



association
of
consulting and
engineering

Consultation on the review of ACE New Zealand's rules

We're reviewing our Rules and we'd like to hear your views. This is a consultation document for members that includes information about our Rules, why we're reviewing them, the process for our review, and questions for your feedback.

about the review

Why should I get involved?

ACE New Zealand is your membership association. Your views on what we do and how we do it are vital.

Last year, we carried out research with members on what you value from your ACE New Zealand membership and how it stands out from membership of other associations. The feedback was clear – our value sits in:

- Our voice for professional services consulting firms
- Preparing our firms for the challenges and opportunities of the future and creating the environment for you to lead through those challenges
- Enabling professionalism in consulting to thrive

We are the only association looking out for the business of consulting. Our new strategy reflects this feedback and sets a clear direction to provide value to all our members.

Being clear on our role and purpose is critical to ensuring we put our energy into the right things. Now we need to ensure our Rules enable us to do this mahi for you and with you in the most efficient and effective way, while also meeting all legal requirements.

ACE New Zealand is continually striving to reflect the diverse and contemporary environment our members operate in. We recognise this will mean different things to different members. It is important the framework we lay out in the Rules can work for all firms. We need to hear feedback from a wide cross-section of our membership to ensure we've got the balance right, for ACE New Zealand's long-term success.

What are the Rules?

ACE New Zealand is an incorporated society under the Incorporated Societies Act 1908. This requires us to have Rules that set out our role, how we operate, and member rights and obligations. The Rules are also referred to as our constitution.

Why are we reviewing them?

Our Rules need updating. While incremental amendments have been made over the years, there has been no comprehensive review to ensure the Rules:

- Reflect a clear, relevant objective for our organisation
- Reflect what it means for a firm to be a member of ACE New Zealand so clients and stakeholders unambiguously know what our members stand for and their value
- Give us flexibility to effectively and efficiently run the organisation and deliver on our objective for members

There are three reasons why we think now is the right time to review our Rules:

- There are some fundamental provisions in our Rules that are no longer fit for purpose
- Some of our Rules are wordy and not clear
- New legislation before Parliament will soon require us to have additional Rules that we don't currently have

Outdated Rules set us up to fail and can hold us back from achieving the most important outcomes for our members. As we enter a new phase of our maturity as a modern, professional association and in anticipation of the upcoming legal changes, now is the perfect time to review our Rules.

How do I get involved?

The review of our Rules has three stages:

Stage one

Please read this paper and provide us with your comments on the challenges and opportunities in this review. It is a long paper, but we need to make sure we are being thorough and clear on where we think the Rules could be improved, and what that means for ACE New Zealand and our members.

We know you're busy, so we're making it as easy as possible for you to share your feedback. You can either:

Send us a written response at service@acenz.org.nz

Complete our online survey (email service@acenz.org.nz if you haven't received it)

Join one of our [online drop-in sessions](#)

Call our team on [04 472 1202](tel:044721202)

Stage two

We'll take your feedback and draft a revised set of Rules. We'll then have them reviewed by a lawyer to make sure they are legally robust and reflect good constitutional practice before providing them back to you for further feedback.

Stage three

Taking into account your feedback, we'll present the new set of Rules at a Special General Meeting later in 2022 for member approval. We'll need a 75 per cent majority of eligible voters present at the meeting or voting by proxy to pass the motion to alter our Rules.

What's in this document?

This paper takes you through the Rules we propose to change, starting with the sections where we are proposing the most fundamental changes, followed by the sections where we are proposing just operational or plain English changes.

We'll let you know what the current Rules say, how we think they can be improved, and what if anything is missing. We'll ask some specific questions for your input. You can answer all the questions, or just the ones that matter most to you.

We'll also talk about the changes we can expect from the new legislation and what steps we can take to prepare ourselves for those changes – so we don't have to come back to you in a years' time to consult on further changes.

If you think we've missed something, please let us know.



current wording, opportunities and questions

OBJECTIVES (RULE 4)

Every incorporated society must set out in its Rules what its objectives are. The objectives set the parameters for the society's operations, and the society must operate within that scope. The objectives also tell people what we're about and how the organisation and its members add value. ACE New Zealand's current objectives are:

"...to promote the interests of its Members and further the practice of consulting and engineering by any means which the Association may think fit, and which recognise the needs, aspirations and demands of society, including but not limited to:

- a) identifying and influencing the course of emerging issues, including both opportunities and threats, that will impact on Members;
- b) achieving a significant improvement in the opportunities for Members to secure work;
- c) planning and implementing educational and training programmes to assist Members to improve the efficiency and effectiveness of their businesses;
- d) preparing and enforcing rules, bylaws, and disciplinary procedures for Members that recognise the demands of society, the changing and competitive nature of the business environment, and the need for a high standard of professional conduct;
- e) encouraging eligible consulting and engineering firms to join the Association; and
- f) joining and subscribing to any organisation which may assist in furthering the objectives of the Association."

