

## **Member feedback received 18 August 2025**

To the board of the Woolston Club Inc

I am writing this in response to your request for consultation of the proposed changes to the Woolston Club Inc rules to comply with the requirements to register under the new incorporated Societies Act of 2022.

### **Point 1**

Key aspects of the Act's intent:

Modernization and Clarity:

The 2022 Act provides a clearer and more comprehensive set of rules for how incorporated societies operate, replacing the older, sometimes unclear, 1908 Act.

Strengthened Governance:

It introduces new requirements for officers' duties, financial reporting, and internal dispute resolution processes, aligning them more closely with the Companies Act.

Enhanced Accountability:

The Act clarifies responsibilities for officers, ensuring they act in the best interests of the society and its members.

Ensuring Financial Integrity:

The Act maintains the principle that societies cannot be formed for the financial gain of their members, with stricter provisions to prevent any distribution of society assets to members upon winding up.

Compliance and Re-registration:

Societies registered under the 1908 Act need to re-register under the 2022 Act by a specific deadline (April 5, 2026) to maintain their incorporated status.

Promoting Good Governance:

The Act encourages societies to have clear and transparent procedures for decision-making, dispute resolution, and constitutional amendments, ensuring that all members have a voice.

In essence, the Incorporated Societies Act 2022 seeks to ensure that incorporated societies operate effectively, ethically, and in a manner that is accountable to their members and the public.

**Response:**

Agreed. The new Act modernises governance and imposes directors' duties (ss 54–61) on the Club's Committee (Board). These duties mean the Board is now legally responsible for all decisions made in the name of the Club. This is why a dual elected structure (Board plus separate judiciary) is no longer viable: the Act only recognises the Board as the governing body.

Point 2

I believe the proposed constitution being presented to the members of the Woolston Club will remove many of the members rights we currently have and will in fact make it harder for the members to be treated fairly or question decisions being made.

**Response:**

This is not correct. The proposed 2025 Constitution does not remove rights; it re-frames them to fit the new Act. Members retain:

- The right to call Special General Meetings (SGMs).
- The right to vote out Board members through no-confidence motions.
- The right to appeal disciplinary decisions to an Appeals Committee.

What has changed is that discipline must sit within a structure the Board oversees. Members' rights are therefore protected and made compliant with the law.

Point 3

The New Constitution should not be about the board and management to change the rules to remove existing rights nor make it harder to hold the board to account if the members feel decisions are being made that harms the club.

**Response:**

Correct in principle – the Board cannot use the rewrite to remove rights unfairly. The draft Constitution was designed to comply with the Act and to ensure Board accountability. Under the Act, members' rights and remedies (e.g. to replace Board members, to requisition meetings) are unchanged or even strengthened through clearer governance and reporting obligations. This is why the any new constitution needs to be agreed to by 75% of the members.

Point 4

If the board makes decisions they believe are in the best interests of the club, then they should be confident to address the members to explain why this is the case and allow the members to make decisions based on these discussions. The board should not hide

behind not having to explain themselves to the members and changing the rules to make this acceptable.

**Response:**

Agreed. The 2025 Constitution requires transparent reporting at AGMs, and members can still requisition SGMs. The concern that the Board can “hide” is not accurate – members continue to have democratic powers to challenge the Board. This is why we have recently been holding our constitution discussion groups to get as much feedback and be as transparent as possible around the changes.

Point 5

In recent history there have been a number of decisions that have caused unrest within the members and caused harm to the Woolston Club, this has primarily caused by the reluctance of the board to engage in "good faith" with the members concerned and the general membership.

**Response:**

We acknowledge that some decisions in recent history have caused unrest among members and the wider Club community, and that this has affected trust between the Board and members.

While this is a governance culture issue rather than a constitutional one, the Incorporated Societies Act 2022 now provides a clear framework requiring Board members to act in good faith, with care and diligence, and in the best interests of the Club. Members also have formal mechanisms to raise concerns and, if necessary, vote out directors who fail to meet these obligations.

