from time to time. Notice of every change of the registered office shall be given to the Registrar of Incorporated Societies.

3.0 OBJECTS

- 3.1 To support affordable access to quality early childhood education for all children in New Zealand/Aotearoa.
- 3.2 To assist Member Associations to provide and develop high quality and accessible early childhood education services.
- 3.3 To support and promote the interests of Member Associations.
- 3.4 To do all things which shall be thought to be conducive to the carrying out of the above objects and the furtherance of Early Childhood Education.

4.0 DEFINITIONS

- 4.1 **Board**
Board shall mean the properly elected or appointed Board who shall at all times have the role of governance of the national office and representation of its members' collective interests. The Board shall be bound by its Code of Ethics and Proper Practice. Membership of the Board shall be determined in accordance with Clause 7.0 hereof.
- 4.2 **CE**
Shall mean the Chief Executive of the Organisation.

- 4.3 **Chair**
Shall mean at all General Meetings of the Organisation the President. At all meetings of the Board or any sub-committee, the person delegated by the Board to be the Chair at such meetings. The chair shall be responsible for controlling the conduct and good order of the meeting.
- 4.4 **Code of Ethics**
Shall mean the Code created by and binding the Board to the adoption of ethical conduct in all areas of its responsibilities and authorities.
- 4.5 **Early Childhood Education Professional**
Shall mean a person who is recognised by the Membership as holding qualifications, skills and experiences in Early Childhood Education and who is employed by a Member Association.
- 4.6 **Financial Year**
The financial year of the Organisation shall be 1st April in one year to 31st March in the next year.
- 4.7 **Member Association Manager**
Shall mean a person employed or appointed by a Member Association as the person responsible for managing the day- to-day affairs of the Member Association.
- 4.8 **Non-employee**
Shall mean a person who is or has been a parent representative on the Board of a Member Association but excluding such persons who are current employees of a member Association.
- 4.9 **Organisation**
Shall mean New Zealand Kindergartens (Incorporated).
- 4.10 **Postal Ballot**
Shall mean a ballot by post which follows the same process for voting strength, time lines and any other rules as specified by the Constitution.
- 4.11 **Electronic Ballot**
Shall mean a ballot by electronic voting including email which follows the same process for voting strength, timelines and any other rules specified by the Constitution.
- 4.12 **Remit**
A written motion which has been proposed by a Board Member or Member Association and seconded by another Board Member or Member Association and must include explanatory notes detailing the reason for the remit.

- 4.13 **Sub Committee**
Shall mean a committee established pursuant to Clause 8.2.9 hereof.

5.0 MEMBERSHIP

- 5.1 Membership shall consist of the following:

5.2 **Member Association**

Shall mean an association duly incorporated for the provision of accessible Early Childhood Education Services.

5.2.1 Associations may become members of the Organisation providing:

- a) They have a not for profit or charitable status
- b) They have their application endorsed by two Member Associations;
and
- c) The application is approved by a minimum of 60 per cent of the Organisation's Board.

- 5.3 The Board shall include the President, 3 elected members and 3 appointed members (Clause 7.0)

5.4 **Honorary Life Member**

Shall mean a person who has been appointed at an Annual General Meeting as an Honorary Life Member. Such appointment shall be based on the Board's recommendation by a remit to the AGM and acceptance by the Membership. Such recommendation shall be in recognition of his/her extraordinary contribution in accordance with the objects of the Organisation. An Honorary Life Member shall be entitled to attend all General Meetings of the Organisation. An Honorary Life Member shall not have any voting rights.

6.0 TERMINATION OF MEMBERSHIP

- 6.1 The classes of Membership are as set out and defined in Clause 5.0 hereof.

- 6.2 If the conduct of any Board Member is such as appears to the Board to endanger the character, good order or welfare of the Organisation, then the Board may at any time by letter invite such Board Member within a specified time to resign. Such Board Member shall be entitled to offer an explanation verbally and/or in writing, to be represented if they so desire by a solicitor or any other person appointed by the Board Member. If a minimum of 60 per cent of the Members of the Board shall vote for their expulsion, they shall thereupon cease to be a member of the Board. The decision of the Board shall be delivered in writing to the former Board Member immediately after the making of the decision.

