

Submission #1

From: Matt Brown

Received: 16 December 2024, via Google Forms

Submission:

Please share your feedback or suggestions regarding the draft guidelines 'Introductory Provisions and About InternetNZ' section.

I am broadly supportive of these sections and their contents.

I think there is duplication which will cause potential confusion in point 17 between items e and g; where development and collaboration with Maori groups is mentioned twice in different terms. I think this would be strengthened and less confusing, if item e was removed and the content incorporated into item g to remove the duplication, for example item g could read:

Collaborating with, and coordinating across, the wider New Zealand Internet community, the general public, Māori, New Zealand government agencies, and other organisations when giving effect to the above objects. These collaborations will uphold our commitment to centering Te Tiriti o Waitangi in our work and respecting tikanga.

Please share your feedback or suggestions regarding the membership section of the draft guidelines below.

None.

Do you think the guidelines provide a clear and effective framework for the Board (Council) and its operations?

No, co-chairs is a risk and unproven model that is not sufficiently justified or proven.

I am supportive of the overall intent to increase the Board's Māori representation (subject to the further comment below regarding how this is specified) and I think the requirement for at least 3 of the board members to contribute towards this is justified and sensible, but mandating that the board must be co-chaired is not required.

Do you have any further feedback regarding the Board (Council) composition, functions, or procedures outlined in the guidelines?

While I am overall supportive of the movement towards centering Te Tiriti in the organisation and including a minimum number of members who contribute towards the board's Māori representation, I am uncomfortable with the wording that the member must "be" Māori - which, while not precisely defined, is presumably intended to be determined by blood/ancestry.

I think the same outcome and intent could be achieved by requiring 3 members of the board to be actively involved in te ao Māori without requiring a specific racial or ancestral background.

Do you have any feedback regarding “general meetings” at InternetNZ?

None

Do you have any further feedback or suggestions for the proposed dispute resolution process?

None

Do you have any feedback or suggestions regarding the Additional Process Provisions section of the drafting guidelines?

None

Do you have any other feedback or comments regarding the drafting guidelines?

None

Submission #2

From: David Farrar

Received: 3 January 2025, via Document attached in email

Key points to include in the preface:

- InternetNZ was founded in 1995 as the Internet Society of New Zealand by a small group of dedicated volunteers. It has been a charitable, open membership organisation since its inception.

Off memory it was not a charitable organisation at inception. This was a status applied for at a later date.

- In 2018 InternetNZ | Ipurangi Aotearoa committed to being a Tiriti centric organisation. We recognise tangata whenua, and understand the unique partnership between iwi, hapū and the Crown and that Te Tiriti is the basis for our collective belonging in Aotearoa.

I disagree that this part of the statement “Te Tiriti is the basis for our collective belonging in Aotearoa.” should be in the constitution. It is a political argument that is hotly contested. It can be interpreted as meaning New Zealand citizens without Māori ancestry have no right to be in New Zealand without the Treaty, and this is in breach of universal human rights declarations that the right to citizenship is non-negotiable.

I have no objection to a statement that says “InternetNZ | Ipurangi Aotearoa recognises tangata whenua, and understand the unique partnership between iwi, hapū and the Crown”

- The following two statements underpin this constitution and should inform the way it is interpreted and implemented:
 - a. InternetNZ administers the .nz domain name system for the collective benefit of Aotearoa New Zealand
 - b. InternetNZ is committed to centering Te Tiriti o Waitangi in its work.

I opposed Part (b) being in the constitution. I have no objection to it being part of a vision statement, but putting this in the constitution is likely to mean that almost every decision that comes before Council will lead to staff saying that the views of members and the community must be ignored because staff believe not doing a proposed action will be incompatible with Te Tiriti o Waitangi.

