# Constitutional Review Committee

# Second Interim Report – July 2017

## Introduction

The constitutional review process is drawing to a close, with a further version of the Constitution being circulated with this report. This is one of the last opportunities for you to provide any additional feedback before the final version of the Constitution is prepared, on which there will be a binding vote. To continue to ensure that the Constitutional Review Committee’s (“CRC”) process is as transparent as possible, this second interim report outlines the decisions the CRC has reached and the underlying rationale for these decisions. This has incorporated the further changes made after much consideration of the submissions and feedback received during the last consultation period of 1 February-31 March 2017. The CRC is committed to giving consideration to any additional feedback received during the final submission period ending on **Monday 14 August 2017**.

## Background

A. A Constitutional Review Committee was established as an ad hoc committee of the RNZFB Board in September 2015, operating in accordance with a Terms of Reference adopted by the RNZFB Board as at 12 November 2015. The CRC’s purpose is primarily to review the RNZFB constitutional rules and make recommendations to the Board as to where it may be desirable to amend these rules.

B. The parameters for the review are to ensure that the constitutional rules:

* are consistent with the needs and the expectations of the blind, low vision and deafblind community and other stakeholders;
* are consistent with and look to implement modern disability philosophy on an on-going basis;
* ensure the Foundation’s objects can and will be achieved;
* ensure the Foundation’s affairs can and will be administered effectively;
* are easy to understand and apply;
* improve and safeguard member and stakeholder participation in the Foundation’s affairs;
* are lawful and include proper processes, checks and balances;
* adhere to the principles of self-determination by involving and consulting with members and clients and ensuring their voice is heard; and
* accommodate the requirements of future generations of blind, low vision and deafblind people.

C. Following each monthly CRC meeting, an update is provided to members and key stakeholders outlining the matters being considered and any decisions made at that meeting.

D. Throughout the review process to-date, the CRC has requested feedback from members and key stakeholders on any general constitutional matter at any time, as well as on more specific areas through a set-period submission process.

E. On 1 February 2017, the CRC published an interim report along with a first draft of the proposed amended Constitution. An eight-week consultation period for submissions on the proposed changes was open until 31 March 2017.

F. The CRC is using all the usual RNZFB channels of communication (including email lists, website, Outlook and telephone information service (TIS)) for both the communication and feedback processes.

G. At the completion of the review process, the CRC will present its recommendations to the Board for consideration and approval.

H. The current Constitution provides that alterations to the Constitution of the nature expected from this review require prior approval of a two-thirds majority of members voting at a meeting of members.

## Process from here

### A. Second Amended Draft Constitution Following Closure of the February/March Submission Period

The CRC continued to discuss the submissions and feedback received during the last submission period and, in some cases, made modifications to their original recommendations as a result. Bell Gully has incorporated the resulting amendments to the second draft of the updated Constitution, giving effect to the CRC’s recommendations to-date. The CRC has signed off on that work.

### B. Circulation of Second Amended Draft Constitution to Members

As has been the case with all CRC bulletin updates and consultation papers to-date, the second amended draft Constitution will be made available via the telephone information service (TIS), website, audio CD and email, which are available to every member. The second draft will be posted through these channels at the same time this report is circulated on 17 July 2017. Unfortunately, because of the sheer number of changes made to the current constitution, including the changes to numbering and the re-ordering of certain sections, it is unworkable to show a meaningful “mark-up” of the changes made between this second amended draft and the current constitution.

### C. Second Consultation Period

The second version of the draft Constitution is now available for feedback so that any further amendments can be made before the official four-week period of consultation closes on 14 August 2017. At the conclusion of this second consultation period the final proposal will be circulated to members in October for their consideration and voting.

### D. Timeframe for feedback from Members

Members are able to provide feedback via the telephone information service (TIS), by email and directly to the Board Secretary at any time up to 14 August 2017.

Having been apprised of any proposed changes throughout the process, the CRC believes that this timeframe will ensure that members should be able to comfortably work within this period to provide any final feedback.

### E. Teleconference meeting for interested parties

A teleconference meeting is scheduled for Thursday 10 August 2017 at 3.00pm to enable participation by anyone who would like to have dialogue with the CRC directly before the final proposal is published for members’ consideration. This is to be held at a point where contributors can still influence the CRC’s thinking and prior to the final version being circulated for voting.

