

## Options for constituting the Internet New Zealand Council

### Summary of advice

This advice was originally provided in September 2024. This is a summary document for wider circulation. It is in every way consistent with the original material. The recommendations are included in full. Some secondary material (examples from other organisations etc.) has been removed for the sake of brevity and simplicity.

### Scope

We have been asked to look at options for constituting the Internet New Zealand (INZ) Council. This is largely about the process, but we have included discussion on board size and structure. We discuss, in particular, who the Council acts on behalf of and what rights that 'ownership' should have in respect of influencing its composition.

### A note about the annual meeting

We note that INZ uses Elections NZ to facilitate the election process. This is a proxy for a general meeting of the members. When we discuss the role of an annual meeting, we acknowledge that the actual vote uses this process.

### Ownership

A board (Council) is a subset of an ownership. It is constituted to ensure the business acts in the best interests of that ownership. This also an important governance concept in that a board should not behave as a 'layer of management up'. It has a different role. This understanding informs the composition and role of any board.

Ownership can, in one sense, be viewed as narrow legal group, those that can vote at the annual general meeting, or a broader ownership, those that are impacted by the organisation's activities, the 'moral ownership'.

We argue the membership of a traditional Incorporated Society does not constitute true ownership. It is more accurately described as an opportunity to influence direction and control of the entity and in most cases benefit from the efforts of the organisation. In the case of Internet New Zealand even this may be an overreach.

Traditionally a Society is created by a group of individuals with a common interest who require a structure to undertake certain activities. In this case the structure has been created to give a sense of ownership around an opportunity.

We note that the memorandum of understanding between MBIE and Internet NZ states that, *the ultimate say in the management of .nz is with the local Internet*

community<sup>1</sup>.

The Incorporated Society model is an obvious one to involve people and organisations. Whether it remains the right one is outside the scope of this short paper, but an interesting discussion, nonetheless.

At the time of writing the membership appeared to be in slow decline to a level of 345. Of those only 143 (41%) voted in the last election.

When this number is viewed as a percentage of the wider internet community it is reasonable to conclude that the moral ownership should have more weight in this case and the rights of the formal members should be limited. This perspective influences the suggested design for constituting the Council.

### **Size of the Council**

Eleven is too large. Good practice indicates a range of seven to nine for effective boards. Beyond that there is a tendency for meetings to become unwieldy and too easy for the group to have one or two passengers not contributing.

*We recommend a maximum of nine Councillors*

### **Elected and appointed**

Presently nine of the eleven Councillors are elected and two are appointed directly by Council. The revised Incorporated Societies Act (2022) requires the majority of officers (Councillors) to be members.

Having only two appointed members is too limiting and places the composition of Council in the hands of others. There appears to be no mechanism for providing guidance to the annual meeting on the skills requirements of Council at any given time. A higher number of appointed members allows the Council to target required skills.

*We recommend five elected Councillors and four appointed.*

### **Nomination process**

Presently the constitution states that all Councillors must be financial members.

*6.3 Only financial individual Members of the Society may serve as Council Members.*

It is unclear why appointed members, who should bring a degree of independence, need to be members of the Society. As noted above there is sufficient legal

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<sup>1</sup> That agreement further defines the Local Internet Community internet community to include but is not limited to:

- a) the government or territorial authority for the country or territory associated with the ccTLD and
- b) any other individuals, organizations, companies, associations, educational institutions, or others that have a direct, material, substantial, legitimate and demonstrable interest in the operation of the ccTLD(s) including the incumbent manager.

imperative to act in the best interests of the Society.

There is a further limiting requirement in this clause.

*10.2.3.4 Each nomination must be proposed by a financial Individual Member of the Society and agreed to by the nominee, who must be a financial Individual Member of the Society. No member may propose their own nomination.*

Why place any barrier between a talented candidate and the recruitment process? It is more common now for appointed or independent positions that candidates can self-nominate.

*We recommend clauses 6.2 and 10.2.3.4 be deleted.*

## **Balance of representation**

We agree with clause 6.4 (or similar) restricting representation from any portion of the membership.

## **Tenure**

They appears to be no limit on tenure in the constitution other than for the President and Vice President (two terms). Clause 6.6 notes that, *Council Members may hold office for consecutive terms*, but does not state an upper limit. Oddly, elected terms are three years and appointed members are two years. This is untidy.

