



## Constitution of the New Zealand Marketing Association Incorporated as of 2024\*

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### 1 PRELIMINARY

**1.1 Status of Rules:** These rules are in substitution for and to the exclusion of any and all previous rules of the Marketing Association.

### 2 INTERPRETATION

**2.1 Definition:** In these Rules and any regulations, unless the context otherwise requires:

"**the Act**" means the Incorporated Societies Act 2022;

"**the Marketing Association**" and "**MA**" means the New Zealand Marketing Association Incorporated

"**Board**" means the Board of Management of the Marketing Association

"**Board Member**" means member of the Board, including Chairperson

"**Chairperson**" means the chairperson of the Board as elected from time to time pursuant to Rule 10.2(a);

"**Chief Executive**" means the chief executive officer of the Marketing Association as appointed by the Board from time to time in accordance with Rule 12;

"**Codes of Practice**" means the Marketing Association's Codes of Practice in New Zealand to be adhered to by the Members as may be adopted or amended by the Board from time to time;

"**FRAC**" means the Finance Risk and Audit Committee of the Marketing Association.

"**Special Interest Group**" (SIG) may be a Council, Network, Forum or any ad hoc special interest group approved by the Board.

"**Member**" means a Member of the Marketing Association

"**National Office**" means the national office of the Marketing Association

"**Officer**" means any Board or FRAC member, CEO, CFO and COO.

"**Representative**" means any person duly authorised in terms of Rule 8.6(a) to represent and exercise all those rights available to a corporate member.

**2.2 No Definition:** Any expression not used in these rules but defined in the Act.

**2.3 Singular and Plural:** In these rules if not inconsistent with the context:

- (a) words importing the singular number shall include the plural and vice versa;
- (b) words importing one gender import all genders; and
- (c) words importing persons shall include corporations and firms, and "firm" includes partnership.

**2.4 Headings:** Headings shall not affect the interpretation of these Rules.

**2.5 Reference to Statutes:** Unless the context otherwise requires, references to a statute include amendments to that statute, a statute passed in substitution for that statute, and regulations passed under that statute or any of its amendments or under a statute passed in substitution for that statute.

### **3 NAME**

**3.1** The name of the Association is New Zealand Marketing Association Incorporated.

**3.2** The Association may also operate under a brand name descriptive of its Members and activities.

### **4 REGISTERED OFFICE**

**4.1** The registered office of the Marketing Association shall be situated at 69 St Georges Bay Road, Parnell, Auckland, or such other place as the Board may from time to time determine.

### **5 VISION AND STATEMENT OF PURPOSE**

**5.1** The Marketing Association is established to be New Zealand's premier marketing organisation, stimulating business success through best-practice marketing.

**5.2** The Association's purpose is to provide stimulus which encourages, develops and inspires the highest standards of Marketing in New Zealand.

### **6 OBJECTS**

**6.1 Objects:** The objects for which the Marketing Association is established are:

- (a) Education: To promote an environment in which users of marketing and their suppliers will develop the necessary marketing skills, and to help identify and seize opportunities which will enable their business to flourish.
- (b) Best Practice: To assist Members to understand the marketing needs and concerns of legislators, consumers and business customers, and to assist Members to respect and act on those needs and concerns.

- (c) Self-Regulation: To promote a self-regulatory environment with government, legislators and other stakeholders, and uphold the Codes of Practice adopted by the Marketing Association, and the Codes of Practice of the Advertising Standards Authority.
- (d) Operations: To establish the Marketing Association as the leading resource for assistance in understanding and applying new technologies in the practice of marketing, and ensure the Marketing Association itself is an advanced user of such new technologies.
- (e) Other: To do all other acts and things which are reasonably necessary or desirable to provide value to the Members.

