

**Constitution and Rules**

**of**

**Telecommunications  
Industry Group  
Incorporated**

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# Constitution and Rules of Telecommunications Industry Group Incorporated

The following shall be the Rules of Telecommunications Industry Group Incorporated.

## 1. Interpretation

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- 1.1 Unless the context requires otherwise, the following words shall have the following meanings:
- AGM** means the Annual General Meeting referred to in clause 12.1;
- Alternate** means a person appointed by a Board Member in accordance with clause 7;
- Associate Members** means the group of members of the TIG that have paid the Associate Member Fee;
- Associate Member Fee** means the means the fee designated as such and set by the Board each Financial Year;
- Board** means the Board of TIG, made up of the Representatives and the Elected Member (or any Alternate when acting as an Alternate);
- Board Member** means any Representative or Elected Member (or any Alternate when acting as Alternate);
- Chairperson** means the chairperson of the Board appointed in accordance with clause 8.4;
- EGM** means an extraordinary general meeting;
- Elected Member** means the person elected by the Associate Members pursuant to clause 6 to be their representative on the Board;
- Financial Year** means the each year ending on 31 March;
- Full Members** means the group of members of the TIG that have paid the Full Member Fee;
- Full Member Fee** means the fee designated as such and set by the Board each Financial Year which fee will be greater than the Associate Member Fee;
- General Meeting** means any AGM or EGM;
- Member** means any or all Full Members and Associate Members;
- Objects** means the objects described in clause 3;
- Representative** means the Chief Executive Officer of a Full Member;
- TIG** means Telecommunications Industry Group Incorporated.

## 2. Name and Office

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- 2.1 The name of the society is the Telecommunications Industry Group Incorporated (referred to hereafter as TIG).
- 2.2 The registered office of TIG shall be Level 8, 2 Commerce Street, Auckland or such other address within New Zealand as may be determined by the Board from time to time.

## 3. Objects

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The objects of TIG are:

- (a) To raise awareness by the New Zealand business community and public of the contribution made by telecommunications to the New Zealand economy;
- (b) To develop and deliver key messages to the New Zealand business community and the public relating to telecommunications investment innovation and contribution;
- (c) To provide Members with high quality research on issues of shared interest;
- (d) To better align the industry members with other industry stakeholders;
- (e) To provide a forum for fresh thinking and debate on issues of telecommunications operation and infrastructure investment;
- (f) To provide input and advice from the telecommunications industry to the Government on telecommunication policies;
- (g) To work with Government to identify regulatory reform that would assist in the operation of telecommunications in New Zealand;
- (h) To work with Government to identify areas of telecommunication infrastructure where Government participation and/or funding is required; and
- (i) To do all other such acts that the Board deems appropriate.

#### **4. Membership**

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- 4.1 There shall be two categories of membership:
  - (a) Full Members; and
  - (b) Associate Members
- 4.2 Full Membership is open to any provider of network-based telecommunication services and Associate Membership is open to non-network based resellers, equipment vendors, telecommunications contractors and any other applicant that the Board may accept by resolution.
- 4.3 The Board may from time to time by special resolution alter qualifications or set further criteria for membership. Any change in membership criteria will not change the eligibility of membership for a current Member for the current Financial Year.
- 4.4 To be admitted as a Member an applicant must:
  - (a) Complete a written application to TIG, providing such information as the Board may require;
  - (b) Agree that when acting in relation to its membership it will conform with the Rules of TIG;
  - (c) Be approved by resolution of the Board Members present at a Board meeting; and
  - (d) Agree to pay any entrance fee, an annual subscription and any other charges properly levied on the applicant in accordance with these Rules.
- 4.5 Members are not partners and are therefore not in any way jointly or severally liable for each other notwithstanding any rules or regulations. Each Member may act unilaterally provided that in doing so it is clear that such action is not on behalf of or represents the view of TIG. TIG will not make public statements that are critical, disparaging or otherwise derogatory of, or take actions that are detrimental to, any Full Member.
- 4.6 Each Member shall be liable for the fees and subscriptions as determined under clauses 4.7, 4.8, 4.9 and 4.10.
- 4.7 For the first Financial Year the entrance fees and/or annual subscription shall be those amounts agreed by the parties attending the first General Meeting at which TIG is established.
- 4.8 For any subsequent Financial Year the Board shall by special resolution determine the entrance fees and annual subscriptions to be paid by each Member. If no special resolution is passed the then current fees and subscriptions will continue to apply.