The new Constitution, together with the Act, provides a stronger foundation to ensure that governance going forward is transparent, fair, and accountable, helping to rebuild confidence and safeguard the Club’s future.

Point 6

Many aspects of our existing rules are fit for purpose and have been developed over many decades. To unwind these unnecessarily and without good reason is not in the best interests of the Woolston Club, nor its members. While we should not live in the past, we need to take the learnings of the past so we do not repeat past mistakes.

A big part of this is how members get treated and what rights they have by being a member of a members based organization.

**Response:**

The 2023 Rules may have served well under the 1908 Act, but they do not meet the legal requirements of the 2022 Act. The Registrar will not accept re-registration without an

updated Constitution. Simply “patching” the old rules creates compliance risk; a full rewrite is required. If the club does not achieve re-registration, then it will cease to exist under current law

#### Point 7

There is nothing in the new Incorporated Societies Act 2022 that says our current rules around the way we address the steps relating to Dispute resolution needs to be fully changed. It does though need a couple of new actions added to fully comply, this is primarily around the ability to incorporate a mediation process. This needs to not only been seen to be neutral, it needs to be neutral.

#### **Response:**

This is only partly correct. While the Act allows flexibility, it requires the governing committee to remain accountable for dispute resolution (Schedule 2). Our current rules (2023) give binding authority to a separately elected Judicial Panel, which creates a governance conflict:

- The Judicial Panel makes the decision.
- The Board remains legally liable under the Act.

This structure is no longer acceptable. The 2025 Constitution resolves this by having Board-appointed disciplinary committees, with the ability to co-opt impartial or external members

#### Point 8

When a manager or board member has the right to charge a member with any offence they want, select the judicial, select the appeal process and dictate how any mediation is completed, it is not going to be a fair process nor compliant with the principles of natural justice.

#### **Response:**

##### 1. Who can bring a complaint?

Rule 11.2 allows any member, guest, visitor, staff, or member of the public to make a written complaint to the Manager.

So yes, a manager or board member could themselves lodge a complaint—but the constitution does not explicitly give them extra powers just because they initiated it.

##### 2. Disciplinary Committee selection

Rule 11.4–11.5:

Normally, the Board decides whether a Disciplinary Committee is convened.

If the complaint is against a Board member, the Manager convenes the Disciplinary Committee.

Rule 11.5(a–c): Members of the Committee must have no actual, apparent, or perceived bias. If unbiased Board members are unavailable, independent club members or even non-members may be co-opted.

Implication:

A manager cannot simply choose the Disciplinary Committee for complaints against regular members; the Board decides.

For complaints against Board members, the Manager convenes, but the constitution requires co-opting unbiased members—so the manager cannot stack the committee with biased participants.

### 3. Appeals Committee

Rule 11.18: The Appeals Committee is convened “as per Rule 11.4”, i.e., following the same process as the Disciplinary Committee.

Rule 11.18 explicitly prohibits any member of the original Disciplinary Committee from being on the Appeals Committee.

Implication:

The manager or board member cannot be on the Appeals Committee if they were involved in the disciplinary process.

The appeals process is structurally separated to maintain impartiality.

### 4. Safeguards for natural justice

Written complaints, notice periods, opportunity to respond, representation rights, evidence disclosure, and clear procedures for co-opting unbiased members all ensure procedural fairness.

Even if a manager convenes a panel for a Board member complaint, the requirement for unbiased members reduces the risk of improper influence.

In Summary

A manager or board member cannot fully control the process.

They can lodge a complaint, but they cannot personally pick the disciplinary panel or appeals panel in a way that violates natural justice.

The constitution requires impartiality and provides safeguards (co-opted members, exclusion of original committee members from appeals).

Bottom line: The assumption that a manager or board member could dominate all stages is not correct under this proposed constitution, because Rules 11.5(c) and 11.18 explicitly prevent biased control.

The 2025 Constitution (Rule 11 – Disputes and Appeals) already provides safeguards:

- Complaints must be in writing.
- Decision makers must not have bias.
- Members have a right to respond, be represented, and appeal.
- If the complaint involves a Board member, independent members can be co-opted.