This will almost inevitably lead to calls for InternetNZ to start using its powers as manager of .nz TLD to remove domain names that some say cause harm to Māori as refusing to do so will be seen as unconstitutional. I can imagine that various lobby groups and political parties would end up facing losing their .nz names as InternetNZ is forced to abandon its traditional stance of not judging content in administering the .nz TLD.

- **Safe:** refers to the Internet being a place where people’s fundamental human rights are protected, and users can enjoy the Internet free from harm.

This clause has the potential to dramatically change InternetNZ from an organisation that has traditionally championed freedom of the Internet to an organisation that actively tries to censor the Internet to achieve the impossible goal of enjoying the Internet free from harm.

Everyday I have people say harmful things about me on the Internet. I would prefer they don’t, but so long as they don’t break the law or breach AUPs they have a right do say harmful things about me.

I support there being a principle of the Internet being safe, but think the language should be more flexible as harm and risk are also counterbalanced by choice and decisions.

- **About:** the Act permits the inclusion of tikanga Māori. A society may include a rule setting out its tikanga, kawa, culture or practice in its constitution (not a mandatory requirement). This section is an opportunity to set out the way things are done in the organisation and the culture it wants to foster. We propose there

is a tikanga and kawa section in the new constitution. This is a new section not in the current constitution.

I'm not opposed to the inclusion of tikanga Māori practice in the constitution, but its acceptability may come down to how well defined it is, so members understand what they are voting for.

- **Drafting instructions:** the constitution will state that in order to give effect to our commitment to Te Tiriti o Waitangi, InternetNZ respects the tikanga based rights, interests and obligations of tangata whenua in Aotearoa and will be guided by tikanga values and principles in the way in which we work. Where appropriate we will seek guidance by tikanga experts on how to do this.

Constitutions should be easy for boards to understand and comply with. If a board has to consult an expert constantly on how to comply with their own constitution, then that is unhelpful. It also opens up the organisation to judicial review. So again any references to following tikanga should be defined as specifically as possible.

- **Fellow criteria:** member survey responses on the proposal to change the criteria for Fellows was fairly evenly split (9 supporting and 10 not supporting). While this is a small sample size we consider it does not show an overwhelming demand for change of the criteria. Further, the current criteria means that Fellows – who are often invited to contribute to discussions around a range of Internet issues – bring a broad range of Internet expertise from both inside and outside the Society, which can be of benefit to the Society more broadly.

I prefer the criteria to be solely for contribution to InternetNZ. As the number of responses was so low, one way to deal with this is to allow the members to vote at SGM/AGM on this issue, and incorporate the preferred option into the constitution.

- **Drafting instructions:** add a clause in the membership section that notes InternetNZ works for the benefit of all of Aotearoa New Zealand. To this end, the Society strives for a membership that reflects the diversity of Aotearoa New Zealand.

You may want to define diversity. Does it include geographic diversity? Political diversity?

- **Council sets the process for becoming a Fellow:** the Board (Council) must set the process, decision-making criteria, and parameters (e.g. maximum number per year) for appointing Fellows. This must be made available to all members. This provision would also formalise the current practice that the appointment of Fellows aligns with the AGM process.

I think the maximum number of Fellows the Board can appoint in a year should be specified in the constitution. With a small membership the number of fellows has

been rising over time to be a significant proportion of the voting base of the members. It would be unhealthy for a future Council to appoint a large number of Fellows.

- a. **Expectations:** members shall adhere to the rules of the society, including, but not limited to a Code of Conduct and the rules set out in this Constitution.

It would be desirable for the Code of Conduct to also be in the Constitution, if failing to adhere to it could lead to loss of membership.

- **Setting subscription fee:** the Board (Council) is responsible for setting the annual subscription fees for individual and organisational members. It must set the fee for individual membership with the aim to minimise financial barriers to membership, and may choose to set this fee at \$0.

I am very opposed to Council having the power to set the fee to zero without the approval of the members.