- 4.9 Annual fees shall be due and payable on the first day of the Financial Year, or such other date that may be determined by the Board.
- 4.10 TIG may at any time make a call upon its Members for a special subscription to meet any special financial needs of TIG, if such is approved by a special resolution of the Board.
- 4.11 While no Member shall be required to pay more than any subscription, where a Member voluntarily does so then that voluntary payment will be recognised as a contribution by that Member for the purpose of clause 18 if TIG is dissolved in that year.
- 4.12 Membership may be suspended or terminated following a resolution at a meeting of the Board, if a Member:
- (a) is convicted of an indictable offence;
  - (b) acts in a manner considered to be injurious or prejudicial to the character or interests of TIG;
  - (c) breaches any provision of these Rules (including any non-payment of outstanding fees) and does not remedy the breach within 14 days after receiving notice from the Board requiring it to be remedied.
- 4.13 Any Member may resign from membership of TIG by giving the Board notice in writing to that effect. Resignation does not take effect until it is received by the Board and the resigning Member shall remain liable for any and all outstanding fees accrued up to the date of resignation.

## **5. Representative**

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- 5.1 The Chief Executive Officer of each Full Member will be the Representative of that Member and will act for the Member in regard to all TIG matters.
- 5.2 A Full Member may change its Representative on giving the Chairperson written notice of the change.
- 5.3 It is intended that wherever possible the Representatives and the Elected Member attend all Board Meetings. Where a Representative or Elected Member is not able to attend a Board Meeting an Alternate may attend.

## **6. Elected Member**

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- 6.1 The Chief Executive shall forward to every Associate Member at least 28 days before the day of the AGM, nomination forms for the election of the Elected Member.
- 6.2 Every candidate for election or re-election as the Elected Member shall be a Chief Executive Officer of an Associate Member and shall lodge with the Chief Executive no later than 14 days before the day of the AGM nomination of his or her candidacy.
- 6.3 The Chief Executive shall forward a list of candidates to all Associate Members seven clear days prior to the date fixed for the AGM at which the election is to take place.
- 6.4 The Elected Member shall be elected by ballot of the Associate Members at the AGM and where there is a tie a second ballot of the tied candidates shall be held.
- 6.5 Each Elected Member shall hold office, commencing from the end of the AGM at which they were elected until the end of the next AGM.
- 6.6 Each Elected Member shall be deemed to retire at the end of the next AGM after the AGM at which they were appointed. Any retiring Elected Member shall be eligible for re-election and if re-elected will begin a new term of office.

## **7. Alternates**

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- 7.1 Each Board Member may from time to time appoint any person who is not already a Board Member to be the Board Member's alternate (an Alternate). No Board Member may appoint a deputy or agent otherwise than by way of appointment of an Alternate. Any Alternate shall be:

- (a) In the case of a Board Member who is a Representative, a direct report to that Representative;
  - (b) In the case of an Elected Member, the Chief Executive Officer of another Associate Member or a direct report to the Elected Member.
- 7.2 Any appointment or removal of an Alternate must be by notice in writing to the Chief Executive signed by the relevant Board Member (provided that in the case of an Alternate to the Chairperson if there is no Chief Executive then notice in writing must be given to another Board Member).
- 7.3 Each Alternate will be entitled to:
- (a) receive notices of all meetings of the Board if the Board Member who appointed the Alternate is known to be either outside of New Zealand or otherwise unavailable to attend meetings;
  - (b) attend and vote at any such meeting at which the Board Member who appointed the Alternate is not personally present; and
  - (c) in the absence of the Board Member who appointed the Alternate, perform all the functions, and exercise all the powers, of that Board Member.
- 7.4 An Alternate will cease to be an Alternate:
- (a) if the Board Member who appointed the Alternate ceases to be a Board Member or revokes the appointment; or
  - (b) on the occurrence of any event relating to the Alternate which, if the Alternate were a Board Member, would disqualify the Alternate from being a Board Member.

