



EQUESTRIAN SPORTS
NEW ZEALAND

CONSTITUTION REVIEW

DISCUSSION DOCUMENT
DECEMBER 2018

ESNZ CONSTITUTION REVIEW TIMELINE

STAGE 1 – CONSTITUTIONAL REVIEW TIMELINE

MILESTONE	DATE
Progress report and discussion document to ESNZ Board Meeting. Board sign off on discussion document and consultation plan going out to members. Incorporate any final feedback from the Board. Release discussion document to Discipline Boards, Area groups, NEC Committees and members following Board approval	7 November 2018 Board meeting
Continue to develop second stage constitution issues: Board appointment process, disputes procedures, president/patron appointments etc.	August 2018 – March 2019
ESNZ Constitution Review Roadshow: regional meetings for all disciplines together	April – May 2019
Deadline for submissions from Discipline Boards, Area groups, NEC Committees and members.	30 June 2019
Incorporate feedback from Discipline Boards, NEC Committees, Area groups and members.	July 2019
In person meeting and review of draft constitution with Mark von Dadelszen.	August 2019
Recommendations of Panel, plus a Draft Constitution based on membership feedback to ESNZ Board meeting	August 2019
Agenda items, including alterations to the Constitution to be posted on the ESNZ website at least 21 days before the date of the AGA.	September 2019
New Constitution ratified at AGA.	End September 2019
Register new Constitution with Incorporated Societies.	ASAP after 2019 AGA.

STAGE 2 – DISCIPLINE BY-LAW REVIEW TIMELINE

MILESTONE	DATE
Commence review of Discipline by-laws.	October 2019
Establish terms of reference for Discipline by-law review.	October 2019
Front end advice – in person meeting with Mark von Dadelszen.	
Compare of Discipline by-laws.	November / Dec 2019
Write to Discipline Boards to inform them of review, ToR and request to appoint a representative to be part of review panel. (Or should the representative be the Chair?)	December 2019
In person meeting with Discipline representatives and Mark von Dadelszen. Present ToR and compare of Discipline by-laws. Discuss and agree order/content of Discipline by-laws. Discuss and agree various sections/areas willing to align. Discuss and agree various sections which can be tailored to their own discipline.	January 2020
By-law template to be developed and sent to disciplines.	January / February 2020
First draft of Discipline by-laws to be presented to panel and Mark von Dadelszen for feedback. Disciplines to incorporate any feedback	March 2020
Finalise consultation and communications plan.	April 2020
Second draft of Discipline by-laws to be presented to discipline board meetings along with consultation and communications plan for sign off. Incorporate any final feedback from the discipline boards.	April 2020
In person meeting and final review of work to date with Mark von Dadelszen.	May 2020
Final draft of Discipline by-laws to be presented to ESNZ Board for sign off.	May 2020
Discussion document and draft by-laws out to members and area groups for feedback. Encourage area groups to have discussion at area AGM's during end May / early June.	End May /early June 2020
Disciplines to send out AGM papers.	June / July 2020
Discussion and presentations to Discipline AGMs. • Dressage AGM - ? • Endurance AGM - ? • Eventing AGM - ? • Jumping AGM - ?	June / July 2020
New by-laws ratified at Discipline AGMs.	June / July 2020

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1. INTRODUCTION

In mid-2016, in anticipation of legislative changes to the law governing incorporated societies and developments in governance models for sports organisations, the ESNZ Board established a Board sub-committee, the Constitution Review Panel (the Panel), to consider the suitability of the current Constitution for the organisation.

The Terms of Reference provided to the Panel provided for a full review, not simply a refresh of the existing relevant governance documents. The Panel has met with Sport NZ experts in sports governance and constitutional change, and has reviewed a range of reports, both reports prepared specifically for the ESNZ Board and reports more generally on upcoming legislative changes.

This discussion document has resulted from the work the Panel has done to date. It is designed to first outline the strengths and weaknesses of the current Constitution and structure of ESNZ and then to stimulate discussion and debate regarding alternatives.

The Panel's approach has been to start with the Constitution because it is the paramount governing document and sets out the principles according to which ESNZ is to be governed. It is the document from which all other Rules of ESNZ derive their legitimacy. However, as members will be aware, the Constitution is a high level document and much of the details of our Rules are in Regulations and By-laws. Consequently, a review of the Constitution should be seen as only the first step in the review of the effectiveness of the governance structure of ESNZ. In order to preserve the integrity of our governance, once a new Constitution has been adopted this work will need to be followed up by a review of the subsidiary governing documents. Accordingly, this document will be the first of a series of documents reporting to members on a review of the governing documents of ESNZ, and which are issued for consultation with members.

In researching the subject of effective governance and the law in relation to incorporated societies, the Panel has found there is plenty of information available. The pending changes to the Incorporated Societies Act have generated many publications and legal opinions, notably from the Law Commission which has drafted the new law. The Sport NZ website has much information on Governance of National Sports Organisations (NSOs), in particular the booklet "Nine Steps to Effective Governance", and is regularly updated with commentary on the proposed New Act, as it progresses through the parliamentary process.

The Sport NZ website also contains a sample Constitution for NSOs with comment on the legal requirements of each article.

This discussion document represents a summary of the Panel's views on the best governance structure and

Constitution for ESNZ, and examines what if any changes are recommended to the current governance structure of ESNZ Constitution (the status quo) to position the organisation accordingly.

Some members might be daunted by the length of this document and/or not be familiar with the concepts discussed. However, we encourage all members to get involved in this review and contribute to the discussion on the governance structure for ESNZ.

REASONS FOR THE REVIEW

KEY POINTS

- **Amendment to Incorporated Societies law underway**
- **Governance of ESNZ to be effective should be aligned with structure of organisation**

There is a very compelling external driver and a number of internal drivers supporting a review of ESNZ's rules at this time.

The Incorporated Societies Act 1908 is to be replaced. There will likely be a 4 year transition period for introduction of the new legislation. The consultation process started with release of a discussion document and call for submissions by 30 June 2016. Over 100 submissions were received raising some important changes that have required revisions to the Bill.

The key proposed changes relate to:

- Basic duties for "committee members" more akin to directors' obligations under the Companies Act 1993, that will be expressly set out in the new legislation;
- More details around managing conflicts of interest;
- Dispute process to be built into constitutions;
- Must have a constitution not just "rules".

More detail on these changes can be found at: <http://www.sportnz.org.nz/managing-sport/news/incorporated-societies-act-changes>

<http://www.mbie.govt.nz/info-services/business/business-law/incorporated-societies>

The timetable for introduction of the new Act has slipped and it is now likely to be introduced in 2019, and enacted in 2020.

Independent of this proposed legislative change, the ESNZ Board had started a process of considering how ESNZ should operate at a governance level and was examining the effectiveness of its current Rules to support the desired governance model.

Effective governance of NSOs is also becoming an important element in funding decisions of Stakeholders such as Sports NZ, Community Trusts and sponsors. It is expected that this will have more and more influence on funding decisions of those bodies in the future.

A report was commissioned from external consultants, BoardWorks International Limited in 2014. This report was titled "One Organisation, Many Sports" – and recommended a review of the ESNZ Constitution and Discipline By-laws and their alignment as befitting a unitary organisation.

The Panel started its work by reviewing the current Constitution to identify clauses where an examination was required, either as a result of the proposed changes to Incorporated Societies law or otherwise because of developments in ESNZ as an organisation since its Constitution was last reviewed.

This discussion document canvasses the content of a revised Constitution that will comply with the requirements of the proposed new Incorporated Societies Act, with specific reference to the following broad topics:

1. **Name** – a name change is not proposed.
2. **Purposes** – see the discussion under the heading – 'Primary Purpose of ESNZ'.
3. **Powers** – covered in Constitution at Article 4
4. **Membership** – categories of membership, and how people become to be members. See discussion under the heading – Members are our Owners
5. **Disciplines** – how structured and governed (this will be outlined in Bylaws).
6. **Subscriptions and levies** – how set, differences for Disciplines/classes/ages of membership.
7. **Member grievances and complaints** - the new Act will require processes for dealing with these to be specified. See discussion under heading – Disputes Procedures.
8. **AGMs** – when to be held, and particular requirements.
9. **SGMs** – how to be called (minimum number for a members' requisition for an SGM), and particular requirements.
10. **AGM & SGM processes** – how are members to be notified of meetings, who chairs, proxies, quorum (are proxies included in the quorum?), who can vote, how are votes cast.
11. **Board** – comprising of what officers and members, how elected or appointed, quorum, how often to meet. See discussion under heading – Governance and Board Makeup.
12. **Elections** – are these held at the AGM or run before the AGM by some form of postal (including email and use of electronic computer-based voting systems) voting? See discussion under heading - Voting by Members.
13. **Finances** – financial year end, annual accounts to be audited or reviewed.