## **7 POWERS**

**7.1 Powers:** For the purposes of carrying out the aforesaid objects the Board will have the following powers:

- (a) To purchase, sell, lease, take on lease, hire or otherwise acquire any real or personal property and any rights or privileges which the Board may think necessary or convenient.
- (b) To raise money by subscription, levies or otherwise and to grant any rights and privileges to subscribers and to such Members as may from time to time be deemed necessary.
- (c) To borrow or raise or secure the payment of money in such a manner as the Board may think fit and to mortgage, pledge and/or charge in any manner all or any of its property, rights, interests and assets.
- (d) To enter into any contracts, agreements or arrangements with any person, firm, syndicate, corporation or company which the Board may deem conducive to all or any of its objects.
- (e) To invest, lend or deal with the moneys of the Marketing Association not immediately required for carrying out its objects upon such securities and in such manner as may from time to time be determined by the Board.
- (f) To make, amend or rescind standards of practice by-laws, standing orders or regulations not inconsistent with these Rules pertaining to the carrying out of all or any of the objects of the Marketing Association, the discipline and control of its Members, the management of its affairs and the observance of its rules and regulations.
- (g) To publish, sell and distribute any form of printed material in order to promote the Marketing Association, its objects and services provided by it.
- (h) To use the funds of the Marketing Association as the Board considers necessary or proper in payment of the costs or expenses and furthermore carrying out the objects of the Marketing Association or any of them including the employment of solicitors, agents, officers and employees as shall appear necessary or expedient.
- (i) To subscribe to, become a member of, or co-operate with any other association whether incorporated or not whose objects are altogether or in part similar to those of the Marketing Association and to procure from and

communicate to such association such information as may be likely to forward the objects of the Marketing Association.

- (j) To do all such things as are incidental or conducive to the attainment of the above objects or any of them and promote any other activity not contrary to the objects.

## **8 MEMBERSHIP**

**8.1 Division into Regions:** The Marketing Association will be divided into such regions as the Board may resolve from time to time. From time to time the Board may set rules for the operation of the regions. At the date of adoption of these Rules there shall be the following regions:

- (a) Northern - comprising Members in those areas incorporating postal zones 0100 – 3999 or equivalent
- (b) Central - comprising Members in those areas incorporating postal zones 4000 - 6999 or equivalent
- (c) Southern - comprising Members in those areas incorporating postal zones 7000 – 9999 or equivalent

**8.2 Establishment of Special Interest Groups:** The Board shall have the power to set up special interest groups to cater for the specialist needs of the differing business types and segments within the Marketing Association.

**8.3 Eligibility:** Subject to rule 8.4, any organisation or person interested in marketing, and who supports the objects of the Marketing Association and adheres to the Codes of Practice as laid down from time to time, is eligible for membership.

**8.4 Application:** Application for membership shall be in writing on the official application form, and must be accompanied by the appropriate subscription.

**8.5 Membership Rights and Obligations:** Membership shall carry full rights of election to the Board, election as an officer, participation in Marketing Association matters, and (subject to the classifications of membership outlined at Rule 8.6) full rights of voting. It shall also carry rights of access to all specialised information PROVIDED THAT no Member or person associated with a Member shall derive any income, benefit or advantage from the Marketing Association where they can materially influence the payment of that income, benefit or advantage except where that income, benefit or advantage is derived from:

- (a) Professional services to the Marketing Association rendered in the course of business, charged at no greater rate than the current market rate;
- (b) Salary or wages earned by a Member as a paid employee of the Marketing Association;
- (c) The reimbursement by the Marketing Association to the Member of actual travel or other expenses incurred by that Member whilst carrying out the business of the Marketing Association; or
- (d) Interest on money lent at no greater rate than the current market rate

**8.6 Membership Categories:** Membership of the Marketing Association will be divided into the following categories (with voting rights as detailed), and the category for membership will be determined by the Chief Executive of the Marketing Association:

- (a) **Corporate Member:** Companies or organisations involved in marketing in their business activities. Each corporate member shall be entitled to one or more votes, according to its Membership Tier, as specified in the schedule of Membership Fees published from time to time. Each corporate Member shall appoint one person from its organisation as its principal contact with the Marketing Association, and nominate who in its organisation will exercise each of the organisation's votes.
- (b) **Individual Members:** Persons involved in marketing in their business or vocational activities. Membership benefits shall apply to that person only and not to any organisation to which that person is affiliated or in which they are employed. Each individual member is entitled to one vote.
- (c) **Life Member:** Any person who:
  - (i) has done meritorious work for the Association, and is nominated for Life Membership by the Board; and
  - (ii) is thereupon accepted for Life Membership by ordinary resolution of the Members at a subsequent General Meeting. Each Life Member will be entitled to one vote.
- (d) **Student Members:** Persons involved in full time tertiary study, who have an interest in developing a career as a professional marketer. Membership benefits shall apply to that person only and not to any organisation to which that person is affiliated or in which they are employed. Student members do not have voting rights.