- 6.3 If the conduct of a Member Association appears to the Board to endanger the character, good order or welfare of the Organisation or a minimum of one third of Member Associations request the termination of such Member Association's membership then the termination of said membership shall be subject to a vote of the Organisation at a General meeting. Said Member Association shall be entitled to offer an explanation verbally and/or in writing and be represented by a solicitor or any other person appointed by the Member Association at such a meeting. If the termination of membership is carried by a majority of at least 60 per cent of the voting strength of Members present at the meeting the said Association shall thereupon cease to be a member of the Organisation. The reasons for the decision of the Organisation shall be delivered in writing to the former Member Association immediately following the making of the decision.
- 6.4 Any Member Association may resign by giving the Board 12 months notice in writing of their intention to do so but such resignation shall not relieve the member from liability to pay any levies or other dues payable by them in the current levy period.
- 6.5 The Board reserves the right to pursue collection action in the case of any member who fails to pay their levies as set by the Board annually, within 60 days of the levies falling due.
- 6.6 Any Board Member shall vacate their office:
- 6.6.1 If they are absent from two (2) consecutive meetings of the Board without leave of the Board
 - 6.6.2 If they resign by giving one (1) month's notice in writing to the Board.
 - 6.6.3 If they are otherwise removed by the Board.
- 6.7 Following a Board Member's resignation or removal such vacancy shall be filled, if possible, for the remainder of that member's term by the Board making an appointment. It shall not be obligatory in all cases for the Board to fill all vacancies arising; however it shall do so if in the Board's opinion it is necessary.
- 6.7.1 An 'elected member' appointed under Clause 6.7 above shall automatically retire at the next AGM but shall be eligible for election in accordance with Clause 7 below for the balance of the term of the vacated office.
 - 6.7.2 An 'appointed member' appointed under Clause 6.7 shall automatically retire at the conclusion of the calendar year but shall be eligible for reappointment in accordance with Clause 7.

7.0 THE BOARD

- 7.1 The Board shall consist of not more than seven (7) persons who shall include:
- 7.1.1 A President. Each term of office shall be for two (2) years.
 - 7.1.2 Three representative members ('elected members') directly elected by the Members and who take up office following their election.
 - 7.1.3 Three independent members ('appointed members') appointed for their skills by the Board and who take up office at the commencement of the calendar year.
 - 7.1.4 Each term of office for elected members shall be for two (2) years with a maximum of three consecutive terms. At the conclusion of the third consecutive term, the member shall stand down but after one further year is eligible for re-election to the Board subject to Clauses 7.1.2, 7.1.5, 7.2.1, 7.2.2 and 7.2.3 hereof.
 - 7.1.5 Where the retirement of more than two elected members occurs simultaneously, notwithstanding Clause 7.1.4, one retiring member selected by Board ballot may serve an additional term of one year.
 - 7.1.6 At the conclusion of each two year term, the re-election of the elected member shall be held in accordance with Clause 7.3 hereof.
 - 7.1.7 The re-appointment of the appointed member shall be at the discretion of the Board. Should the appointed member reach the conclusion of a third term, the member shall stand down but after one further year is eligible for reappointment to the Board.
- 7.2 Of the three (3) elected representative members of the Board one will be a Member Association Manager, one will be an Early Childhood Education Professional and one will be a non-employee Representative.
- 7.2.1 The Manager member must hold the position of Manager of a Member for the term of their office on the Board. If the Manager member resigns from, or otherwise vacates the office of Manager, the member must also resign from the Board forthwith.
 - 7.2.2 The Early Childhood Education Professional member must hold that position at the time of nomination. The member must resign from the Board forthwith if the member becomes no longer employed by a Member Association.
 - 7.2.3 The non-employee member must, at the time of nomination be, or must have previously been, a member of an Association Board.
- 7.3 The election of the elected members shall be held at the Annual General Meeting in accordance with Clauses 16.0 and 17 hereof.
- 7.4 Upon being elected/appointed to the Board the member shall immediately sign the Code of Ethics and Proper Practice and Letter of Appointment.