Our current objectives are a mix of aspirational services we provide for members (such as identifying and influencing the course of emerging issues that will impact members) and more inward procedures or mechanisms to deliver those services (such as to join other organisations and enforce rules and bylaws) or the by-products of us doing a good job (such as growing members, increasing our member's opportunities to secure work).

questions

Do you agree our objectives should be updated?

If so, do you support the example provided for what revised objectives could look like? What do you like or not like about the example?

Is there anything else you would like us to include in a revised objective that we haven't included in our example?

We see opportunities for our objectives to be more aspirational and outward-focused to demonstrate the value ACE New Zealand brings to its members and society, rather than to focus on operational matters and the mechanics of the organisation's activities.

We think the objectives should be:

- Aspirational not operational
- Focussed on the outcomes we want to achieve for our members and society, not the by-products of us doing a good job or the mechanics by which we achieve those outcomes
- Broad enough to encompass any aspects of our projected functions today and into the future, and flexible enough to apply across different periods of challenge and opportunity

We think the objectives should describe what ACE New Zealand is known for providing to its members and its members' stakeholders. We also want to recognise our commitment to diversity and inclusion, recognise our bicultural society and Treaty obligations, and rewrite this section in plain English.

Here's an example for what revised objectives could look like:

"The objectives of the Association are to support, promote and represent professional services consulting in Aotearoa New Zealand, including by:

- a) Representing Member views and providing an influential voice to positively shape Aotearoa's policy agenda
- b) Identifying emerging issues that impact professional services consulting and assisting Members to respond
- c) Contributing to the development and recognition of effective consultancy practice
- d) Connecting members to build a strong network of consulting professionals across Aotearoa New Zealand
- e) Celebrating the practise of professional services consulting and the benefits Members provide to society

In all aspects of our work, we promote diversity and inclusion and recognition for Te Tiriti O Waitangi."

MEMBER OBLIGATIONS (RULE 8)

This section of the Rules is where we define what ACE New Zealand membership means, and the commitments our members make to the way they practise professional services consulting. Currently, member obligations and member rights sit together in one Rule. We think they should be separate Rules. Here we talk specifically about member obligations, and we address member rights later on.

The current obligations are:

“8.07 Each Ordinary or Associate Member shall at all times ensure that, in carrying on their business activities, that Member does not do or permit to be done or become engaged in any act, activity, or conduct which is contrary to the objectives of the Association or which would bring the Association or the practice of consulting or engineering into disrepute.

8.08 Each Member shall at all times ensure that no direct or indirect connection or commercial affiliation with any person, firm or organisation is held where that connection or affiliation might, in the opinion of the Board, be likely to influence or affect the professional judgment or advice of the Member.

8.09 Subject to Rule 8.08, each Member shall at all times ensure that conflicts of business interests are fully disclosed to a client or potential client at the earliest possible opportunity.

8.10 Each Member has an obligation to notify the Board of any act or omission of a fellow Member which comes to that Member's notice and which appears to bring the Association or the practice of consulting or engineering into disrepute. Such notification shall be accompanied by a clear statement of the evidence supporting the allegation.

8.11 No Ordinary Member shall attempt, directly or indirectly, to supplant another Ordinary Member, nor to take over work of another Ordinary Member until clear notification has been received from the employing party that the connection of the other Member with the work has been discontinued.

8.12 A Member shall, if required by the Board, provide evidence to establish that the Rules and Bylaws of the Association are being conformed with.

8.13 Where a Representative leaves an Ordinary Member and joins another firm; or where the Member undergoes changes in name, ownership, or control or significant changes in the documents forming its constitution, the Board shall be notified forthwith.

8.14 Any decision of the Board specifically affecting the membership of any Member of the Association, shall be promptly communicated to that Member in writing. The Board shall upon receipt of fresh information, not previously considered in its determination, and which could not reasonably have been made known to the Board earlier, be obliged to review and if necessary amend its decision concerning the Member."

The current obligations cover a range of relevant areas, including good conduct, conflict of interest, and good faith marketplace participation, setting a clear expectation that ACE New Zealand members represent a certain standard of consulting service. It also includes some provisions that are not specifically member obligations and that would sit better elsewhere in the Rules, for example, the obligations of the Board around communicating decisions and responding to new information that is relevant to a decision the Board has already made about a member, and keeping their details for the register up to date.

We see an opportunity to tidy up this section so it's focussed on member obligations only and put into plain English. We also think we can better align our member obligations with the things that are important to leading a credible, sustainable, and professional consulting firm today. This might include having robust quality management systems, building diverse and inclusive workplaces, and more. We are also hearing more that members are looking for ACE New Zealand membership as a mark to distinguish them in the eyes of their clients.

While ACE New Zealand membership is not an accreditation and ACE New Zealand is not a regulator, we want it to be a trusted brand that signals our member firms are committed to quality, credibility and sustainable business – so our voice and influence with clients, decision-makers and other stakeholders is strengthened. This is about setting the bar for what we want ACE New Zealand membership to mean in the eyes of professional services consulting firms, our clients and decision-makers.