**8.7 Subscriptions:** Each Member, except Life Members, will be liable to pay all fees, subscriptions and levies in the amounts as fixed by the Annual General Meeting from time to time. The Board will present recommendations for the yearly subscriptions for approval by the Members at the Annual General Meeting of the Marketing Association.

**8.8 Variations in Subscriptions:** The Board shall have the power to alter subscriptions by up to a maximum of 5% annually, taking into consideration overall price indexing, without the necessity to seek the approval of members.

**8.9 Variation in Membership Tiers:** The MA shall have the power to adjust a Member's annual subscription, based on variations to the membership tier into which they fit.

**1.1 Register of Members:** The Chief Executive shall keep a register of Members at the registered office of the Marketing Association. Members shall immediately notify the Chief Executive in writing of any change in name or address. The Register must record the full name, address, occupation and category of membership of each member, the date of membership and all subsequent changes. In maintaining the Register, the Chief Executive will ensure that the information is treated in the strictest confidence and that the provisions of the Privacy Act 2020 are complied with at all times.

## **9 CESSATION OF MEMBERSHIP**

**9.1 Membership of the Marketing Association:** Membership of the Marketing Association will continue until:

- (a) a change occurs in the ownership or effective control of a Member whether by sale, amalgamation, liquidation, takeover or merger. In such an event, notice in writing must be forwarded to the National Office within twenty-one (21) days. The Chief Executive will have the discretion whether to grant a transferral of Membership or to terminate Membership and require a new Membership application to be filed along with the appropriate fee; or
- (b) a Member is more than ninety days in arrears with their subscription and fails to pay such outstanding subscription within 10 days of the date of having received a notice in writing from the Marketing Association to pay the outstanding subscription. Notwithstanding such removal, such Member will remain liable for the outstanding subscription payable to the Marketing Association.

**9.2 Power to reprimand, suspend or expel a Member :** The Board may, by majority resolution, reprimand, suspend or expel a Member if the Member has been guilty of such misconduct as is calculated, in the opinion of the Board, to affect prejudicially the well-being or reputation of the Marketing Association, the Objects or Rules of the Marketing Association, or those engaged in marketing, providing that the procedures outlined in clause 25 of this Constitution have been followed.

**9.3 Resignation:** Any Member may resign from the Marketing Association by giving twenty-one (21) days' notice in writing to the National Office and paying with such notice all unpaid subscriptions that may be due, and at the end of such period of notice they shall cease to be a Member.

**9.4 Notice period:** Members shall abide by the rules and regulations of the Marketing Association during any period of notice of resignation or expulsion.

**9.5 Return of Documents:** Any Member or Representative of a Member who has resigned or been removed pursuant to these Rules shall return to the Chief Executive any documents, papers, pamphlets or other materials the Member may have acquired as a right or privilege of Membership of the Marketing Association and also any property belonging to the Marketing Association.

## **10 BOARD AND OFFICERS**

**10.1 Business conducted by the Board:** The overall governance and strategic direction of the Marketing Association will be conducted by the National Board. The Board will:

- (a) Act in good faith and in the best interests of the Association
- (b) Exercise powers for proper purposes only
- (c) Comply with the Incorporated Societies Act 2022 and the constitution
- (d) Exercise reasonable care and diligence
- (e) Not create a substantial risk of serious loss to creditors
- (f) Not incur an obligation the Board or officer doesn't reasonably believe the Association can perform.

**10.2 Board composition:** The Board shall comprise the following Officers:

- (a) The Board Chair, appointed by application to the Board; such appointment to be presented to the Association Members at a General Meeting for approval
- (b) At least three (3) and up to four (4) elected members, elected by the majority of votes cast by Association Members at the Annual General Meeting of the Association. Provided that members shall make up the majority of Board members.
- (c) At least three (3) and up to four (4) Appointed Officers, selected by the Board; such appointments to be presented to the Association Members at a General Meeting for approval. Provided that members shall make up the majority of Board members.
- (d) The Chief Executive

**10.3 Nomination of candidates for election:** Each candidate for election to the Board must be a Member, or employed by a Member organisation, and must be nominated in writing by two (2) Members. Such nomination must be received by the National Office at least twenty one (21) days before the date of the Annual General Meeting, and must be signed by the proposer, the seconder and the candidate.