*We recommend a term of three years for all Councillors with a maximum tenure of nine years, (three terms).*

## **President/ Vice President**

These are anachronistic titles. More commonly now in Incorporated Societies the President is a role outside the board. It has a membership relations focus. Someone who has the time to get out and about, attend events, wave the flag etc. We are not sure how useful this function is within INZ. Presidents, where they exist, typically chair the annual meeting. If the role is retained it should be outside the Council, able to attend meetings from time to time but not vote.

This also places the choice of the Council chair with the annual meeting. This is not good practice. The Council, not the membership, is best placed to understand who among its number is best placed to lead the board. This should be an annual vote perhaps three months after the annual meeting. This gives the refreshed Council time to get its feet and a sense of the people now around the table. A deputy chair is useful both to stand in as required and as a step in succession to the chair role.

*We recommend that*

- *the roles of President and Vice President are discontinued*
- *two new roles are defined of chair and deputy chair. The Council appoints these roles*

## Process

Good practice governance recruitment in Incorporated Societies involves a formally constituted appointments panel. Its terms of reference are laid out in the constitution. This is similar to the process you currently use for the Domain Name Commission.

The panel designs and runs the recruitment process. The Council passes on its skills and competencies requirements together with any relevant performance review information of the board or individual Councillors seeking renewed terms.

## Panel composition

Generally, these are three people, four at the outside, comprising the board chair (unless standing for reappointment), an independent person skilled in governance or executive recruitment and a representative of the membership (appointed by the annual meeting or stakeholder council). At least one woman or two if the group is four people.

## Options

There are various degrees of influence/ control these panels can have.

Appointed roles: select and interview a short list and then either make the final decisions (no recourse to the members) or recommend to the annual meeting for a yes/no vote.

Elected roles: select and interview a short list and one of two options.

- Recommend only the number of candidates to fill open positions to the annual meeting for a yes/no vote
- Send all nominated candidates to the annual meeting with a ranked preference.

All candidates, even renewing ones, should be interviewed. There is wisdom to be had from talking to current Councillors.

*We recommend the creation of a constitutionally mandated board appointment panel with these features.*

- *three persons being the chair, an independent and a members' representative*
- *power to make appointments*
- *recommends to the annual meeting a ranked preference of candidates for election*
- *all short list candidates to be interviewed including those seeking renewal*

## Skills and competencies

What skills should INZ be looking for among its Councillors?

There is always a tendency to look for people with sector experience. There is no doubt that the board must have sufficient knowledge or experience to know when and on what basis to question chief executive's proposals or judgements, and to evaluate execution of the strategic plan. A board must, therefore, have within its

membership the ability to 'sense check' the various matters that come before it.

But there is little evidence that domain knowledge defines great boards. Good governance comes from high functioning social groups

*What distinguishes exemplary boards is that they are robust, effective social systems<sup>2</sup>*

Equally there is a place for a small proportion of directors to be chosen specifically because they come from completely unrelated fields. This ensures that the board also has the capacity to apply intelligent naïveté. Because they have no prior specialist knowledge or direct sector experience such directors are often better able to question management proposals and assumptions, and they do so from a genuine need to fully understand (i.e., a learning perspective).

Any intelligent director will understand the need to get up to speed with the business and will do so but they are not there to duplicate management competency. They have a separate role.

Above all they should understand what governance is and the role they are expected to perform.

The Council should also have the competence within it to understand how the relationship works at the governance level with its subsidiary entity (DNCL) and how to maintain effective oversight of its business.

### **Individual attributes**

Whatever skills and background a director brings to the table they must have the personal qualities in order turn that experience to the benefit of the board and the company. We see some of our best professional directors working across businesses where they have no direct experience because they bring a group of personal attributes well suited to the business of governance.

Individual attributes commonly found to be important in a governance context include the following. These expand on the statements in your current framework.

#### **General**

- To see the big picture and the implications and impact on issues in the broader sense
- To make sensible, astute recommendations and business decisions
- To interpret both factual and conceptual information and make sound judgements based on that information
- To contribute to the creation and not merely the preservation of stakeholder value; and to be able to distinguish between the separate but complementary roles of governance and management.

#### **Strategic**

- To understand the position of the organisation in its markets and its

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<sup>2</sup> Sonnenfeld, J. What makes boards great. Harvard Business Review. September 2022

relationship to key stakeholders

- To ensure that strategies and business plans are adopted that will deliver the organisation's vision and mission; and
- To look beyond the short-term and ensure that the board adopts a longer-term, stewardship approach.

