

THE INCORPORATED SOCIETIES ACT 1908

**RULES OF INDEPENDENT TERTIARY EDUCATION NEW ZEALAND INCORPORATED**

**1. Name**

The name of the Association shall be Independent Tertiary Education New Zealand Incorporated (“the Association”).

**2. Objects**

The objects for which the Association is established are: -

- (i) To bring all private tertiary education providers together into one comprehensive association.
- (ii) To promote and foster the interests of all private tertiary education providers.
- (iii) To provide services to members of the Association.
- (iv) To maintain a strong network of consultation, within the Association and with others in areas of interest to the Association.
- (v) To represent the views of members.
- (vi) To stimulate, co-ordinate and support professionalism, growth and development within the Association.
- (vii) To use the funds of the Association to pay the costs and expenses of carrying out the objects of the Association including the employment of staff as required by the Board.
- (viii) To buy, lease, hire, grant any security interest in or otherwise dispose of any property, or to give guarantees, if necessary to enable the Association to carry out its business.
- (ix) To accept donations and gifts for the benefit of the Association and to establish streams of revenue in addition to membership subscriptions.
- (x) To do all such things as are in the opinion of the Board incidental or conducive to achieving the above objects, or to undertake any other activity which is not inconsistent with them.
- (xi) To promote the quality and professionalism of members’ programmes

The objects listed above are separate objects and are not to be interpreted so that any of them is subsidiary to, or limited by, any of the others.

All of the powers of the Association may be exercised by the Board, unless the Act or these Rules require them to be exercised by a General Meeting.

### **3. Registered Office**

The Registered Office shall be at such place in New Zealand as the Board may from time to time decide.

### **4. Common Seal**

- (a) The Common Seal of the Association shall be that adopted by the Board, who shall be responsible for it.
- (b) Whenever the Common Seal of the Association is used, it must be countersigned by any two members of the Board.

### **5. Alteration of Rules**

- (a) These Rules may be altered, added to or rescinded by a resolution passed by a Special Meeting.
- (b) The purpose of any proposed alteration to the Rules must be notified to members and must be adequately explained in the notification sent to members.
- (c) Duplicate copies of every such alteration or amendment to the Rules shall be delivered to the Registrar of Incorporated Societies in accordance with the provisions of the Act.

### **6. Notice**

Any notice required by these Rules will be considered properly delivered if it is sent to the last known address of the member to whom it is sent.

### **7. Membership**

- (a) Any PTE registered with NZQA under the Education Act or person working in the private tertiary education sector or any organisation with an interest in the private tertiary education sector may apply for membership of the Association, but the Board may grant or decline membership in its discretion.
- (b) There shall be four classes of membership; Full membership, Affiliate membership, Provisional membership and Corporate membership.
  - i) Full membership being an NZQA Registered private training establishment within the terms of the Education Act 1989.

1. A Full member is entitled to all the privileges of membership.
- ii) Affiliate membership being any person working in the private tertiary education sector or any organisation with an interest in the private tertiary education sector
    1. An Affiliate Member shall be entitled to attend and speak, but not vote, at meetings of members.
    2. An affiliate member shall not be entitled to be a member of the Board but may be co-opted to the Board under Rule 20(b)
  - iii) Provisional membership being any NZQA Registered private training establishment within the terms of the Education Act 1989 that has not yet achieved Category 3 status in the NZQA EER process.
    2. A Provisional Member shall be entitled to attend and speak, but not vote, at meetings of members.
    3. A Provisional member shall not be entitled to be a member of the Board.
  - iv) Corporate membership being any established corporation of two or more NZQA Registered private training establishments.
    4. A Corporate Member and any of its group shall be entitled to attend and speak at meetings of members.
    5. A Corporate member and any of its group shall be entitled to be a member of the Board.
- (c) An application for membership must be sent to the Board, and the Board will then consider the application.
  - (d) Every Full member must advise the Board within seven days of any action, which results in the member ceasing to be registered by NZQA.
  - (e) If a Full member ceases to be registered by NZQA, that member will also cease to be eligible for Full membership until such time as it re-acquires registration from NZQA, and reinstatement of its Full membership has been approved by the Board.
  - (f) If a Full member does not receive an NZQA EER rating of Category 3 or above that member will cease to be eligible for Full membership and will become a Provisional member until such time as it re-acquires an NZQA EER rating of Category 3 or above, and reinstatement of its Full membership has been approved by the Board.
  - (g) Membership of the Association shall be from 1 January to 31 December in each year. This membership is a rolling membership that will automatically renew each year unless the member gives one (1) calendar month's written notice to the Board that they do not want their membership to renew for the following year ('the Cancellation Notice'). For clarity, the

Cancellation Notice must be received by the Board on or before 30 November of the current year of membership in order to be effective.

