

Constitutional Review

2022

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Acknowledgements

Executive Summary

Result of constitutional analysis

1. In conducting this review, we have identified a number of Sections of the Constitution that are not fit for purpose primarily for the following reasons:
 - (a) The Sections do not adequately reflect a partnership / bi-cultural organisation as contemplated in the Organisation's mission and object statements, as reviewed against the principles of te Tiriti identified by the Waitangi Tribunal in the Hauora report.
 - (b) Due to the ad hoc nature of past changes, the Constitution has become internally inconsistent in a number of areas, with repetition of subject matter, and inconsistent terminology, that results in confusion and uncertainty as to interpretation and process.
 - (c) In some areas, practise has developed to embrace modern means of communication with members, whilst the Constitution still reflects older meeting structures that have to some extent been replaced.
2. A table of our recommendations on a clause by clause basis is set out in the schedule to this report.

Structural issues

3. We have also noted that a large number of issues raised with us in the consultation phase, and also in the survey responses, do not strictly address the Constitution but were targeted at organisational and governance matters. Whilst the Constitution does address the structure and governance structure, a review of the Constitutional document is not a substitute for governance or structural review.

Implementation

4. Due to the number of prior ad hoc changes, and internal inconsistencies in the Constitution as it currently exists, this has led us to conclude that is not possible to provide solutions by way of additional or amended clauses to address the issues identified. This is because the structure of the document itself is internally inconsistent to the point where adding anything additional would only serve to exacerbate the issues.

5. Given the importance of having a functional constitution, we consider that amendment to the Constitution would be best approached in stages as follows:
- (a) Stage one would involve proposing a replacement constitutional document to be presented for adoption by the members that did not seek to create structural change, but was fit for purpose against the current objects of the Society, and removed the inconsistencies and interpretation problems identified in our analysis.
 - (b) The proposed document would be a wholly new document and would need to go through the internal checks and balances of the Organisation.
 - (c) Once a document with clear processes and internal consistency is achieved, that can be used as a base from which any further structural changes are made over time.
 - (d) Stage two would involve the Organisation determining if it will carry out targeted consultation regarding the overall structure of the Organisation, that would then inform the need for any further constitutional change before registration under the Incorporated Societies Act 2022
 - (e) Stage three is amendments to incorporate changes arising from stage two and any additional matters required to achieve registration under the Incorporated Societies Act 2022 before December 2025.

Introduction

Appointment

6. New Zealand Nurses Organisation Incorporated (NZNO) was registered as an incorporated society in 1991. It is registered as a Union under the Employment Relations Act 2000. Since its incorporation, its constitution has been amended 18 times. Following a recent significant change in voting process from representational voting to a one person, one vote model, a policy remit was passed in late 2020 calling for an independent review of the Constitution of NZNO. Morrison Kent was appointed by the Board to undertake the review in late 2021 (following an REOI process in early 2021), with a view to providing a report for consideration at the 2022 NZNO AGM.

Terms of Reference

7. The Terms of Reference for the independent review provide that the reviewer(s) will:
- (a) Undertake a systemic review of the current NZNO Constitution (2020-2021) in its entirety;
 - (b) Report on the adequacy of the current NZNO Constitution (2020-2021) and recommend amendments as deemed necessary;
 - (c) Prepare and report on an implementation plan addressing any recommended constitutional amendments, including draft amendments or rescindments and explanations about the consequences of any recommendations;
 - (d) Make any additional comments and/or recommendations that are appropriate and relevant to the review.
8. The reviewer(s) will consider, but not necessarily duplicate as part of this review, the matters relating to the Board and NZNO's governance structure that were addressed in the Independent Governance Review Final Report by Chris Bailey, dated 2 November 2020 (the Governance Report). The reviewer(s) may agree or disagree with any of the recommendations made in the Governance Report or suggest any amendments to those recommendations as deemed necessary.
9. In undertaking the review, we have also taken into account the Policy Remit that instigated the review and was approved by a majority of the members. A copy of the Policy Remit is attached in the Appendices.