The initial approach of the Panel in undertaking a review of the ESNZ Constitution has been twofold - to try to identify what is working well and what is not working well in the current Constitution and needing review, and also to determine what additional clauses will be required under the proposed new Incorporated Societies Act, such as a disputes process.

For some of the above topics, there is likely to be little change from the provisions in the current Constitution. In particular, the panel has not considered at this time any changes to the AGM and SGM processes, nor to the Finance related provisions. However, Members feedback is welcomed on these topics and if there is strong support for change in any of the aspects of ESNZ's Constitution which are not canvassed in this document, there will be a review undertaken as part of the overall review.

2. CURRENT ORGANISATION STRUCTURE

KEY POINTS

- ESNZ was structured on establishment as a unitary organisation
- Over time, its charter documents have developed features more typical of a federation structure
- The Panel considers ESNZ is best suited to a unitary structure.

A preliminary consideration for the Panel has been the structure of ESNZ as a unitary or federal organisation. ESNZ has historically been structured as a unitary organisation controlled directly by its members, albeit through participation in area groups which are not separate legal entities but exist within ESNZ.

An NSO structured as a federation has the national body owned by various clubs/branches or regional bodies which are separately incorporated legal entities.

See Appendix for current ESNZ structure

The first moves to set up a national organisation representative of the various horse interests in the country, that would control competitions under international rules in New Zealand, and be able to organise and control an Olympic Equestrian team, were made in the early-1950's under the leadership of Messrs Pilmer and Holden. At the inaugural meeting convened by these gentlemen there was discussion on the scope of the organisation and the general feel of the meeting was that it should not be confined to one branch of equestrian competition but should be comprehensive and cover all horse competition activities.

Members of the organisation were to be represented on an area basis, and the country was divided into 6 areas with 4 representative members from each area forming a Council.

The following areas were established:

1. North Auckland, Auckland, Waikato
2. Taranaki, Rangitikei, Manawatu
3. Poverty Bay, Hawkes Bay, Wairarapa, Wellington
4. Marlborough, Nelson, Nth Canterbury to Rangiora
5. Canterbury, South Canterbury
6. Otago, Southland

Accordingly, the area group representation model has existed since the foundation of the organisation. Over time the number of area groups has been expanded under

the Constitution to 20, and in Endurance, a club model operates.

Despite being established as a unitary structure, subsequent changes to how ESNZ operates have been modelled more on a federation model, and parts of the organisation have assumed rights and powers which have not been delegated to them by the ESNZ Board, the only body in the organisation with a full governance role.

These changes have resulted in a Constitution and By-laws which do not support the original intent of the founders of centralising authority within the national body, which has as its members, the individuals who participate in the sport.

The Panel's view is that as ESNZ is primarily an events based organisation, it is suited to a unitary structure and the drift towards a federal structure is not in the sport's interest. Succinctly put –

“Whatever the structure, [ESNZ] needs to operate within a framework that results in clear accountability. Sport is fraught with opportunities for confusion and potential conflict.

... Documented clarity on roles and expectations is vital. The emerging use of aligned constitutions, cascading strategic plans, service agreements and whole-of-sport plans is a positive step in gaining such clarity.”¹

¹ Nine Steps to Effective Governance, 3rd Edition, Sport NZ publication at page 36

3. PRIMARY PURPOSE OF ESNZ

KEY POINTS

- The Panel considers the primary purpose of ESNZ is to act and speak on behalf of **all** Equestrian Sports within NZ and within the international sports community

The Panel recognised that in order to identify and develop the best structure and governance framework for ESNZ the Panel had to understand the organisation and have clarity as to its purpose.

All Societies have more than one object or purpose and these objects define the business the Society can undertake. The Board of an Incorporated Society needs to have a clear understanding of the **Prime Purpose** in order to maintain the strategic direction, the true north heading, of the society. While they act in the interest of their members, Societies are formed to serve a purpose in the wider community.

The question posed by the Panel to ascertain this Prime Purpose was - what is it that the community would most miss if ESNZ ceased to exist today. While such objects as Olympic representation and FEI representation are very important objects for ESNZ, the Panel considered these purposes do not have the critical feature of importance to all members and the wider community that would constitute a Primary Purpose.

The Panel concluded that the Prime Purpose of ESNZ is to act and speak on behalf of **all** Equestrian Sports within NZ and within the international sports community.

How the Panel defines “all Equestrian Sports” is to adopt a meaning based on the current range of disciplines that are ESNZ sports, which means that showing, vaulting, polo, polocrosse, mounted games, carriage riding and similar would remain out of scope. This definition is open to review and comment by members.

If ESNZ ceased to exist today, organisations to represent the separate disciplines and other separate sports would carry on and develop. They would however act separately and Equestrian Sports in New Zealand would be organised and carried on in a fragmented manner. None of these groups could or would provide leadership for all Equestrian Sports (as defined) and many resources would have to be duplicated. As well, the economies of scale that come from a single unified organisation would be lost and some services unable to be funded.

From its purpose will be derived the objects of ESNZ. In the current Constitution, the Objects setting out what ESNZ has been established to do are outlined in Article

3, attached to this discussion document as Appendix B. The Panel does not propose any significant changes to the Objects of ESNZ as currently expressed.

Questions to consider

- Do you agree with the Constitution Review Panel’s statement that ESNZ’s primary purpose is: To act and speak on behalf of **all** Equestrian Sports within NZ and within the international sports community?
- If you don’t agree with the Constitution review panel’s statement as to ESNZ’s primary purpose as above, what do you consider ESNZ’s primary purpose to be?

4. MEMBERS ARE OUR OWNERS

KEY POINTS

- ESNZ is a member organisation
- Board acts on behalf of members
- ESNZ has a number of categories of membership
- ESNZ members have limited ability to participate directly in decision-making (including changes to the Constitution) because of the voting system adopted by ESNZ

A Constitution is a legally binding contract between an organisation, represented by its Board, and the organisation's owners.

The Board's responsibility is to act on behalf of the 'owners' to achieve the best possible outcomes for the organisation. The Board is primarily accountable to the 'owners'.

Legal owners have three enduring authorities:

- exercise control over the Board at a General Meeting (AGM or SGM);
- alter or amend the constitution or rules;
- determine to wind up the legal entity.

While NSOs are seldom structured as companies and so rarely have formal shareholders, the concept of ownership is still valid and 'Ownership' is a key concept in setting the governance framework for an NSO such as ESNZ.

In incorporated societies, owners are usually known as the 'members' or the 'member organisations'. It is useful to view the members of an association or society as the equivalent of legal owners.

In NSOs with traditional federation structures this legal ownership group can be quite small, perhaps just a small number of regions, branches or other member entities. In such cases, their obligation at General Meetings to be truly representative of the clubs and participants further down the structure versus the observed reality has contributed to political dissent in some sports.

In ESNZ, membership is primarily limited to individuals (but see comments later in this section on Affiliated and Member organisations) and there are a range of options set out in the current Constitution at Article 5. These are:

- Full member (including junior members)
- Introductory members
- Honorary Life members
- Life members

Introductory members are defined in the Constitution as non-fee paying members. Following the recent review of membership fees, there should be no members who are not fee paying, so this definition in the Constitution will need to be updated.

The last category – Life Members – refers to members who paid a life membership fee when a fee was prescribed. It is no longer a membership option and as a result, there is a finite group of members who are life members. Removal of this option is considered a fair position because equestrian sports can be a sport for life and ascertaining a fee upfront fee that reflects an individual's participation as a member over potentially many years is very difficult to calculate in any equitable way.

To be a voting member, a member has to be aged 18 and not be a non-fee paying member. Affiliated and Member organisations can also have voting rights.

In ESNZ, which the Panel considers should remain a unitary organisation, the mechanism for members' exercise of their ownership rights more resembles the type of mechanism that would be adopted by a federation structure and a review of this mechanism is considered warranted to maintain the integrity of a unitary model.

From the outset of the organisation, the franchise that belongs to the legal owners/voting members was diluted in ESNZ and substituted by the area group delegate voting system still used at AGMs. It is easy to see that logistically the delegate system has several advantages in terms of decision-making, and participation in voting at General meetings is easily managed.