### F. Consideration of final draft

A four-week period will be available following the circulation of the final draft of the amended Constitution which will include our recommended changes based on the feedback received and the reasons for our recommendations. This four-week period for consideration and voting on the final draft will commence on 5 October 2017.

## Papers circulated for feedback to-date

* **Objects** - circulated on 4 May 2016, with a deadline for submissions of 31 May 2016.
* **Participation, Representation and Voting** - circulated on 4 May 2016, with a deadline for submissions of 31 May 2016.
* **Board Accountability and Performance** - circulated on 10 June 2016, with a deadline for submissions of 7 July 2016.

## Working Group Forum held

* **Proxies** – a Working Group met with the CRC on 9 February 2017 and discussed the pros and cons of having proxy votes available to members.

## CRC decisions made, impact on constitution and rationale

### 1. Self-determination

Self-determination is an over-arching and fully entrenched principle which applies not only to the Foundation but to society overall. The CRC has clarified its own understanding of the principle of self-determination as it applies to the RNZFB. Acknowledging that some Members would prefer a philosophical statement included in the Constitution and noting that this principle is subjective and means different things to different people, the CRC has taken the principle of self-determination into consideration throughout the review and has now included a pre-amble on the first page of the Constitution to reflect this.

### 2. Eligibility to receive services

Under the current Constitution, eligibility for membership is defined, while eligibility to receive services is not. The CRC considered whether eligibility to receive services should also be stipulated in the Constitution, but after review, felt that those to whom the Foundation provides services is an operational matter, not a constitutional one, and, therefore, there is no change. This allows the Foundation to be responsive to changing circumstances and needs. Members retain ultimate control of the Foundation through their ability to elect directors.

### 3. Readability and “plain English” drafting

#### 3.1 Numbering

Feedback was received that the change to the clause numbering in the last draft was less user-friendly to blind people accessing the document electronically. The numbering has been changed to a more accessible format.

#### 3.2 Definitions

Readability of the Constitution would be enhanced by consolidating all defined terms into a section for this purpose at the beginning of the document. This avoids readers having to search multiple sections to find out what a defined term means.

#### 3.3 Definition of “Blind Person”

In response to a discussion paper on the RNZFB’s objects, some people had expressed concern that the proposed draft did not refer to those with low vision or who are Deafblind. Consistent with the CRC’s aim to make the Constitution as readable as possible, the CRC intends including a definition of “blind person” in the Constitution which will make it clear that those with low vision and who are Deafblind are included when this term is used. By making this clear in the definitions section it should make the document flow better for those reading the Constitution using synthetic speech or audio narration.

#### 3.4 “Plain English” drafting

Bell Gully has undertaken a review of the changes being proposed by the CRC and considered how these will impact the wording of the existing Constitution and has ensured any amendments will comply with the law.

#### 3.5 Whether to quote from legislation

The current Constitution includes direct quotes from existing legislation, such as the Companies Act. This was to assist members, particularly those who read the Constitution in audio format, to get a complete picture of relevant legislation without the need to consult other documents that may or may not be readily available in the format of the member’s choice.

While this approach is highly accessible, the CRC considered whether this may make the document unnecessarily complex for many readers. It also means that if Parliament changes the text of legislation being quoted, a further constitutional amendment will be necessary to reflect Parliament’s change.

The CRC considered whether the readability of the Constitution could be further improved by simply referencing the appropriate sections of legislation, with the relevant clauses being included as footnotes to the Constitution, and thus updated easily without the need for an amendment.

The CRC sought Bell Gully’s advice on this approach, who advised that much of the prescriptive language repeating sections of legislation should remain verbatim, given there are currently no “default” procedure rules for Incorporated Societies. As such, these provisions have remained unchanged in the amended Constitution.

### **4. Governance structure and Incorporated Societies legislation** update

#### 4.1 RNZFB to remain an incorporated society

Both the CRC and the feedback received to-date have expressed a preference that an Incorporated Society is the most appropriate structure for the RNZFB.

#### 4.2 Update of Incorporated Societies legislation

The NZ Government has issued the exposure draft of the Incorporated Societies Bill, designed to replace the dated and, no longer fit for purpose, 1908 Act. The new Bill is designed to modernise the legal structures surrounding the establishment, governance and oversight of incorporated societies in New Zealand.