A revised version of this Rule could be:

“Commercial and marketplace behaviour

All Members must:

- a) hold professional indemnity insurance for a sum of not less than \$500,000
- b) disclose and appropriately manage conflicts of interest
- c) compete in the marketplace, including with other members, in good faith and without unfair advantage
- d) engage openly and honestly with clients, and provide impartial and competent advice
- e) have a policy and process in place for responding to client concerns or complaints.

Working environment

All Members must have:

- f) robust quality management systems
- g) appropriate policies and practices in place to promote inclusive workplaces and to maintain the health, safety, and continued competence of their people
- h) appropriate policies and practices in place to ensure the sustainable management of the environment and the wellbeing of communities across their business practices.

Membership commitments

All Members must:

- i) comply with ACE New Zealand’s Rules and Regulations, including the current Rules and any later changes to them
- j) conduct themselves at all times in a manner consistent with being a fit and proper member of ACE New Zealand.

The Board may, at its discretion, require members to provide evidence of how they are meeting their **Member obligations**.

If a member has reasonable grounds to believe that another member is not complying with these obligations, they must report the matter to ACE New Zealand.”

questions

Do you agree we should update our member obligations?

If so, do you support the example provided for the revised member obligations? What do you like or not like about the example?

Is there anything else we should include or consider in the member obligations that we haven't discussed?

We recognise these obligations set a high bar for how we operate commercially, how we run our businesses and take care of our people, and how we demonstrate our commitment to the community. A high bar adds value to membership and the credibility our members hold with their stakeholders. Our question to you is, have we pitched this at the right level? How high do you want the bar for membership to be?

We recognise some of these obligations would be easier to demonstrate than others. And we know there may be a difference in how the work environment obligations are brought to life by different sized firms. But the key lies in the commitment to action through putting policies and practices in place that are appropriate to your firm. We also recognise that different firms may be at different stages of their journey towards some of the work environment commitments, and it is ACE New Zealand's job to help all our members find their way to realising them.

If a member is not meeting their obligations the Board would need a process to respond. As a membership organisation committed to uplifting the standard of professional services consulting as a whole, the response would need to include a supportive and restorative focus.

We need to hear from all types of firms on where the challenges and opportunities lie in these proposed new obligations.



MEMBERSHIP (RULES 5-7)

member categories

The current Rules allow for four categories of membership within ACE New Zealand:

- a) Ordinary
- b) Retired Ordinary Member
- c) Honorary Life Member
- d) Associate Member

There are three aspects of our member categories that we think need reviewing:

one

ACE New Zealand is a firm-based membership organisation, and yet the Rules establish us as having firm (Ordinary and Associate) and individual members (Retired and Honorary). This creates inconsistency with our overall purpose and administrative challenges when it comes to billing, managing member rights (such as voting entitlements), and member obligations.

Our individual memberships (Retired and Honorary) recognise members who have made significant contributions to ACE New Zealand over a period of time. There may be more appropriate ways to recognise individuals who have given substantially to our organisation and sector other than through offering individual memberships to a firm-based membership association.

two

ACE New Zealand has no hierarchy in firm membership. Therefore, it is unclear why our members are called "Ordinary Members". A more modern approach would be to move to the clear and simple term "Member" to describe the single tier of ACE New Zealand membership.

questions

Do you think we should retain individual membership categories (honorary life and retired members) or do you think there is a more appropriate way to recognise individual contributions and maintain connection with individuals after they retire from their firm?

Do you think we should rename the "Ordinary Member" category to "Member"?

Do you think we should reconsider the place that Associate Member has within our membership, and instead look at a programme to build strong strategic partnerships based on reciprocal value?

three

Associate Membership is for firms that "will bring benefit to the ACE New Zealand Membership by being accepted as a Member". Associate members need to agree to abide by the Rules and subscribe to a Code of Ethics or Code of Conduct that is acceptable to the Board. Associate Membership is generally taken up by supplier organisations and we currently have only four of these members.

We need to question the relevancy of Associate Membership. We see an opportunity to more strategically align with a wide range of stakeholders, including supplier organisations, research institutes, client organisations, and more, for the benefit of our members. Rather than a membership class with narrow criteria and rules that these wide range of stakeholders would have trouble committing to, we may be better to look at a strategic partnership programme that is more focussed on partnerships and value for both parties.

For example, the requirement that an Associate Member be a "firm" and subscribe to a Code of Ethics or Code of Conduct would rule out many client organisations whose senior personnel, for example, are public policy professionals that do not belong to an individual membership association.

Further, the requirement to agree to the Rules (in their entirety) including all the obligations that focus on practising consulting may be a barrier to the key stakeholders we would like to see have greater alignment with our organisation.

Criteria for Ordinary Membership

We believe there's an opportunity to review the requirements for Ordinary Membership and to better distinguish between what are criteria for entry to membership and ongoing member obligations.