- 7.5 Following an Annual General Meeting, should an elected vacancy on the Board exist, it shall be possible for the position to be re-opened for election through a postal or electronic ballot. The information distributed will clearly state the nature of the vacancy and call for appropriately skilled nominees.

8.0 POWERS OF THE BOARD

- 8.1 The management and control of all property, real and personal and affairs of the Organisation shall be vested in the Board which may exercise all such powers, and do all such acts and things as it thinks fit for the benefit or welfare of the Organisation.
- 8.2 In furtherance, and not in limitation of, and without prejudice to the general power conferred or implied in the preceding clause, it is hereby expressly declared that the Board shall be entrusted with, and may exercise and perform the following powers and duties:
- 8.2.1 It may from time to time take all steps and proceedings and do all acts and things it may consider advisable for carrying into effect the objects of the Organisation.
- 8.2.2 It may appoint or employ and in accordance with the provisions relating to employment contained in current legislation dismiss, remove or suspend such employees or agents of the Organisation as it may from time to time think fit, fix their period of employment and fix their salaries and emoluments.
- 8.2.3 It may institute, conduct, defend, compound or abandon any legal proceedings by or against the Organisation or its officers or otherwise concerning the affairs of the Organisation, and may also compound and allow time for payment in satisfaction of any debts under any claim or demands by or against the Organisation.
- 8.2.4 The Board may effect insurance for the Board members and employees of the Board in respect of:
- a) Liability not being criminal liability, for any act or omission in his or her capacity as a Board member or employee; or
 - b) Costs incurred by such Board member or employee in defending or settling any claim or proceeding relating to any such liability; or
 - c) Costs incurred by a Board member or employee in defending any criminal proceedings taken in relation to their capacity as a Board member or employee on which they are acquitted.
- 8.2.5 It may refer any claims by or against the Organisation to arbitration, and observe and perform any orders made in respect of same.

- 8.2.6 It may control, invest and deal with any of the funds or monies of the Organisation's Board in such manner as it shall think fit, and from time to time may vary such investment or investments, or realise the amount invested therein and it may bank the monies of the Organisation in such bank or banks and operate thereon as the Board may determine.
- 8.2.7 The Board shall have the power to borrow or raise money and give security for payment of the same or to secure the payment of any money owing by the Organisation for the satisfaction or performance of any obligation or liability incurred or undertaken by the Organisation and in particular by the issue of debentures or by mortgage, or by charge, or lien upon the whole or any part of the Organisation's real or personal property or assets (whether present or future). Save as it provided in this clause the Organisation shall not have power to borrow money and in particular no asset shall be pledged as security under the power conferred by the clause if any such asset has been purchased either wholly or in part from funds obtained from the New Zealand Government unless before such pledging the consent of the Minister of Education is first obtained.
- 8.2.8 It may in its absolute discretion appoint such properly elected Board members or such other persons as it deems necessary to form a Sub Committee for such purpose as the Board in its discretion shall determine.
- 8.2.9 Any committee, including Sub Committees, appointed by the Board shall have powers only as the Board shall from time to time determine and the Board may, at any time, revoke, alter or extend such powers.
- 8.2.10 The Board shall have power to form standing orders and policy statements it deems necessary from time to time for the purposes of regulating the affairs of the Organisation including the powers and procedure of any Sub Committee.
- 8.2.11 Copies of standing orders and policy statements affecting the organisation shall be brought to the notice of members in writing and forwarded to each Member Association. Standing orders and policy statements as made shall remain in force until repealed by the Board.
- 8.2.12 It may appoint on terms and conditions that it deems necessary, any additional persons with specific skills to assist the Board in the attainment of the objects of the Organisation.
- 8.2.13 Any Board member shall, with the approval of the Board, be entitled to hold any office and act as professional adviser for profit and may contract with the Organisation provided they disclose their interest in any contract and shall not vote in regard to the appointment to any office or in respect of any contract in which they are interested.

- 8.3 The appointment of appointed member pursuant to clause 7.1.3.