As there are some substantive changes which will have implications for the Foundation, the timing of the new legislation is being closely monitored and, where it makes sense to, resulting changes have been incorporated into the review process.

Bell Gully has considered and advised how best to deal with any potential impacts on the Constitution during the period until the Incorporated Societies Bill becomes law and the transition period that will follow the new law coming into force.

#### 4.3 Complaints and grievances (Section 13)

Based on the Government’s work on the exposure draft of the Incorporated Societies Bill and to address a deficit in the current Constitution, the CRC believes that it is important that the Constitution includes a robust, independent complaints and grievance process.

This process is intended to deal with constitutional issues, although inevitably it will need to dovetail with procedures that the organisation has in place for complaints about operational matters.

A new Complaints and Grievances Procedures section has been included as a new section 13. This provides a powerful way for people to have their say if they feel aggrieved, with a right to be heard by the Board, giving recourse to get an answer. The wording of this section has predominantly replicated the suggested wording contained in Schedule 2 of the Incorporated Societies Bill, with some minor amendments for procedural clarity. These procedures will play an important role in strengthening self-determination, transparency and a right to be heard. In addition, a mandatory policy will be created to cover complaints at a governance level, rather than those of an operational nature.

### 5. National versus sectorial model

Submitters expressed a range of views regarding whether the Board should continue to be elected nationally, or whether a change should be made to a sectorial model.

In line with the vast majority of feedback received, the CRC has agreed to pursue a national representation model for the Board as it is likely to produce the most qualified, balanced Board. If it was required that certain board directors had to come from specific constituencies or from other representation groups, this could limit the number of potential candidates or the skill set from which the Board has to draw upon. A national model should provide opportunity for any potential candidate to put themselves forward for nomination and to afford the greatest pool of skills on the Board.

The CRC acknowledges a feeling among some submitters that there is a need for individual directors to be better connected with the people who elected them. It is the CRC’s intention to recommend to the Board a liaison programme to ensure that the Board is seen to be more in touch with specific regional and sectorial constituencies to enhance greater connectivity and engagement.

**6. Tangata Whenua and The Treaty of Waitangi**

The feedback around Tangata Whenua and the application of the principles of The Treaty of Waitangi were considered in-depth. The CRC decided that the principles of The Treaty of Waitangi and their application to the governance and services of the Foundation were to be given particular recognition under the Foundation's Objects in Section 3 and to also be a Mandatory Policy (Section 6.7) which can only be changed following consultation with members.

**7. Member Council**

The CRC received feedback requesting that it consider the establishment of a Member Council. The CRC decided that it was not necessary to have a further level of governance while we already had a Board that will be elected under the principles of self-determination. It was considered that the well-established Blind Sector Forum Aotearoa NZ, which includes a partnership arrangement including the Foundation, was a good forum for consumers to represent and advise on the interests of service users. The rules show that communicating and consulting widely with stakeholders is mandatory.

### 8. Objects (Section 3)

The CRC circulated a discussion paper which proposed a simplified set of objects. Feedback received ranged from a request to greatly simplify the objects, through to keeping them as they are. The feedback acknowledged the repetition contained in the current Constitution. However, some persuasive submissions were received, suggesting that some essential elements of the objects had been lost in the proposed revisions.

The CRC revisited the objects based on this feedback, with a further draft of the proposed Objects section prepared, eliminating repetition while not losing key principles and re-circulated in July 2016. The CRC’s aim is to ensure that the revisions, while more streamlined, have not lost any of the original intent and nothing of significance is lost, while making the objects clear, readable and unambiguous. Further feedback queried whether some of the original objects have been lost as a result of the streamlining. The CRC has again reviewed the changes and believes that the more general, simplified wording continues to capture the intent of the very specific objects contained in the current constitution. In particular, feedback was received as to whether Rules 3.9, 3.10 and 3.11 of the current constitution, which have been removed from the proposed constitution, have been sufficiently covered in the revised objects. The CRC has again reviewed these rules and believes that:

* the current Rule 3.9 (To promote and encourage the elimination of barriers to the dignified participation and use by blind people and those with low vision in and of mainstream activities structures and facilities, and to social and physical environments that preserve and enable personal integrity and choice and that recognise the value and contribution of all citizens) is covered in Rules 3.1, 3.3.2, 3.3.3, 3.4.1, 3.4.2 and 3.8;
* the current Rule 3.10 (To promote and encourage open and convenient access and use by blind people and those with low vision to and of all programmes, services, buildings and facilities designed or intended for public use including: transportation, information and telecommunications, education, work training opportunities and creative leisure) is covered in Rules 3.1, 3.2, 3.3.1, 3.3.2, 3.3.3, 3.4.1, 3.4.2, 3.5 and 3.8; and
* the current Rule 3.11 (To promote and encourage the creation of opportunities for blind people and those with low vision to contribute to the economic, social, political and cultural life of the community) is covered in 3.1, 3.3.2, 3.3.3, 3.4.1, 3.4.2, 3.5 and 3.8.

### 9. Powers (Section 4)

Though feedback was requested, there has been no feedback received to-date suggesting any amendments to this section. The CRC agreed that the Powers section was generally comprehensive and did not require amendment.

### 10. Membership (Section 5)

The Membership section has been simplified. It is proposed that there are only two types of Members – a “Full Member” and a “Guardian Member”.

#### 10.1 Associate Membership and Associate Director

The move to a model of electing the Board based on self-determination was an important shift for the RNZFB. In recognition of the vital role that sighted supporters play in the work of our organisation and the lives of blind people, the present Constitution includes a class of membership known as “Associate Members”. Associate Members can elect one director to the Board, who serves a three-year term.

After much discussion and consistent with a model of self-determination, the CRC proposes that the class of membership known as “Associate Membership” should be abolished. This mechanism had originally been retained to ensure this group of people and stakeholder organisations would feel they had a mechanism to participate in Foundation governance, but this need has now run its course. The CRC recognises that the RNZFB would not be able to do all that it does without the support of people who are generous with their time, talent and, of course, financial support. The CRC believes that gratitude can continue to be showed through a range of mechanisms such as community committees and recognition programmes for supporters of all kinds.

The position of Associate Director would be disestablished accordingly.

#### 10.2 Eligibility for Membership

The CRC considered the Guardian Membership criteria and, in particular, the differences between guardianship and someone holding a power of attorney. Due to a desire for this power to be as broad as possible, an appointed attorney has also been included in the eligibility requirements of a Guardian Member.

#### 10.3 Mode of Application for Membership

A small change has been made to allow for an application for membership to be in the “prescribed manner”, as opposed to the “prescribed form” as it currently reads. This will allow for the way a person can apply for membership to keep up with technology and not be limited to a paper form.

#### 10.4 Access to the Register of Members

The proposed Rule 5.5.1 now allows for the Register of Member to be available for access by members. This has been included to align with proposed changes under the Incorporated Societies Bill. It should be noted that this requirement will not limit any legal requirements under the Privacy Act.

#### 10.5 Major Proposals

Presently, certain changes trigger the major proposals provisions of the Constitution. Such proposals require service recipients who have not opted into membership of the society to be notified, so they can become members and vote on the proposal if they wish.

This provision exists in recognition of the fact that not all recipients of the Foundation’s services choose to become members and participate regularly in the governance of the organisation. However, if the Board is proposing to make a change of significance, then service recipients may wish to exercise their right to become a member.

The major proposals provision, therefore, defines what kinds of proposed changes require the Board to contact all service recipients.

The CRC has reviewed this clause with a view to seeing if its wording can be simplified, while protecting the goal of providing for wide consultation on significant issues. Following this review, the CRC has not proposed any significant changes to the current section.

### 11. Board – Establishment and functions (Section 6)

#### 11.1 Constitution of the Board

In 2017, a Board of nine elected members is on the large side. With the removal of the “Associate Director” position, this would leave a Board of eight directors, plus the existing provision for the Board to co-opt under specific circumstances. The CRC had proposed reducing the number of directors to eight. Subsequent feedback indicated that the status quo of nine directors was preferable, with three directors being elected by members each year.

#### 11.2 Directors to act in the interests of the society and its Members

The CRC considered whether to amend Rule 6.2 of the Constitution to align with the wording in the new Incorporated Societies Bill, which, as currently drafted, requires directors to act only in the best interests of the incorporated society they govern, and not its members. The current Constitution requires directors to act in the interests of the society and its members. After discussion about the possible implications of both approaches, the CRC has decided to align the wording with the Bill. This is on the basis that as an incorporated society is a body of members, the Foundation is the members, therefore “and its members” becomes superfluous.

