

What is the proposal?

The Tennis NSW Board (**Board**) considers that the current Tennis NSW Constitution dated 24 November 2020 is not contemporary or consistent with modern principles of good governance. Accordingly, the Board has identified a need to review and update the current Tennis NSW Constitution for the reasons outlined further below.

In order to achieve this, the Board proposes to undertake an “A for B” substitution whereby the current Tennis NSW Constitution will be replaced in full by a new constitution which (save for key provisions which have been retained from the current Tennis NSW Constitution) is largely based on the Sport Australia best practice ‘model’ constitution which has been specifically drafted to reflect and implement the Sport Governance Principles (**SGP**) (March 2020) and Sport Governance Standards (**SGS**) (February 2022), as recommended by Sport Australia (formally the Australian Sports Commission). Both the SGP and SGS represent Sport Australia’s recommendations regarding best practice governance for sporting organisations.

Why is change required?

The Board considers that the current Tennis NSW Constitution is outdated, difficult to read, and most importantly is not reflective of modern principles of good governance. In particular, in a number of places the current Tennis NSW Constitution does not reflect the Sport Australia SGP and/or SGS (e.g. Board makeup including gender and other diversity, enshrining a right of appeal for disciplined members, categories of directors, utilisation of technology in regards to voting & the conduct of meetings, and clarification around maximum terms for directors etc.).

Given this, the Board considers that if Tennis NSW does not modernise its constitution, the organisation runs the risk of being non-compliant with current governance requirements. This in turn could expose the organisation to significant legal and/or reputational risk. Additionally, there is a concern that if Tennis NSW does not have a governance structure that reflects best practice the organisation will be less likely to receive government funding or other partnerships/sponsorship which would ultimately be detrimental to the development and growth of the sport of tennis in NSW and limit our organisation’s ability to support our members to develop and deliver on their initiatives.

Based on the Board’s review of the current Tennis NSW Constitution, the current drafting of the constitution would require substantive amendment to align with ‘best practice’ governance principles. Tennis NSW therefore considers that attempting to update the current Tennis NSW Constitution ‘piece by piece’ would likely have the undesirable consequences of making the document more convoluted, confusing, and difficult to follow. It is also possible that attempting to update the constitution in this way may not actually achieve ‘best practice’. It is for this reason that the “A for B” substitution approach is the Board’s preferred approach to the modernisation and updating of the TNSW Constitution.

What are the major changes?

The drafting of the proposed new constitution is largely adopted in full from the Sport Australia model constitution. In most cases, whilst the wording of the clauses has been updated to ensure clarity and reflect modern good governance, the practical implications of these clauses remain unchanged from the current Tennis NSW Constitution.

Further, in certain clauses, the Board has resolved to retain the exact wording as presently appears in the current Tennis NSW Constitution. Put another way, the rights, responsibilities and powers under these clauses are **unchanged** from the position which currently exists under the current TNSW Constitution. The clauses which fall into this category are as follows:

- Clause 2.2 – Objects of the Company;
- Clause 5 – Membership (including categories of members and the process for application for membership); and
- Clause 11.1 – Votes of Members (i.e., member voting rights).

However, the Board recognises that there are some clauses which represent a significant departure from the position which exists under the current Tennis NSW Constitution. The Board would like to take this opportunity to provide the rationale behind these proposed changes and to provide the opportunity for the Tennis NSW membership to give their feedback on these proposed changes. The clauses which represent a major change include the following:

Clause 7 – Grievances and Discipline of Members

The current Tennis NSW Constitution does not make any reference to a process for the disciplining of members and/or the resolution of disputes involving a member or grievances between members. SGS 8.3 provides that organisations have clearly defined processes for resolving disputes. To meet this standard, the Board proposes to include a power for the Board to create and/or adopt policies related to the disciplining of members and the resolution of disputes. The inclusion of these processes in policy rather than the constitution ensure that the processes can remain current and adaptive to changes in governance standards.

Clause 7.2(e) also constitutionally enshrines a right of appeal for a member who is subject to a hearing, investigation or determination taken under a Policy adopted for this purpose under the constitution. This right does not exist under the current Tennis NSW Constitution and ensures procedural fairness for all Tennis NSW members.

Clause 11.2 – Election of Directors

Under the current Tennis NSW Constitution there is no provision to enable director elections to be held other than at an Annual General Meeting. The proposed drafting of clause 11.2 allows the Board to hold an electronic director election prior to an Annual General Meeting, with results to be announced at the relevant meeting. It is the Board's view that moving director elections online will increase members ability to take part in the voting process without a reliance on proxy voting and will also de-politicise the Annual General Meeting, which the Board considers to be desirable.