#### Analytical

- To interpret financial statements and statistical information and the significance and meaning of appropriate performance indicators
- To question and probe information, assumptions and assertions in a quest for improved understanding and better decision-making; and
- To remain objective and measured under pressure.

#### Social

- To participate actively and harmoniously, respecting and valuing the contributions of others and contributing to effective teamwork
- To articulate a point of view in a coherent and persuasive manner without dominating the board's proceedings; and
- The strength of character to maintain an independent point of view when others disagree.

#### Other options

We were asked to consider other structural options that may be relevant to Internet New Zealand.

#### Stakeholder Councils

Many industry membership organisations have an intermediary entity between the ownership and the board. Stakeholder Councils or similar are intended to bring diverse views to a group and be a useful conduit of information to the board. Often the board and the Council will meet together formally on a planned basis. Other functions may include having input into the skills and competencies matrix for board recruitment, placing a representative on the board appointment panel.

Some examples.

##### OSPRI [Stakeholder Council](#)

This Council has an independent chair. Its remit is stated as

- *The Council advises and makes recommendations to the Board on operational policy associated with OSPRI programmes. The Council is also responsible for making recommendations to OSPRI's shareholders on appointments to the Board.*

##### Hanga-Aro- Rau [Stakeholder group](#)

The group's primary purpose is to.

- *Provide guidance and feedback on our organisational strategic direction and performance (including endorsement of key organisational documents such as our Statement of Strategic Direction, Operational Plan, and Investment Advice to the Tertiary Education Commission)*
- *Offer advice and guidance from an industry perspective*
- *Evaluate the performance of our governing Council*
- *Recruit and appoint future governing Council members*

## **NZ Rugby Te Kaunihera**

The proposed Council was outside the Incorporated Society structure.

Its key functions were proposed as.

- *Cohesion and alignment across all parts of the sport*
- *Direct relationship with the board of NZ Rugby*
- *Input onto the board skills matrix and nominating one person on the appointment panel*

Whether Internet NZ is truly an industry sector in its own right is the question. A stakeholder council model may be unnecessarily cumbersome.

*We do not recommend a stakeholder council model for INZ without careful thought.*

## **Two tiered boards**

This model that breaks a company's governance into two distinct boards. Usually, these are known as the supervisory board and the management board.

The theory is that the management board oversees the running of the business and financials. The supervisory board oversees the long-term strategy, reputation and direction. It also assesses the actions of the management board.

These structures are often found in Germany, Northern Europe and Scandinavia, nations characterised with high levels of stakeholder and employee participation in governance. Deemed to be a feature of the Rhenish model with emphasis on social capitalism.

In total there is usually a larger number of directors, and the structure can be bureaucratic in practice. The management board tends to be heavy on executive directors.

They may work in their own contexts and there is evidence that this model protects from some of the excesses and questionable governance practices seen in other jurisdictions. In reality the management board is the senior team with possibly one or two others. Internet NZ is too small an entity for such a complex model and whether you would get the skills needed at the supervisory level is unknown.

*We do not recommend a two tiered board structure*

## **Other matters**

We note in the constitution (10.2.3.2) that annual meeting shall *approve a business*

*plan and budget of income and expenditure for the current financial year.*

This is not good practice. The Council is not formed to manage in detail the finances of the organisation. It is not possible for a group of members in annual meeting to exercise any competent diligence over a c\$14m budget. The meeting receives the annual report and ensures probity through the appointment of the auditor.

Members have the ultimate sanction over the competence of their Council via clause 6.10 *Any Council Member can be dismissed by resolution of a General Meeting of the Society, provided that such resolution is passed by at least a two-thirds majority of those voting.* It is more common for this to be the whole of a board rather than individual members. The point of any board is that the business has become too complex to be managed in detail by the owners. Hence their control and sanction needs to be at highest level, not that of approving operating budgets.

*We recommend clause 10.2.3.2 be removed from the constitution.*

## **Te Ao Māori**

The recent review process recommended that Internet NZ consider.

*...a more representative model of governance that is co-designed by Māori and informed by iwi that gives effect to Te Tiriti.*

What that model may look like is outside the scope of this discussion, but we make some related comments which are relevant to how the Council may be constituted. Many people, including us, are thinking about what a model of governance might look like that blends the two worlds and we frequently encounter this in our work with clients. We have yet to see a fully formed response. That does not mean the intent is incorrect, but it may take some time and iterations to arrive at something that truly works.