#### 11.3 Major Transactions

Current Rule 6.4.1.3.4 (now Rule 2.1.27.4) limits the Foundation’s ability to borrow to no more than 5% of its total net assets. The CRC believes that this is an extremely low number and that, today, 25% is a loan to equity ratio that would be considered low risk and reasonable in today’s commercial environment.

When no substantive comment was received in regard to the proposed change to 25%, the CRC agreed that Rules 2.1.27.4, 2.1.27.6 and 2.1.27.7 (part of the definition of “Major Transaction”) should be increased to enable borrowing up to 25% of the amount of total net assets of the Foundation which would enable the Foundation to operate more commercially. However, the CRC agreed that powers to provide a guarantee or indemnity over 25% of the Group’s assets were too high and there needs to be constitutional protection against the Board giving guarantees above 2%. Therefore, Rule 2.1.27.5 would remain at 2%.

The CRC agreed that Rule 6.4.1 be amended to require a Major Transaction to be approved by a special resolution, being a majority of two thirds of members voting at a meeting of members, raised from the simple majority in the current Constitution. The reason for this change is to recognise the significance of a major transaction and the need to have a greater proportion of members agreeing to progress with such transactions.

As provided in proposed Rule 6.4.3, where the approval of a Major Transaction is sought, the Board is required to provide members with “such reasonable information about the proposed transaction to enable an informed decision to be made”. This expands the type and range of information the Board will need to provide to comply with the “reasonableness” test, instead of the narrow and prescriptive wording contained in the current constitution.

#### 11.4 Board policies

The CRC considers that Rule 6.7 relating to operational policies is prescriptive to the point of almost writing the entire policy. The CRC has drafted a new clause stating that there must be mandatory policies on certain issues and requiring consultation with members if a change to any of these mandatory policies is being proposed. This allows the Board to be more responsive to change, while ensuring members must be consulted.

A Board Engagement and Communications with Stakeholders policy, a Conflicts of Interest policy and a Complaints and Grievances policy has been added to the list of mandatory policies.

In response to feedback received, the CRC has added a brief description of each policy to ensure the Constitution provides a high-level indication of the expectations of what each policy needs to cover.

#### 11.5 Conflict of Directors’ Interests

The section on Conflicts of Directors’ Interests is aligned with the Companies Act and the draft Incorporated Societies Bill.

### 12. Eligibility, tenure and election of directors (Section 7)

#### 12.1 Tenure of Board Directors

In response to feedback received on issues surrounding participation, representation and voting, the CRC has not detected a strong groundswell for the introduction of mandatory term limits for board directors.

Noting that it can take board directors some time to come to grips with their duties once elected, the CRC had suggested that the terms of directors should be extended from three years to four years. Further feedback on a proposed four-year term was received in submissions and the CRC undertook additional consultations with former and current Board directors to ascertain if there was a preference between a three-year term and a four-year term. Views on this topic were fairly evenly split. As such, the CRC decided to withdraw the four-year term recommendation, which means that directors would continue to be elected for a three-year term.

As part of their discussions on this proposed change, the CRC noted that the Board has recently established a Governance Committee which will consider director performance and accountability, and, in addition, the new Complaints and Grievances process should also provide a mechanism for any concerns about a director’s under-performance to be brought to the forefront. It is understood that director performance and accountability is recognised through the ballot box, with members choosing to vote for those directors they believe are performing their duties well. The CRC also noted that it is important for new directors to receive a thorough induction, to get them up to speed as quickly as possible.

#### 12.2 Filling a Casual Vacancy

The CRC gave consideration to the preservation of the general seats when a casual vacancy occurs.

It agreed that if there is a next highest polling candidate to fill any vacancy, this candidate would hold office until the term of the director who caused the vacancy is at an end so as not to upset the balance of the director rotation. If there are two candidates with an equal number of votes, the returning officer will determine by lot which candidate to ask first. In the event there was no one on the candidate list, the position would remain vacant until the next election, at which time, the extra candidates would be elected to the Board. The lowest polling successful candidate would serve the balance of the term of the vacated position. If this vacancy creates an interim skill deficit, the Board is entitled to utilise the co-option mechanism already in the Constitution and co-opt a director with suitable skills.