The downside is that the wider membership loses the ability to participate directly in the decision making process and this leads to disconnection between the members and the organisation. **Currently most decisions, including changes to the Constitution, are made by 36 members (the discipline voting delegates) and the Board.**

The Panel has considered a number of options for a voting system which will enable participation more widely by the membership and/or vest voting powers on a more representative basis.

The need for a Board to be able to clearly identify the organisation's owners will increase with the passing of the new Act. Enforcement of the Act will primarily rest with the membership of the organisation. The new Act does increase the capability of the Registrar of Societies in the area of enforcement but this capability has been deliberately limited. It is recognised that Societies are

democratic entities and as such enforcement should, where possible, be internal. Members will have increased rights and abilities to go to the courts if there is a perception the organisation is acting in contravention of the Constitution or members' rights.

AREA GROUPS

KEY POINTS

- **Importance of Area Discipline Committees in delivery of sport is recognised**
- **Area Group structure to be reviewed in consultation with Area Discipline Committees**

The Panel is also currently examining the Area Groups structure as it operates within the organisation and as it is described in the Constitution. The Panel has noted that although within the Constitution, Area Groups are part of the organisation, over the years a number of Area Discipline Committees have incorporated a separate entity which undertakes some of the activities that would otherwise be undertaken by the Area Discipline Committee, such as running shows, fund raising and so on. In some parts of the country and disciplines, this separate entity has assumed the role of the Area Discipline Committee, while in other parts the Area Discipline Committee structure is still in place and sits alongside the separate entity with common office holders. Those separate entities which have assumed the role of an area discipline committee are not clearly catered for in the current Constitution and how best to accommodate them within a new Constitution is challenging under a unitary structure.

Any solution will require extensive consultation with all Area Groups, the goal being to establish a structure that will work best for ESNZ and for the Committees at the Area Group level recognising their critical role in delivery of our sport.

The panel considered the Equestrian Australia model of tiered Affiliation which would allow for member organisations and other groups to associate or belong as members to ESNZ. This model does work well in allowing private organisations, clubs and other groups to join and belong to EA. However, membership of organisations by affiliation does not sit well with a unitary structure which is based on a membership comprising individuals who participate in the sports.

AFFILIATED ORGANISATIONS AND MEMBER ORGANISATIONS

The current Constitution provides for membership by organisations at Article 9. Specifically it refers to Affiliated and Member Organisations. Although it is not entirely clear from the wording in the Article in the current Constitution, it would seem that Affiliated organisations are organisations such as NZPCA and RAS which have their own rules relating to equestrian sports competitions

and a Member organisation is an organisation set up specifically to run ESNZ events.

With a growing number of external providers of equestrian competitions run under ESNZ rules and using ESNZ Officials, there is a need to ensure these providers are supporting the development of ESNZ Officials and equestrian sports generally in the same way as ESNZ members, ie through a membership fee.

The process for affiliation and membership by other organisations is under review and any changes made will be communicated separately and after due consideration, incorporated into the new Constitution. Refer <https://www.nzequestrian.org.nz/esnz/associated-events/>

5. VOTING BY MEMBERS

KEY POINTS

- Historically, ESNZ has allocated voting rights to Area Groups (through the mechanism of Area Discipline Committees appointing Discipline Boards) rather than individual members
- With limited exceptions, universal voting by financial members of ESNZ is restricted to election of the President and Vice President.
- Voting on changes to the current Constitution is limited to the ESNZ Board and the 9 voting delegates (4 from each discipline) appointed by each Discipline Board.
- The Panel favours retaining voting power at the Area Group level because these Committees are central to delivery of the sport.
- However, the voting by Area Groups under the current model may not be truly representative of members around the country.

Membership is central to the incorporated society model and members play a key role in the governance of an incorporated society through the annual general meeting and election of officers

The purpose of an incorporated society is expected to be based on the following principles:

- An organisation with members who have the primary responsibility for holding the society to account;
- A private body that should be self-governing and free from inappropriate Government interference; and
- No distribution of profits or financial benefits to members. People join a society for a shared purpose, not to profit personally in a financial sense from the activities of the society.

These principles are recognised in the new Incorporated Societies Bill.

Members appoint a Board or Committee to run the society on their behalf and it is through control over appointments to this Board or Committee that members hold the society to account. Such matters as appointment and removal of officers should be covered in the Constitution.

However, how members are enfranchised does not necessarily have to be on a democratic basis of one

member, one vote. There can be valid reasons for allocating voting rights based on criteria other than universal franchise. **For instance, historically ESNZ has allocated voting rights to Area Groups rather than individual members.**

*"In addition to rules in the constitution, societies often make use of subsidiary forms of rulemaking to manage more detailed matters. These subsidiary rules may be given different names, including bylaws, regulations, guidelines or policies. The main distinction between rules in the constitution and these subsidiary forms of rulemaking is that bylaws do not need to be registered. They also cannot override or conflict with the registered constitution. They are therefore, commonly used to prescribe matters of operational detail that may need to be altered more frequently, for example, the detailed rules for sporting competitions. They are not generally suitable for matters related to the structure and functioning of societies."*²

The voting rights of ESNZ members are contained both in the Constitution and Discipline By-Laws, as set out in the attached Appendix A. With limited exceptions, universal voting by financial members of ESNZ is restricted to election of the President and Vice President. Voting on changes to the Constitution is restricted to the ESNZ Board and delegates chosen by each Discipline. Voting on election to the Discipline Boards is generally restricted to Area Discipline Committee representatives although in Endurance any ESNZ member who is a member of an Endurance Club can potentially vote on Endurance Board appointments. (Endurance does not apply the Area Group model, and has a Club structure instead).

The significance of consolidated voting at the discipline level is that the Discipline Board Chairs (or other Discipline Board representative) are automatically members of the ESNZ Board under the Constitution, resulting in a representative Board. Elsewhere in this discussion document the Panel puts forward recommendations for changes in the process of selecting the ESNZ Board, to move to a skills-based Board drawn from a wider pool of people within the sport. See discussion under the heading - Governance and Board makeup.

This consolidation of voting power at the Area Group level is a feature of the organisation that has existed since its establishment as the New Zealand Horse Society. The

² NZLC Report – A New Act for Incorporated Societies, para 7.20, page 104

Panel considers that retaining a voting system based at the Area Group level is appropriate because these groups remain central to the delivery of the sport, even recognising the emergence of affiliated groups such as Woodhill Sands which are playing a growing role in providing venues and running events. By and large it seems members interested in contributing to delivery and promotion of equestrian sports get involved in the Area Discipline Committees. The Panel is interested in the views of members on this point.

However, the Panel considers that voting at the Area Group level may not be a fair proxy for voting by individual members because the Area Groups have remained largely unchanged in a geographic sense since inception over 50 years ago, yet the location of members has changed so that they are not evenly spread between area groups.

The original 6 Area Groups representing 17 areas were:

1. North Auckland, Auckland, Waikato
2. Taranaki, Rangitikei, Manawatu
3. Poverty Bay, Hawkes Bay, Wairarapa, Wellington
4. Marlborough, Nelson, Nth Canterbury to Rangiora
5. Canterbury, South Canterbury
6. Otago, Southland

Subsequently, there has been some deconsolidation with the 17 Areas each becoming an Area Group, plus Auckland divided into Auckland and Waitemata, and the addition of Bay of Plenty and Taihape as new Area Groups. As well, there has been re-configuration of the South Island Area Groups with Ashburton added and North Canterbury to Rangiora seeming to be consolidated into Canterbury.

Furthermore, there are now Area Committees in each Discipline with the exception of Endurance which operates through a club structure. Consequently, across the organisation there are at least 60 Area Discipline Committees and 10 Clubs.

The following table provides an indication of where members are located based on details held in the ESNZ database. In a large urban area such as Auckland, there may be some inaccuracies in the allocation between Auckland and Waitemata Area Groups, however the table presents a position of a wide variety of membership numbers between the Groups.

AREA GROUP	MEMBER NUMBERS (at 31 August 2018)
Northland	410
Waitemata	277
Auckland	1160
Waikato	1090
Bay of Plenty (includes Rotorua and Taupo)	661
Gisborne	150
Northern Hawkes Bay	356
Central & Southern Hawkes Bay	230
Central Districts	492
Taihape	57
Taranaki	314
Wairarapa	302
Wellington	530
Marlborough	280
Nelson	237
Canterbury	1227
Ashburton	143
South Canterbury North Otago	249
Otago	338
Southland	321

Area Group member numbers range from 57 in Taihape to 1437 in Greater Auckland. Furthermore, there are 5 area groups representing 3598 (41%) members in the Upper North Island, 8 area groups representing 2431 (27%) members in the Lower North Island and 7 area groups representing 2795 (32%) members in the South Island.

