

Basketball New Zealand – Proposed Constitution

Basketball New Zealand (**BBNZ**) proposes to amend its Constitution in the form set out in the **attached** papers. BBNZ has utilised the Sport NZ constitution template for NSO's and has consulted with Garry Williams KC (Harbour Basketball Member), and Gibson Sheat Lawyers, Wellington.

Following the three online hui held online during July, we received feedback from members on the proposed Constitution. Overall, from the Members that attended (19 Members as well as ABS), we received positive feedback on the proposed Constitution. Some feedback, where we made changes to what was proposed included:

- Support for the variation to the Board member terms of office (*Constitution clause 6.23*);
- Amending the that the notification requirements for the AGM to include an email notification in addition to the website notification (*see Constitution clause 5.2*); and
- Clarification arising from questions about the new non-voting membership category of 'Club' (*see point 11 of this summary of changes and Constitution clause 4.12*).

Some questions also arose around affiliation processes and geographic definition of boundaries. These are matters that can be addressed outside of the Constitution as they are and will remain at the Boards' discretion.

This summary does not purport to set out all changes between the current Constitution and the proposed Constitution.

Clauses referenced below are to clauses in the proposed Constitution.

Mandatory changes

A number of the changes are required to comply with the Incorporated Societies Act 2022 (**Act**). These include:

1. **Contact Person** (clause 2.6): The appointment of a Contact Person whom the Registrar of Incorporated Societies can contact when needed.
2. **Member consent** (clause 4.5): A requirement that a person must consent to be a member of BBNZ.
3. **Register of members** (clause 4.35 – 4.37): Arrangements for keeping BBNZ's register of members up to date and what the register must contain.
4. **Business of AGM** (clause 5.3): That conflicts of interest of Board Members must be presented at AGMs.
5. **Resolution passed in lieu of meeting** (clause 5.24): Permitting a resolution by 75% of Members to be passed outside of a General Meeting. Note this ability is optional under the Act but must be included in the Constitution if it is permitted.
6. **Qualification** (clause 6.19): That a person must consent to be a Board Member and must certify that are not disqualified under the Act and the Constitution from being a Board Member.

7. **Dispute resolution** (clause 18): A dispute resolution process must be included in the Constitution that is consistent with the rules of natural justice. The proposed clause set out how BBNZ might manage disputes and other matters arising that are dealt with under policies or bylaws (for example Book 6 Judicial Regulations), while ensuring that it complies with the Act's requirements. There are also dispute procedures within the Constitution for certain circumstances, for example removing a Board Member. [The flow chart in Appendix A helps to determine the correct procedure for handling a certain dispute or other matter.]
8. **Common Seal** (clause 27 in the current Constitution): This has been removed as it is no longer required under the Act.

A description of the officers' duties under the Act is set out in clause 8.1. The conflicts of interest regime set out in the Act, including how 'interested' is defined, disclosure requirements and the consequences of being interested, has also been included in clause 9.

Additional changes

It is proposed that the following additional changes are made to enhance the Constitution from a governance perspective and to ensure it reflects BBNZ's strategic and operational environment:

9. **Tikanga** (clause 3.2): Included the tikanga, kawa and culture of BBNZ. There is no expectation that this also be included in the Constitutions of our member organisations.
10. **Capacity and powers** (clause 3.3): Replaced the list of specific powers with a general statement that BBNZ has full capacity, rights, powers and privileges, subject to the Constitution, the Act and general law, which aligns with the Act.
11. **Member categories** (clauses 4.6(c)): Clubs are a new **non-voting** membership category defined in 1.1 of the constitution as follows: **Club** means a club that is a member of, and within the geographic region of, an Affiliated Association. Further information is at section 4.12. All member applications or re-categorisations are at the discretion of the BBNZ Board.
12. **Membership re-categorisation** (clause 4.7): If an Affiliated Association has Small Association Status BBNZ can reclassify their membership category to be a Club.
13. **Large or Small Association Status** (clause 4.9): BBNZ can determine whether an Affiliate Association is granted Large or Small Association Status.
14. **Affiliated Association obligations** (clause 4.10): The requirement to provide information to BBNZ (under clause 8.6 of the current Constitution) is replaced with a requirement to enter into, and substantially comply with, a Service Level Agreement (**SLA**) with BBNZ. The SLA sets out the deliverables of each party. The Board may terminate an Affiliated Association's membership if they fail to be a party to a SLA, or they are in material breach of the SLA. This obligation will fall away if BBNZ decides that all Affiliated Associations are no longer required to enter into SLAs.
15. **Suspension of membership** (clause 4.25): If an Affiliated Association is in breach of their membership obligations and the Board believes it is in the best of interest of the game in the region or New Zealand, the Board may suspend the Affiliated Association's membership and/or assume operational control until it is no longer in breach.
16. **Quorum** (clause 5.11): Provides for what happens if no quorum is reached at a SGM, that the meeting is cancelled.

17. **Voting entitlements** (clause 5.15): We have attached the voting entitlements as an Appendix, we are proposing to leave current voting entitlements as status quo for 2 years (2026 and 2027 AGM's) which will be reviewed in 2027 through a BBNZ and Association working group to determine the voting structure from 2028 onwards, which will then be reviewed every 5 years following that. Every Life Member is entitled to 1 vote.
18. **Functions and powers of the Board** (clause 6.1): The Board has all the powers necessary for governing and managing the operation of BBNZ, subject to the Act and the Constitution, so a list of specific powers (clause 23.1 in the current Constitution) is not necessary.
19. **Disqualification of Board Members** (clause 6.20): A person cannot hold office with an Affiliated Association or a Club and be a Board Member of BBNZ at the same time.
20. **Integrity Code** (clauses 17.2 – 17.4): These clauses do not predetermine that BBNZ will adopt any specific integrity code but provide a framework for consistent application when it does. They set out how the application of an integrity code will cascade down the basketball system and include a requirement of Affiliated Associations to include in their constitutions that their non-individual members are bound by an integrity code adopted by BBNZ.
21. **Transition** (clause 21): Board Members elected or appointed under the current Constitution continue under the new Constitution. The number of terms they served under the current Constitution count towards the maximum number of terms permitted under the new Constitution. Note there is no change to the Board composition of 4 Elected and 4 Appointed Board Members. There is a proposed change to the terms of office served from a term of 4 years and a maximum of 2 consecutive terms (8 years maximum) to a term of 3 years and a maximum of 3 consecutive terms (9 years maximum). The current board has 5 members (4 elected, 1 appointed) who are in their second and final consecutive terms of office. These members are not eligible for re-election or re-appointment at the expiry of their current terms. The 3 appointed members who are in their first term will be eligible for a further 2 consecutive terms if reappointed resulting in a 1 off transition impact of potentially serving 10 years rather than the proposed 9 year maximum going forward.


Appendix A – Flow chart for managing disputes
