

TOMATOES NEW ZEALAND INCORPORATED

EXPLANATORY NOTES TO PROPOSED NEW CONSTITUTION 2024

PART A OPTIONAL CHANGES (NOT REQUIRED BY INCORPORATED SOCIETIES ACT 2022)

Clause	What has changed	Reason for change
3.1 Objects	To promote and build a resilient, sustainable and profitable NZ tomato industry	Amended to better reflect the work of TNZ
	In para (h) amended to include the Order, the Commodity Levies Act 1990, the Biosecurity Act 1993, and any other relevant legislation	To be clear about the specific legislation that TNZ must follow
4.6 Condition of Membership	Inserts a new condition of membership, being that a member must not do things that may bring TNZ Inc or the tomato industry into disrepute	To manage risk to the industry
4.12 – 4.12 Ceasing to be a Member	Circumstances in which a person’s membership can be ended are expanded and clarified, including where something is done by a principal representative etc of a member (in the case of corporate members)	To add clarity
4.14 – 4.15 Provision of Information	Confirming that TNZ can require members to provide information to it (e.g. for the purposes of dual voting)	To add clarity on situations that might require members providing TNZ with extra information
7.2 Directors of TNZ and 15 General Meetings	Where all references to a number of days was stated these have been changed to the equivalent weeks e.g. nomination for	Weeks are easier for calculations than days

	board elections was 70 days, now 10 weeks	
7.2 Postal and Electronic Voting	New clauses inserted	To expressly permit TNZ to conduct ballots of members by postal or electronic voting.
15.4 Expulsion from Attendance (deleted)	Rule permitting members to vote to exclude another member from a general meeting	Deleted because it is preferable that such matters are dealt with by the Board.

PART B CHANGES REQUIRED BY, OR TO REFLECT, INCORPORATED SOCIETIES ACT 2022

Clause	Section of Act	What section says	What proposed clause says
1.1 Definitions	Various	Act introduces requirements for TNZ to have a disputes procedure, to maintain an interests register and register of members, and to provide an annual report to each AGM.	New definitions inserted – Annual Report, Complaint, Dispute, Dispute Procedures, Interests Register, Register of Members.
4.6 Application for Membership	76	A person must consent to become a member of a society. To provide for a formal application process (assists record keeping, and ensures that new members consent to becoming members, as the Act requires). Note that this does not include existing members, only new members	New clause, requiring a new member to complete an application form (which includes their consent).
4.7 Register of Members	79	TNZ must keep a register of its members, containing certain information.	TNZ must keep a Register of Members that contains the information required by the Act.

4.14 Ceasing to be a member	38-44	The Constitution must contain procedures for resolving disputes, which must comply with natural justice	Among other ways a member's membership can end, membership can end as a result of a dispute process.
6 Disputes	26(1)(j), 38-44	The Constitution must contain procedures for resolving disputes, which must comply with natural justice	Any Dispute (see Definitions) must be decided under the Dispute Procedures in Schedule 1.
10 Conflicts of Interest	62-73	Act sets out requirements where a Director has a conflict of interest, and sets out what is, and what is not, a conflict of interest. TNZ is permitted to amend the Act's provisions relating to conflicts of interest in its Constitution	<p>Reflects the Act, except that:</p> <ul style="list-style-type: none"> • The Act says an interested Director may not sign any document relating to the matter – the Board considers that a Director must not vote, but should be able to sign documents (especially as sometimes all directors might be required to sign a certificate e.g. to a lender) • The Act says an interested Director can be present when the decision is made – the rules say the Director cannot be present <p>Note that the rules reflect the Act and say that if 50% of the Directors cannot vote, the matter must be referred to an SGM.</p>
11.8 Duties of Directors	54-61	Act sets out the duties of officers of TNZ	It is not required to include the duties of directors in the Constitution, as they are already set out in the Act. However, the duties are included in the Constitution due to their importance.

11.11 Indemnities and Insurance	94-98	TNZ is not permitted to indemnify its Directors, or to pay for D&O cover for them, unless it complies with sections 94-98	Reflects sections 94-98 by setting out when TNZ may indemnify and effect insurance for a Director – including permitting TNZ to indemnify or effect insurance for a Director in relation to liability for a failure to comply with their duties.
15.11 Annual Report to AGM	86	TNZ must present an annual report to each AGM	TNZ must present an Annual Report to each AGM, with the content set out in the Act.
16 Common Seal (deleted)	123	TNZ can have a common seal, but is not required to have one	Requirement to have a common seal deleted.
23 Contact Person	113	Act requires the Constitution to say who TNZ's contact person is	Provides that the General Manager is the contact person.
Schedule 1 Dispute Procedures	39. 40	Act requires TNZ to have dispute procedures that are consistent with natural justice – and provides that if TNZ adopts the procedures in Schedule 2 of the Act, the procedures will be deemed to comply	Schedule 1 reflects Schedule 2 of the Act.