

## NZKGI Constitution Review 2024 – Overview of Proposed Changes for 2024 AGM

Proposed change	Rule Reference	Notes
<b>Changes required by new Incorporated Societies Act or consequent on those changes</b>		
Act references updated	Throughout	Required in the new Act.
'Rules' changed to 'Constitution'	Throughout	Required in the new Act.
Insert clause to provide when new Constitution comes into effect	Rule 2	The new Constitution will take effect as the rules of NZKGI from the first 1 April that occurs after the date on which it is registered by the Registrar of Incorporated Societies, unless the Constitution is registered on or after 1 April 2026, in which case it will take effect on the day it is registered. This timing is designed to ease the transition to the new financial year dates (see below) while still ensuring the new Constitution is in place by 5 April 2026, as required under the new Act.
Insert statement that NZKGI will not operate for the purposes of the financial gain of its Members	Rule 3.2	The Constitution is required by the new Act to include a clear statement that it does not operate for the financial gain of its Members.
Consent to becoming a member added	Rule 5.2(a), (d), (e) and (k)	The new Act requires consent of new members to become a member to be obtained and retained by NZKGI. This is the case even where a Grower becomes a member by paying a levy. A consent process is being discussed with Zespri.
Clarifying the process for approval of applications for membership	Rule 5.2(a)(ii) and 5.2(b)	The new Act requires the Constitution to specify circumstances in which persons become Members. As a result, the wording in Rule 5.2(a)(ii) is clarified to more fully describe the Executive Committee's approval under the alternative membership path – firstly in relation to an approved application form, and secondly in relation to approving an application itself. Rule 5.2(b) has been added which will allow the Executive Committee to set the criteria and fees for the alternative membership path.
Clarifying the situations for refusing applications for membership	Rule 5.2(c)	For the same reason as above, rule 5.2(c) clarified to specify the situations in which the Executive Committee may refuse an application for membership (whether a Levy payer or otherwise) on any of the bases which would cause an existing Member's membership to cease.

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Clarifying the situations for cessation of membership	Rule 5.3(b) and 5.3(c)	The new Act requires the Constitution to specify circumstances in which persons cease to be Members. Rule 5.3(b) has been added to more specifically describe and separate out the ways in which membership may cease. Rules 5.3(b)(i), (ii) and (iii) have been added to link to Rules 5.2(a)(i) and (ii). Rule 5.3(c) has been added and clarifies that where membership ceases because it has been more than 12 months since Levy payment, a Grower may return to membership on payment of another Levy.
Clarifying the process for dealing with breach by a Forum Member	Rule 6.17	Rule 6.17 clarifies that the existing process for dealing with breach by a Forum Member sits outside the dispute resolution process (which would otherwise be required by the new Act).
Clarification re Executive Committee composition	Rule 8.1	The new Act requires that a majority of the officers on a society's committee (Executive Committee) must be either members of the society or representatives of a group of members. This is now stated.
Changes re minutes of Executive Committee meetings	Rule 8.8 Rule 10.5(k)	The Constitution is required to clearly state when minutes are to be recorded and how they can be requested. This is now provided for.
Changes re AGM timing and filing of financial statements	Rule 9 Rule 10	The new Act introduces a requirement that an AGM be held within six months of a society's balance date, as well as requirements for the timing of filing financial statements. This is now provided for.
Additional requirements re finances	Rule 12	The Constitution has been updated to include more detail about the methods for control and management of NZKGI's finances as required by the new Act, including that accounting records will be retained for the period required under the new Act and that annual returns must be filed annually. Changes reflect NZKGI's current practices.
Conflict of interest rules	Rule 16 Clause 7 of Schedule 2	Rule 18 has been redrafted to align with the requirements of the new Act. In particular, the Officer conflict of interest provisions have been separated from the Member conflict of interest provisions. Clause 7 in Schedule 2 has also been retained. A general commercial benefit from being in the industry, shared with other Members, will not be a conflict of