Currently, the Rules provide that an Ordinary Member:

"... shall be a firm that:

- a) Is ordinarily resident or incorporated in New Zealand;
- b) In the opinion of the Board, has appropriate personnel with knowledge and experience in the field of consulting in the natural and built environment to furnish impartial and competent advice;
- c) Can produce evidence at all times in the form of a professional indemnity insurance policy that the Firm is covered for a sum of not less than \$500,000;
- d) Is constituted so that all control and management decisions of the Firm are made by persons who:
 - (i) Are Institution members in the class of Fellow or Chartered Member, or
 - (ii) Hold professional qualifications which in the opinion of the Board are equivalent to those of Institution members in 5.02(d)(i) and
 - (iii) Are members of a profession or organisation recognised by the Board as upholding a Code of Ethics compatible with that of the International Federation of Consulting Engineers (FIDIC);
- e) Has signed an undertaking agreeing to abide by the Rules and Bylaws of the Association for the time being in force or as they may thereafter be altered, amended, or enlarged, and to pay the annual subscription.
- f) Competes in the market place, in the opinion of the Board, on an equal basis with other Firms, in that income, which is derived primarily from the provision of consulting services, is open to competition from other Firms and operates without unfair advantage."

There are three specific challenges and opportunities for our review of this Rule:

one

The requirement that all control and management decisions of the firm be made by a Fellow or Chartered Member of Engineering New Zealand or someone who has equivalent qualifications and memberships doesn't align with the changing nature of firm leadership.

We have chief executives and firm directors who are professional leaders, accountants, public policy experts etc. It is becoming more common for us to receive membership applications from firms led by professionals who don't fit this narrow mould, but they are professional firms providing consulting services that align with the sectors we service and would make an excellent contribution to ACE New Zealand membership.

By making senior membership of Engineering New Zealand or an equivalent professional or technical association a strict criteria for membership, we are limiting our opportunity, devaluing the contributions other professions make to the leadership of our sector, and embedding bias against groups that are not fairly represented within hierarchical member pathways of other technical and professional associations or within senior leadership roles in our sector.

It's also not clear what value this membership criteria adds to ACE New Zealand today. To the extent that it's about ensuring the individuals can be held to account for standards of behaviour through another membership organisation, we would argue that we shouldn't have to rely on other organisations' processes to monitor the standard of our own members and to protect our brand reputation. We can ask about memberships and ethical commitments during the application process as a relevant factor for the Board's consideration whether the applicant is a fit and proper firm to be a member of ACE New Zealand, but making it a strict criteria is limiting.

two

The focus on consulting in the built and natural environment doesn't reflect the broad range of areas our members now work within, which has evolved and will continue to evolve, including increasing work in software engineering, information technology, and business and advisory services.

questions

Do you think we should review and simplify the criteria for Ordinary Membership?

If so, do you agree that the Rules should set the minimum intrinsic criteria for membership, and the other obligations, behaviours and competencies we would expect from our member firms instead sit within our member obligations section of the Rules?

Are there any other changes you think we should consider for the criteria for Ordinary Membership that we have not covered?

three

The criteria to comply with the Rules, hold appropriate levels of professional indemnity insurance, furnish impartial and competence advice, and compete in the market place on an equal basis with other firms is more an ongoing member obligation, not an entry criteria. It would be better for membership criteria to simply reflect the intrinsic qualities of a member firm, with the obligations, behaviours and competencies set out in the Member Obligations section. These matters would still be tested on entry to membership, but as an obligation the firm needs to continually meet rather than an entry criteria.

We have an opportunity to embed membership criteria that are more inclusive of the people and services our firms offer, and better reflects ACE New Zealand's maturity in a simple and uncomplicated way.

For example, a revised version of this Rule setting the criteria for being a Member of ACE New Zealand could simply be:

"A Member is a firm that:

- a) is ordinarily resident or incorporated in Aotearoa New Zealand,
- b) provides professional services consulting in Aotearoa New Zealand,
- c) commits to ACE New Zealand's Member Obligations, and
- d) in the opinion of the Board, is a fit and proper firm for ACE New Zealand membership."



question

Do you think we should remove the requirement that employee representatives of an Ordinary Member need to hold senior management positions and instead give firms greater flexibility to nominate their chosen representatives?

Ordinary member representatives

The current Rules allow Ordinary Members to nominate representatives who exercise the rights of the Member firm in several capacities (for example, voting). A representative is required to be either an individual who carries on sole practice, a partner in a partnership, or an employee of the Ordinary Member "holding a senior management position within a Firm".

We know that some groups are not fairly represented within the senior management of our firms, and this is an endemic diversity and inclusion issue we are working to address. Requiring representatives to be in senior management positions could serve to unintentionally reinforce biases against those groups. We believe it could be better and more inclusive to give firms the flexibility to nominate representatives appropriate to their interests, rather than limiting it to senior personnel only.



questions

Do you think we should include a provision in the Rules that says the Board must give reasons for refusing a membership application?