## **8. Board and Appointment and Election of Chairperson**

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- 8.1 The Board will comprise of the Chairperson, the Representatives and the Elected Member.
- 8.2 Should a Full Member's membership of TIG terminate for any reason, any person appointed by that Full Member to the Board will automatically cease to be Board Member.
- 8.3 Where the Associate Member that an Elected Member is the Chief Executive Officer of ceases to be a Member then the Elected Member shall be deemed to have resigned from the Board and the Chief Executive shall call an EGM to allow a new Elected Member to be elected. The process for electing an Elected Member at an EGM shall follow the same procedure as for an AGM but references to AGM shall be read to mean EGM.
- 8.4 Annually, at each AGM, the Board Members will appoint one of their number, or an independent person, as Chairperson of the Board for all Board meetings and General Meetings. The elected Chairperson will hold office from the end of the AGM at which they were appointed until the end of the subsequent AGM, but shall be eligible for re-election. If at any meeting the Chairperson is not present, the Board Members may elect one of their number as Chairperson for that meeting.

## **9. Board's Powers and Duties**

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- 9.1 The business and affairs of TIG will be managed by, or under the direction or supervision of the Board.
- 9.2 The Board may exercise all the powers of an incorporated society that are not required, either by the Incorporated Societies Act 1908 or these Rules, to be exercised by the Member.
- 9.3 The Board may, except as provided in these Rules, delegate to a committee of Board Members, a Board Member, an employee of TIG or to any other person, any one or more of its powers.
- 9.4 The Board may appoint such employees as it considers necessary to carry out its powers and duties.
- 9.5 Except as set out in these Rules, the Board may regulate its own procedure.

- 9.6 No person other than the Chairperson may act as spokesperson for TIG unless appointed by the Board. The Board may appoint a person to act as spokesperson in whatever manner they choose including limiting the duration of the appointment or the scope of issues the person may comment on.

## 10. Board Meetings

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- 10.1 A meeting of the Board may be held:
- (a) by a number of Board Members who constitute a quorum, being assembled at the same time and place; or
  - (b) by means of audio or audio-visual communication by which all Board Members participating and constituting a quorum, can hear each other throughout the meeting.
- 10.2 The Chairperson may convene a Board meeting at any time (but at least once in every three month period) and must, at the request of a number of Board Members who constitute a quorum, convene a Board meeting. Notice of every Board meeting must be given to every Board Member who is in New Zealand or to the Board Member's Alternate, if necessary. Where possible, at least seven days' prior notice of a Board meeting will be given.
- 10.3 A quorum for a Board meeting may be fixed by the Board but, unless so fixed, is 50 percent of the Board Members.
- 10.4 At all Board meetings each resolution shall be determined by 50 per cent of the votes cast, unless stated otherwise.
- 10.5 Every Board Member (including Elected Member) has one vote. In the case of an equality of votes the Chairperson will not have a casting vote.
- 10.6 Unless otherwise stated, special resolutions of the Board must be determined by 75 percent of the votes cast.
- 10.7 The following matters shall require a special resolution of the Board:
- (a) As provided for in clauses 4.3, 4.8, 4.10, 17 and 18;
  - (b) Any policy, position or view point to be adopted and expressed as a public policy position or view point of the TIG;
  - (c) The appointment and removal of a Chief Executive;
  - (d) The appointment and removal of any spokesperson for the TIG;
  - (e) Entry into contracts with Members.

## 11. Chief Executive Officer

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- 11.1 The Board may appoint a Chief Executive Officer with such designation and on such salary and conditions of service as may be determined from time to time.
- 11.2 The Chief Executive shall be responsible to the Board in all respects.
- 11.3 The Chief Executive shall appoint such other staff as may be required for the efficient conduct of the affairs of TIG within the scope of the agreed budget for the TIG.
- 11.4 If at any time the Board have not appointed a Chief Executive then any notice required to be given to the Chief Executive may be given to the Chair and the role allocated to the Chief Executive in these Rules shall be carried out by the Chair.

## 12. General Meetings

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- 12.1 An AGM will be held each year:
- (a) to appoint the Chairperson as set out in clause 8.4;
  - (b) to appoint the Elected Member as set out in clause 6;