10. Exclusions

- (a) Not a structural review;
- (b) Not an organisational review;
- (c) Not a governance review – but does reference previous governance review as requested in the remit where that review provided for constitutional change.
- (d) Will not bring about behavioural change – outcome of organisational review.

Summary of Process

11. The REOI required that the reviewers undertake a process of consultation of key stakeholders. The review team undertook interviews with:
 - (a) The Kaiwhakahaere;
 - (b) The President;
 - (c) The Acting CEO;
 - (d) Members of the Mental Health Nurses Section;
 - (e) Members of the Cancer Nurses College;
 - (f) A member of the internal legal team of NZNO;
 - (g) Members of Te Poari;
 - (h) A Regional council representative
12. In addition, we have had written and verbal responses to our preliminary questions in relation to the review from members of the Constitution Review Advisory Group (CRAG)
13. We have also undertaken an online survey that was sent to all members. This was responded to by 5.320 members, with an average completion rate of 29%. A summary of the survey results is set out in the Appendices.
14. The themes from the direct consultation sessions are summarised in this report. The survey outcomes are summarised in the attached appendix relating to the survey. The source data from the survey is available as an excel document.
15. When reviewing the Constitution document, we have created a set of flowcharts that follow the decision pathways set out in the Constitution and have highlighted in red boxes where we see concerns or interpretation issues in the relevant decision-making matrix. The flowcharts are also attached as an appendix and are referenced in the Section by Section legal analysis.

Outline and Summary of Feedback Received

Themes from consultation interviews

16. The Feedback received in the consultations was thoughtful and the groups participating made a genuine and significant effort to come together to put forward their views and experiences. The themes that created tension and concern were often repeated between the different groups. A summary of those themes is below.
17. A general lack of clarity and/or dissatisfaction with how the various structures within the Organisation worked together and/ or functioned and resourced.
18. Recognition of the tension for resources and priorities as between the two roles of the Organisation as both a union and a professional organisation.
19. Whilst the Organisation had been through some very challenging issues including troublesome use of social media, there was a sense that the Organisation had turned the corner and that there was an improved willingness to work together.
20. A lack of clarity evidenced in respect of the following:
 - (a) The roles, functions and need for all of the NZNO structures;
 - (b) The function of the AGM;
 - (c) Voting mechanisms at the AGM as compared to outside of the AGM;
 - (d) The scope of the “one member one vote” mechanism;
 - (e) Correct classification of policy /constitutional remit issues and the remit process;
 - (f) Resourcing of the various structures;
 - (g) Distinctions in function and purpose of some structures;
 - (h) The relevance and impact of having a Treaty partnership compliant organisation;
 - (i) The roles and functionality of the two Standing Committees;
21. There was also repeated comment in respect of the following issues:
 - (a) A strong desire to function both as a union and as a professional body;
 - (b) A continuing theme of members being “disconnected” and/ or “disengaged”, and a need for recognition of the workload of the “engaged” members;

- (c) A desire for “simplicity” and fewer structures, versus a sense of importance of the existing structures within the Organisation for those engaged with them;
 - (d) General support for and recognition of the importance of being a Treaty Partnership based organisation coupled with a lack of clarity as to Treaty partnership principles and confusion created by a “partnership” versus “democracy” theme (as compared to democracy *within* a partnership);
 - (e) An underlying demand for structural and organisational change;
 - (f) A strong desire to be a “member-led” organisation reflecting and promoting the interests of nurses, whilst desiring different skill sets of those in Governance roles including the need for a strong research based approach, and expertise together with a generalist understanding and knowledge of the issues across the Organisation;
 - (g) Issues of trust, and issues raised as to safety within the Organisation and the ability to raise issues;
 - (h) A failure to prioritise research and data collection for the purposes of advancing the position of nursing, and being an expert organisation for that purpose, versus the challenges of resourcing and time needed for long term data and research collection practices;
 - (i) A strong desire to be able to put forward remits for constitutional and/or policy change on an annual basis versus frustration with lack of consistency and coherency in the Constitution arising through multiple changes.
22. A lot of the issues that were addressed with us during the consultation phase did not strictly relate to the Constitution. As we have noted, this was not a structural review, an organisational review nor a governance review process. For this report we have identified where the Constitution intercepts with the problems identified.