9.0 BOARD MEETINGS

- 9.1 The Board shall meet no fewer than six (6) times in each year at such times and places as the Board may determine.
- 9.2 In addition to the meeting referred to in Clause 9.1 hereof the Board shall meet as often as it determines in the course of each year with the delegates from each Member Association to discuss any matter the Board deems necessary.
- 9.3 The Chair may convene a meeting of the Board at any time or the CE shall at the request in writing of not less than half of the Members of the Board convene a meeting of the Board upon giving seven (7) working days' notice to all members of the Board.
- 9.4 Meetings of the Board may at the direction of the President or Chair be held by teleconference or internet conferencing or meeting services in which case attendance at the meeting for the purposes of a quorum shall be deemed to take place upon the conference telephone call or internet conferencing or meeting services having made connection with four (4) Board Members. Proper Minutes of a teleconference meeting or internet conferencing or meeting services will be kept in the same manner as if each member was physically present.

10.0 ANNUAL GENERAL MEETING

- 10.1 The Annual General Meeting of the Organisation shall be held each year in accordance with the requirements of the Incorporated Societies Act 1908 at such time and place as fixed by the Board and at such meeting the following business shall be transacted:
 - 10.1.1 Receive and consider the Annual Report of the Board and any other duly constituted Sub Committee.
 - 10.1.2 Receive and consider the Reviewed Financial Statements.
 - 10.1.3 The election of the elected members of the Board.
 - 10.1.4 The discussion of remits.
 - 10.1.5 The consideration of any other business as may be accepted by all the members present at the Annual General Meeting. The Chair may terminate discussion on any matter at their absolute discretion.
- 10.2 At least thirty (30) working days written notice of such Annual General Meeting stating the nature of the business to be brought before the Annual General Meeting shall be given to each Member.
- 10.3 All other General Meetings shall be Extra Ordinary General Meetings.

11.0 EXTRA ORDINARY GENERAL MEETINGS

- 11.1 The Board may whenever it thinks fit, or, upon the requisition in writing by a minimum of one third of Member Associations shall convene an Extra Ordinary General Meeting.
- 11.2 Notice of any Extra Ordinary General Meeting required by the Board shall be given in writing to all Members by the Board. Such written notice shall state the time, date and place of the Extra Ordinary General Meeting and the purpose for which such meeting is to be held. Such written notice shall be given by the Board at least ten (10) working days prior to the date of the Extra Ordinary General Meeting.
- 11.3 Where any Extra Ordinary General Meeting is requested by Member Associations, the request shall be in writing and signed by the same Member Associations, state the specific purpose for the meeting and be sent by courier or registered post to the registered office of the Organisation. Within five (5) working days of receipt of the request the Board shall give written notice to all Members of an Extra Ordinary General Meeting. Such written notice shall state the time, date and place of the Extra Ordinary General Meeting and the purpose for which the meeting is to be held. Such written Notice shall be given by the Board at least ten (10) working days prior to the date of the Extra Ordinary General Meeting. The Extra Ordinary General Meeting shall be held within twenty (20) working days of receipt of the request by the Board. Should the Board fail to convene such a meeting, the Member Associations requiring the meeting or a majority of them may themselves convene a meeting to be held not later than three (3) calendar months after the date the requisition was sent, by courier or registered post, to the registered office of the Organisation.
- 11.4 Whenever any Extra Ordinary General Meeting is adjourned for fifteen (15) working days or more, at least seven (7) working days notice of the time, date and place for the reconvening of such adjourned meeting shall be given in the manner specified in Clause 11.2 hereof. Only one (1) such reconvening shall be permitted for any Extra Ordinary General Meeting called pursuant to Clause 11.3 hereof.
- 11.5 Any notices required by this constitution to be given in writing may be delivered in person, by courier, mail or e-mail to the address of any member supplied by that member to the organisation.