- **Changes proposed:** it is proposed that for clarity, the death of a member is added as a reason for removing that person's membership. In the case of an organisational member, it is proposed that liquidation, dissolution or otherwise ceasing to exist be added as a reason for removal. We are also proposing to change the criteria of "serious conflict with the objects of the society" to "serious conflict with the constitution of the society", and add a new criteria for removal of "bringing the society into disrepute".

This greatly widens the ability of the Council to remove members, especially if concepts such as tikanga are put into the constitution and not defined.

- a. in the opinion of the Board (Council, the Member's actions are in serious conflict with the constitution of the Society or the Member has brought the Society into disrepute. This must be done by resolution agreed by at least 75% of Board members.

I would prefer any such resolution need at least 80% of board members

- b. **Representation of Māori:** guaranteeing Māori representation in governance is a top priority

I think representation of Māori is very important but not the top priority or something that should be guaranteed, I note that three of our 11 Councillors are Māori which is

27%, roughly twice the level of the adult population. So we are achieving good representation without dedicated spots.

- c. **Diversity:** our governance should be diverse

Again we seem to be doing very well in this area already. By natural evolution InternetNZ has gone from a Council that was 95% white males to one which is highly diverse in terms of gender, ethnicity, religion, sexual orientation etc.

- d. a reduction in the number of Councillors (Board members) from a maximum of 11 to a maximum of nine. This reflects guidance received from external governance experts who consider 11 is too many for efficient and effective governance and recommended between seven and nine Board members.

As the person who got Council reduced from 20 to 12, I support a further reduction to nine as that does reflect best practice for governance size.

- e. an increase in the number of appointed members for the Board. There can already be two appointed members at InternetNZ. By extending this to four, it gives more room to ensure the Board can fill any skills or diversity gaps for the governance of the Society.

I strongly oppose this. This would mean 44% of Council would be appointed, and the ability of members to influence Council greatly reduced. If members thought Council was strongly going the wrong way, they could replace every elected Councillor at two AGMs and still not have gained a majority on Council. It would take three entire AGMs for the members to be able to gain a majority on Council.

If this aspect does proceed, I think there should be a clause allowing an SGM to no confidence the entire Council as a way to ensure Council is accountable to the members.

- f. the introduction of skills requirements for elected members. At present there are only disqualifying factors set out in section 7.6 of the current constitution.
- g. a move from a President to a Chair chosen by Board members, reflecting current conventions for boards, and that boards are well-placed to choose who will be Chair. Regional Councils are an example of another type of entity that takes this approach.

I support the Chair being chosen by the Board.

- h. the introduction of co-Chairs to lead the Board, one of whom must be Māori. There will be transitional provisions to allow for a Chair and Deputy Chair if co-leadership is not feasible in the short term. A

proposal to require co-Chairs of the Board was tested with members and stakeholders, however, we consider that having transitional provisions gives some flexibility for situations where the co-leadership model is not feasible.

I oppose a co-chair model. Putting aside the issue of requiring one to be Māori which I oppose, a co-chair model weakens the board and strengthens the role of staff. A sole leader of the board can provide direction and leadership, especially in the intervals between board meetings. A co-chair means that this is reduced.

- i. introduction of minimum representation requirements for Māori, as part of our commitment to centering Te Tiriti o Waitangi.

I regard this as unnecessary and believe one can achieve good representation through elections and the appointed members process where knowledge of Te Ao Māori would be one of the factors.

- j. all Board members should have knowledge of Te Tiriti and support our goal to be a Te Tiriti centric organisation. How they achieve this will be guided by the Appointments and Nominations Committee and the Board Charter.

This means that no one who disagrees with this approach would be eligible to be on the board. It effectively applies a political litmus test to the board. By doing so InternetNZ would no longer be open to all, and I believe would no longer be suitable to be the manager of the .nz TLD.

- **Composition:** The Board (Council) will be comprised of:
 - a. five Board members elected by InternetNZ membership. These people must all be members of InternetNZ, and
 - b. up to four appointed board members, who may or may not be members of InternetNZ at the time of appointment.