Themes from survey

23. The themes from the survey seem consistent with the information gathered from direct consultation. A full summary of the survey output including word clouds that depict themes from various questions is attached as an Appendix.

Review of Constitution - Clause by Clause Partnership / Bi-Cultural objectives

Methodology and process

24. We have completed an analysis of the Constitution for the purposes of giving effect to te Tiriti based partnership provisions separately from the strict legal analysis that follows later in this report. That allows clarity to be provided as to what are partnership issues as against mere inconsistencies or interpretational issues.

Current Mission and Objects as the criteria for assessment

25. In this part of the report, we have adopted as criteria the mission statement in clause 4 and the “Partnership” objective in subclause 6.1.3 of the Constitution.
- 4. Mission**
- 4.1 NZNO is committed to the representation of members and the promotion of nursing and midwifery. NZNO embraces te Tiriti o Waitangi and works to improve the health status of all peoples of Aotearoa New Zealand through participation in health and social policy development.
- 6. Objects**
- 6.1 The objects of NZNO are to:
- (1) 6.1.1 ...
- 6.1.3 Give effect to te Tiriti o Waitangi partnership through representation of the concerns and interests of Māori members, and by seeking continued improvements in Māori health; ...”
26. We were also guided by the principles recommended by the Waitangi Tribunal in the Wai 2575 Hauora Inquiry. These are:
- (a) The guarantee of tino rangatiratanga, which provides for Māori self-determination and mana motuhake in the design, delivery, and monitoring of primary health care.
 - (b) The principle of equity, which requires the Crown to commit to achieving equitable health outcomes for Māori.
 - (c) The principle of active protection, which requires the Crown to act, to the fullest extent practicable, to achieve equitable health outcomes for Māori. This includes ensuring that it, its agents, and its treaty partner are well-informed on the extent, and the nature, of both Māori health outcomes and efforts to achieve Māori health equity.
 - (d) The principle of options, which requires the Crown to provide for and properly resource kaupapa Māori primary health services. Furthermore, the Crown is obliged to ensure that all primary health care services are provided in a culturally appropriate way that recognises and supports the expression of hauora Māori models of care.
 - (e) The principle of partnership, which requires the Crown and Māori to work in partnership in the governance, design, delivery, and monitoring of primary health services. Māori must be co-designers, with the Crown, of the primary health system for Māori.

27. The Waitangi Tribunal's recommended principles articulate Crown obligations to Māori. As such, they provide a relevant, if somewhat imperfect, measure by which to assess the Constitution of NZNO. We have therefore assessed the extent to which the Constitution supports and promotes these principles, measuring alignment with the principles as opposed to direct implementation.
28. Our clause-by-clause assessment of the Constitution where relevant to this review exercise is set out below.

Clause 2 Definitions Section

Clause 2: Content

29. The definition Section defines terms that are used in the Constitution document. Where particular terms are used in the document that do not have an agreed definition, potential arises for miscommunication and dispute as to the meaning of that term.

Clause 2: Problems arising

30. The definition Section omits any definition for the term "bi-cultural". There is no explanation or guidance in the Constitution as to the meaning of the term "bi-cultural" despite references to NZNO's commitment to bi-cultural values, for example subclause 1.6 in Schedule 4.

Clause 2: Recommendation

31. We recommend inclusion of an agreed meaning for the term "bi-cultural". This would remove the potential for miscommunication and provide a greater degree of certainty for members. We consider that this would better promote the principle of equity and the principle of partnership.