The Panel is interested in members' views on whether they consider representation in ESNZ Board selections on the basis of voting rights allocated evenly to Area Groups (through Discipline Committees) to be fair and reasonable given the location of members as shown by the above table.

As observed above, the Panel considers that giving voting rights to members through the intermediary of Area Group Committees is appropriate for the

organisation. However, the Panel also considers that how the voting rights are currently allocated to Area Discipline Committees for the election of Discipline Board members may not result in a Discipline Board that is truly representative of members. It is important that the Discipline Boards are truly representative of members because these Boards select the Voting Delegates that represent members in most decision-making. The Panel considers a move to a proportional form of representation where votes are allocated based on area group membership would be preferable for appointments at the Discipline Board level and should be considered.

Questions to consider

- What is your view on Area groups retaining their current proxy representation of members' views in terms of voting for their Discipline representatives?
- Would you prefer all members to vote individually rather than through Area group representation and if so, how do you see this working?
- What is your view on proportional representation? ie larger Area groups would get more votes based on the number of members each has at a predetermined measurement date.
- If you do not favour proportional representation do you want the status quo (as in table above) or do you want some other form of voting for Area groups, and if so, what?
- What is your view on the current number of Area Groups and the geographic locations that they cover? Should there be further division or consolidation of some areas? What would this look like?

6. GOVERNANCE AND BOARD MAKEUP

KEY POINTS

- Governance is possibly not well understood by many ESNZ members
- A governance role involves working on the organisation, rather than in the organisation.
- ESNZ has a representative Board. This is an approach to Board selection which is no longer considered best practice
- Skills based Boards at Sports Organisations is now common practice

ESNZ members can struggle with clarity on the Board's governance function. What is governance?

Governance is the process by which the ESNZ Board:

- Ensures ESNZ complies with all legal and constitutional requirements;
- Sets strategic direction and priorities;
- Sets high-level policies and management performance expectations;
- Monitors and evaluates ESNZ organisational performance; and
- Characterises and oversees the management of risk.³

There is no single definition of governance but these are the key elements, recognising the separation of roles between the Board and management and at the same time, the relationship between the two roles.

"The genuine-value adding function of governance is not easy and requires frameworks and discipline. Too many boards lapse into being spectators to management, reviewing last month's activities rather than focusing on influencing the future. The board represents and serves the interests of the owners, be they shareholders, members or beneficiaries of a trust. When things go awry the board will necessarily dip into detail, but it should avoid, in normal times, acting as supra-layer of management. The [board members] fiduciary obligation is to hold in trust the efforts of those who have gone before and ensure that benefits are delivered to the current and future generations."⁴

Board members are collectively required to act in the best long-term interests of ESNZ as a whole, even if they

feel an obligation to represent particular interest groups, say because they also have a Discipline role or are a sport official. This does not mean that the Board should not consult with and seek direction from current stakeholders, but that the Board may have to make decisions that contradict the wishes of some of these stakeholders.

To be effective, Board members need to set aside the other roles they might hold in the running of equestrian sports competitions, and take a step back from day-to-day operational matters and focus on bigger picture governance issues relevant to the long-term sustainability of ESNZ. Put another way, Board members need to work on the organisation, rather than in the organisation. A number of Board members come to their Board role after many years of valuable service working in the running of equestrian sports competitions in New Zealand. Without a clear understanding of the different roles, it is too easy to simply be another layer of management.

The ESNZ Board makeup is currently a mix of a representative and skills based Board. The Board comprises the President, the Vice-President (both elected at large at the AGA), the Chair of each Discipline Board (Dressage, Endurance, Eventing and Jumping) and 3 independent board members appointed by the Board itself. The Board may also co-opt non-voting members to provide specialist skills and expertise.

Representative boards are nearly a thing of the past in the NFP sector as the result of a better appreciation of sound governance practices and the failure of the representative structure to deliver sound governance. An expectation that the role of the Discipline appointed board members is to represent that Discipline and not the best interests of ESNZ as a whole, is a misunderstanding widespread throughout the membership.

Sports Boards need to reflect and understand the communities they serve. Gender, ethnicity and age need to be actively considered

The formation of skills-based boards is now a common practice across New Zealand. That said, having an understanding of equestrian sports competition is arguably a necessary skill for an ESNZ Board member.

The core Board member skills are: strategic thinking capability; understanding of organisational structures and systems and of financial management; an up to date knowledge of the sport; commitment to ESNZ's mission

³ Nine Steps to Effective Governance, Sport NZ, 3rd Edition, page 13

⁴ Governance in the New Zealand Sport and Recreation Sector, Sport NZ publication, page 4

and values; interpersonal and teamwork skills.

These skills are coupled with the following personal attributes: high ethical standards, sound independent thinking (Board work is brain work), an ability to recognise and acknowledge real or perceived conflicts of interest, a commitment to seeing things through and making a contribution at the governance level, and last and not least, a sense of humour.

If ESNZ moves to a skills based Board, then it becomes even more important that all members have an opportunity to participate in the election of Discipline Boards because members will have a limited role in the appointments to the ESNZ Board

The Panel considered the following 4 options for members' voting in respect of ESNZ Board appointments:

Option 1: Status Quo - Board membership and selection process remains as under current Constitution;

Option 2: Additional appointed members, and all members can directly vote for elected positions - Board has 9 positions - additional appointed members (4 instead of 3), and all ESNZ financial members aged 18 years and over can directly vote for elected positions (5). Board appoints Chair;

Option 3: Additional appointed members, voting for elected members at Area Group level and proportional representation allocating votes to Area Groups based on membership - Board has 9 positions. Additional appointed members (4 instead of 3), voting for elected members at Area Group level and proportional representation allocating votes to Area Groups based on membership. Board appoints Chair;

Option 4: All members can vote directly for President. Discipline representation on ESNZ Board through Appointment Panel process, and all members can vote for a candidate from their nominated discipline. Board has 9 positions.

ALL OPTIONS HAVE A 9 MEMBER BOARD.

Option 1: Under the status quo which results in a representative Board, all ESNZ financial members aged 18 years and over would be eligible to vote for the President and Vice-President, the 4 Discipline representatives would be the Discipline Chairs or other Discipline Board member nominated by the Discipline Board, there would be up to 3 appointed Board members plus co-opted (non-voting) Board members.

Option 2: Under option 2 which is a move to a skills based Board, the Board membership would comprise 5 elected members and 4 appointed members with the Board appointing its Chair. Appointed Board members would be selected through an Appointments panel process and voting for elected Board members would be open to all

ESNZ financial members aged 18 years and over.

Option 3: Under option 3, also a move to a skills based Board, mix of appointed and elected Board members as per option 2. However, voting for elected Board members would be by Area Group Delegates with voting rights allocated to each Area Group based on proportion of members residing in each Area.

Option 4: Under option 4, a modification of the status quo, there would be Discipline representation on the ESNZ Board, however members would vote directly for that representative from their discipline who need not be a Discipline Board member - All members can vote directly for President. Additional appointed members (4 instead of 3), Discipline representation on ESNZ Board through Appointment Panel process, and all members can vote for a candidate from their nominated discipline.

The preference of the Panel is for either of options 2 and 4 for the reason set out below. The views of members on all options are sought.

The Panel considers that adopting a proportional representation approach to the allocation of voting rights to Area Groups across Disciplines for selection of the Voting Delegates would not be practicable.

Where the Panel does consider there is a place for further consideration of proportional representation in ESNZ's voting practices is in relation to Discipline Board appointments. This is discussed in more detail below under the heading – DISCIPLINE BOARDS.

Questions to consider

- Which Board composition option of the four presented do you favour and why?

Under options 2 and 3, there is no longer a President role, either separate from or as part of the Board Chair role. The views of members are sought as to the importance of ESNZ having a President. If there is strong support for retaining this role, how should the President be appointed and what should be the responsibilities of this role?

It is not uncommon for sports organisations to have both a President and a Chair. In this situation, the President role is largely limited to the ceremonial side of the organisation, but is not a decision-making role. Under this model, in a new Constitution the President would not be a member of the ESNZ Board but would act as an independent check for members.

