# Part Four: Governance

* Composition of the NEC
* Functions
* NEC meetings
* Qualifications and Duties of the Officers
* Election and appointment of the NEC
* Subcommittees
* Removal of NEC members and ceasing to hold office
* Conflicts of Interest
* Other considerations

## Composition of the National Executive Committee

1. **What our Constitution says right now**

The NEC comprises of up to 10 members with the following:

* President
* Immediate Past President or President Elect
* Five elected members
* Up to Three Board Appointed Members

The Constitution outlines when the President Elect becomes President and subsequently, when the President becomes Immediate Past President.

The current Constitution also allows for a National Māori Adviser as an appointed member of the NEC.

1. **Why this is important and our proposed approach**

The structure of a governance board is crucial to ensuring the organisation is well governed, understands and can meet all its obligations under the Act, its Constitution, and provide strategic direction to the organisation.

General feedback received during the consultation process indicated the current structure works, but has some challenges. These challenges in particular are focused on the length of terms for the NEC, division of workload, and diversity of skills on the Board. The feedback indicated that, the preference is for leadership within the Assembly to include a majority of people with lived experience of disability. In the case of the Assembly, this means that any Board member must meet the eligibility of Full Individual Membership.

Below we outline some options for you to consider.

### Proposal One: Same Structure with clear position descriptions

The first proposed approach is largely keeping the same structure as the Assembly currently has with a President, Immediate Past President, President Elect, elected and appointed members. This means the NEC keeps the same number of NEC members, but strengthening the structures around the governance through the use of bylaws, subcommittees, and other supports to achieve diversity, representation and inclusion in our governance structure.

An important part of this will be that the President-elect and the Immediate Past President would in effect be the Vice-President during those parts of their term. All NEC positions will have positions descriptions that will be managed by the NEC. This will ensure expectations of the roles are set and provide a supportive, collaborative leadership approach between these roles.

### Proposal Two: A Shared Leadership Approach

This approach is focused on having well-defined roles of either a co-Chair model or President / Vice-President Model. There would be no Immediate Past President or President Elect.

The benefits of this approach are:

* The terms of these positions would be aligned, and therefore, the relationship between the two leaders would be developed over a longer period of time.
* With the roles being well-defined with clear roles and responsibilities, the decision making, particularly for day-to-day affairs is shared.
* This model is one that could develop towards a bi-cultural co-chair structure, including Tangata Whenua and Tangata Tiriti leaders, strengthening how DPA gives effect to their commitment to Te Tiriti o Waitangi.

### Proposal Three: Chair and Deputy Chair appointed by the NEC

In this proposal, the NEC would be elected, as per the Constitution with appointed positions still available. The NEC at its first meeting following the AGM would appoint their Chair and Deputy Chair.

This model of working would have the NEC choosing their leader, rather than the leaders being elected directly by the members. In this model you the NEC could choose to have a shorter period for those leadership positions or have the leadership position rotating amongst those on the NEC enabling the NEC to retain strong institutional knowledge across the NEC. This model can help with succession planning and has the benefit of shared decision making in leadership.

**What the proposed Constitution will say**

1. Any amendments to the constitution will be determined by the preferred proposal selected by members. Some of the governance structures that will remain in place under all three options are reviewed below.
2. **National Māori Adviser**: the NEC may appoint a National Māori Adviser.
3. **Composition of the NEC:** The NEC will comprise ten (10) members. Seven (7) members must be elected by the members, and three (3) members appointed by the NEC.
4. **Term of NEC members (proposed):** the general term of NEC members will be two or three-years from the date of the AGM for elected members and for appointment members from the following meeting of the NEC after the appointment is endorsed by the NEC. [This will be determined depending on the Governance proposals in Paragraphs 59, 60 and 61.
5. **Skills and Diversity (proposed):** The Assembly will endeavour to have a range of skills and diversity represented on the NEC. Appointments shall be made to ensure the right capability and skills mix on the NEC. This includes skills such as finance and risk, strategy, and diversity including, but not limited to Māori representation and expertise in mātauranga Māori.
6. **Vacancies on the NEC**: The NEC may choose to fill a vacated position on the NEC by making a special appointment. This position is only available until the following AGM, however, any appointed member would be eligible to seek election.
7. **Balance of Members on the NEC:** All NEC members should be eligible members of the Assembly.

## Functions of the Committee

1. **What our Constitution says right now**

The functions of the committee are covered in 9.12 of the current constitution. Section 9.12 outlines the scope of the NEC’s responsibilities. This is quite an extensive list.