- (c) to receive reports on the previous year's activities, including the Chairperson's Report, a financial report and auditor's report;
  - (d) to consider any notices of motion and remits; and
  - (e) to transact any other business that may properly be conducted at an AGM.
- 12.2 An AGM will be held in such place and at such time as may be decided by the Board, but no later than 6 months after the end of a Financial Year.
- 12.3 Written notice of each AGM will be forwarded to all Members by the Chief Executive at least 30 days prior to the meeting, such notice to include the agenda of business to be conducted at the meeting.
- 12.4 Notices of motion containing changes to these Rules and all other remits must be received by the Board at least 35 days prior to the meeting.
- 12.5 The Board may convene an EGM at any time and must convene an EGM on receipt of a written request signed by at least fifty percent of Full Members, stating the business to be transacted. At an EGM (unless all Members are present) only the business mentioned in the notice calling the meeting may be transacted. Otherwise the procedure for convening an EGM will be as close as possible to that of an AGM.
- 12.6 An irregularity in a notice of a General Meeting is waived if a majority of the Full Members entitled to attend and vote at the General Meeting attend the meeting without protest as to the irregularity, or if they agree to the waiver. The accidental omission to give a notice of a General Meeting to, or the non-receipt of a notice of a General Meeting by, any person will not invalidate the proceedings at the General Meeting, provided that the Chairperson is first satisfied (acting reasonably) that no Member has been unfairly prejudiced.
- 12.7 Each Member may appoint one representative to attend and speak at a General Meeting.
- 12.8 While Associate Members may vote on the election of Elected Member and may otherwise attend and speak at any General Meeting, Associate Members will not otherwise be entitled to vote at any General Meetings.
- 12.9 At any General Meeting at least 50 percent of the Full Members must have a representative attending the meeting for a quorum to be constituted. The meeting will be adjourned if a quorum is not available within 30 minutes, and the Board will arrange a new meeting within a reasonable time.
- 12.10 At a General Meeting:
- (a) voting will be by a show of hands, unless the Chairperson calls for a ballot;
  - (b) in the case of an equality of votes cast the Chairperson will not have a casting vote.

### **13. Postal Voting/Proxy**

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- 13.1 Matters that would normally be determined at an EGM or Board meeting may, if decided by the Chairperson, be determined by way of a postal vote, in which case the following procedure will apply:
- (a) A notice specifying the matter to be voted on and the date by which the vote is to be returned will be forwarded to all Board Members by letter, fax or email.
  - (b) Only a Board Member may cast a postal vote and each Board Member will be entitled to one vote.
  - (c) All votes will be returned by Board Members by letter, fax or email.
- 13.2 Any Member entitled to vote at a General Meeting shall be entitled to appoint a proxy to attend and vote on behalf of the Member at the General Meeting.

### **14. Finances and Records**

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- 14.1 The Board must:

- (a) keep proper records of all proceedings and meetings of the Board and of every General Meeting;
  - (b) keep all other documents, records, reports and communications connected with TIG;
  - (c) keep proper books of account and financial records of TIG;
  - (d) have control of all funds of TIG and operate all bank accounts in the manner from time to time determined by the Board;
  - (e) have control of the Common Seal, which may only be affixed to a document by a resolution of the Board.
- 14.2 As soon as practicable following the end of each Financial Year the Board will cause to be prepared a statement containing particulars of:
- (a) the income and expenditure for that Financial Year; and
  - (b) the assets and liabilities of TIG as at the end of that Financial Year.
- 14.3 The Board will cause the statements referred to in clause 14.2 to be examined by a suitably qualified auditor, who is not associated with a Member. The auditor may request the production of any books, papers, accounts and documents relating to the affairs of TIG and will present a report to the Board prior to the AGM following the relevant Financial Year.

## 15. **No Pecuniary Profits by Participants**

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No private pecuniary profit may be made from TIG by any Member, Representative, Elected Member or Alternate ("**Participant**") except that:

- (a) a Participant may receive full reimbursement for all costs, charges and expenses properly incurred by the Participant in connection with the affairs of TIG, as approved by the Board from time to time;
- (b) TIG may pay reasonable and proper remuneration to any person or entity in return for services provided to TIG, as approved by the Board from time to time;
- (c) a Participant may be paid all usual professional, business or trade charges for services provided, time spent and acts done in connection with the affairs of TIG by the Participant, as approved by the Board from time to time;
- (d) a Participant may retain any remuneration properly payable to the Participant by any entity with which TIG may be in any way concerned or involved and for which the Participant has acted in any capacity whatever. This applies even if the Participant's connection with that entity is in some way attributable to the Participant's connection with TIG. However TIG may not lend money or lease property or assets at less than current commercial rates, having regard to the nature and terms of the loan and lease to any person (as defined in the Income Tax Act 1994):
  - (i) who is a Participant;
  - (ii) who is a shareholder or director of any company by which any business of TIG is carried on; or
  - (iii) who is a settlor or a trustee of a Trust that is a shareholder of any company by which any business of TIG is carried on; or
  - (iv) if that person or that company and the settlor or trustee or shareholder or director referred to in any one of the foregoing paragraphs of this proviso are associated persons as that term is defined in the Income Tax Act 1994;
- (e) the Board Members in determining all reimbursements, remuneration and charges payable in terms of this clause, will ensure that the restrictions imposed by the above clauses are strictly observed.