Do you think we should pre-empt the new legislation and include a provision around the membership register and the process for keeping it up to date?

Admission to membership

The Rules currently provide that every membership application shall be made in a form prescribed by the Board. It's appropriate that the Board maintains flexibility around the application process so no substantive changes are proposed to this section, other than to revise it into plain English. But, looking ahead to the new incorporated societies legislation, there are three additions to this Rule we should consider:

one

There will be a requirement in the new legislation that we get a person's¹ consent to be a member

two

The new legislation embeds strong, fair and transparent decision-making, and it would be appropriate and consistent with these principles for the Rules to set out clearly when a member may be declined membership, and for the Board to provide reasons why a membership application is declined

three

Under the current and new legislation we are required to keep a register of members and in the new legislation we are required to include within our Rules arrangements for keeping the register up to date. It would be appropriate in this review to include a new provision that clearly states this register will be kept, where it will be kept, who will have access to it, and that members are responsible for notifying of any change in their details for the purposes of this register.

¹ At law, a "person" includes a corporation sole, a body corporate, and an unincorporated body.

question

Do you think we should make it clear in the Rules that a member firm cannot resign to avoid a disciplinary process?

Terminating membership

Currently a membership can be terminated:

- If the member resigns
- If they don't pay their subscription
- Following a disciplinary process
- If the member ceases to fulfil the necessary criteria for membership
- If the firm goes bankrupt or into receivership or liquidation
- If the constitution of the firm changes significantly.

The circumstances for membership termination are on the whole appropriate, and no substantive changes are proposed here, other than to revise it into plain English and make any necessary adjustments following consideration of our member obligations and disciplinary processes. We should also consider making it clear that a member cannot resign to avoid a disciplinary process.

RIGHTS OF MEMBERS (RULE 8)

The Rules provide that members have certain rights relating to attending meetings, voting at meetings, and standing for election to the Board. No substantive changes are proposed to the rights of members, but there are some areas here that could be tidied up to resolve inconsistencies with other Rules and provide greater clarity to their meaning.

For example, this Rule currently provides that:

“Only employees of an Ordinary Member who have the consent of a Representative may attend a general meeting of the Association or its other meetings.”

We don't always have the administrative capacity to check each person attending a general meeting has the consent of the firm's representative (and we don't expect our member firms have time to do this either). We think it's more inclusive to allow any employee of a member firm to attend our general meetings. Voting rights would still be limited to formal representatives.

“Each Ordinary Member Representative has the right to nominate or be nominated for an elective office of the Association.”

The new Rules relating to the election to the Board passed in 2020 provide that Board members can include employees of an Ordinary Member and doesn't restrict it to just Representatives. While these are not directly inconsistent, it would be better to tidy up the member rights section of the Rules to be consistent with the new Board election Rules.

“Each Ordinary Member Representative is entitled to receive a 'copy of the published proceedings and documents of the Association' except in limited circumstances where the Board may limit this right.”

If the proceedings are published, they shouldn't be limited to just Representatives – the documents published on our website are either available to any employee of a member firm, or they are available to the public.

question

Are there any comments you would like to make on the rights of ACE New Zealand members and the areas we're proposing to tidy up as outlined above?

"Each Member may seek the advice and support of the Association 'on any matter within the objects and any other matter'."

We are a small and lean organisation, and any advice and support offered should be limited to matters that fall within our objective. We should remove the wide obligation that members can seek advice and support on "any other matter" to ensure ACE New Zealand staff can spend time on the things that matter most for our members.

Also, this doesn't make it clear who the Member is – in other places in the Rules it is specifically stipulated where the right refers to the Ordinary Member Representative or any employee of the Ordinary Member. We need to consider how wide we want this obligation to be and – thinking about the nature of enquiries we currently get from across the membership – we suggest this right should be for all members including employees of Ordinary Members.

"No appointed or elected officer of the Association shall adjudicate upon, or investigate in an official capacity for the Association, any matter relating to a partner, director, shareholder or employee of that officer's firm. Likewise, any immediate direct competitor in practice, or former fellow representative of that person's firm shall normally withdraw from such duties and shall have the right to be excused. For like reason, any applicant for ordinary membership shall have the right to object to any person undertaking such duties on behalf of the applicant and such objection shall normally be accepted by the Board. Any Ordinary Member shall have the right to make submissions about any other Member."

This Rule is wordy and it is not clear why it is sitting in the member rights and obligations section. As this relates to conflicts of interest in disciplinary matters, that is covered in respect of natural justice obligations within disciplinary processes. As it relates to other decision-making of the Board, avoiding conflicts of interest is covered off in the Board Charter and good governance practice. It is not clear that this needs to be a standalone Rule and, if it is, it needs to be worded more clearly and sit within another section of the Rules.

We also think the right to appoint a proxy for voting should sit here with the member rights, rather than as a standalone right like it currently does in Rule 20.