1. **Why this is important and our proposed approach**

The Functions of the NEC need to align with the legislation and cannot contradict anything within its own rules or the legislation. A simpler approach is proposed with this Constitutional review, where the NEC is empowered with the functions it requires to appropriately manage the affairs of the Assembly, but these powers are not listed in the Constitution.

The current Constitution allows for development of Bylaws, which are not currently used by the Assembly. Alongside Bylaws, it is proposed that the NEC adopt a Charter to set clear expectations and procedures of the NEC and its Officers in relation to Governance. Whilst the Bylaws and Charter primarily apply to the NEC members, all members of the Assembly are still subject to these as rules of the Assembly.

This approach will help simplify the Constitution, what is a bylaw or in the Charter and therefore remove the need for Schedules to sit within the Constitution. Additional to this approach, will be ensuring the NEC has the powers and functions to give effect to Te Tiriti within its work.

**What the proposed Constitution will say**

1. **Functions of the NEC:** The National Executive Committee is the committee that manages and supervises the Assembly in accordance with the Act, any regulations of the Act, and the rules set out in this Constitution including giving effect to Te Tiriti o Waitangi in the way it operates.
2. **Power of the NEC:** The NEC is granted any powers necessary to direct and supervise the affairs of the Assembly.
3. **Charter:** The NEC will be managed by its own Charter which sets out its roles, responsibilities and procedures of the NEC.

## Meetings of the Committee

1. **What our Constitution says right now**

Schedule B primarily outlines how meetings are conducted for the NEC. This Schedule outlines the requirements for notice of meetings, the role of the Chairperson, methods of meeting, quorum, voting, minutes etc.

1. **Why this is important and our proposed approach**

The primary change to the Schedule is shifting these rules to a section on Governance, rather than in a schedule.

This section can clarify who is eligible to vote in meetings, ensuring that staff members who may be considered Officers under the Act, but those staff members will not be eligible to vote on matters considered by the NEC.

**What the proposed Constitution will say**

1. **Chairperson:** The Chairperson of NEC meetings will be the President, or if the President is not available then the Immediate Past President or President Elect shall resume the Chairperson position. If these Officers are not available, then the NEC members present will choose someone amongst themselves to Chair the meeting.
2. **Methods of Meeting:** Meetings of the NEC will be held online, in person or as otherwise determined by the Chairperson.
3. **Quorum:** Quorum will be a majority of the total number of members of the NEC.
4. **Voting:** Elected and appointed members of the NEC are able to exercise a single vote on each order of business, with the Chairperson presiding holding a casting vote should one be required. No other Officers or Members of the Assembly will hold a vote at the NEC meetings.
5. **Minutes:** Minutes should be taken for all NEC meetings.

## Qualifications, Eligibility and Duties of Officers

1. **What our Constitution says right now**

There are no rules in the Constitution in relation to the Qualifications and Duties of Officers. However, the rules do outline who is eligible to be on the NEC. At present, eligibility extends to:

* an Individual member;
* a representative of an Organisation of disabled people member; and
* a representative of a Family member;
* but does not include an employee of the Assembly.

1. **Why this is important and our proposed approach**

There are specific qualifications and duties required by the Act to be elected officers of an incorporated society. Including these qualifications and duties in the Constitution gives clearer expectations for NEC members about what their responsibilities are to govern the organisation.

The proposed approach is to include an overview of the qualifications and duties of Officers in the Constitution and refine the eligibility criteria to align with the proposed approach taken in relation to membership types.

**What the proposed Constitution will say**

1. **Eligibility:** Any full member: individual, life, family or organisation is eligible to be an officer of the Assembly provided they are:

* At least 18 years of age;
* Not a staff member of the Assembly;
* Are not disqualified from being an Officer as per paragraph 84 in this document.
* **OPTION ONE:** Have been a full member for not less than 3 or 6 months.
* **OPTION TWO:** Have the rights of a full member as per Part Two of this document.

1. **Disqualification of Officers:** A person is disqualified from being an officer if they are —

* currently bankrupt
* prohibited from being a director or promoter of a company.
* disqualified from being an officer of a charitable entity
* convicted and sentenced for certain offending within the last 7 years
* subject to particular orders in New Zealand and overseas
* unable to comply with any qualifications for officers contained in the society’s constitution.