- (h) Every application for membership shall be in writing in the form prescribed by the Board and shall also include signing any Code of Ethics. If the application is approved by the Board, the applicants name will be entered on the Register of Members, and the applicant must be advised of that not more than 10 working days from the date of approval.
- (i) If an application for membership is not approved by the Board, the applicant must be advised in writing of the Board's decision, within 10 working days from the date of that decision. The decision of the Board shall be final.

## **8. Members & the Rules**

- (a) All members shall be subject to these Rules, and any Code of Ethics of the Association, and must comply with them at all times.
- (b) Every member shall be entitled to a copy of the Rules and any Code of Ethics, free of charge.
- (c) The Board shall keep a Register of all members and may make the list of Members available on an Association Website.

## **9. Ceasing to be a Member**

- (a) Any member may resign from the Association by giving notice in writing to the Board.
- (b) The Board may cancel the membership of any member whose subscription is not paid.
- (c) Any member who fails to comply with the Rules, or any Code of Ethics of the Association, or who brings the Association into disrepute, may be suspended or removed from the Register of members by the Board.
- (d) Resignation, cancellation of membership or suspension under any of (a) – (c) does not release the relevant member from liability for any subscriptions or other amounts that have become due prior to that occurring.
- (e) Before the Board takes any action of the kinds referred to in (b) or (c), it must advise the relevant member of the potential action, and the relevant member shall have the right to make submissions to the Board before any decision is made by it. The decision of the Board shall then be conveyed to the member and shall be subject to appeal at the next General Meeting of the Association, at which the final decision shall be by majority vote.

- (f) Any decision by the Board under (b) or (c) is valid for all purposes until such time as it is reversed by a General Meeting of the Association.
- (g) Any member who has resigned or been removed or suspended pursuant to these Rules shall return to the Association any documents, papers, pamphlets, or other material which the member acquired as a result of membership of the Association.

**10. Member Representation**

- (a) A member may nominate any of its officers or employees as its representative to attend meetings of the Association and to exercise all voting and other rights vested in such member, including the right to stand for election to the Board or any other office.
- (b) Any such nomination must be in writing and delivered to the Board and may similarly be cancelled or replaced from time to time by the member making it.
- (c) Any member may invite any of its officers or employees to attend meetings or the Annual conference of the Association.

**11. Quality Commission Scheme.**

- (a) All members of the Association, other than Affiliate members, will also be members of the Quality Commission.
- (b) Any member who in accord with Rule 9 (a) resigns from the Association or has its membership terminated in accord with Rule 9 (c) will no longer be a member of the Quality Commission.
- (c) All members of the Quality Commission Scheme must comply with any decisions of the Quality Commission which relate to them.
- (d) Any Code of Practice or similar codes published by the Quality Commission are expected to be the benchmark for appropriate behaviour for members of the Association.

**12. Funds and Properties**

- (a) All assets of the Association shall be under the control of the Board, who shall have power to deal with them as the Board may think fit without reference to any General Meeting of the Association's members, except where a winding up of the Association is proposed.
- (b) In addition to the other powers vested in it by law or by these Rules, the Association has power to borrow or raise money from time to time with or without security, and otherwise as the Board thinks fit.

- (c) All legacies or gifts of money or other property may be dealt with by the Board as it thinks fit, unless given to the Association for a specific purpose, in which case the Board must use all reasonable endeavours to achieve that purpose.
- (d) The Association's funds may be invested in such manner as the Board determines.

### **13. Financial Year**

The financial year of the Association shall be from the 1<sup>st</sup> day of January in each year to the 31<sup>st</sup> day of December in the same year, or as may be determined by the Board from time to time.

### **14. Board and Officers**

- (a) The Board of the Association shall consist of up to nine persons who are either officers or employees of members of the Association, who shall be elected on a national or regional basis as determined by the Board from time to time.
- (b) Except where Rule 18 applies, each member of the Board shall be appointed by the membership of the Association, for a period of two years, from 1 October to 30 September in the second year following that in which they are elected. There shall be an election each year to fill the positions of the retiring members of the Board. Each retiring member is eligible to stand for re-election to the Board.
- (c) The Board may resolve to hold a postal ballot to determine the election of the Board.
  - No person shall be elected to the Board unless they have completed the appropriate nomination form in full.
  - The immediate past Chair may be invited by the Board to any meetings and shall be entitled to speak and to vote.
  - Any member of the Board who ceases to be either an officer or an employee of a member of the Association must resign from the Board.
  - An election for members of the Board shall be by ballot and every voter shall vote for no more than the number required to fill the vacancy.