Furthermore, the Chair, rather than the President, would preside at General Meetings subject to certain exceptions such as controversy or unrest where a President who is not a Board member may be better placed to chair the meeting.

For the last 5+ years, the ESNZ President has not chaired the ESNZ Board. Instead, a Board Chair has been appointed from within the Board. The Board Chair role is a critical position in any organisation and generally is an

appointment by the Board, and not a role elected by the wider membership. An effective Chair provides overall leadership to the Board without limiting the principle of collective responsibility for Board decisions. An effective Chair builds working relationships with and between Board members, encouraging trust and respect, and maintaining a cordial and constructive relationship outside of the boardroom.

Under options 2 and 4, the ESNZ Board membership would comprise 5 elected members and 4 appointed members with the Board appointing its Chair. Appointed Board members would be selected through an Appointments Panel process and voting for elected Board members would be open to all members or Area Group delegates depending on the option chosen.

The automatic right of Discipline Board Chairs (or their nominee) to be appointed to the ESNZ Board will be removed. Instead, the Discipline Boards will have a role in identifying and nominating Members with the skills and attributes relevant to ESNZ Board requirements. These individuals may be Discipline Board members or persons outside the Discipline Board.

The driver for this suggested change is recognition that Discipline Board Chairs already have made a significant volunteer commitment to the sport by taking up the Discipline Board Chair role and that the workload that comes with that commitment can overburden or limit their capacity to contribute to the work of the ESNZ Board. By having more people working on the sport (governance) as well as in the sport in the organisation and running of events, the workload gets shared and more people are given an opportunity to contribute to equestrian sports.

Effective communication between the ESNZ Board and Discipline Boards will be necessary for the Boards to be aligned. The CEO will play a critical role in ensuring that the Boards are aligned.

More work is to be done on how the Appointments Panel would operate and its membership.

The Constitution will contain provisions relating to membership and operation of the Board Appointments Panel, including factors to be taken into account by the Panel in recommending Board appointments.

Members' views on Board tenure are sought, especially as regards elected roles which can currently be as short as 1 year. The ability of a Board member to come up to speed on Board issues and make an appropriate contribution as a Board member within a 1 year time frame can be an unrealistic expectation. A minimum 2 or 3 year term may be beneficial, with a total maximum tenure also specified.

The Panel also considers there should be provision in the Constitution for the removal of Board members and Board committee members who are in breach of their Board duties before the expiry of their term of office. The

Board by a majority decision could exercise this power and members may also by requesting an SGM for the purpose of removing a Board member.

The duties and powers of the ESNZ Board are defined very simply in the current Constitution in the following terms- "*the governance and management of ESNZ shall vest in the Board which may exercise all the powers of ESNZ and do all things which are not expressly required to be undertaken by ESNZ at a General Meeting.*"⁵

It is proposed that the duties and powers of the Board be described in more detail in the new Constitution.

Questions to consider

- What do you think should be a minimum term for Board members' tenure?
- Do you support a maximum term for a Board member's tenure? If yes, what do think is appropriate?
- What do you think should be the number of Board members?
- Do you favour retention of the role of President?
- What, if any, changes would you want to see to the President's role?
- How should the President be appointed?

DISCIPLINE BOARDS

Apart from the reference in Article 16.1 of the current Constitution that Discipline Boards are recognised by the ESNZ Board, the current Constitution is silent on the appointment of Discipline Board members. Given that the Discipline Boards are committees of the ESNZ and derive all their powers by delegation from the ESNZ Board, it is fundamental that the ESNZ Board has ultimate control over the membership of these Boards. This does not mean that the ESNZ Board should control the Discipline election process, simply that it should have the ability to decline the candidacy of any prospective Discipline board member who, in the opinion of the ESNZ Board, is not suitable for a Discipline Board role.

In addition, as commented above, if decision-making as to the Discipline Board appointments continues to be held by Area Groups as a proxy for members and not members generally, the Panel considers that the allocation of voting rights to Area Groups should be based on proportional representation to ensure that all members are fairly represented in the voting process.

Furthermore, as it is the Panel's view that membership of the Discipline Boards should be approved by the ESNZ Board, it follows that the ESNZ Board should also have the subsequent power to remove a Discipline Board member, should such action be required because that Board member is in breach of his or her Board duties.

⁵ Article 15

7. DISCIPLINE BY-LAWS

KEY POINTS

- Discipline By-Laws are not aligned to limits of delegated authority
- There should be consistency in the By-Laws between Disciplines to the extent possible which is currently not the position
- Review of By-Laws proposed as part of this Review

The Discipline By-Laws have undergone a design drift over time which may suggest to readers that they are separately incorporated entities rather than a committee of the ESNZ Board. This drift has led to the Disciplines assuming significant authorities or powers without any recourse to the ESNZ Board, such as employing staff, conducting investigations and making financial decisions without approval by the ESNZ Board. Each of these actions have potentially serious implications and risk for the reputational and financial security of ESNZ yet the Board and CEO may not have any input into the decisions.

Furthermore, there is no By-Law template common to all Disciplines. Having a number of standard provisions common to all Disciplines would assist the ESNZ Board and CEO ensure alignment and collaboration. As a second stage in this constitution review process, it is proposed that terms of reference for Discipline By-Laws are developed which will highlight the connection to the ESNZ Board, provide details of delegated authority, accountability to the ESNZ Board in management matters such as annual budgets and reporting requirements and working with Discipline staff and related matters. Making clear the limits of delegated authority and the performance expectations of each Discipline Board is necessary for ESNZ overall effectiveness.

Based on these terms of reference, Discipline By-Laws will be amended as necessary in each Discipline's chosen way to enact their delegated authorities and remove clauses exceeding such authorities.

8. DISPUTES PROCEDURES

Extract from Law Commission Report on the new Incorporated Societies Act:

Whether they realise it or not, all societies already have obligations to resolve, or participate in the resolution of disputes or grievances that may arise in their society. Despite the Incorporated Societies Act 1908 saying nothing about disputes, the courts have regularly held that members of societies can bring matters to court, either by seeking judicial review or on the basis of alleged breach of contract.

Having a case go to court, usually the High Court, is expensive in both time and money, and is highly likely to be divisive and potentially destructive within a society... The new statutory provisions will require each society to include in their constitutions, and follow, internal processes for dealing with disputes. The Act will also specify minimum standards of natural justice for affected

members that society processes must satisfy.....

The mandatory provisions proposed for the Act will be minimum requirements. Societies will have considerable freedom in designing their procedures, so long as they satisfy the minimum requirements for natural justice. Societies are free to develop unique mechanisms that suit the culture and purposes of their society and members. They may also choose to adopt or develop procedures based on existing models used or tried elsewhere.....

Disputes between members of a society, or between a member and the society they belong to, are inevitable at some point and to some extent. Many societies may experience conflict or disputes only rarely, which may only make the experience of dealing with a dispute all the more difficult and traumatic when it does occur. Given the practical inevitability of disputes, we consider that all societies should be required to at least have some

minimum provisions in place, to deal with complaints, disputes or grievances when they arise, and to do so efficiently and fairly. Such provisions must satisfy existing legal norms for affording disputants natural justice, principally the right for any complainant or alleged “offender” to be fairly heard, and for any decision to be fairly made, without bias or the appearance of bias. If dispute resolution does not resolve a matter effectively, or fairly and in accordance with natural justice, the matter in dispute can continue to affect a society for years and may open it to expensive and disruptive court action. Both these risks can be avoided or at least minimised if a society has relatively simple procedures in place, and follows them when a complaint or grievance arises.

The Law Commission did not envisage that all societies must have the same or similar procedures. It recommended that the new Act require that societies have rules or procedures for resolving disciplinary disputes and other grievances. The Act should contain minimum requirements for such rules, concentrating in particular on defining natural justice requirements for societies dealing with disputes. Some simple procedures that would satisfy the statutory minima may be set out in model rules, but each society remains free to develop or retain their own procedures, so long as they satisfy the statutory minima. Some larger, well-resourced societies, for instance sporting bodies, have well-developed disputes procedures, including access to external arbitral bodies. Such procedures will almost certainly satisfy the natural justice minima imposed by the new Act, and societies will be able to continue to use the processes and providers that they have already developed or chosen. Other societies that currently do not have procedures may choose to adopt mixtures of internal resolution, access to external mediation and appointing some form of external arbitrator or referee. The decision will rest with each society, so long as statutory minima are met.⁶

KEY POINTS

- **Changes to Incorporated Societies laws will require disputes procedures to be referenced in a Society's Constitution**
- **It is in Members' interests to have disputes resolved efficiently and effectively**
- **ESNZ has separate disciplinary processes for disputes arising in competition and disputes not related to competition**
- **A well designed disputes resolution process enables early intervention that can produce an outcome acceptable to the parties**

The new Act will require a reference to an organisation's Disputes Procedures to be written into the Constitution.