This preserves natural justice.

#### Point 9

There is nothing in the new Incorporated Societies Act 2022 that says we can not continue with our judicial process to elect members to hear complaints or disputes.

#### **Response**

Correct, the Act does not expressly ban an elected judiciary. But the legal responsibility still rests with the Board, even if another group makes the decision. This creates “authority without accountability,” which is a governance conflict. MBIE guidance makes clear that the Committee must remain the single governing body.

#### Point 10

Under Schedule 2 Optional dispute resolution procedures it covers:

7 Society may refer complaint

(1) A society 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.

(2) A society 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).

Our current judicial process complies with these requirements except for the consensual dispute resolution process.

8 Decision makers

A person may not act as a decision maker in relation to a complaint if 2 or more members of the committee 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.

#### 41 Safe harbour if Schedule 2 is used

(1) The procedures in a society's constitution for resolving disputes must be treated as being consistent with the rules of natural justice if those procedures consist of—

(a) all of the procedures in clauses 2 to 8 of Schedule 2; and

(b) any additional procedures that are consistent with those procedures.

(2) Subsection (1) does not prevent a society from having other procedures in its constitution for resolving disputes (as long as those procedures are consistent with the rules of natural justice).

#### 42 Constitution may provide for types of dispute resolution

(1) A society's constitution may provide that all or certain kinds of disputes must or may be submitted to any type of dispute resolution, including—

(a) consensual dispute resolution (for example, mediation, facilitation, or a tikanga-based practice); and

(b) determinative dispute resolution (for example, arbitration under the Arbitration Act 1996 or adjudication).

(2) This section and section 43 do not apply to the extent that other legislation requires a dispute to be dealt with in a different way (and the provisions of a constitution that relate to disputes have no effect to the extent that those provisions contravene, or are inconsistent with, that legislation).

#### Example

An incorporated society (T) is a trade union. Under section 161 of the Employment Relations Act 2000, the Employment Relations Authority has exclusive jurisdiction to make determinations about employment relationship problems generally, including matters about whether a person is entitled to be a member of the union and matters related to a failure by a union to comply with its rules.

T's constitution must not provide for employment relationship problems to be dealt with by arbitration because that would be inconsistent with that section.

#### 43 Provisions relating to arbitration

(1) If a society's constitution provides that a dispute must or may be submitted to arbitration under the Arbitration Act 1996, the relevant provisions of the constitution must be treated as an arbitration agreement that is binding on the society and the affected member or officer.

(2) A society's constitution may prescribe procedural matters (not inconsistent with the Arbitration Act 1996) that govern an arbitration under this section.

#### 10 Arbitrability of disputes

(1) Any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless the arbitration agreement is contrary to public policy or, under any other law, such a dispute is not capable of determination by arbitration.

(2) The fact that an enactment confers jurisdiction in respect of any matter on the High Court or the District Court but does not refer to the determination of that matter by arbitration does not, of itself, indicate that a dispute about that matter is not capable of determination by arbitration.

#### **Response:**

The example used here is illustrating a conflict of jurisdiction:

Trade unions are incorporated societies, but their membership disputes fall under the exclusive jurisdiction of the Employment Relations Authority (ERA) (section 161 of the ERA 2000). Therefore, a union's constitution cannot require arbitration (under the Arbitration Act 1996) for those disputes, because that would contradict the ERA.

So, the example is saying: even if you're an incorporated society, your constitution can't override another law that gives decision-making power to a specialist authority or the courts.

For most clubs (like Woolston Club) this is a poor and confusing example, because it relates to a very specific type of incorporated society (trade unions). MBIE included it just to show how other legislation overrides dispute processes in a society's constitution.

For a sports or community club, this trade union example is largely irrelevant – but the principle behind it is useful: a constitution can't contradict other laws.

In plain terms for Woolston Club:

This trade union example isn't meant to apply to ordinary clubs like ours. It's simply showing that if another Act (like the Employment Relations Act for unions) gives a specific authority (like the ERA) power to decide disputes, then an incorporated society's constitution can't "contract out" of that.