Clause 4 Mission

Clause 4: Content

32. The "Mission" Section provides an explicit statement of mission for NZNO, including that "NZNO embraces te Tiriti o Waitangi and works to improve the health status of all peoples of Aotearoa New Zealand through participation in health and social policy development".

Clause 4: Problems Arising

33. Embracing te Tiriti o Waitangi, in our view, would require mechanisms that are not currently present in the Constitution. For example, where the Board establishes a subcommittee, task force or working group pursuant to clause 21, there is nothing in that clause to create an expectation that such subcommittees etc will include or have regard

to the concerns of Māori. A further example arises under clause 25.2.3 where there is no requirement or expectation that policy remits received by the Remit Committee will be assessed for the extent to which the proposed policy will support and promote the te Tiriti o Waitangi partnership.

Clause 4: Recommendation

34. We do not recommend a change to the mission statement. However, we recommend that the te Tiriti partnership be better reflected in clauses 21 (subcommittees) and 25.2.3 (remits). We consider that this would better promote the principle of equity and the principle of partnership.

Clause 6.1.3 Objects

Clause 6.1.3: Content

35. This subclause expressly states that one of the objects of NZNO is to “give effect to te Tiriti o Waitangi partnership through representation of the concerns and interests of Māori members, and by seeking continued improvements in Māori health”.
36. This object aligns perfectly with the principles recommended by the Waitangi Tribunal and provides a clear and unambiguous statement of the importance attached to te Tiriti partnership within NZNO.

Clause 6.1.3: Recommendation

37. We recommend this statement of commitment be retained. We consider that having this as one of the NZNO’s objects promotes the principle of equity, the principle of active protection, and the principle of partnership.

Clause 9.1.4 Structures

Clause 9.1.4: Structures

38. Clause 9.1.4 provides a description of Te Runanga o Aotearoa NZNO (Te Runanga). The description includes the following:

“... and to lead NZNO on the development of processes Māori within NZNO. Te Runanga will reflect the bi-cultural perspective of the NZNO within the Partnership under the te Tiriti o Waitangi.”

Clause 9.1.4: Problems Arising

39. We consider it would not be possible for Te Runanga alone to “reflect the bi-cultural perspective of New Zealand Nurses Organisation”. Any “bi-cultural” outcome will require commitment and contribution from both cultures.

Clause 9.1.4: Recommendation

40. We recommend that the wording of clause 9.1.4 be amended to read:

“Te Runanga will assist the New Zealand Nurses Organisation to give effect to the principle of partnership under te Tiriti o Waitangi.”

41. We consider that this would better support the principle of equity, the principle of partnership, and the principle of active protection by affirming that the commitment to a partnership is not the responsibility of one party alone.

Clause 10.3.1 Terms of Directors

Clause 10.3.1: Content

42. This subclause provides that the term of the Kaiwhakahaere and Tumu Whakarae directors shall be three years, with a right of re-election for a further consecutive three years and may be eligible to stand for office again every three years thereafter.

Clause 10.3.1: Problems Arising

43. Although this clause accurately reflects the current tenure arrangements for the Kaiwhakahaere and Tumu Whakarae, its inclusion within the Constitution will prevent Te Runanga from ever amending the terms of office. Such amendment would require the Constitution to be changed which can only occur with the support of NZNO’s general membership. We consider that this limitation tends to undermine the guarantee of tino rangatiratanga of Te Runanga members to govern their own affairs.

Clause 10.3.1: Recommendation

44. We recommend that the wording of this subclause be amended to read:

“The term of the Kaiwhakahaere and Tumu Whakarae directors shall align with the respective terms of office as provided in Nga Ture.”

We consider that this would better support the guarantee of tino rangatiratanga.

Clause 10.4 President and Kaiwhakahaere as Co-Chairpersons

Clause 10.4: Content

45. This clause provides that the President and the Kaiwhakahaere are co-chairs of the Board and may alternate chairing of the Board meetings.