12.0 QUORUM

- 12.1 No business shall be transacted at any General Meeting of the Organisation or at any meeting of the Board unless a quorum of Members is present at the time the meeting proceeds to such business.
- 12.2 The quorum for any General Meeting shall be not less than 60 per cent of the voting strength of Members.
- 12.3 The quorum for any meeting of the Board shall be not less than four Members of the Board.
- 12.4 The quorum for any meeting of any Sub Committee shall be not less than half the members of such committee.
- 12.5 If within half an hour from the time appointed for any meeting a quorum is not present, the meeting shall stand adjourned to the same day fifteen (15) working days later at the same time or at such other time as may be directed by the Chair.

13.0 REMITS

- 13.1 All remits shall be delivered to the National Office not less than thirty five (35) working days prior to the date of any General Meeting.

14.0 ADJOURNMENTS

- 14.1 The Chair of any General Meeting or meeting of the Board may with the consent of the meeting adjourn the meeting from time to time and from place to place. No business shall be transacted at any reconvened meeting other than the business left unfinished at the meeting from which the adjournment took place.

15.0 VOTING STRENGTH

- 15.1 Every question coming before any General Meeting shall be decided by members exercising their full voting entitlement, which shall be determined as follows:
 - 15.1.1 The Board shall have one (1) vote.
 - 15.1.2 Each Member Association will have one (1) vote.
- 15.2 A Member Association not represented at a meeting shall have no right to vote by proxy.

16.0 VOTING

- 16.1 At every General Meeting of the Organisation voting shall be either on a show of cards or by secret ballot. The type of voting shall be determined in accordance with this Clause. The cards and voting forms shall be supplied by the Organisation.
- 16.2 Every matter to be considered at any General Meeting shall be decided on in the first instance by a show of cards except:
- 16.2.1 In the case of an expulsion of a Member Association which will be by secret ballot.
- 16.2.2 In the case of the election of the President, Board and Honorary Life Member which will be by secret ballot.
- 16.3 In the case of any equality of votes whether by show of cards or by any secret ballot, the Chair shall have a casting vote in addition to any vote which they may be entitled to.
- 16.4 The result of the ballot shall be declared before the close of the meeting and when declared by the Chair shall be deemed to be a resolution of that meeting. The Chair shall ensure that the resolution is entered into the Organisation's Minute Book.
- 16.5 Scrutineers may be appointed by the Chair for the purposes of assisting in the counting of votes provided that such Scrutineers do not have any interest as a nominee, proposer or seconder in such a vote.
- 16.6 In the event of any voting conducted by a show of cards not providing a conclusive result, the Chair shall have the discretion to either require that the vote be retaken or may require a secret ballot.

17.0 METHOD OF VOTING

- 17.1 Nominations and elections for the position of President and elected Board Members shall be conducted in the following manner:
- 17.1.1 Not less than forty five (45) working days prior to the Annual General Meeting the Organisation shall invite nominations for the positions specified in Clause 17.1 hereof.
- 17.1.2 In giving such notice the Organisation shall supply the appropriate forms on which such nominations shall be made. The nomination forms shall be signed by the nominee, proposer and seconder. The proposer and seconder must be a Member.
- 17.1.3 Nomination forms must be received by the CE not less than thirty (30) working days prior to the date of the Annual General Meeting.

- 17.1.4 The CE shall not later than fifteen (15) working days prior to the date of the Annual General Meeting forward to each member the names of all nominees who have consented to be nominated, together with details of the positions for which they have been nominated.
 - 17.1.5 Voting for the positions specified in Clause 17.1 hereof shall occur on forms supplied by the Organisation by secret ballot at the Annual General Meeting. The highest polling candidate for each elected category will be deemed to be elected to the position.
 - 17.1.6 A vote shall still occur for the positions of President and Board Member even if only one (1) nomination has been received for the specified position. In this situation a person will not be deemed to be elected until they have been approved by not less than half of the voting strength of members.
- 17.2 In the event that the same person is elected to the position of Board Member and President, such person shall be required to state the position they wish to fulfil and the other position shall be re-opened for nomination and voting on terms consistent with the Constitution.
- 17.3 In respect of counting of any postal or electronic ballot votes the Chair may appoint any person to act as a Scrutineer. Such Scrutineer shall have no interest as a nominee, proposer or seconder in such ballot.