At present, ESNZ's Disputes Procedures sit in the rules and regulations.

The procedures required under the new Act include provision for disputes between the organisation and its members as well as any disciplinary processes. These procedures will need to include the process for investigating and dealing with member's grievances and complaints concerning the misconduct or discipline of members. It should be seen that the disputes resolution procedure is separate from the disciplinary procedure even though the two processes may be interlinked.

ESNZ's current disputes procedures are under separate review.

Work continues on this topic and is discussed in more detail below.

A dispute or conflict exists when two or more persons perceive that their values or needs are not compatible. The parties have divergent interests.

WHY SHOULD ESNZ BE CONCERNED ABOUT DISPUTE RESOLUTION?

Apart from the external driver of the new Act requiring ESNZ to consider dispute resolution, ESNZ has many reasons to have a sound dispute resolution process.

ESNZ exists to act in the interest of members. It is in the interest of the members to have disputes resolved efficiently and effectively as this will allow them to continue to enjoy equestrian sport without the disharmony attached to disputes.

ESNZ has a duty to protect members.

For ESNZ significant manpower and financial resources can be committed to addressing disputes as they escalate, and if a major conflict emerges there is the potential to destabilise the organisation.

WHAT PROCESSES DOES ESNZ HAVE IN PLACE?

ESNZ has a reasonably robust disciplinary process in regards to competition. The process is contained in our General Regulations and the stewarding manuals.

The main tools ESNZ has for a disciplinary process outside of competition are the Judicial Committee and the powers of the ESNZ Board. These are also used to some extent for dispute resolution. Jurisdiction for either of these bodies is not always clear and the powers of the Board to act have been questioned in the past.

There are several sections in the current General Regulations that relate to the disciplinary process and there is also reference to a complaints process but there is no formal dispute resolution process within our current

⁶ Law Commission Report – A New Act for Incorporated Societies, June 2013, pages 125-126

rules. However, there is work currently underway as a separate project to review ESNZ's disciplinary system and make amendments to the provisions in the General Regulations.

Disputes that have escalated in recent years have been dealt with in an ad-hoc basis with some being referred to the Judicial Committee and others going to a negotiation type solution or in rare cases a mediation type process.

In nearly all cases the initial complaint is received by either a Discipline board or the general manager and is initially dealt with at their discretion. Results have been mixed with some parties being left feeling unheard.

Some disputes have escalated, resulting in considerable costs to ESNZ and the complainants.

It needs to be recognised that disputes will arise and that planned and controlled intervention at early stages can remove the natural inclination that parties to disputes have when left unresolved, which is to escalate.

INTERVENTION

From the ESNZ's perspective, early intervention is the key to mitigating the harm disputes can do to the organisation and its members. From a constitutional perspective the first step in intervention is a healthy complaints procedure and a complaints investigation process.

COMPLAINTS

Complaints that relate to issues outside of competition should be easy to file and to process. The process for making a complaint needs to be clear and adhered to in order that the members learn to trust and therefore use the process.

The Panel's view is that the Constitution needs to focus on allowing complaints to take place and the process for making complaints. The detail of the complaints process

It needs to be noted that most current Discipline by-laws prescribe the power to hear and act on complaints to that Discipline board. Such provisions do not take account of the potential conflicts of interest that may be present under this approach and could undermine the integrity of the complaints resolution process.

INVESTIGATION

A fair approach to the investigation of complaints is often key to successful management of such complaints. The principles of natural justice are applicable. If a complaint refers to a dispute, in order to facilitate a resolution to the dispute, ESNZ needs to understand the dispute and to understand the interests of the parties.

Qualified investigation of a complaint in a neutral manner will help ESNZ decide what the best process for resolving the dispute is. ESNZ can then try to move the parties to that process.

An investigation can be a very sensitive situation, either

because of the subject matter or the persons involved or other reason. Postings on social media by Members and others can result in the spread of mis-information. It is now very difficult for disputes to be raised and addressed in private because of such postings, and there is a growing expectation of some form of reporting back to the wider membership. Furthermore, member's rights when under investigation need to be protected. Conducting an investigation requires a certain skill set and only qualified personnel should lead an investigation. Who an investigator reports to may also need to be prescribed.

Enquiry needs to be conducted in a neutral manner without focus on an outcome. Confidentiality needs to be maintained as parties may not disclose information otherwise.

A well designed dispute resolution process will allow early intervention that can produce a resolution that will be acceptable to both parties. That does not imply that all parties will get what they want or that compromise is the only answer.

It is recognised that to make these interventions work some resources would need to be committed. Mediation and even facilitation does require trained personnel and arbitration or adjudication requires the services of a qualified arbitrator or lawyer. The question of who picks up any cost needs to be considered but for all parties this process should be cheaper than Court.

9. THE PLACE OF NATIONAL EQUESTRIAN CENTRES (NECS) IN ESNZ

KEY POINTS

- NECs are for the benefit of all ESNZ members and the NEC assets represent a significant share of the value of ESNZ as an organisation.
- The place of the NECs in ESNZ is relevant for consideration by members in the context of a Constitution Review because of the duration of ownership by ESNZ of the NECs, the involvement of a number of members in the operation of the NECs, and their significance to the organisation.
- How integrated or autonomous should the NECs be – a couple of alternatives are discussed and views are sought.

There are two NECs, the assets and operations of which sit within ESNZ. Both are located on leased land, however the leases are long term arrangements and allow for site development and capital improvements.⁷

The National Equestrian Centre Taupo was established in the early 1970's on a 56.5 ha block of land just north of Taupo, bounded on one side by the Waikato River.

The National Equestrian Centre Christchurch is located on a [104 ha] block of land on McLeans Island Road, north west of Christchurch City Centre and close to Christchurch International Airport.

Both NECs feature stables, covered and open yards, competition arenas and training/warm up arenas as well as associated infrastructure (truck parks, ablution blocks, sheds, hall and kitchen facilities).

The NECs' purpose is to benefit all ESNZ members. Their grounds and facilities are available for hire by ESNZ groups and other organisations or individuals for shows, training, clinics, camps, and other equestrian activities.

The NECs operate under a By-law last updated in 2009. This By-law states that the NECs are to be administered by a Committee elected annually by the ESNZ Board and that the Committee is accountable to the ESNZ Board.

The carrying value of the assets located at the NECs is approximately \$3.36m (2016: \$1.9m) which is over 50% of the total carrying value of ESNZ assets. Accordingly,

the NEC assets represent a significant part of the value of ESNZ as an organisation.

Both NECs have capital projects in progress as part of a planned approach to improving the facilities for the benefit of the equestrian community through developing the NECs into "international standard training and competition venues".

These projects have by and large been initiated by and driven by the NEC Committees themselves, rather than part of an overall facilities plan developed by the ESNZ Board and endorsed by the members. The NEC Committees have historically operated with a level of autonomy that is more consistent with a federation model of organisation than a unitary model. In relation to the current capital projects this has meant that the planning, construction and fundraising aspects have all been managed by the NEC Committees.

This raises a number of issues for ESNZ, such as:

What is the role of ESNZ in the provision of a network of equestrian facilities across New Zealand? To date, this role has been limited to the establishment of the NECs and this may be the best outcome in terms of ownership. However, there is also an advocacy role for ESNZ, especially in the large metropolitan centres as the result of an increasingly structured approach undertaken for Local and Central Government investment in sports facilities. This discussion is outside the scope of the Constitution Review and is referred to primarily as an example of the changing external environment in which National Sports Organisations (NSOs) are operating.

- How should ESNZ approach the ownership and development of facilities such as the NECs in the future?
- Is the current approach of devolving leadership for facility development to local groups within the sport the approach that will yield the best outcome for equestrian sports nationally in the future?
- Level of expertise within the organisation to competently negotiate contracts, project manage large capital projects, and understand the need for as well as deliver regular reporting on contract progress and risks such as cost over-runs on a timely basis.