Clause 10.4: Recommendation

46. We recommend clause 10.4 and the practice of the President and Kaiwhakahaere being expressly recognised as co-chairs of the Board be continued. We consider that this clause is an explicit expression of the principle of partnership.

Clause 11.2.13 Board Powers

Clause 11.2.13: Content

47. This clause empowers the Board to:

“place any issue which it considers requires the consideration of the membership to a ballot of all financial members, or a ballot at regional council meetings or any other democratic decision-making process which it decides on.”

Clause 11.2.13: Problems Arising

48. We consider that this power potentially undermines the principle of partnership by omitting any obligation or expectation that an issue will be assessed for alignment with te Tiriti o Waitangi before it is sent for consideration by ballot.

Clause 11.2.13: Recommendation

49. We recommend that before any matters are sent for the consideration of the general membership by ballot or other democratic process, that the issue is assessed for alignment with te Tiriti o Waitangi and where there is a risk of non-alignment, that an explanation of the risk is included within the information provided to members. We consider that such amendment will better promote the principle of partnership and the principle of active protection.

Clause 11.2.16 Availability of External Advice

Clause 11.2.16: Content

50. This subclause empowers the Board to seek external advice on particular matters.

Clause 11.2.16: Problems Arising

51. Presently there is no express mechanism within the Constitution that encourages the Board (or remit committee) to seek advice on the extent to which any proposed policy or issue supports NZNO's bi-cultural values and commitment to te Tiriti o Waitangi. Reliance is placed upon the Kaiwhakahaere and Tumu Whakarae to provide that advice. We do not consider that this approach is adequate or sustainable.

Clause 11.2.16: Recommendation

52. We recommend that this clause is amended by addition of the words:

“including the implication of any proposed policy on NZNO's bi-cultural values and commitment to te Tiriti o Waitangi.”

We consider that this amendment would better support the principle of active protection and the principle of partnership.

Clause 21 Subcommittees and Task Forces

Clause 21: Content

53. This clause empowers the Board to establish subcommittees, task forces and working groups to support them in their deliberation of specific issues on an “as needed” basis. The subcommittees, task forces and working groups may be given delegated decision-making powers as authorised by the Constitution and the Board.

Clause 21: Problems Arising

54. There is no mechanism within the appointment process to encourage the appointment of persons able to articulate the interest of Māori NZNO members. It is therefore not clear how the interests of Māori members will come to be represented on subcommittees, task forces and working groups appointed by the Board.

Clause 21: Recommendations

55. We recommend that subclause 21.2.2 is amended by addition of the following words:

“determine the number and type of membership of the subcommittee, having regard to the principle of partnership under te Tiriti o Waitangi.”

We consider that this amendment would better promote the principle of partnership and the principle of active protection.

Clause 25 AGM / Remit Committee

56. Clause 25: Content

57. This clause sets out timetabling of AGMs, the business of AGMs and the chairing of AGMs, together with providing a compressed terms of reference for “the Remit Committee”.

Clause 25: Problems Arising

58. Subclause 25.2.3.3(ii) directs that it is the role of the Remit Committee to identify possible risks associated with the Remit. It is noted that where constitutional remits affect Te Runanga or are inconsistent with Nga Ture, these will be presented for endorsement at a Hui-a-Tau, and only if endorsed will they be subject to the “one person one vote” process in clause 29. We consider that the reference of such remits to a Hui-a-Tau promotes the principles of tino rangatiratanga and active protection and should be retained.
59. We note however that for policy and constitutional remits that do not directly affect Te Runanga, there is no express requirement for those remits to be assessed for alignment with the te Tiriti partnership and principles recommended by the Waitangi Tribunal.