DISCIPLINE (RULE 17)

This Rule currently provides that the Board may take disciplinary action against a member where “necessary or desirable to protect the interests of the Association”. This includes where a complaint is received about any member, but also where the Board has reason to believe that disciplinary action may be appropriate. In its current form, it states:

“17.01 The Board may take such disciplinary action, in accordance with this Rule, as it from time to time considers necessary or desirable to protect the interests of the Association.

17.02 Where any complaint is received in respect of any Member, or where the Board has cause to believe that any disciplinary action may be appropriate in respect of any Member, the Board shall refer the matter to a Disciplinary Committee constituted in accordance with Rule 17.03.

17.03 The Board may from time to time appoint a Disciplinary Committee, either as a standing committee or in respect of any particular complaint, which shall consist of the following:

- a) A chairperson, who shall be a member of the Board;
- b) A person, who shall hold Institution membership in the class of Fellow or Chartered Member of at least 10 years standing or who, in the opinion of the Board, is a person of comparable standing in an organisation as defined in 5.02(d)(iii).
- c) A lay person, who shall not be a professional engineer.

17.04 The procedures to be adopted by any Disciplinary Committee shall be in accordance with bylaws, made under Rule 21 which among other things shall allow for notice to be given, right of response to any complaint, and entitlement to be heard, and, so far as any such bylaws do not extend, the Disciplinary Committee may regulate its proceedings as it thinks fit.

17.05 The Disciplinary Committee shall have the power to do all or any of the following in respect of any complaint against any Member:

- a) To impose any fines or penalties;
- b) To order the payment of any costs incurred in respect of any complaint;
- c) To censure any Member;
- d) To suspend membership for any period;
- e) To cancel membership;
- f) To exonerate a Member;
- g) To impose such other sanctions as the Disciplinary Committee may consider appropriate in any particular case."

ACE New Zealand is a membership organisation supporting and promoting the interests of professional services consulting. We are not a regulator and it is not proposed that we become one. But the new legislation requires us to have rules around complaints so we need to have this Rule.

However, this Rule needs to be reviewed. As it stands, it is unclear what members can be disciplined for and the potential penalties outlined are broad (for example, no maximum level of fine is prescribed and while the Rule provides that a disciplinary committee may impose "penalties", "penalties" is not defined).

Within the sector, there is greater scrutiny on the role of firms in ensuring robust quality management to prevent errors and near misses by their employees, and the interest in firm regulation was raised by MBIE in its 2021 consultation on the occupational regulation of engineers. Firm responsibility is also expected to emerge for discussion from Engineering New Zealand's Systems Report accompanying the Masterton Buildings Inquiry, due for release in early 2022.

questions

Do you agree we should provide greater clarity in the Rules about what members can be disciplined for and potential penalties?

If so, do you agree that the scope for discipline sits within whether a member is complying with their member obligations? What other grounds for discipline would you propose?

What do you think are appropriate penalties for member firms that are found to not be complying with their member obligations? What level of flexibility would you like to see to support members to meet their obligations vs a response based in penalties?

Are there any other comments you would like to make on the rules relating to the discipline of members?

Do you agree we should amend the rules now in advance of the new legislation to allow for the Board to develop procedures for the hearing of complaints that members have about the Association? What do you think is important to consider and include when drafting those procedures?

As noted above, ACE New Zealand is not a regulator and we are not planning to become one. The key reason we have a complaints process is to preserve the interests of our membership brand. In this review, we are taking the opportunity to show leadership around what ACE New Zealand membership stands for and offers as its own brand, for the purpose of building trust and credibility with our stakeholders. So we need clear processes for managing concerns that a member is bringing that brand into disrepute.

Members that join our organisation and commit to following the Rules and obligations deserve greater clarity around our role and jurisdiction for considering complaints about them and the penalties they might face if a complaint is upheld. Also, the Rule provides for a disciplinary committee process only – we'd like to include more flexible processes including for the early resolution of complaints.

We recommend that members could be open to discipline by ACE New Zealand for any breach of their member obligations, as these are what members commit to. This is the approach taken by many member associations. Any penalties for breaches of those obligations should be commensurate to what that breach means for membership and ACE New Zealand's reputation.

We rarely receive complaints. Most complaints relate to individuals' actions and are best dealt with by the individual's professional association. We also don't have internal capacity to manage large numbers of complaints about members. For these reasons, we don't want a complaints and disciplinary process that is complicated, time-consuming or bureaucratic. This means we need to allow for flexibility in complaints management. It is appropriate that the procedures for managing complaints be prescribed by the Board in regulations that sit under the Rules, as is currently provided for, although the current procedural regulations/bylaws need updating.

The new legislation will also require us to have procedures for resolving complaints that members have about the Association. While those procedures would be embedded in a regulation or bylaw, we could pre-empt the new legislation and recognise in the Rules now a member's right to complain about the society and allow for the Board to develop procedures for this.