⁷The land at Taupo is leased from DOC, and at Christchurch from Canterbury Regional Council. Both leases grant renewal rights to ESNZ

What established processes exist for undertaking this reporting?

- Impact on grant funding profile of NECs sitting within an NSO.
- Capital raising capability of NECs and constraints imposed by other banking arrangements within ESNZ.

These issues are relevant for consideration by members in the context of a Constitution Review because of the duration of ownership by ESNZ of the NECs, the involvement of a number of members in the operation of the NECs, and their significance to the organisation.

Sport New Zealand has issued the publication - A Governance Framework, which provides guidance on leadership, and discusses the need for evidence of sound governance and planning practices. This publication explains why good governance is essential for sports organisations. Many of the issues outlined above can be addressed through good governance practices covering:

- Confidence and Security – reputational and legal risks are valid concerns for Board and committee members in ESNZ and working within an agreed framework can provide comfort to these persons operating on a voluntary basis in a complex sector.
- Better results - efficient utilisation of scarce results because of good decision-making based on relevant information.
- Stakeholder confidence – application of others' money and respectful use of time gifted through a framework that manages resources in an ethical, efficient and transparent manner.
- Job satisfaction - a good governance framework makes the job easier and more satisfying, increasing the chances of attracting and retaining good people.

There are two schools of thought as to the preferred governance framework for the ownership and operation of the NECs. The first is that these issues can be accommodated within the current ownership and governance model adopted by ESNZ. The second is that a new ownership model for the NECs would better serve the interests of members.

Option 1: Retain direct ESNZ ownership of NEC assets and oversight of NEC administration and development through ESNZ Board

This is the status quo with enhancements. Leadership and good governance are regarded as what is important, rather than ownership structure; as structure alone does not provide the framework and a disciplined approach to decision-making. Working without good frameworks and policies makes life difficult in any sector and more so when most of the individuals working in roles are volunteers.

The NECs would remain administered by a Committee reporting to the ESNZ Board, with agreement on

delegated authority and accountability and reporting responsibilities, all supported by an operational plan developed by the Committees.

The issues with this approach are considered to be lack of perceived ownership (and therefore connection) by the local equestrian community, an inability to strategically target local grants funders because the NECs are part of a national organisation and conversely, confusion about the place of the NECs within ESNZ on the part of national grant funders.

Option 2: Divest NEC ownership, administration, and development to a new entity established for this purpose and controlled by ESNZ

This options adopts a federation model in the sense that the NECs would be separate entities albeit under ESNZ control.

It is likely that a separate entity would be established for each NEC which might create a North Island and South Island divide, although this arguably is already present in terms of member connections with the NECs.

The ownership models to be considered are a company and a trust.

A company would be wholly owned by ESNZ and the ESNZ Board would appoint and remove Directors. The company's Constitution would provide for the Board to act in the interests of the shareholder (ESNZ) rather than the Company.

Boards of directors are responsible for the governance of their companies. The shareholder's role in governance is to appoint the directors and to satisfy themselves that an appropriate governance structure is in place. The responsibilities of the Board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the company's business or activities and reporting to shareholders on their stewardship. Consequently, there would be a transfer of control from the ESNZ Board to the NEC Limited Board.

The NEC Board would be able to raise funds secured over NEC assets without recourse to ESNZ but would be separately responsible for debt servicing, subject to any financial assistance, such as a Guarantee from ESNZ, sought by a lender and given by ESNZ at ESNZ's discretion.

The NEC By-laws also empower the NEC Committees to raise loans for specific purposes, with debt servicing responsibilities sitting with the Committee. However, under the current ownership model, debt servicing ultimately is the legal responsibility of the wider organisation and so any borrowings by an NEC creates financial risk for the organisation as a whole.

This risk is understood by the ESNZ Board and has been the driver for increased accountability of NEC Committees to the Board as development plans are put

into effect.

For financial reporting purposes the company would be regarded as a controlled entity of ESNZ and its financial performance and position included in the ESNZ group consolidated financial statements.

Under this structure, the NEC Limited Board would set strategy, which may or may not closely align with ESNZ strategy in all respects. Loss of direct ESNZ Board input into the governance of the NECs is the principal change from the current operating model. There would be increased autonomy in the running of the NEC. Whether this is of concern may depend on the quality of the pool of people willing to get involved in the governance of NEC Limited as opposed to administering the day to day operations of the NECs.

Under Trust ownership, power of appointment and removal of Trustees would be held by the ESNZ Board and the Trust's purposes would be described in terms consistent with the Purpose clause in the NEC By-law. Responsibility for managing the Trust's assets for these purposes would be held by the Trustees.

The issues about devolution of strategy setting, loss of direct input for the ESNZ Board into the Trust's governance and size of pool of people willing to act as Trustees are essentially the same as for a company structure.

Any Trust would be established as a charitable trust notwithstanding that registration with Charities Services is currently problematic for sports related organisations. This registration issue would also arise for the company. It is unlikely that either entity would successfully register as a tax charity, with the outcome that any cash gifts received by the trust or Company would not be deductible to the donor. As with ESNZ, tax exempt status would need to be based on characterisation of the company or Trust as an amateur sports promoter.

Ownership of sports facilities through a company is not common in New Zealand, however there are a number of instances of Trusts owning sports facilities and sometimes with a company as part of the overall legal structure.

The other reason put forward for a separate ownership structure for the NECs is access to grant funding. The NEC Committees (and some Area Groups for that matter) have stated that their access to funding from local grants organisations is obstructed by being part of a national organisation; that a separate entity would qualify as a local organisation for this purpose. (It remains to be seen whether a company owning a regionally located asset but which is controlled by an NSO would be regarded as a local organisation. A trust or club might more easily satisfy this requirement.)

Securing grant funding is becoming increasingly competitive and ESNZ does not want its organisational structure to be a barrier to groups from within the sport obtaining funding for worthwhile projects that benefit ESNZ members and the equestrian community more widely. More discussion with grants funders relating to this issue is recommended. In addition, the option of establishing separate 'Friends of NEC' organisations as fundraising vehicles could be examined.

Feedback is sought from members as to how integrated or autonomous they want the NECs to be. The contribution of NEC assets to separate entities is a step towards a federation model for governance of the sport whereas elsewhere in this discussion document a unitary model is favoured by the Panel for reasons outlined.

Questions to consider

- Do you favour Option 1 (retain ownership of NECs) or Option 2 (divest NEC ownership, administration, and development to a new entity)

10. NEXT STEPS

This draft of the Discussion Document is for review by, and consultation with, the Discipline Boards and Area Discipline Committees and Members generally.

APPENDIX A:

MEMBERS VOTING

A summary of the voting powers given to ESNZ Members under the current Constitution and Discipline by-Laws:

ESNZ CONSTITUTION

Art 1: – **Voting Delegates** means in the case of a General Meeting (includes AGM and SGM) 9 delegates from each Discipline and such number of delegates from Affiliated Organisations as prescribed in their MOU or affiliate agreement with ESNZ.

Art 6.2: – **Voting Members** are full members aged 18 years or older.

Art. 11.5:

- **Voting Members** are entitled to vote in the election of President and Vice President.
- **Voting Members** are entitled to vote at Area Group Committee meetings.
- **Voting Members** are entitled to vote at Discipline general meetings.

Art. 11.6: – Only the President, the Vice-President, the Board and **Voting Delegates** may vote at a General Meeting on matters other than the election of the President and Vice President.

Art 24:

- Voting at a General Meeting is by ordinary resolution of those present and entitled to vote, ie President, Vice President, Board and Voting Delegates; except for alterations to the Constitution and winding up ESNZ, both of which require a special resolution.
- Proxy voting is allowed for Discipline and Affiliated Organisation Delegates, subject to a limit related to number of Delegates physically present.

DRESSAGE BY-LAW

The national administrative functions of Dressage NZ are supervised by the Dressage Board, a sub-committee of the ESNZ Board.

Clause 7 - Voting on Dressage Board appointments is limited to Area Delegates elected by Dressage Area Groups, and persons eligible to vote pursuant to the ESNZ constitution.

Clause 22 - Voting at Dressage General Meetings is limited to Area Delegates, the Dressage Board and a Rider's

Representative.

Dressage NZ also has in its administrative structure a Dressage Committee which is a group comprising a Delegate from each Dressage Area Group, the Riders' Representatives and the Dressage Board, the President and CEO of ESNZ .

The functions of this Committee are set out in clause 14.

By-law changes are required to be approved by this Committee as set out in clause 22.