**10.4 Approval of candidates for election:** The Board (or its appointed subcommittee) will assess the nominations for appointment or election of Board Officers and will approve suitable candidates for presentation to the Members for voting. Such approval shall not be unreasonably withheld but shall preclude a person who is:

- An undischarged bankrupt
- Prohibited from being a director or promoter of a company
- Disqualified from being an officer of a charitable or not for profit entity
- Convicted and sentenced for a crime within the last 7 years
- Subject to a banning order
- Under 16 years of age

**10.5 Tied vote:** In the event that there is a tie in the voting for the election of Elected Members, the successful candidate shall be determined by the toss of a coin.

**10.6 Candidates for Appointment:** The Chair and Appointed Officers will be selected from suitably qualified candidates who submit an application for consideration by the Board, subject to the requirement that the Chair must be a Member or employed by a Member organisation.

**10.7 Term of Appointment to the National Board:** All Officers of the Board shall be elected for a three (3) year term and will continue in office until the Annual General Meeting of the Marketing Association three years after their election or appointment.

**10.8 Board continuity:** Notwithstanding the Term of Appointment specified in clause 10.7, the National Board will make available for election at least one (1) of the Elected Officer positions at each Annual General Meeting. Where there is no Elected Officer's term expiring at the Annual General Meeting, the Board shall reach agreement on which Elected Officer is to stand down.

**10.9 Subsequent terms of office:** All Officers (elected or appointed) of the Board

may stand for a further term of office on the National Board, subject to the provision that the Chair may hold the position for no more than three (3) consecutive terms of office.

**10.10 Resignation:** Any Officer of the Board may resign from office by notice in writing addressed to the Board Chair.

**10.11 Casual vacancies:** Any casual vacancy on the National Board may be filled by the appointment of a replacement for the balance of the period until the next Annual General Meeting, at which time the position will be filled in the usual way.

**10.12 Board remuneration:**

- a) In general no Board position will be remunerated, apart from consideration of travel costs for the Board members located outside of Auckland.
- b) The Chair may be eligible to receive an honorarium in recognition for their contribution and time required to perform in their Chairperson role.
- c) Any honorarium will be submitted for approval at the AGM and will be reviewed every two years.



## **11 OPERATION OF THE NATIONAL BOARD**

**11.1 Meetings of the Board:** Meetings of the Board shall be held a minimum of eight (8) times per year. The Board Meeting schedule will be set at least six months in advance.

**11.2 Chairmanship:** The Board Meetings shall be presided over by the Chairman, or in the absence of the Chairman, by a Deputy Chairman, whom the Board shall elect from amongst their numbers at the first Board meeting of each term of office.

**11.3 Quorum:** The quorum for a meeting of the Board shall be five (5) members of the Board, provided that the quorum present includes at least one of either the CEO or the Chairman.

**11.4 Voting / decision-making:** Voting at meetings of the Board shall be on the basis of one person one vote, with decisions being made by way of a simple majority. In the case of a tie, the Board Chair shall have a casting vote in addition to their deliberative vote.

**11.5 Resolution in writing:** A resolution in writing, signed by all members of the Board for the time being will be as effective and binding as if it had been passed at a duly convened meeting of the Board. Any such resolution may consist of several documents in like form, each signed by one or more members of the Board. An electronic reproduction of any such document signed by members of the Board will be conclusive evidence of such resolution having been signed.

**11.6 Minutes:** Minutes shall be kept of the proceedings of the meetings of the Board. All such minutes shall be placed before the next Board meeting for confirmation, and entered into the Minutes Book available to Members on request.

**11.7 Power to delegate:** The Board shall delegate the day-to-day operational management of the Association to the Chief Executive. The Board may further delegate any of its powers to sub-committees consisting of such Officers and other persons as it sees fit. In the exercise of the power so delegated, any such subcommittee shall conform to any requirements of the Board.

**11.8 Special Board meetings:** Any three (3) Officers of the Board may direct the calling of a meeting of the Board by request in writing to the Chief Executive, stating the purpose of the meeting. At least seven (7) days' notice in writing shall be given to each Board member in respect of such meeting.

## **12 CHIEF EXECUTIVE**

**12.1 Appointment:** The Chief Executive will be appointed by, and be responsible to, the Board, and will report directly to the Chairperson, on such terms and conditions as the Board shall determine.