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		interest. There are also new rules added to deal with the situation where more than 50% of the Executive Committee or the Forum cannot vote on a matter due to a conflict of interest.
Dispute resolution procedures	Rule 18	The new disputes procedures reflect the natural justice requirements of the new Act.
Contact person added	Rule 19.2 and 19.3	The new Act requires every society to have at least one and up to three contact person(s) who will be the Registrar's point of contact. The Officer Manager is listed as the contact person for NZKGI.
Requirement for register of Members	Rule 19.4	The new Act requires societies to keep a Register of Members.
New provision re access to information	Rule 19.6	The new Act allows Members to make a written request for information about NZKGI. The Constitution details procedural requirements for these requests, where the costs fall, and how the society may respond.
Provision for giving of indemnity and providing insurance	Rule 20	Under the new Act, if a Society wishes to be able to provide an indemnity to its Officers (e.g. the Executive Committee members) and maintain insurance, this needs to be provided for in the Constitution. Rule 20 enables this. The Executive Committee will still need to decide whether to provide an indemnity and maintain insurance.
Changes to winding up processes	Rule 21	The amended rule refers to the processes under the new act, as required by that Act.
Limitation on distribution of surplus funds	Rule 22	The new Act requires a statement that if a society is liquidated or removed from the register: <ul style="list-style-type: none"> <li>a. no distribution will be made to any Member; and</li> <li>b. any surplus funds to be distributed to a not-for-profit entity (which is a defined term in the new Act).</li> </ul> The Constitution has been updated so that any surplus funds will be distributed to "another not-for-profit entity or entities...with similar purposes to NZKGI who may use that property for the benefit of Kiwifruit Growers".
Common seal clause removed	N/A	This is no longer required under the new Act and has been removed.
Consequential changes related to above	Various clauses	Carious consequential changes related to above, including minor wording changes, clause re-numbering and clause cross-referencing. This has included removing clauses from Schedule 1 relating to the

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		transition to changes made to that Schedule in 2022, as that transition has now occurred and those provisions are no longer necessary.
<b>New Balance date for annual accounts</b>		
New Balance Date	Rule 9 Rule 10.1 Rule 12	The balance date is proposed to move from 31 December to 31 March upon successfully re-registering the amended Rules. The reason for this is that under the new Incorporated Societies Act 2022, the AGM must be within six months of the balance date and we wish to keep our AGM in August in line with current practice.
<b>Provision for Co-opted Executive Committee Members</b>		
Power to appoint co-opted Executive Committee members	New rule 8.4	A new rule has been added to allow the Executive Committee to appoint co-opted committee members. The purpose will be to give board experience and develop new talent. Co-opted Executive Committee members will still need to come from the Forum. They will have full voting rights. Definition of "Co-opted Executive Committee Member" has been added.
<b>Other substantive changes to the NZKGI Rules</b>		
Requirement to update appointment of Supply Entity representatives	Rule 6.8	Rule 6.8 has been added to require that every three years, to coincide with the election of Regional Representative Forum members, the Executive Committee will ask Supply Entities to confirm the appointment of their representatives under Rule 6. This will ensure the requirements of Rule 6.7 are checked.
Additional reporting obligations on NZKGI	Rule 12.8 Rule 12.9	New rules to provide: <ul style="list-style-type: none"> <li>• for NZKGI to provide an annual report to Members summarising the activities undertaken by NZKGI in furtherance of its objects; and</li> <li>• for NZKGI to consult Members annually on its plans. This will probably take the form of regional forums.</li> </ul>
<b>Other tidy-up changes to the NZKGI Rules</b>		
Minor wording and format changes for consistency, conciseness and clearer meaning of clauses	Various (but see Rules 8.6(j))	These changes improve the clarity of the Constitution and will make it easier to understand.
Definitions added/changed	Definitions section	<ul style="list-style-type: none"> <li>• Forum Representative</li> <li>• Office Manager</li> <li>• Objects</li> <li>• Officer</li> </ul>