This massively depowers the membership. At an absolute minimum it should be 6/3 elected/appointed but preferably 7/2.

- **Representation:** the Society shall endeavour to ensure that at least 3 members of the Board as a whole must be Māori, to ensure a baseline of Māori representation. At least one appointed Board member must be Māori (and this counts towards the minimum 3 Māori members). In the case where the number of Māori board members is fewer than three due to a change in elected members, this should be addressed during the next available appointment opportunity for Board members.

If there is to be guaranteed representation it should be proportional to the share of the adult population which would be either 1/9 or 2/9.

The proposed rule would mean the guaranteed representation would be between 33% and 43%, depending on the overall size of the board. This guarantees over-representation.

I am aware that some have a view that the Treaty guarantees equal partnership and this means equal numbers. I disagree with that interpretation but if that is the view then the principled proposal should be for 50/50.

- **Skills:** appointments will be made to ensure the right skills and capability mix for good governance and to fill any skills gaps. The appointments process should also give consideration to gender balance and diversity of lived experience on the Board (but all members must meet skills requirements). Two members of the Board must have specific expertise in Te Tiriti o Waitangi, te ao Māori and/or Māori governance. All Board members should have knowledge of Te Tiriti and support our goal to be a Te Tiriti centric organisation.

I am comfortable with expertise in Te Tiriti o Waitangi and te ao Māori being parts of the skills matrix, which would likely still lead to significant Māori representation (which is good).

Again I am very much against a requirement for board members to share the same political view on the Treaty of Waitangi. A political litmus test like this will change InternetNZ from an organisation that all New Zealanders can contribute to, to one that only some are welcome in.

- **Term length:** the term for all elected and appointed Board members will be three years from the date of the AGM. The change in term length for appointed members makes it consistent with elected members and is in line with external governance advice we received. If someone is being elected/appointed for a partial term due to a Board member vacating their seat, they will be elected/appointed for the remainder of the term. Board members can serve up to a total of three terms. The co-Chairs or Chair and Deputy Chair are appointed for a two-year period, with the Board reaffirming the Chair/co-Chairs annually.

It is unclear what this means in practice. What if a Chair is not reaffirmed? I would have the Board simply elect the Chair and Deputy after each AGM. This ensures they always have the confidence of the Board.

- **Replacing a Board member:** if an elected Board member steps down or is removed during their term, their role may remain vacant until the next election, at which time a new elected member will fill the remainder of the 3-year term. If an appointed member steps down or is removed, their role may be filled by appointment at any time. If the Board composition is not in accordance with the

Act or the Constitution (e.g. there will be fewer than 7 members or there will be more appointed than elected members), then a byelection may be held to fill an elected position for the remainder of the term.

If the board is reduced to nine, I think any vacancies of elected members should always be filled with a by-election.

- **Changes proposed:** it is proposed that an Officer can be removed by resolution of either the Council or Society, but only under specific circumstances. While this lowers the bar from two thirds of voting members at a General Meeting, it adds in clear rationale for removal. It also adds a process around the removal of an Officer due to missing meetings. The situations for ceasing to hold office will all be stated in one place in the constitution (even if expanded on elsewhere).

I oppose the board being able to sack an elected member of the board. Only the membership should be able to do so, and the 2/3rds majority should remain as the threshold for removal should be hard to achieve.

I also support the ability of the members to remove the entire Board if they believe it is not operating in the best interests of InternetNZ.

- a. by agreement of the co-Chairs or by the Chair of the Board (Council), on request of 20 or more eligible members. The request must state the motions which will be moved at the meeting. This section will provide the number of days notice required, which will be consistent with other General Meeting timing provisions in the constitution.

This suggests the Chair can refuse an SGM request made by 20 or more members. I think their only role should be to facilitate it and set timing, if the request for the SGM does not specify it.