1. **Officer Duties:** As an officer you must:
2. Act in good faith and in the best interests of the society.
3. Exercise powers for proper purposes only.
4. Comply with the Act and your society’s constitution.
5. Exercise reasonable care and diligence.
6. Not create a substantial risk of serious loss to creditors.
7. Not incur an obligation the officer doesn’t reasonably believe the society can perform.

## Elections and Appointments

1. **What our Constitution says right now**

Under the current constitution states that this must be done by postal ballot. Under Part 5 rule 13.3.3 also states that the election of NEC members shall be at the AGM. Schedule D also outlines how ballots will be collected and that there will be a Returning Officer and two Scrutineers.

1. **Why this is important and our proposed approach**

The current practice of the NEC elections is by a vote through electronic means. Electronic voting either during a meeting or in the lead up to a meeting could lead to higher participation in elections because people can vote in their own time during the election period. Electronic voting also provides a useful audit trail to ensure the NEC know that those casting votes are eligible to do so.

This part of Constitution will not just cover how a member can cast their vote in elections, but will also outline:

* When nominations for elections take place,
* How the election will be conducted,
* Appointments to the NEC,

Broadly, the conditions for elections and appointments will remain the same. The approach is to bring all these components together in one section of the Constitution rather than spread out.

Additionally, a new proposal would see the establishment of an Appointments and Governance Committee. This Committee would be tasked with ensuring that any procedures of the NEC are designed and implemented with consideration to the Assembly’s values, alongside inclusive practices. The surveys demonstrated that members were wanting more transparent practices that also considered leadership development. This approach would also support succession planning.

**What the proposed Constitution will say**

1. **Elections of the NEC:** Elections of NEC members will take place by electronic polling either before or at the Annual General Meeting, with results of the election being announced at the Annual General Meeting.
2. **Nominations for elections:** nominations for elections must be provided in a way as determined by the NEC. Eligible members must be given notice of any vacancies on the NEC.
3. **Timeframes for elections:** Nominations should open no less than 20 working days ahead of the call for the election (call for the Annual General Meeting).
4. **Voting:** Voting should be open for no less than a period of 10 working days.
5. **Appointments:** The NEC may recruit from its membership appointed roles to the NEC. The NEC will provide information about the role and skills they are seeking. The appointee will be confirmed on the NEC by a majority vote of the NEC. The NEC will set the process for recruitment and may undertake interviews if they require it.
6. **Term of Appointed members to the NEC:** The usual term for appointed members will be the same as elected members and commence from the meeting following when the NEC approves an appointment.

## Subcommittees and Advisories of the NEC

1. **What our Constitution says right now**

Section 10 and 11 of the constitution outlines the rules around Standing Committees and other committees. These sections outline how standing committees are set up, who can be on them, their powers and the reporting requirements to the NEC.

1. **Why this is important and our proposed approach**

Our proposed approach is to call these subcommittees and advisory as the NEC sees fits. Similar rules would apply to what is currently in the Constitution.

Subcommittees and Advisory Committees are important to support the governance of the organisation. They can be used to monitor or aide in the development of particular work programmes on a more regular basis. This can be useful in providing focused time on a particular item of business. Finance, Risk and Audit committees are quite common in governance as these areas often require more time and expertise to understand and manage finances, risks, and the relationships with the auditor.

In this approach, there will be no named standing committees, however the intent of the NEC is to stand up committees through its bylaws to support its ability to govern effectively.

Governance areas that the committees will cover:

* Finance, Risk and Audit
* Governance
* Appointments and Elections
* Māori rōpū and advisory committee to assist the NEC on giving effect to Te Tiriti across the organisation.

**What the proposed Constitution will say**

1. **The purpose of subcommittees and advisory committees:** the NEC may appoint subcommittees and advisories as required to undertake or advise on business on its behalf.
2. **Membership of subcommittees and advisory committees:** subcommittees and advisories may consist of any member of the Assembly, or other persons as the NEC requires. At least one Officer of the Assembly shall be represented on a subcommittee.
3. **Terms and procedures:** A terms of reference should be developed for each subcommittee to outline their roles and responsibilities. They must ensure that appropriate records like minutes and reports are kept and provided to the NEC as required.
4. **Limitation of powers of subcommittees and advisory committees:** A subcommittee or advisory committeemust not spend any money or incur any liabilities in excess of any budget approved by the National Executive Committee without the prior approval of the National Executive Committee.

## Ceasing to be an Officer or Committee Member

1. **What our Constitution says right now**

Rule 9.13 outlines the tenure of a NEC member. This rule outlines when the term of an officer ends. The term ends at the end of their term as an elected NEC member; if an officer misses 3 consecutive meetings of the NEC without being excused by the President, or if the officer is no longer a financial member of the Assembly.