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		<ul style="list-style-type: none"> <li>Representative of Member Definitions moved to the back of the document for ease of reference.</li> </ul> <p>The Conflicts of Interest Policy is limited to employees and contractors and does not apply to the Grower Forum and Executive Committee Members (who will be covered by the new conflict of interest provisions). The Conflict of Interest Policy has been labelled a bylaw for the purposes of the Act.</p>
Form of entity and gender neutral wording	Throughout	Form of entity and gender neutral language is now used throughout the document in accordance with best practice drafting.
Aim section removed	N/A	On legal advice, the Aim section removed from the Constitution as it creates confusion about the application of the Objects, and obscures what is NZKGI's real purpose – looking after the interests of Growers. Legal advice is that removal of the Aim section will have no effect on NZKGI's operation.
Registered office clause moved	Rule 19	This has been moved to sit with the provisions relating to registers and records.
Tie-breaker vote added for Region's with only one Regional Representative	Rule 6.6(a)	Tie-breaker voting procedure has been added to this clause requiring an additional vote between the tied candidates (same as the tie-breaker for the Executive Committee). No such procedure currently exists.
Clarifying voting on Regional Representatives where more than one permitted for a Region	Rule 6.6(b)	As not currently provided for, changes are to: <ul style="list-style-type: none"> <li>provide that, where more candidates exceed the quota under the preferential voting system than vacancies, the candidates with the highest number of votes in that round are elected (sub-paragraph (v));</li> <li>in the event of a tie that the returning officer shall count the second and subsequent preference votes of Members whose first and second preferential votes were not for one of the tied candidates (sub-paragraph (vii)); and</li> <li>minor clarifying amendments.</li> </ul>
What happens when there are no candidates nominated for a Region or less than the permitted number	Rule 6.6(c)	As not currently provided for, changes are proposed to provide that when no candidates are nominated for a Region or less than the permitted number are nominated:

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		<ul style="list-style-type: none"> <li>• no candidates or a lesser number of candidates than the permitted number will be elected;</li> <li>• the vacancy does not affect the operation of the NZKGI Forum;</li> <li>• the NZKGI Forum may decide not to fill the resulting vacancy in its membership, hold a new election in accordance with this Constitution to fill the vacancy or may appoint a new Regional Forum Member from the Region for which the vacancy has occurred; and</li> <li>• if the NZKGI Forum decides not to fill the vacancy, it may still subsequently decide:             <ul style="list-style-type: none"> <li>○ at any time until the next election, to appoint a new Regional Forum Member from the Region for which the vacancy has occurred; or</li> <li>○ at any time until 12 months prior to the next election, hold a new election in accordance with this Constitution to fill the vacancy.</li> </ul> </li> </ul>
Clarification re term of elected Forum members	Rule 6.11 and 6.15	It has been clarified that the term runs from election until the day before the next election (previous wording implied that the term only ceases if and when a replacement Forum Member is elected).
Change re meetings by electronic means	Rule 7.3	Amendments made to clarify the wording in relation to meetings by electronic means.
Clarifying processes re election of Chairperson, Vice Chairperson and Executive Committee	Rule 8.2	<p>Changes have:</p> <ul style="list-style-type: none"> <li>• clarified the application of paragraph (d) to situations where no nominations are received for the Chairperson or Vice-Chairperson roles or only one nomination is received (previously it appeared to apply only to insufficient nominations for the four general roles) and separated it into two paragraphs;</li> <li>• clarified that re-numbered paragraph (f) applies to the situation where more than one nomination is received for the Chairperson or Vice-Chairperson roles;</li> <li>• clarified the application of sub-paragraph (g) which deals with situations where a vote is needed to determine the general positions and to fill the Chairperson or Vice-Chairperson roles;</li> </ul>

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Clarification re term of office of Committee members	Rule 8.5	Clarified that the term extends until the day prior to the next election.
Clarifications re vacancies on Committee during term	Rule 8.13	Clarified that a vacancy on the Executive Committee during term does not affect the operation of the Executive Committee.
Simplifying references to other committees in Schedule 1	Clause 1, Schedule 1 Consequential changes are made in Rule 7.4(b) and elsewhere in Schedule 1.	Reference to ad hoc committees, which can change, simplified to “other committees”.