REGIONAL CHAIRS (RULE 13) AND OTHER GROUPS

This Rule provides that there will be 12 Regional Chairs. The Chairs are elected officers (see Rule 14). Among other things, it outlines their “duties” as being to:

- “Convene meetings within the areas for the purpose of communicating to area members the activities of the Association, and to otherwise act as a conduit of communication between members in the region and the Association”. It is very prescriptive in its current form, providing that regional meetings will be held where practicable three times each year.
- Liaise with the Chief Executive for general area administration and for publicity and promotion of Association activities within their areas
- Provide reports to the Board before each Board meeting
- Reporting complaints against members within their regions relating to services provided by members and for assisting the Board, if required, in investigating complaints

This section of the Rules would benefit from a review of the language into plain English. We also believe the roles and functions of a Regional Chair could be better prescribed and be more outcomes focussed to better reflect the reality of the role today. For example:

- The focus on administration, publicity and promotion of ACE New Zealand activities in their regions isn't always the best use of regional chairs' time where we have experts in this discipline within the ACE New Zealand staff.
- The requirements to have three region meetings and provide reports to each meeting of the Board are strict duties that often set our busy regional chairs up to fail.

questions

Do you agree we should review the role of regional chairs to better reflect the strategic nature of these roles, and allow for greater flexibility in how regional chairs meet the responsibilities of their role in their specific region?

If so, what do you think should be included within their role considering the ideas suggested above?

Do you agree that the Rules should also provide for the creation of groups, such as the Young Professionals Group, creating clear objectives and responsibilities for those groups?

Are there any other comments you would like to make on the rules relating to regional chairs and/or groups?

We think it would be better to prescribe more strategic roles for our regional chairs around building strong member, client and stakeholder relationships in their regions, being the regional champion of the ACE New Zealand strategy, representing ACE New Zealand at regional meetings and events, and being the connector for the ACE New Zealand community in their region. We also think the Rules should give the Regional Chairs greater flexibility to perform their role in a way that's appropriate for their region. Maintaining a connection to the Board is important, but prescribing the need for a report to each Board meeting is onerous.

We also think it would be appropriate to allow the Board to establish other groups and committees within the ACE New Zealand membership. The Rules currently don't provide for this. ACE New Zealand has a growing Young Professionals committee which has no clear status under the Rules, no recognised role or responsibility. Prescribing Rules to allow for the establishment of groups would mean greater accountability for the group and ensure a clear mandate connected with the ACE New Zealand objective and strategy, and more recognition to the group and its role within the ACE New Zealand eco-system.

ANNUAL SUBSCRIPTIONS (RULE 9)

This section of the Rules provides that members pay an annual subscription at a rate determined by the Board, that it is payable in two half-yearly instalments, and the process where members do not pay their fees and where members join part way through a financial year. Other than to review this section for plain English, the only other change we would like to make is around the timeframe for notifying the membership fee rate.

Currently the Rules require that the rate set for the upcoming financial year be notified to members at the annual general meeting. Our financial year is 1 April to 31 March. Our annual general meeting is usually in August, meaning that notification of rates needs to be made seven months in advance of the start of the upcoming financial year, and well before any budgeting process. It is difficult to accurately predict our environment, strategy and needs to deliver on our objective to members this far in advance. We think it would be more appropriate for the rate to be notified after initial budgeting processes for the upcoming year have been carried out.

We are proposing to change this Rule so the membership rate for the upcoming financial year be notified to members no later than three months before the start of the upcoming financial year. This would help us better align the rate to what is needed to deliver on our objective and strategy.



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GOVERNANCE AND MANAGEMENT (RULES 10-12 AND 14-15)

Currently the Rules relating to the Board, governance and management are not well grouped together. We would like to change this so they sit clearly together to cover:

- Board composition and election processes
- Board strategic and financial duties and powers
- Board meetings and procedures
- Appointment of staff

We don't propose any significant substantive changes to the Rules relating to the Board and its governance, however we think there are areas that we could tidy up and make clearer.

For example:

- The Rules are currently very prescriptive that Board meetings shall be not less frequent than once every two months. We think the Rules need to be less prescriptive on this – respecting everyone's time, meetings should be as needed and not per set timeframes.
- The sections relating to sub committees of the Board and the Board's nomination of representatives could be clearer and more user friendly. Currently the Board may establish three layers of committees – subcommittees reporting to an executive committee reporting to the Board. We are a lean organisation and layers of bureaucracy don't promote effective and efficient decision-making.
- We should include an authorities section which provides that a decision of the Board on the interpretation of the Rules is final and binding on all members
- Although implied, it is not specifically stated in the Rules that the control of the Association's funds is vested in the Board, and the Board may authorise any expenditures it considers necessary to further the Association's objective – this could be clearly stated.

question

Do you agree with the proposal to amend this Rule to allow for the member rate for the upcoming financial year to be notified to members no later than three months before the start of the upcoming financial year?

questions

Do you agree we should better group the Rules relating to the Board – composition, elections, duties, powers and procedures and address the issues as suggested above?