### **15. Election of Officers**

- (a) At the first meeting of the Board following the AGM at which the newly elected Board members are present, the Board shall elect from its number a Chair and up to two Deputy Chairs, and a Secretary and Treasurer, all of whom shall hold office for one year.

**16. Chairperson**

At all meetings of the Board, the Chair, or if the Chair is absent, a Deputy Chair or another member of the Board, shall act as Chairperson. The Chairperson of the meeting shall have a deliberative vote and also a casting vote.

**17. Quorum**

Four elected members shall be a quorum at all meetings of the Board.

**18. Casual vacancies**

Any casual vacancy on the Board may be filled by the Board, and any person so appointed must meet the criteria for Board membership and shall hold office until 30 September in the year in which they are appointed.

**19. Resignation due to absences**

Any Board member absent for two successive meetings without good reason shall at the discretion of the Board cease to be a member of the Board.

**20. Delegation by Board**

The Board may –

- (a) appoint a Chief Executive Officer as set out in Rule 31; and /or
- (b) set up any sub-committee or co-opt an individual to exercise such powers as may be delegated to that sub-committee or person. Any powers delegated to any such sub-committee or person must be conferred by unanimous vote of the Board.

**21. Meetings of the Board**

Meetings of the Board may be held either at a predetermined destination notified to all members of the Board prior to the meeting, or by teleconference. All reasonable travelling and accommodation expenses incurred by members of the Board attending meetings of the Association and meetings of the Board shall be borne by the Association.

**22. Procedure of the Board**

The Board may regulate its own procedure in any respect which is not addressed by these Rules.

**23. Annual General Meeting**

The Annual General Meeting of the Association shall be held in conjunction with the annual conference of the Association or no later than the 1<sup>st</sup> day of December each year at a time and place determined by the Board for the following purposes: -

- (a) To receive from the Board a report on, and the financial statements for, the preceding financial year, and an annual plan and budget for the ensuing year.
- (b) To fix the annual subscription for the ensuing year.
- (c) To consider any other appropriate business.

Any other appropriate business under (c) must be submitted in writing and received by the Board at the Association's office no later than 28 (twenty-eight) days prior to the holding of the Annual General Meeting.

**24. Notice of Annual General Meetings**

The Association shall give the members at least 21 days' notice by mail, facsimile or email of the venue of, and business to be considered at, each Annual General Meeting.

**25. Special General Meetings**

Special General Meetings of the Association may be called at any time by the Board and must be called if one tenth of the Full members of the Association request such a meeting.

**26. Notice of Special General Meetings**

The Board shall give the members at least 21 days' notice by mail, facsimile or email, of the holding of any Special General Meeting. The notice shall specify the nature of the business to be discussed.

**27. General Meetings**

At all General Meetings, the Chair, or in his or her absence a Deputy Chair shall take the chair and if both are absent, a Chairperson shall be appointed from the members of the Board who are present at such meetings. The Chairperson for the time being of the meeting shall have a deliberative vote and also a casting vote.

**28. Votes at General Meetings**

Full members shall be entitled to vote at any General Meeting in accordance with Rule 29, if their subscription has been paid. A member may vote by their representatives under Rule 10(a) or by proxy. The quorum at any General Meeting shall be twenty members present by their duly appointed representatives or proxy. If a quorum is not present within half an hour of the time appointed for the commencement of the General Meeting, the meeting shall be adjourned. A further meeting will be called within 2 weeks and if a quorum is not present, those members that are present shall constitute a quorum.

### **29. Voting Classes of Members**

Voting shall be in accordance with the membership categories explained below, with membership category 1 having one vote, membership category 2 having two votes. Corporate members have the number of votes that the largest PTE in the group would have according to its EFTS and in addition one vote for each of the other PTEs in that group.

For the purposes of this Rule, the membership categories are:

- (a) Membership category 1 – PTEs whose number of students in the previous calendar year equated to less than 200 EFTS
- (b) Membership category 2 – PTEs whose number of students in the previous calendar year equated to 200 or more EFTS
- (c) Membership category 3 – PTEs with Corporate membership

### **30. Results of Resolutions**

The Chairperson of the meeting shall declare the results of each resolution and must ensure it is accurately noted in the minutes.