#### 12.3 Board nominations and voting

The CRC has considered the need to find the balance between holding the Board as an entity accountable for the strategic direction and performance of the organisation, while also giving members sufficient information to cast an informed vote. This includes having sufficient information about candidates who wish to become Board directors, as well as assessing the performance of individual directors seeking re-election.

The CRC has agreed that it will continue with the “first past the post” method of voting.

Currently, candidates are required to provide a 60-word “snapshot” of their skills, experience and abilities; a 300-word profile or curriculum vitae; and to respond to a series of questions related to their ability and their aspirations for the organisation. The candidates contact details can be obtained and therefore, members are able to make an informed judgement.

#### 12.4 Co-option onto the Board

Following submissions received to-date, the CRC debated issues around membership of the Board and the balance that must be struck between self-determination and ensuring that the Board has the skill-set it needs in order to make quality decisions that are in the best interests of the organisation and its members. It concluded that the power to be able, at certain times, to co-opt people with a particular range of needed skills was desirable for an agile Board, so would remain.

Co-option has always been a contentious matter, because co-opted directors are not directly accountable to members. The CRC has sought to address some of the concerns that have been expressed through the feedback since the first draft of the proposed Constitution was circulated. The CRC recommends that the number of co-opted directors at any one time remains at two, with any director the Board co-opts only serving a maximum of two consecutive terms of three years. The current “two-stage” co-option process has been retained, with any decision to co-opt needing to be supported by a majority of elected directors.

### 13. Board – meetings and general (Section 8)

#### 13.1 Deputy Chairperson

In 2011, the role of Deputy Chair was abolished. The CRC proposes reinstating this role. It believes it will assist meeting administration by having an identified person available to step in as Chair, if required and will also facilitate succession planning. While it doesn’t bind the Board in terms of who it may elect as Chair in future, it sends a clear signal about who should be prepared to step in to the Chair’s role should it be vacated either temporarily or permanently.

#### 13.2 Remuneration for Chair and Directors

The rules around assessing and changing the remuneration for the Chair and the directors have been reviewed and have included wording to ensure that a meeting at which directors are unable to speak has a method to appoint a chair.

#### 13.3 Access to the Board

The CRC has spent much time discussing whether any constitutional provisions need to be introduced that guarantees a member’s right to seek a meeting with the Board. While mechanisms exist for formal proposals, we recognise there may also be merit in formalising the procedure which is presently informally agreed upon by the Board of the day that any member may seek to address the Board on any matter of concern. The new Complaints and Grievance process will assist with this to some degree, but there may also be matters of strategic or even operational significance that members wish to bring to the Board’s attention without utilising the complaints process.

The CRC noted with interest that, to-date, very few members had exercised their right to attend and speak at Board meetings, yet feedback had been received that avenues are needed for members to be able to bring their views and concerns to the Board. The CRC proposes rewording Rule 8.13.2 of the Constitution to clarify that a member is entitled to speak at a Board meeting if they have obtained the Chairperson’s approval to do so prior to the meeting.Notices of Board meetings are circulated in advance of meetings via the usual Foundation communications channels and if the opportunity to speak at Board meetings is made clearer, then hopefully this will have a positive impact on members coming forward to seek permission from the Chair to bring topics to meetings.

#### 13.4 Right of Board to “go into committee”

A concern was raised about the Board moving into committee for items of general business which had not been itemised on the published agenda. The CRC noted that, in practice, this would not occur because the topic of any items of general business needs to be specified before the Board can resolve to go into committee. There is also a Board in Committee governance policy in place, which sets out the requirements of moving into committee. Amendments have been made to Rule 8.13.3 to clarify this process.

### 14. Meeting of Members (section 9)

#### 14.1 Member proposals, Postal votes and Special meetings of members

The CRC has considered in detail the various types of meeting mechanisms available to members under the Constitution and the types of matters which would need to go to the membership, such as amendments to the Constitution or a major transaction. The CRC has also considered whether a more formal mechanism needs to be added for less significant issues, to cover how members could garner support to bring an issue to the Board table and provide easier access to the Board to discuss topics of particular interest.

The CRC was surprised that, to date, members have not used the provisions of Section 9 to put a member proposal to the Board. Perhaps this is down to the provision being ‘hidden’ in a long and detailed Constitution and members simply not knowing it is there.