Your skills and competency framework already notes knowledge of Te Ao Māori. We assume a basic knowledge is seen as a desired attribute among all Councillors. Additionally, around the table there should be some people with more than a basic working knowledge. That can be achieved though the recruitment process.

However, we caution on building a 'representative' governance model which focuses particularly on any given grouping of membership. This pertains to any setting or grouping. A director (or Councillor) in any legally constituted board has a first duty to the organisation as a whole.

S 54.1 of the Incorporated Societies Act (2022) states.

*An officer, when exercising powers or performing duties as an officer, must act in good faith and in what the officer believes to be the best interests of the society*

That is further clarified in S 61.

*The duties in [sections 54 to 59](#) are owed to the society (rather than to members)*

It is vital to have knowledge of a particular stakeholder group at any board table, but



it is wrong to overly emphasise the 'representative' obligations of a single director or Councillor. People understandably tend to 'fight their corner' first, ahead of the legal obligation to the organisation as a whole and the Council's need to look at the wider picture. This is not the fault of individuals, but the tendency must be understood and worked with. Often the perceived 'representative' is placed in a difficult position between their 'constituency' and the wider organisation. They are only one voice at the table and only one perspective.

Too much narrowly focused behaviour can seriously inhibit governance efficacy and sometimes limit the broader contribution that an individual may potentially make. Ultimately the Council must speak with one voice. The primary attribute required is one of governance competence.

The comments above are first principles observations. They do not relate specifically to Māori or any other group of stakeholders. As noted, how to give effect to a genuine intent of partnership and ensure principles of good governance are retained is a journey many organisations have begun but it remains, as yet, a work in progress.

We make no specific recommendations here as the area is out of scope. But in thinking about how to respond to this specific review recommendation we encourage keeping governance first principles in mind and not creating unnecessary complexity. In particular we suggest caution around 'representative' models of governance.

## SUMMARY OF RECOMMENDATIONS

We recommend.

- a maximum Council size of five elected Councillors and four appointed
- a term of three years for all Councillors with a maximum tenure of nine years, (three terms)
- We recommend clauses 6.2 and 10.2.3.4 be deleted from the constitution.
- the creation of a constitutionally mandated board appointment panel with these features
  - three persons being the chair, an independent and a members' representative
  - power to make appointments
  - recommends to the annual meeting a ranked preference of candidates for election
  - all short listed candidates to be interviewed including those seeking renewal
- the roles of President and Vice President are discontinued
- two new roles are defined of chair and deputy chair. The Council appoints these roles
- clause 10.2.3.2 be removed from the constitution.

We do not recommend.

- a stakeholder council model for INZ without careful thought
- a two tiered board structure

## Skills and competencies framework

We provide a template for directors skills and competencies not to replace the one you have but by way of checking for completeness. The weightings will be specific to your Council.

DESIRED CHARACTERISTICS	Weighting	Name 1	Name 2 etc	Unweighted Total	TOTAL
<b>SKILLS</b>					
Ability to think strategically					
Analytical, critical reasoning and problem solving skills					
Strong financial literacy and analytical ability					
Oral communication skills					
Ability to understand and relate to stakeholders					
Understanding of Te Ao Māori					
<b>ATTRIBUTES</b>					
Ethical, open, honest, trustworthy, high levels of integrity					
Independence and inquisitiveness					
Ability to establish quality relationships					
Ability to work as a team player					
Preparedness to work hard and commit time and effort to do the job					
Has an outcomes focus					
Strong stewardship orientation/consumer focus					
<b>EXPERIENCE</b>					
Relevant governance experience					
Understanding of and experience in internet sector					
Community/stakeholder influence and connections					
Broad business experience					
Others???					
<b>MEETING PERFORMANCE</b>					
Well prepared for meetings					
Adds value to board dialogue					
Able to focus at the governance level of issues					
Able to disagree without being disagreeable					
<b>TOTAL</b>					

## **Boardworks**

Boardworks is a specialist governance consultancy founded in 1997. We have particular expertise in membership structures, notably Incorporated Societies. We have advised many clients on constitutional change, board composition, recruitment and frameworks of accountability back to the membership. Some of our most complete and relevant thinking can be found within the governance review of New Zealand Rugby (2023), [here](#). See especially pages 54-64.

[www.boardworks.nz](http://www.boardworks.nz)

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