**12.2 Function:** The Chief Executive will operate and manage the Marketing Association within the parameters approved by the Board, and such other instructions and directions provided by the Board from time to time.

## **13 REGIONAL AND SPECIAL INTEREST GROUP (SIG) COMMITTEES AND OFFICERS**

**13.1 Regional and SIG Committees:** Each Region and SIG will be administered by a committee. Regional committee members will be elected or appointed. SIG committee members will be appointed as required.

**13.2 Eligibility for Election:** Each candidate for election or appointment to a Regional committee must be an Individual Member or employed by a member organisation and must be nominated in writing by two (2) Members. Such nomination must be received in the National Office at least twenty-one (21) days before the date of the Annual General Meeting and must be signed by the proposer, seconder and the candidate.

**13.3 Elections:** Members shall elect Regional committees at an Annual General Meeting of the Marketing Association.

**13.4 Composition of Regional Committees:** The Regional Committees shall be comprised of:

- (a) A chairperson
- (b) Up to eight (8) other Members
- (c) In the event that insufficient Members are nominated to form a Regional committee, additional nominations may be called for from the floor at the Annual General Meeting. Should there still be insufficient members to form the committee, the Regional Chairperson shall have the power to co-opt Members, whose term shall terminate at the date of the following Annual General Meeting.
- (d) No more than one representative of a Member company may serve on any one of the Regional and SIG Committees.
- (e) Tied Vote: In the event that there is a tie for the final vacancy on a Regional committee, an exception to the committee's composition specified in Clause 13.4(b) shall be made and both members shall be deemed to have been elected.

**13.5 Proceedings of the Regional and SIG Committees:** Proceedings of the Regional and SIG committees will be governed by the same requirements outlined in these Rules as governing meetings of the Board.

**13.6 Term of Appointment to a Regional Committee:** Once elected or appointed, the officers of the Regional Committee will continue in office for a two-year term, at which time each may offer himself or herself for reappointment.

## **14 MEETINGS OF THE MARKETING ASSOCIATION**

**14.1 Annual General Meeting of the Marketing Association:** The Annual General Meeting will be held every 12 months, no later than three (3) months after the end of the financial year, on a date and at a time and place to be designated by the Board, and for the following purposes:

- (a) To receive from the Board a report and audited financial statements for the

preceding financial year of the Marketing Association.

- (b) To elect and / or approve the appointment of a Chairperson and members of the Board as specified in Clause 10;
- (c) To elect Regional Chairpersons and members of each Regional Committee as specified in Clauses 13.1 - 13.6.
- (d) To consider and conduct such other business as may properly be brought forward.

**14.2 Special Business:** All business other than that set out in Rule 14.1 shall be deemed to be special business, notice of which must be given to Members of the Marketing Association in the notice calling the meeting.

**14.3 Proposals:** Members must submit to the Chief Executive all proposals or items they wish to have considered at the Annual General Meeting at least 21 days before the date fixed for the Annual General Meeting.

**14.4 Notice of Meetings:** The Chief Executive will send out to all Members, at least 28 days prior to the date fixed for the Annual General Meeting, a notice giving details of the date, time and place of the Annual General Meeting. The accidental omission to give notice of a meeting or the non-receipt of notice of a meeting by any Member entitled to receive notice shall not invalidate the proceedings at that meeting.

**14.5** The Chief Executive will send to all members at least 14 days prior to the date fixed for the Annual General Meeting a formal notice of all business to be transacted.

## **15 SPECIAL GENERAL MEETINGS**

**15.1 Special General Meeting:** At any time the Board may call a Special General Meeting of the Marketing Association and shall do so on a requisition in writing by not less than ten (10) Members of the Marketing Association stating the purpose for which the Special General Meeting is required.

**15.2 Notice:** The Chief Executive will send out to all Members, at least 14 days prior to the date fixed for the Special General Meeting, a notice giving details of the date, time and place of the Special General Meeting and such notice shall specify the nature of the business to be transacted at the meeting and no other business than that specified shall be transacted. The accidental omission to give notice of a meeting or the non-receipt of notice of a meeting by any Member entitled to receive notice shall not invalidate the proceedings at that meeting.