This Section has been itemised in a more logical sequence to better present the options open to members in the hope that members will be more aware of, and avail themselves of, the mechanisms available to them to exercise their rights.

The current Constitution is based around meetings of members as the primary vehicle for voting on issues, including on a change to the Constitution. The Board wishes to see a more democratic process employed as a mandatory requirement in the proposed Constitution to ensure that all members are able to have their say. To this end, the rules in Section 9 have been amended to specify that postal votes are required for all major issues, to be followed by a meeting of members. On legal advice, such meetings are still required to be held to conform to Incorporated Society legislation.

Postal votes will however be preceded by a 30 Working Day period of debate and discussion before the voting process commences. This is a new initiative designed to ensure there is a recognised constitutional process in place, providing an adequate timeframe for members to debate and discuss any issue being put to a vote. A possible outcome of this discussion period could be that, potentially, a proposal could be withdrawn or modified. The proposed changes also provide that 20 members would be able to produce a reasoned rebuttal or counter-proposal that will then form part of the voting material circulated to all members. Members will still be required to vote on the original Board proposal, but will do so after consideration of the information contained in any rebuttal or counter-proposals received and circulated. In addition, the Board will also provide mechanisms to enable the debate to continue during the 20 Working Day voting period.

Note that 100 members can also cause a postal vote to be triggered, including amending the constitution, with the Board similarly being able to refute or produce a counter-proposal on any member proposal received.

The former requirement of 5% of members to call for a meeting of members has now been reduced to a threshold of 100 members. The current provision that resolutions adopted at such meetings, including any arising from the Annual General Meeting, are not binding on the Board has been retained. However, this does not apply in the case of a special meeting following a postal vote, where the outcome will be binding on the Board.

Even though a member resolution may not be binding on the Board, the proposed Constitution now specifies that the Board is required to respond to members within 40 Working Days as to their intentions regarding the resolution and giving reasons if no further action is proposed.

#### 14.2 Proxies

In the first draft of the Constitution circulated in February, the CRC had intended to recommend retaining the proxy vote system for meetings of members. Appreciating that the issue of proxies is contentious, the CRC welcomed further input through the submission process and set up a working group for those interested in the question of proxy voting to ensure that all perspectives have been fully canvassed and all those with a particular interest in this topic are able to participate in full discussion before the CRC makes its recommendation.

Following receipt of written and in-person submissions, the CRC once again considered the matter of proxy votes and what, if any, place they should have in the Constitution. The CRC is committed to promoting processes in the Constitution that are democratic and inclusive. It is important that everyone who wants a say can have one. To that end, the CRC proposes that the use of proxies be removed entirely and, in an attempt to reduce the likelihood that a quorum may not be met, the number of members required to constitute a quorum at a meeting of members has been reduced to 30 members.

#### 14.3 Board’s ability to amend the Constitution

Mindful of the concern expressed by some members following the adoption of amendments to the Constitution in September 2014, the CRC proposes amending the rule governing the Board’s ability to modify the Constitution without a vote of the membership in very restricted circumstances, so that it reads as follows.

*“Notwithstanding Sub-Rule 9.5.1, the Board may alter the Constitution without the approval of a resolution of Members if the alteration is made to correct a manifest error, or is necessary to align the Constitution with any changes to applicable governing legislation. Any changes made under Sub-Rule 9.5.5 will be notified to Members via the normal channels of communication employed by the Board (in accordance with the policy on Communications, Preferred Formats and Service of Documents).”*

Legal advice provided to the CRC clarifies that a “manifest error” is one so obvious. The advice follows:

*There is little useful commentary on the definition of “manifest error” in New Zealand. However, Australian and English commentary provides some relevant insights.*

*In summary, the courts have interpreted “manifest error” according to its ordinary meaning - that is, an error which is plain, clear or obvious. Australian courts have held that a “manifest error” must be sufficiently obvious that there is no need for “prolonged adversarial argument” (Promenade Investments Pty Ltd v NSW [1992] 26 NSWLR 203). Similarly, English Courts have interpreted “manifest error” as meaning “oversights and blunders so obvious… as to admit of no difference of opinion” (Walton Homes Ltd v Staffordshire CC [2014] 1P & CR 10 (2013). Case law has also held that, in deciding whether there is a “manifest error”, the court will consider the context of the document concerned (Galaxy Energy International Ltd v Eurobanker SPA [2001] 2 Lloyd’s Rep 725).*