Schedule 2 allows a society to refer disputes to subcommittees or external persons. But crucially:

- These must be appointed by the Committee.
- The Committee must still be satisfied the decision makers are impartial.
- Safe-harbour protections only apply where the process is consistent with natural justice.

A separately elected judiciary, outside Board oversight, does not fit this framework.

#### Point 11

I would propose one of two options, a committee of three life members could be formed to hear any cases, these are respected members, elected by the members for proving they have the best interests of the club at heart. the other option is to engage an independent mediator to hear any dispute who can then make a binding decision.

I have been in contact with MBIE about this and they have agreed this would be fully acceptable.

#### **Response:**

Independent involvement is positive and is already allowed under the proposed 2025 Constitution (co-opting impartial members or using external mediators). But ultimate oversight must remain with the Board to comply with the Act. An 'elected judiciary' with binding powers would breach this as.

#### Point 12

We can not have a set of rules where there is no clear idea on what an offence is, our current rules clearly outline what is acceptable or not, these need to be retained.

Our current rules have a set of transparent inclusions so not only can justice be done, it is seen to be done fairly, these also need to be retained.

#### **Response:**

The proposed 2025 Constitution sets out misconduct processes and requires that natural justice principles are followed. Rather than embedding every specific offence into the Constitution, details of offences can be set out in by-laws or policies, which are easier to update, communicate, and enforce consistently.

We welcome member input into updating the by-laws to clearly outline specific offences, ensuring transparency and fairness. This approach still ensures that justice is both done and seen to be done.

Excluding offences from the Constitution does not remove the club's obligation to follow New Zealand law, including common law, and ensures that all members remain accountable under legal requirements.

#### Point 13

Our current rules need to be read with the understanding of "do they comply with the new Incorporated Societies Act 2022" and where there are gaps, fill these gaps. It should be to throw all our current rules out and starting again. We should not be amending existing rules like voting percentages or numbers of members to call meetings without going through our normal processes on how to change rules. Again, if the board feels they have a good argument that is in the members benefit to changes these, they can present their case and member choose to proceed or not.

#### **Response:**

Unfortunately, the old 2023 Rules rely on a dual governance model (Board plus elected judiciary), which conflicts with the Incorporated Societies Act 2022 and cannot simply be "gap-filled." A fresh Constitution is legally required for re-registration.

It is not the intention to discard the previous work done by members—the contributions and efforts that went into developing the old rules are valued and appreciated. However, the current 2023 rules do not meet the requirements of the new Act, and compliance necessitates creating a new Constitution that aligns with current legal obligations while still reflecting the Club's values and member input. We welcome feedback and suggestions on the finer details such as voting numbers etc.

#### Point 14

If we strengthen the governing processes and add a robust mediation process, I believe the members will feel more confident to adopt a constitution that complies with new act and then we can get these registered.

#### **Response:**

We appreciate this feedback and agree that strengthening governing processes and introducing a robust mediation framework are key to building member confidence. The proposed 2025 Constitution is designed to achieve this, providing impartial disciplinary panels, structured appeals, and clearly defined mediation procedures, while ensuring that the Board retains the ultimate accountability required under the Incorporated Societies Act 2022. While these processes may be delegated to committees or independent persons, the legal responsibility for all decisions remains with the Board.

It is important for members to understand that the governance requirements under the 2022 Act have changed significantly compared with the previous 1908 framework. Many

of the old Woolston Club rules no longer meet these legal requirements, which is why a full update of the Constitution is necessary rather than simply amending existing rules.

We value the feedback received from members and will carefully review all submissions as we work towards the next draft of the Constitution. Our goal is to ensure a constitution that is fully compliant with the law, protects members' rights, provides transparent and fair governance, and incorporates practical mechanisms—such as mediation and appeals—that address members' concerns.

By working together through this consultation process, we aim to deliver a governance framework that strengthens the Club, safeguards members' rights, and supports the long-term sustainability of the Woolston Club.

#### Point 15

Thank you for considering this.