## **16 PROCEEDINGS AT MEETINGS**

**16.1 Voting:** Only Members who have paid all fees, subscriptions and levies payable will be entitled to vote in person or virtually (electronic via the internet) at any meeting. Members will have the number of votes attached to the class of membership (as detailed at Rule 8.6) to be exercised either personally, or in the case of a corporate member, by its Representative.

**16.2 Postal/Electronic Voting:** Members shall be entitled to cast their vote at an Annual General Meeting or Special General Meeting by way of a postal or electronically transmitted vote. An electronically transmitted vote will be in a form approved by the Board from time to time, and may include (without limitation) voting by facsimile, email or voice recognition devices. Such votes must be received at the registered office of

the Marketing Association at least 4 hours prior to the commencement of the meeting.

**16.3 Proxies:** Any Member entitled to vote but unable to attend any meeting shall be permitted to appoint a proxy to represent that Member at any time prior to the commencement of the meeting. Such appointment must be presented at the commencement of the meeting, and must be in writing and contain the name and address of the proxy, the name and address of the Member represented, and be signed by that Member.

**16.4 Method of Voting:** Motions put to the meeting shall be deemed to be carried if the majority of Members present in person or by proxy or Representative, or voting by postal or electronic means, vote in favour of the motion (PROVIDED THAT) voting may be by secret ballot where any five (5) Members demand a ballot. For the avoidance of doubt any Representative or proxy of a Member may join in the call for a ballot. For such a ballot, voting papers shall be supplied to the Members.

**16.5 Evidence:** Unless a ballot is demanded, a declaration by the Chairperson that a resolution has been carried unanimously or by a certain majority or lost, and an entry to that effect made in the Marketing Association's minute book, shall be the conclusive evidence of the fact without proof of the number or proportion of the vote recorded in favour of or against the resolution. In the case of an equality of votes, either on a show of hands or on a ballot, the Chairperson shall have a casting vote in addition to their deliberative vote.

**16.6 Quorum:** The quorum for an Annual General Meeting or Special General Meeting shall be twenty (20) Members entitled to vote. These members must be present in person, virtually (electronically via the internet), or by proxy or Representative or have cast their vote in an approved manner prior to the meeting. No business shall be transacted at any meeting of the Marketing Association unless a quorum is present. If within half an hour of the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned until the same day and time in the following week, at which time those Members present will constitute a quorum.

**16.7 Chairperson:** The Chairperson, and failing him/her the Deputy Chairperson, shall be the Chairperson at Annual or Special General Meetings of the Marketing Association. In the absence of both, the Members present shall elect one of their number as Chairperson.

**16.8 Minutes:** Minutes of such meetings shall be recorded in a proper manner. Such minutes shall be available to the Members on request.

## **17 FINANCIAL YEAR**

**17.1 Financial year:** Unless and until the Marketing Association resolves otherwise, its financial year shall end on 31 December in each year.

## **18 PROPERTY AND FUNDS**

**18.1 Property and Funds:** The property and funds of the Marketing Association shall be applied solely towards the promotion of the objects of the MA, and in such a manner and such amounts as the Board shall from time to time resolve. All moneys received by or on behalf of the Marketing Association, including Branch moneys, shall be paid into bank accounts with such Bank as the Board shall appoint from time to time.

**18.2 Financial statements:** All income and expenditure of the Marketing Association shall be authorised by the Chief Executive who shall be responsible for providing the Annual General Meeting with audited financial statements.

**18.3 Taxation returns:** The Chief Executive shall be responsible for filing all Goods and Services Tax returns, and other required returns with the Inland Revenue Department and the keeping of all records required.

## **19 PERSONAL BENEFIT**

**19.1 Personal benefit:** Any income, benefit or advantage shall be applied to the objectives of the organisation. No member of the organisation or any person associated with a member, shall participate in, or materially influence any decision made by the organisation, in respect of the payment to or on behalf of that member or associated person of any income, benefit or advantage whatsoever. Any such income shall be reasonable and relative to that which would be paid in an arm's length transaction (being open market value). The provisions and effect of this clause shall not be removed from this document, and shall be included and implied to any document replacing this document.