Clause 25: Recommendation

60. We recommend that all remits should be assessed for alignment with the partnership under te Tiriti o Waitangi. Where a remit does not align, the Remit Committee should work with the submitter to amend the remit so that it does align, as contemplated in subclause 25.2.3.4. We consider that this will better support the principle of active protection.
61. In terms of an amendment to the constitution, we recommend enlarging the first sentence of subclause 25.2.3.3.ii to read: “identifies possible risks associated with the remit, and the consequences of the remit both intended and unintended, including any risk to the partnership under te Tiriti o Waitangi”.

Clause 31 Alterations to the Constitution and Policy Remits

Clause 31: Content

62. Subclause 31.3 places limitations on alterations that may impact upon the Partnership under te Tiriti o Waitangi and provides as follows:

“The Constitution shall not be altered in any way which alters the Partnership under te Tiriti o Waitangi, unless such changes are also ratified by Te Runanga.”

Clause 31.3: Recommendation

63. We consider that ratification from Te Runanga as contemplated in clause 31.3 is essential for the integrity of the Partnership and will promote the principle of active protection. We recommend that clause 31.3 is retained.

Schedule 1 – Membership and Bargaining

Schedule 1: Content

64. Clause 6.3 of Schedule 1 sets out the obligations that all members shall have.

Schedule 1 - Clause 6.3: Problems Arising

65. This subclause, which sets out a member’s obligations omits any equivalent obligation to those of the Membership Committee and te Poari to “support the Board by working in partnership to achieve NZNO strategic aims in giving effect to te Tiriti o Waitangi”. We consider that this omission signals that members are not individually expected to support NZNO in giving effect to te Tiriti o Waitangi.

Schedule 1 - Clause 6.3: Recommendation

66. We recommend the addition of a new subclause 6.3.3 to read:

“Act in a manner that supports NZNO giving effect to te Tiriti o Waitangi.”

We consider that this amendment will better promote the principle of partnership and the principle of active protection.

Schedule 4 – Criteria for Board of Directors

Schedule 4: Content

67. Schedule 4 sets out the criteria for appointment on to the Board of Directors and sets out in clause 2 the desired qualities.

Schedule 4: Problems Arising

68. The desired qualities of Directors do not include an understanding of the partnership under te Tiriti o Waitangi.

Schedule 4 - Clause 2: Recommendation

69. We recommend that “understanding and commitment to the Partnership under te Tiriti o Waitangi” be included as a desired quality for Board directors.

Summary Conclusions - Partnership

70. The opening sections of the Constitution speak strongly of bi-culturalism and Partnership under te Tiriti o Waitangi. This is reflected in governance arrangements at a national level. The adoption of Co-Chairpersons for the Board gives effect to the commitment and intent in the Objects and Mission clauses.
71. We consider that if the intent to function bi-culturally and in partnership is to be achieved across the organisation, then the Partnership arrangements will need to extend beyond the Board and be reflected in those parts of the Constitution that govern the functions and operations of NZNO.
72. We suggest that there is currently an over-reliance on the Kaiwhakahaere and Tumu Whakarae to nurture and protect the Partnership on behalf of the organisation and that this is unlikely to be sustainable.
73. We recommend that amendments be made to the Constitution to encourage greater use of externally sourced expertise and advice particularly in respect of remits and proposed policy changes.
74. We also recommend that amendments be made to better distribute responsibility for the te Tiriti Partnership across the membership as a whole.

***Kotahi ano te kahao o te ngira e kuhuna ai te miro ma, te miro pango, me te miro whero
The needle has but one eye through which the threads of many colours must pass, the white, the black and the red.***

Review of Constitution – Section by Section – “fit for purpose” legal Analysis

Structure of analysis

75. For the purposes of this analysis, we have divided the Constitution into Sections that address various topics. An overview of the subject matters identified in the Constitution is set out below, followed by the Section by Section analysis.
76. In each Section we address where relevant:
- (a) the content included in the Constitution;
 - (b) the problems we see arising from those Sections and their interpretation;
 - (c) references to the Governance review and or Survey results as relevant; and recommendations.
77. We have structured our comments against the Constitution provisions in the following order:

Definitions

- Clause – 2

Objectives / Powers

- Clause 3 – 7

Membership / Bargaining

- Clause 8
- Schedule 1

Structures

- Clause 9
- Schedule 7
- Appendix 1
- Appendix 2

Board/ Te Poari / Committees

- Clauses 10 – 24
- Schedule 3
- Schedule 4

AGM / SMG

- Clauses 25 – 28
- Clause 30

Remits

- Clause 29
- Clause 31

Admin

- Clause 32 – 36
- Schedule 2
- Schedule 8

Elections / Ballots

- Schedule 5
- Schedule 6

Clause 2 - Definitions

Clause 2: Content

78. Clause 2 is the main definitions clause of the Constitution. Most definitions merely define a term as used. However, some definitions attempt to define broad concepts and include non-definition subject matter.
79. For example, there is a definition of Partnership which is specific to NZNO. This definition includes an acknowledgement on the part of NZNO as to certain relationship principles and behaviours. These matters go beyond defining a term.
80. There is also a definition of Kawa which includes a reference to encompassing the desires of NZNO and Te Rūnanga to work together in accordance with the Memorandum of Understanding (July 2000).

Clause 2: Problems Arising

81. The inclusion within the definitions Section of matters such as the acknowledgement by NZNO as to relationship principles and behaviours, and the introduction of the Memorandum of Understanding from July 2000 is problematic. Having core underlying concepts and agreements contained within the definitions section as compared to the body of the document does not promote clarity. It also means these matters are easily missed when reading the Constitution, which can lead to interpretation problems and inconsistency.

Clause 2: Intersection with Governance Report

82. The Governance Report notes that the Memorandum of Understanding of 2000 was intended to be a living document, locking in the bi-cultural model. The Governance Report also contains a recommendation for the review of the Memorandum of Understanding to update that document.

Clause 2: Recommendations

83. The acknowledgements contained within the definitions of Partnership and Kawa should be contained in clauses in the main body of the Constitution, which will provide greater clarity to these matters.

Objectives/Powers - Clauses 3 to 7

84. We do not propose to comment on the vision, mission and philosophy of the Organisation in this part. Their inclusion in the Constitution is appropriate to create context and underlying guidance and we have commented on the mission in relation to partnership issues above.

General Recommendations

85. We do think it would also be appropriate to include statements about the history of the Organisation to provide context for the two key roles that the Society holds and the relationship with Te Runanga.

Clause 6: Objects - Content

86. The Objects of NZNO are set out in clauses 6.1.1 – 6.1.11.

Clause 6: Problems Arising

87. The eleven Objects of NZNO as listed represent a mix of objects relating to:
- (a) the Union,
 - (b) the professional body,
 - (c) the individual interests of the members, and
 - (d) the general promotion of the nursing profession.
88. There is some repetition between the various stated objects, and the order in which they are set out creates a lack of clarity as to their underlying purpose. For example, clauses 6.1.4 and 6.1.8, relating to “advocacy for health and social policy”, and “the highest standards of health and social services for Aotearoa New Zealand”, are related but separated in the list of objects by other unrelated objects. Similarly, clauses 6.1.5 and 6.1.7 appear overlapping, but with an unrelated object in-between. Objects which clearly relate to the Union/Industrial role at clauses 6.1.6 and 6.1.9 are similarly separated.

Clause 6: Survey/Consultation Feedback

89. All of the objects of the Society were identified in the Survey answers to be either vitally important or significant to the direction of the Organisation, with very few participants identifying any objects to be of “lesser importance”.
90. Question 49 in the Survey asked if there were other Objects considered important to the members. The comments received reflected the tension between the Union and the professional roles and whether there should be an ascendancy of one over the other.

Clause 6: Recommendations

91. The objects of the Incorporation could be better structured and organised to reflect their underlying purposes providing better clarity and confirming the dual role of the Organisation.