Are there any comments you would like to make on the governance of ACE New Zealand that you would like us to consider in this review, or suggestions above that you disagree with or have alternative views about?

Do you agree with the grounds proposed for removing a Board member from the Board? Are there any other grounds we should be considering? What would be relevant to consider in terms of criteria for removing a regional chair?

- Currently the Board is required to present its budget to members for adoption at the AGM, but this doesn't work well as our financial year starts on 1 April and the AGM is usually held in August (after the previous end of year accounts have been through the auditing process). This means the budget is being presented for approval when we are already five months into the financial year. A more modern governance approach is for the management of the annual budget to be entrusted to the Board (which is made up of elected member representatives), with accountability back to members at the annual financial reporting and annual general meeting.
- We think it would be appropriate for the Rules to provide for the organisation to indemnify present and past Board members, committee members, the Chief Executive and staff, and any other representatives in respect of liabilities arising from the performance of their functions or duties connected to their role with ACE New Zealand.
- The Rule relating to the Board's power to make bylaws or regulations should sit here, rather than where it currently does as a standalone Rule 21.

The new legislation for incorporated societies will require us to include the grounds for removing a Board member. Our Rules are currently silent on this but it may be appropriate to address this now, as well as how other officers like Regional Chairs are removed where appropriate. Grounds for removing a Board member may include where:

- They offer their resignation in writing to the Board President before the end of their term
- Their employing firm ceases to be a member of ACE New Zealand due to resignation or removal
- They are found by resolution of a 75 per cent majority of the Board to be in breach of their responsibilities of Office as set out in the Board Charter

Similar criteria could be developed for the removal of regional chairs.

questions

What do you think it will be important for us to include in our new Rules relating to how members can raise a motion for a general meeting?

Do you think there are circumstances in which we should allow for written resolutions in lieu of a general meeting? If so, when do you think that would be appropriate?

Do you think we should review the quorum for general meetings and the minimum number of eligible voters needed to request a special general meeting? If so, what do you think it should be?

Are there any other comments you would like to make on the rules relating to meetings of the Association?

MEETINGS OF THE ASSOCIATION (RULE 16)

This section of the Rules covers annual general meetings and special general meetings. The provisions included are relevant and no substantive changes to them are proposed, other than to review them for plain English and put them in a better order.

However, there are several areas where we could provide greater clarity and pre-empt what will be required in the new legislation. For example, providing greater clarity on how members can introduce motions for consideration at a general meeting and the timeframes for this, as well as when minutes are required to be kept and whether we will allow for written resolutions in lieu of a general meeting.

Given the growth in ACE New Zealand's membership in recent years, it may also be appropriate to consider whether the quorum for general meetings (20 eligible voters) remains appropriate, and whether it is still appropriate that a special general meeting can be requested by no fewer than 10 eligible voters.

questions

Do you agree we should include a process for when consultation with members regarding a proposed Rule change is required ahead of a general meeting?

Do you think we should prepare for the new legislation by including a process for minor or technical amendments outside of a general meeting?

NOTICES (RULE 18)

The Notices section of the Rules needed to be updated to reflect electronic communications – currently it refers to notice being given if posted by ordinary post.

RULE CHANGES (RULE 19)

Currently the Rules can only be changed by a resolution passed by a majority of not less than 75 per cent of eligible voters at a general meeting. We think this is still appropriate. However, we think it would be helpful for the Rules to specify where and when consultation with members is required before any Rule change. Consultation is appropriate for substantive reviews and proposals like this one. But consultation may not be needed to reflect minor changes required by law, or to fix minor errors in wording for example.

Under the new legislation, societies like ours will be able to amend the constitution without resolution at a general meeting if the amendment has no more than a minor effect or corrects errors or makes similar technical alterations only – although a 20-day grace period will be allowed for any member to object to the amendment.

DISTRIBUTIONS (RULE 22)

The new incorporated societies legislation will require us to nominate a not-for-profit entity, or a class or description of not-for-profit entities, to which any surplus assets will be distributed to on our liquidation or removal from the register of incorporated societies.

Our current Rules provide that when we wind up or dissolve, a resolution may be passed that gifts or transfers our property to "some other institution or institutions within New Zealand for the purpose of furthering scientific knowledge or promoting the welfare of the engineering profession or such other similar purpose as the Association shall determine". For the purposes of the new legislation, we need to be clear that the receiving institution or organisation needs to be a not-for-profit entity. We recommend this be made clear in our Rules under this review.

SEAL (RULES 22-23)

This Rule is currently required by the Incorporated Societies Act. We propose to review it for plain English only.

give us your feedback

Now you know what we're proposing in this review of our Rules, and what our key questions are. You might also identify opportunities or challenges we have missed. This is your membership organisation and we want to hear what you think.

We're making it as easy as possible for you to share your feedback. You can either:

Send us a written response at service@acenz.org.nz

Complete our online survey (email service@acenz.org.nz if you haven't received it)

Join one of our [online drop-in sessions](#)

Call our team on [04 472 1202](tel:044721202)