## 16. **Competition Compliance Protocol**

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- 16.1 The Board shall adopt a Competition Compliance Protocol, to ensure the business and affairs of TIG are conducted in compliance with the Commerce Act 1986. The Board may

substitute or amend the Competition Compliance Protocol from time to time by resolution. The current version of the Competition Compliance Protocol is set out in Annex A.

- 16.2 The Members and Representatives of TIG (including Alternates and the Elected Member) will conduct themselves in accordance with the Competition Compliance Protocol.

## 17. **Amendments to Rules**

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Amendments to these Rules may be adopted only at a General Meeting of TIG. Any proposed amendments must be set out in full in the notice calling a General Meeting. Such amendments will be approved only if supported by the votes of 75 percent of the Board Members present and voting at the meeting, provided that no amendment may be made to these Rules if it would affect clause 15.

## 18. **Dissolution**

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- 18.1 TIG will be wound up in accordance with the Incorporated Societies Act 1908, if supported by a 75 percent majority vote of the Board.
- 18.2 On a winding up, the assets of TIG remaining after payment of all TIG liabilities will be disposed of to each Member in proportion to its contribution in the previous Financial Year or such manner as passed by resolution at the General Meeting convened for the purpose of winding up TIG.

## TIG Competition Compliance Protocol

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### Application

- 1 This Protocol is intended to ensure compliance with the Commerce Act 1986 and applies to Members of TIG and their Representatives (including Alternates and the Elected Member) (together **Members**).
- 2 Members should ensure that, to the extent officers or employees of Members are involved in matters relating to TIG, those officers and employees are aware of the terms of this Protocol.

### Maintaining competition

- 3 The Members affirm that the business and affairs of TIG are not intended to interfere with competition in the market, and furthermore should not give the impression of interfering with competition.
- 4 Members will not discuss in the TIG forum:
  - 4.1 Current or proposed pricing of goods or services offered by those Members in the market;
  - 4.2 Matters that relate to any Member's competitive strategy in the market;
  - 4.3 Commercial tendering opportunities for which Members are likely to compete.
- 5 To the extent possible, Members' personnel participating in TIG should not be directly involved in day to day pricing matters, or other operational decisions associated with downstream networks or products.

### Information security

- 6 Members should not exchange or disclose competitively or commercially significant information through or following the TIG forum. In particular, Members should:
  - 6.1 Disclose only the minimum information necessary to contribute effectively to the objectives of TIG;
  - 6.2 Not disclose sensitive information of a strategic nature relating to customers, prices, costs, products, market trends or roll-outs, except to an Independent Analyst;
  - 6.3 Not discuss other competitors or customers or the effect, if any, a particular policy initiative might have on that competitor's or customer's business in the future.
- 7 TIG may engage a third party not operating a telecommunications business or a business offering services or products which include telecommunications services (**Independent Analyst**) to carry out market analysis provided that any such engagement shall be subject to confidentiality constraints to ensure that information is collected without it being shared with any Member other than the one who contributed it and that any report back is of information that is aggregated and presented in such way that it cannot identify any particular Member or customer and does not provide information that might impact on the manner in which Members might compete.
- 8 There should be little (if any) need to share commercially sensitive information either that relates specifically to customers or more generally. Having said that, anyone handling sensitive information should sign confidentiality agreements to circumscribe any commercially sensitive that is shared inadvertently.
- 9 In exceptional circumstances, Members may agree to share commercially sensitive information provided only that any such information is exchanged on limited basis for a specific purpose and subject to appropriate confidentiality undertakings with each

party being satisfied that the exchange on such terms will not breach competition law.

**Crown infrastructure investments**

- 10 The Members acknowledge that the Government's Broadband Initiative may involve Crown investment in the private sector, Government/private sector partnering or the Government purchasing services from Members.
- 11 It is intended that TIG will discuss and make recommendations to the Government on the most appropriate framework for investing in broadband infrastructure. However, the Members recognise that the Government may ultimately adopt a competitive commercial process to allocate funding, in which case TIG must not become a platform for Members to collude in that process. Members will not discuss or exchange information in relation to competitive tendering or RFP processes undertaken by the Government.
- 12 The Members recognise that the competitive significance of the Government's initiative is evolving, and will require periodic reconsideration of this Protocol as the initiative develops.