1. **Why this is important and our proposed approach**

The Act requires the Assembly to outline when an Officer of the Assembly ceases to be an officer according to its own rules. The end of the NEC member’s term is just one way an Officer can cease to hold office, and so this section should clearly outline the reasons when an NEC member will no longer qualify as an NEC member.

**What the proposed Constitution will say**

1. **Ceasing to be an Officer or Committee Member:** An Officer of the Assembly ceases to be an Officer:

* At the end of the Officers elected or appointed term;
* Resigns from office by providing notice in writing to the President either effective the date it is received, or at a later date specified by the Officer;
* Is removed as part of a decision under a Disputes Resolution Process;
* Is disqualified from being an officer under the rules of the Constitution or according to the Act;
* If the Officer misses three consecutive meetings of the NEC without being excused by the President; or
* If the Officer does not renew their membership by the first day of the membership year.

## Conflicts of Interest

1. **What our Constitution says right now**

There is nothing in the Assembly’s constitution right now that sets out a requirement to declare a conflict of interest or the process for dealing with interests.

1. **Why this is important and our proposed approach**

Whilst there are no conditions in our Constitution right now, it is standard governance practice to hold a register of interests, also known as a conflict of interest. The NEC does have a register of interests and it is managed within each NEC meeting.

This Interests Register outlines any other roles, responsibilities, positions, investments, or relationships that might be considered a real or perceived conflict for the current members of the NEC.

An example could exist when hiring a CEO, if any member of the NEC were a partner or family member of the applicant, then the applicant’s partner might not be able to participate in the hiring process or decision making.

Another example could be if an NEC member was part owner in a business that had put in a tender or proposal for work to be done at NEC. The NEC member would be an interested party and would not be able to participate in any decision making process associated with the awarding of that contract. In fact, that Business might be excluded from even participating in a tender process if that was appropriate course of action.

There is a requirement in the Act to have an interests register, and the interests register should be made available to the members of the Assembly at any time. The proposed approach is to have a simple statement requiring the NEC to maintain an Interests Register, for NEC members to declare any interests, real or perceived, should a decision arise where they have a conflict, and the process for dealing with any conflicts.

This section will also outline if a simple majority of NEC members are conflicted in a matter. In addition to the details in the constitution, further detail on how the NEC manages and identifies mitigations to Interests are managed through an NEC policy and procedure.

**What the proposed Constitution will say**

1. **Declaring an Interest:** NEC members must declare their conflict as soon as they become aware of it and ensure the Interests Registers is kept up to date at all times.
2. **Expectations of NEC members who have a conflict:** NEC members who have a conflict, can participate in any discussion, remain in the meeting if the NEC agrees. However, they must not vote on a matter they have an interest in.
3. **Voting and quorum:** If an NEC member has a conflict in a decision, the quorum of that meeting is not affected if the NEC member cannot vote. If more than half of the NEC members have a conflict in a matter, then a Special General Meeting must be called so the members can vote on the matter.

## Other considerations

### Regional Executive Committees

We received a lot of varied feedback on Regional Executive Committees and engagement from members. Whilst Regional Executive Committees have played an important role in the organisation historically, they are either operating on a much smaller scale comparative to their history or simply do not exist where they were operational before.

The proposal is that we do not carry Regional Executive Committees forward into the new constitution.

**What does this mean?**

Member engagement and regional issues are still just as important as they were when Regional Executive Committees were operational.

You can still expect to see regional engagements, and members are welcome to organise their own meet-ups and connect. The NEC encourages these activities, but these activities will become more informal and encourage member-led events tailored to the communities where the members are based or focused on particular interests of members. This structure also removes a layer of administration for those wanting to organise without the significant responsibility of taking on an official role that was previously required with the Regional Executive Committees.

### Proposal: Community and Interest Groups

In lieu of Regional Executive Committees it is proposed that Community and Interest Groups are available for members to informally organise in ways they find useful and meaningful.

These groups would be non-voting but influential groups who could request time to submit papers to the NEC for consideration, they may also inform other policy and advocacy work that the NEC undertakes through its operational arm.

**What the Constitution would say**

This proposal doesn’t necessarily require a rule in the Constitution. However, in the membership section members have rights to engage and connect with other members. These groups would primarily require operational support to organise; however, the intent is that the NEC would create ways for these groups to present papers or policy to the NEC for consideration. That function can be enabled through a bylaw.

# 