Clause 13 Board Make-Up

Clauses relating to Board make-up, director rotations, nominations process etc. represent the most significant proposed change to the position which currently exists. As such these changes will be expanded on in more detail.

Number of Board Members

There is no change to the number of Board members or the ratio of Elected to Appointed Directors. As is currently the case there can be no less than seven (7) total directors and no more than ten (10) total directors. Of these directors, not more than seven (7) can be Elected directors, and there can be no more than three (3) Appointed directors.

Director Eligibility

In order to be eligible to stand for an Elected Director position or to be considered for appointment as an Appointed Director a candidate must be able to satisfy the requirements set out in Schedule 2 of the proposed new constitution. These requirements codify the 'automatic disqualification' provisions under the Corporations Act in addition to some additional requirements which are consistent with Tennis NSW's policies (i.e. being able to evidence working with children check certification). This assessment will be undertaken by the company secretary at the time of nomination for election or consideration for appointment.

This process avoids the situation which is possible under the current Tennis NSW Constitution whereby a candidate may be ineligible to sit as a director, but this assessment would not occur until after that candidate is elected or appointed. This avoids the potential situation of a casual vacancy caused by the election of an ineligible candidate.

Gender Diversity

The current Tennis NSW Constitution does not make any provision for ensuring diversity of gender representation on the Board. SGS 4.3 provides that no gender should account for more than 60% of the total number of directors on a board. Therefore, in order to align with best practice (and separately because the Board recognises the value in diverse representation on the Board) the proposed new constitution enshrines a gender diversity target.

Categories of Director

A major change in the new proposed constitution is the removal of the current categories of directors (e.g. Country, Metro, Court Operator etc.). The Board considers that the current categories do not guarantee the desired diversity of representation on the Board given the director categories are linked to the category of the member who nominates the director, rather than the director's personal circumstances. That is to say that under the current constitution, a candidate who is metro based and has no connection to regional NSW could feasibly be elected as a Country director if nominated by a regionally based member. The Board also considers that the current process is open to manipulation in the sense that director candidates could potentially seek nomination in a category which has a smaller number of potential candidates in order to increase/guarantee the likelihood of election.

In order to ensure true regional vs. metropolitan Sydney representation, the Board proposes to include a strict quota (clause 13.3(e)) whereby no one region (i.e. metropolitan Sydney or regional NSW) shall constitute more than 60% of the total number of directors. Whether a director is classified as regional or metropolitan for these purposes will depend on the location of the candidate's place of residence at the time of nomination when considered against the boundaries of metropolitan Sydney to be determined by the Board from time to time. The Board considers that this approach ensures equal representation for regional NSW and metropolitan Sydney whilst closing the potential for exploitation which is created by the categories of directors which currently exist.

Nominations Committee

The proposed drafting of the new constitution provides for the implementation of a nominations committee that will be made up of an independent chair (i.e. not a Tennis NSW member or director), a member representative and a Board representative, all of which are appointed by the Board. The role of the nominations committee will be to recommend candidates to fill Director vacancies (including casual vacancies) and assess all nominees for Director vacancies. This proposed change introduces a level of independence to the director nomination process which does not currently exist.

under the current Tennis NSW Constitution and should support the Tennis NSW membership to make informed decisions about who they elect to fill positions on the Board.

Maximum Term for Appointed Directors

The proposed drafting of the new constitution proposes to reduce the maximum consecutive term for appointed directors from 9 consecutive years to 6 consecutive years. This is to facilitate increased director rotation and to ensure diversity of skill and thought on the Board.

Transitional provisions

In the current drafting of the proposed new constitution it should be noted that there are two clauses, being clause 13.2 (transitional provisions) and schedule 1 (as it relates to Directors) which are transitional provisions. These provisions have been drafted to ensure that those persons who are elected as Honorary Life Members of the Company will remain as Honorary Life Members following the adoption of the proposed new constitution with **no changes** to any of their rights. Additionally, clauses have been included at 13.2 which have the effect of ensuring that the status of the incumbent Board (i.e. in respect of term lengths, board make-up etc) remain unchanged per the conditions of the election/appointment of the current Board members. Finally, sunset clauses have been included in clause 13.2 which allow appropriate lag time for clauses which impact on Board make up to take effect. This will allow the Board to have sufficient time to appropriately implement director rotations and to set itself up to meet its stated diversity targets (both in terms of gender diversity and regional vs. metro representation).