18.0 MINUTES

- 18.1 The Minutes of all General Meetings, of all Board and Sub Committee meetings shall be taken by any person delegated by the Chair of such meeting.
- 18.2 Where applicable the Minutes of the Meetings referred to in Clause 18.1 hereof shall, as a minimum record the following:
- 18.2.1 The names of all members present at such meetings or apologies given to the same;
 - 18.2.2 Any agreement reached on any matters put before the meeting;
 - 18.2.3 All matters agreed on for future consideration;
 - 18.2.4 All resolutions and motions passed including the name of the proposer and the seconder;
 - 18.2.5 All financial statements presented by the Chair or other delegated person;
 - 18.2.6 Where any member acknowledges responsibility for any action taken by that member
 - 18.2.7 Any matter before the meeting which a member asks to be recorded.

- 18.3 Board Members may at any time inspect the Minute Book of the Board and any other Members may at any reasonable time inspect the Minutes of any Board Meeting.
- 18.4 The Board will ensure the minutes of all General Meetings are distributed to Members.
- 18.5 The Board will ensure a summary report on each Board meeting is distributed to Member Associations.

19.0 FINANCIAL REPORTS

- 19.1 The Board shall cause proper accounting records to be kept:
 - 19.1.1 Of all sums of monies received and expended by the Organisation and the matters in respect of which such receipts and expenditure takes place.
 - 19.1.2 Of all assets and liabilities of the Organisation including all mortgages, charges and securities of any description affecting any of the property of the Organisation.
- 19.2 Board Members may at any time inspect the financial records of the Organisation.
- 19.3 Members may at any reasonable time inspect the financial records of the Organisation, other than employee records.
- 19.4 At the Annual General Meeting in each year the Board shall lay before the Organisation, the reviewed financial statements for the year ended 31 March in each year signed by the Reviewer, the Chair or delegated Board member and the Chief Executive.
- 19.5 The reviewed financial statements which are to be laid before the Organisation at the Annual General Meeting shall, not less than fifteen (15) working days before the date of the Annual General Meeting be sent to all members.
- 19.6 The Reviewer shall be appointed by the Board from time to time. Such Reviewer shall be a member of the Institute of Chartered Accountants of New Zealand and hold a Chartered Accountant (CA) membership. Such appointment shall be on terms and conditions as determined by the Board. If the Board appoints a Reviewer who is unable to act for some reason, the Board shall appoint another Reviewer as a replacement.

20.0 COMMON SEAL

- 20.1 The Common Seal of the Organisation shall be that approved by the Board. The CE shall be responsible for the safe custody of the Seal.
- 20.2 Whenever the Common Seal of the Organisation is required to be affixed to any deed or document, writing or other instrument the seal shall be affixed thereto pursuant to a resolution of the Board and attested to by the CE or President

21.0 ALTERATIONS TO CONSTITUTION

- 21.1 Any of these rules may be altered, amended or revoked or any new rules added by resolution at any Annual General Meeting or at any Extra Ordinary General Meeting called for the purpose provided that not less than thirty (30) working days' notice of the proposed alteration, addition, amendment or revocation has been given to members in accordance with the provisions as are herein set out for General Meetings. No such resolution shall be deemed to have been passed unless it is carried by a majority of at least 60 per cent of the Voting Strength of Members. The Organisation shall register any alteration in its Constitution as required by any statutory provisions for the time being in force.

22.0 WINDING UP AND SURPLUS ASSETS

- 22.1 On the winding up of the Organisation, any property or funds whatsoever remaining after satisfaction of all debts and liabilities shall be distributed either as determined by the members of the Organisation at or before the time of such winding up to any one or more charitable organisations operating within New Zealand which promote or assist in early childhood education or welfare or as otherwise determined by the Registrar of Incorporated Societies.
- 22.2 For the purpose of complying with the requirements of the Inland Revenue Department and/or the Charities Act 2005 in maintaining the charitable status of the Organisation, no addition, amendment or alteration to the Constitution may be made which will in any way affect the charitable status of the Organisation. Provided, however, that should the Organisation decide to relinquish its charitable status this clause may be altered.