## **20 ALTERATION TO RULES**

**20.1 Procedure for amendments:** Subject to Rule 19.1, these Rules may be altered, added to or rescinded at any Annual General Meeting or Special General Meeting provided that:

- (a) Notice of the proposed alterations or additions to, or rescission of the Rules are advised to the National Office of the Marketing Association by any Member not less than 21 days prior to the Annual or Special General Meeting. Such notice must be moved and seconded by Members of the Marketing Association.
- (b) Notice of the proposed alterations or additions to or rescission of the Rules or any of them shall be despatched to each Member at least fourteen (14) days Prior to the date of the meeting at which such alterations, additions or rescission is to be considered.
- (c) The meeting may amend any such proposals.
- (d) No resolution at any such meeting shall affect any alteration in, or addition to, or rescission of, the Rules or any of them unless it is carried by a motion of at least two-thirds of the total votes cast for (and against) such resolution.

**20.2 Limitation:** No addition to or alteration of the non-profit aims, personal benefit clause or the winding up clause shall be made which affect the tax exempt status. The provisions and effect of this clause shall not be removed from this document and shall be included and implied to any document replacing this document.

## **21 AUDITOR**

**21.1 Auditor:** At each Annual General Meeting the Marketing Association shall appoint an auditor for the ensuing year who shall audit the MA's accounts for such year.

## **22 REGULATIONS**

**22.1 Power of General Meeting:** The Marketing Association may enact through its Annual General Meeting or any Special General Meeting such regulations as shall be deemed necessary for the application of these Rules and the general administration of the Marketing Association.

**22.2 Board Power to Legislate:** In the event of any matters arising not covered by these Rules it shall be competent for the Board to legislate for the matter.

## **23 DISCRETION OF THE BOARD**

**23.1 Discretion of Board:** Any matters not specifically covered in these Rules shall be considered and acted upon by the Board at its discretion.

## **24 DISCIPLINARY ACTIONS**

**24.1 By Chairperson:** The Chairperson of the Board, with the consent of the Board or of the Annual General Meeting, may take disciplinary action against any person who is a Member of the Marketing Association for any action or matter whatsoever which is considered to be or is likely to be prejudicial to the objects or Rules of the MA, or those engaged in Marketing.

**24.2 Form of Disciplinary Action:** No disciplinary action shall be taken against any Member without the Member concerned being given the opportunity to be heard on the subject of any alleged misconduct at a meeting of the Board. Disciplinary action may (without limitation of the rights of the Marketing association against a member at law) take the form of fines, suspension or expulsion from the MA. The procedures of the Complaints and Disputes system will be followed as outlined in Clause 25.

**24.3 Advertising Standards Complaints Board:** In the event that a complaint is lodged with the Advertising Standards Complaints Board (ASCB) relating to advertising by a Marketing Association Member, the Member concerned must abide by the ruling of the ASCB.

## **25 COMPLAINTS and DISPUTES**

### **25.1 Member or officer may make a complaint**

- 1) A member or an officer may make a complaint by giving to the Board (or a complaints subcommittee) a notice in writing that—
  - (a) states that the member or officer is starting a procedure for resolving a dispute in accordance with the Association's Constitution; and
  - (b) sets out the allegation to which the dispute relates and whom the allegation is against; and
  - (c) sets out any other information reasonably required by the Association.
- 2) The Association may make a complaint involving an allegation against a member or an officer by giving to the member or officer a notice in writing that—

- (a) states that the Association is starting a procedure for resolving a dispute in accordance with its Constitution; and
  - (b) sets out the allegation to which the dispute relates.
- 3) The information given under subclause (1)(b) or (2)(b) must be enough to ensure that a person against whom an allegation is made is fairly advised of the allegation concerning them, with sufficient details given to enable them to prepare a response.
- 4) A complaint may be made in any other reasonable manner permitted by the Association's constitution.

## **25.2 Person who makes complaint has right to be heard**

A member or an officer who makes a complaint has a right to be heard before the complaint is resolved or any outcome is determined.

1. If the Association makes a complaint, —
  - (a) the Association has a right to be heard before the complaint is resolved or any outcome is determined; and
  - (b) an officer may exercise that right on behalf of the Association.
2. Without limiting the manner in which the member, officer, or Association may be given the right to be heard, they must be taken to have been given the right if—
  - (a) they have a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
  - (b) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
  - (c) an oral hearing (if any) is held before the decision maker; and
  - (d) the member's, officer's, or Association's written statement or submissions (if any) are considered by the decision maker.