### **31. Chief Executive**

- (a) The Board may appoint a full-time or part-time Chief Executive, to be known as “The Chief Executive Officer” or such other title as the Board may approve.
- (b) Any such Chief Executive or other appointee shall be directly responsible to the Board for the efficient functioning of the Association’s administration, in accordance with the directions of the Board as conveyed by the Association Chair.
- (c) The Chief Executive shall perform the duties set out in their job description and such other duties and functions as may be reasonably required by the Board from time to time.
- (d) The Chief Executive shall be responsible for all funds of the Association and shall present a statement of the Association’s finances to all regular meetings of the Board.

### **32. Conferences**

The Board shall plan and organise an annual Conference to be held in conjunction with the Annual General Meeting. The Board may cancel any Annual Conference if there are insufficient registrations to justify holding it.

### **33. Annual Subscription**

The annual subscription payable by members shall be recommended by the Board to each Annual General Meeting and shall be fixed by resolution passed at the Annual General Meeting.

**34. Other Subscriptions and Levies**

Every member shall pay the annual subscription. In addition, the Board may levy a special subscription if considered necessary, which may be revoked at a Special General Meeting called for that purpose.

**35. Winding up**

The Association may be—

- (a) wound up by a resolution of members in accordance with section 24 of the Act; or
- (b) wound up by the High Court in accordance with section 25 of the Act; or
- (c) dissolved by the Registrar in accordance with section 28 of the Act.

If the Association is wound up in any of those ways, the surplus assets after payment of liabilities and the expenses of the winding up shall be transferred to a Society having objects similar to those of the Association and which shall where possible be selected by the Board at its last meeting or, if that is not possible, selected by the Liquidator of the Association having regard to the objectives of the Association.

**36. General**

If a dispute arises in respect of a matter which is not provided for in these Rules or in the interpretation of these Rules, or any other matter related to the Association, the Board's decision shall be conclusive and binding, unless it is revoked at a Special General Meeting called for that purpose which is held not later than the next Annual General Meeting.

**37. Interpretation**

In the interpretation of these Rules (unless the context requires a different construction):

“Act” refers to the Incorporated Societies Act 1908 as amended from time to time, and includes any Regulations made under that Act which are in force from time to time and also any legislation replacing that Act.

“Affiliate membership” is defined in Rule 7 (b), and “Affiliate member” has a corresponding meaning.

“Association” means Independent Tertiary Education New Zealand Incorporated.

“Board” means the Executive Board for the time being of the Association as constituted under Rule 14 of these Rules.

“Code of Ethics” refers to any Code of Ethics of the Association in force from time to time.

“Corporate membership” is defined in Rule 7 (b), and “Corporate member” has a corresponding meaning.

“Education Act” refers to the Education Act 1989 as amended from time to time, and includes any Regulations made under that Act which are in force from time to time and also any legislation replacing that Act.

“EFTS” is to be determined for the purposes of Rule 29 in the same manner as in the Ministry of Education’s Single Data Returns, and by reference to those returns. If at any time the Ministry of Education ceases to determine and record that information, then “EFTS” shall be determined in such manner as the Board considers to be a fair equivalent of the calculation of EFTS used by the Ministry in the above returns.

“Full membership” is defined in Rule 7 (b), and “Full member” has a corresponding meaning.

“NZQA” refers to the New Zealand Qualifications Authority, a body established by the Education Act, and if at any time the New Zealand Qualifications Authority (or any successor body) is disestablished, includes its successor.

“Prescribed” and “Recognised” shall mean as prescribed and recognised by the Board.

‘PTE’ means a Private Training Establishment of the kind referred to in section 159 of the Education Act.

“Provisional membership” is defined in Rule 7 (b), and “Provisional member” has a corresponding meaning.

“Quality Commission Scheme” refers to the unincorporated body named “Quality Commission Scheme”, which also comprises members of the Association but which is operated independently of the Association, as it exists from time to time.

“Special Resolution” means a resolution of members that is passed by—

- (a) 75% or more of Full members who are present at a General Meeting of the Association and who are entitled to vote; or
- (b) in the case of a postal vote, 75% or more of the Full members of the Association that have made a postal vote in respect of the relevant resolution.

Singular words include the plural number and vice versa, and a word of any gender includes the other gender and also the neuter.

Headings are used in these Rules only as a visual aide and are to be disregarded in interpreting the Rules to which they relate.