ENDURANCE BY-LAW

The national administrative functions of Endurance NZ are supervised by the Endurance Board, a sub-committee of the ESNZ Board.

Voting on Board appointments and rule changes at a General Meeting is limited to Voting Members as defined in clause 5.

Clause 5 – Ordinary and Honorary Life Members are entitled to vote.

EVENTING BY-LAW

The national administrative functions of Eventing are supervised by the Eventing Board, a sub-committee of the ESNZ Board.

Voting on Board appointments and rule changes at a General Meeting is limited to Voting Members as defined in clause 5.

Clause 5 - Voting Members able to cast a vote at the ESNZ Eventing AGM are:

- The duly appointed voting delegates of Eventing Area Committees.
- The members of the ESNZ Eventing Board.
- One duly appointed North Island Riders Representative (an elected position by current riding ordinary members).
- One duly appointed South Island Riders Representative (an elected position by current riding ordinary members).
- Two duly appointed Organising Committee Representatives (an elected position by Organising Committees).

JUMPING BY-LAW

The national administrative functions of Jumping are supervised by the Jumping Board, a sub-committee of the ESNZ Board.

Voting on Board appointments and rule changes at a General Meeting is limited to Voting Members as defined in clause 5.

Clause 5:

- One appointed voting delegate representing each Jumping Area Group Committee.
- Members of the Jumping Board (except when voting on Board election).
- Chair, ESNZ Show Hunter.

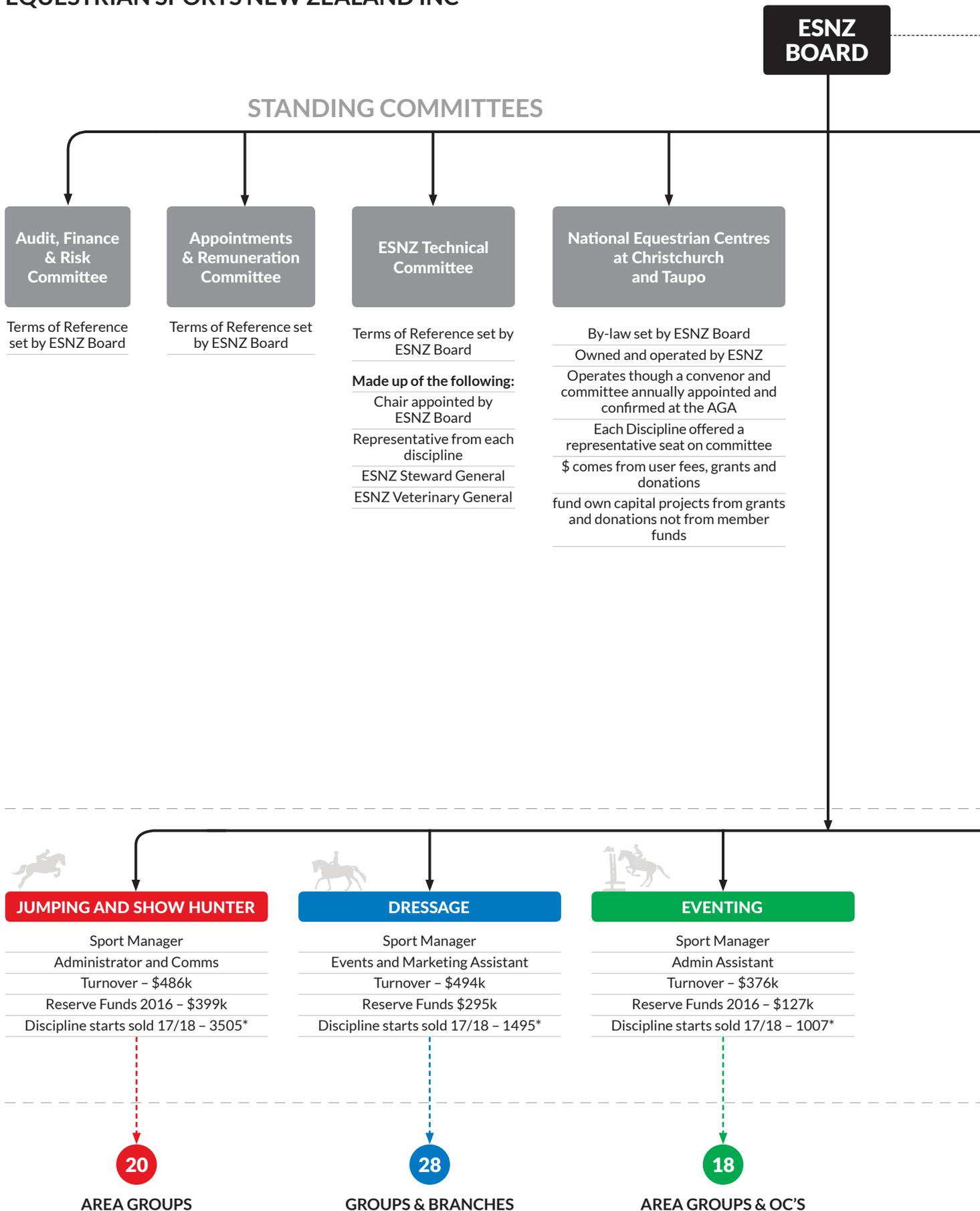
APPENDIX B: OBJECTS

3.1 The objects of ESNZ are to:

- a. Be the national body in New Zealand to promote, develop, enhance and protect equestrian sports;
- b. Develop opportunities, programmes and facilities to enable, encourage and enhance the participation, enjoyment and performance of people and horses in equestrian sports;
- c. Provide a framework for the establishment, promotion and staging of international, national, regional and other equestrian events;
- d. Publish and enforce Articles and regulations for equestrian competitions and events in New Zealand;
- e. Encourage, organise and promote the entry of ESNZ teams and individuals that are able to compete with distinction in the Olympic Games, FEI Games and other International Events.
- f. Represent New Zealand on the FEI and liaise with other national equestrian federations or organisations;
- g. Promote the safety and welfare of all participants and horses in equestrian sports;
- h. Act in good faith and loyalty to ensure the maintenance and enhancement of ESNZ and equestrian sports, its standards, quality and reputation for the collective and mutual benefit of ESNZ and its Members;
- i. Maintain and enhance the reputation of ESNZ and equestrian sport through the development of standards and practices which fulfil these Objects;
- j. Promote mutual trust and confidence between ESNZ and its Members and at all times act on behalf of, and in the interests of, the Members and equestrian sport in New Zealand.

DISCIPLINE STRUCTURE

EQUESTRIAN SPORTS NEW ZEALAND INC



ESNZ CENTRAL

- Governed by a Constitution
- Set the General Regulations
- Holds all records data and information
- Judicial Process
- Audits all accounts – does all finances for Eventing/Jumping/HP
- Set membership levels & fees
- Income comes from:
 - › Membership fees & horse registrations
 - › Grants & donations
 - › Sponsors
 - › Discipline Service fees / loans
 - › Commercial activity
- Insurance for all members for Public & Statutory Liability
- Provide for international competition
- Run all FEI admin in NZ
- Turnover \$1.1M

TOTAL MEMBERS REGISTERED

FULL - **3392**
 INTRODUCTORY - **908**
 NON-COMPETING - **417**
 LIFE MEMBERS - **939**
 FULL - CHILD - **1003**

TOTAL HORSES REGISTERED

 **5581**



HIGH PERFORMANCE

- Funded from \$4m tagged funds from High Performance Sport NZ (HPSNZ)
- Works to agreed ESNZ HP Strategy & Investment Schedule with HPSNZ
- Cannot be used for ESNZ operational expenses
- Dependent on performance and winning at the highest level
- No member/discipline funds are used by High Performance
- HP staff paid by HP budget not ESNZ Central budget.

ENDURANCE

Sport Manager
 Turnover - \$46k
 Reserve Funds 2016 - \$63k
 Discipline starts sold 17/18 - 274*

PARA

Sport Manager
 Turnover & Reserve Funds included in ESNZ Central Financial Statement

*Discipline starts are calculated at May 31.

- All have by-laws that set out their set up and rules of operation
- All run their own budgets
- Set their own discipline fees and levies
- Get income from discipline starts, sponsorship & levies
- All pay their own staff
- Provide officials pathways for Judges/Stewards/TDs/Course Designers

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AFFILIATED CLUBS

- Deliver the events on behalf of the disciplines
- Collect the levies and fees where required



EQUESTRIAN SPORTS
NEW ZEALAND