## **25.3 Person who is subject of complaint has right to be heard**

This clause applies if a complaint involves an allegation that a member, an officer, or the Association (the respondent)— has engaged in misconduct; or

- (a) has breached, or is likely to breach, a duty under the Association's constitution or bylaws or the Incorporated Societies Act; or
  - (b) has damaged the rights or interests of a member or the rights or interests of members generally.
1. The respondent has a right to be heard before the complaint is resolved or any outcome is determined.
  2. If the respondent is the Association, an officer may exercise the right on behalf of the Association.
  3. Without limiting the manner in which a respondent may be given a right to be heard, a respondent must be taken to have been given the right if—
    - (a) The respondent is fairly advised of all allegations concerning the respondent, with sufficient details and time given to enable the respondent to prepare a response; and
    - (b) The respondent has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
    - (c) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
    - (d) an oral hearing (if any) is held before the decision maker; and
    - (e) the respondent's written statement or submissions (if any) are

considered by the decision maker.

#### **25.4 Investigating and determining a dispute**

1. The Association must, as soon as is reasonably practicable after receiving or becoming aware of a complaint made in accordance with its constitution, ensure that the dispute is investigated and determined.
2. Disputes must be dealt with under the constitution in a fair, efficient, and effective manner, following the principles of natural justice.

#### **25.5 Association may decide not to proceed further with complaint**

The Association may decide not to proceed further with a complaint if—  
the complaint is trivial; or

- (a) the complaint does not appear to disclose or involve any allegation of the following kind:
  - (i) that a member or an officer has engaged in material misconduct;
  - (ii) that a member, an officer, or the society has materially breached, or is likely to materially breach, a duty under the society's constitution or bylaws or this Act;
  - (iii) that a member's rights or interests or members' rights or interests generally have been materially damaged;
- (b) the complaint appears to be without foundation or there is no apparent evidence to support it; or
- (c) the person who makes the complaint has an insignificant interest in the matter; or
- (d) the conduct, incident, event, or issue giving rise to the complaint has already been investigated and dealt with under the constitution; or
- (e) there has been an undue delay in making the complaint.

#### **25.6 Association may refer complaint**

The Association may refer a complaint to—

- (a) a subcommittee or an external person to investigate and report; or
  - (b) a subcommittee, an arbitral tribunal, or an external person to investigate and make a decision.
1. The Association may, with the consent of all parties to a complaint, refer the complaint to any type of consensual dispute resolution (for example, mediation, facilitation, or a tikanga-based practice).

#### **25.7 Decision makers**

A person may not act as a decision maker in relation to a complaint if 2 or more members of the Board or a complaints subcommittee consider that there are reasonable grounds to believe that the person may not be—

- (a) impartial; or
- (b) able to consider the matter without a predetermined view.

### **26 COMMON SEAL**

**26.1 Common Seal:** The Marketing Association shall have a Common Seal which shall be kept in the custody of the Chief Executive and shall not be affixed to any document or instrument except pursuant to a resolution of the Board and in the presence of the Chief Executive and at least one member of the Board, and the Chief Executive and that Board member shall sign any deed or instrument to which the Seal is affixed.

### **27 VOLUNTARY WINDING UP: DISPOSITION OF PROPERTY**



**27.1 Winding up:** The Marketing Association may be wound up voluntarily if the Marketing Association at an Annual General Meeting or Special General Meeting of its Members passes a resolution requiring the Marketing Association so to be wound up and appointing a liquidator, and the resolution is confirmed at a subsequent Annual General Meeting or Special General Meeting called together for that purpose and held not earlier than thirty (30) days after the date on which the resolution so to be confirmed was passed. Only a simple majority is required to pass and confirm a resolution to wind up.

**27.2 Distribution of surplus assets:** If upon winding up or dissolution of the Marketing Association there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid over to or distributed amongst the Members of the Marketing Association but shall be given or transferred to some other not for profit organisation having objects similar to the objects of the Marketing Association. Such distribution must be approved at the meeting called for the purpose of winding up the Marketing Association.

## **28 INDEMNITY**

**28.1 Indemnity:** The Marketing Association will indemnify the members of the Board and Committees, whether past, present or future for actions taken by any such members in good faith and within the rules of the Marketing Association in the course of furthering the objects and interests of the Marketing Association. This indemnity is given in consideration for the members of the Board and committees making themselves available to conduct the work of the Marketing Association.

**28.2 Conduct of action:** The Marketing Association reserves the right to take over the conduct of any claim or litigation if it considers this appropriate.

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