*On that basis, we consider that a “manifest error” in the context of the RNZFB constitution would likely be an error that is so obvious and clear on its face that its existence is easily agreed upon. This could, for example, include an incorrect cross reference, erroneous references to legislation which has been repealed, or typographic errors.*

### 15. Accounts and Audit (Section 10)

Alterations have been made to this section of the proposed Constitution in conjunction with the Foundation’s auditor to bring it into line with current accounting principles. None of the original intent has been lost.

### 16. Information, Reports and Communication (Section 11)

Feedback requested that there must be good channels of communication and engagement with stakeholders. This is proposed to be done in a number of ways. A rule has been included to ensure that users of the Foundation's services are widely consulted with to establish the strategic direction of the organisation. Also included is a rule that provides a channel for members to speak to the board directly, as well as the inclusion of a grievance process which enables member concerns to be raised at board level.

Changes have been made to section 11 to align with the legislative requirements on an incorporated society to prepare a set of financial statements, as opposed to an annual report. The changes being proposed reflect the reporting that is currently being prepared by the Foundation.

Feedback had asked the CRC to investigate whether “official information” could be made available. While under the current Incorporated Societies Act there is no requirement for incorporated societies to be subjected to this, the new Bill outlines circumstances where societies may have to make certain information available. Rule 11.4.1 has been expanded, making available a number of additional documents that are important for members to better appraise the organisation. These include a copy of the strategic plan, the annual plan, the report on the annual plan and the schedule stating the number of Foundation employees, current or former, who, during the Financial Year received remuneration and any other benefits in their capacity as employees, the value of which was or exceeded $100,000 per annum stating the number of such employees or former employees in each range of $10,000.

### 17. Postal Ballots (Section 12)

Postal ballots are required for all special meetings and the meeting to review director remuneration.

### 18. Liquidation of Foundation and Disposal of Surplus Assets (Section 14)

Given that the liquidation of the Foundation is a very significant event, the CRC has moved this topic into a separate section. There has also been an increase to the voting threshold, requiring a two-thirds majority (special resolution) rather than simple majority and will also include a postal ballot given the significance of this provision.

## Conclusion

The changes being put forward by the CRC are seeking to strengthen membership participation and preserve the principle of self-determination. The CRC believes the second draft of the amended Constitution presents a good mix which substantiates these values and enables agility where appropriate. The sum total of all these changes is, an organisation where self-determination is even stronger, while making changes that allow the Foundation to be responsive. The proposed changes will ensure transparency, enable full participation, and preserve equity and fairness for members.

Thank you once again for all of the relevant, honest and considered feedback you have provided to-date. The CRC has considered every piece of feedback received, and has endeavoured to take on board your suggestions where it has been practicable to do so.

The CRC again welcomes any further feedback you may have on the second draft of the Constitution. If there are any remaining provisions in the draft that require further explanation or a clearer rationale for any proposed changes, please raise this through the feedback channels as well. It is important that members have as much information as possible before they are asked to vote later in the year.

As mentioned, a two-hour teleconference meeting is scheduled on Thursday 10 August at 3:00pm with interested parties to discuss the feedback received before the final proposal is published for members’ consideration. At this teleconference meeting, contributors can still influence the CRC’s thinking and prior to the final version being circulated for voting on. Participation will be open to anyone who would like to have dialogue with the CRC directly.

In those areas where feedback from this final round of consultation is indicating there are still matters that have not been adequately addressed, it may be that further amendments are required to the draft Constitution before the final version is circulated for voting on.

You can provide us with your feedback on the second draft of the updated Constitution in the following ways.

You can:

* email your views to CRCFeedback@BlindFoundation.org.nz
* Record your submission on the Telephone Information Service, option **3 1 5 3**.
* Post your submission in your preferred format to Jane Moore, Board Secretary, Blind Foundation, Private Bag 99941, Newmarket, Auckland 1149.

Please ensure any feedback/comments on this second draft of the amended Constitution are submitted by **Monday 14 August 2017**.

We look forward to hearing your thoughts and thank you once again for taking the time to be part of this important process.