Clause 7: Powers - Content

92. The Powers of NZNO, as an entity, are set out in clauses 7.1.1 – 7.1.6.
93. The Powers of the organisation are stated in a very minimalist manner. There is a general power to represent the interests of any member and to charge fees, to raise money by levies and grant rights and privileges to members. Otherwise, the stated Powers relate to the ability to handle funds, borrow funds and enter into real estate transactions. The day to day Powers to operate are found elsewhere under headings relating to the Powers of the Board and CEO.

Clause 7: Problems Arising

94. The placement and limited expression of Powers in clause 7 is not helpful to interpretation of the Constitution, or the actual Powers of the Organisation as a whole.

Clause 7: Recommendations

95. The Powers of the Incorporation should include all Powers legally available to the Organisation including the power to carry out, effect and perform the objects of NZNO in accordance with the Constitution. This would ensure that there is no accidental constraint created by referencing only a limited number of Powers and better align the Powers with the objects and the function of the Incorporation.

Membership/Bargaining

Schedule 1: Content

96. Clause 8 of the body of the Constitution provides that:
- (a) membership provisions are set out in Schedule 1;
 - (b) and eligibility to Industrial services and representation is set out in Schedule 1.
97. Schedule 1 clauses 1-3 set out a list of 11 classifications of persons eligible to become a member plus classifications for honorary membership and affiliate membership.
98. Clause 4 of Schedule 1 provides for eligibility to Industrial services.
99. Clauses 5 of Schedule 1 then returns to the subject of admission to membership.
100. Clause 6 provides for rights and responsibilities of membership. However, clause 6 contains additional provisions relating to eligibility to Industrial services.
101. Clause 7 of Schedule 1 provides for termination of membership, how members become non-financial membership (7.1.3) and expulsion(7.1.4) but with deemed membership situations being recognised in clauses 7.1.2 and 7.1.5 again relating to eligibility for Industrial services.
102. Clause 8 provides for a register of members.
103. Clause 9 addresses dispute resolution.
104. Clause 10 returns to the topic of representation.
105. Clause 11 deals with negotiation and ratification of Industrial bargaining. Flowchart 4 is a flowchart setting out the process providing for ratification of Industrial bargaining in Schedule 1.

Schedule 1: Problems Arising

106. Schedule 1 attempts to address several important and separate subject matters within the one schedule . The contents of the schedule are not well ordered resulting in a lack of clarity.
107. Within Schedule 1 there is also inconsistency in the wording and definitions used. Under clause 4.1, “all members” are entitled to Industrial services with specific exceptions. Under clause 6.1, all “financial members” have the right to professional services and Industrial services. The meaning of “Industrial Services” is relatively clear as to meaning, “Professional Services” is not so clear.
108. Within the Rights and Obligations of Members, generic membership information relating to the functions of the professional body is interspersed with specific Industrial provisions.
109. Members seeking legal representation are required to maintain their financial membership. Membership may also be deemed to be in place and that information is found under two separate provisions, being clauses 7.1.2 and 7.1.5.
110. There is also use of undefined and inconsistent terminology such as the use of the phrase “Membership Coverage” in clause 7.1.2 which requires an assumption as to its meaning.
111. In Clause 7 relating to Termination of membership there is no clarity as to the effect of a suspension, and how that affects representation and membership status.
112. In clause 11, the ratification process, as depicted in flowchart 3 refers to what are now redundant processes. Importantly, clause 11 does not contemplate the current means of voting by each member and contemplates voting at members meetings by physical ballot or show of hands as the standard process. That is only departed from if the negotiating team considers the standard process will be undemocratic or impracticable. It appears that this determination of meetings being undemocratic or impracticable is required every time an electronic vote by member is undertaken.

Schedule 1: Consultation Feedback

113. Little feedback was received in respect of Schedule 1, membership or Industrial ratification processes. Based on the feedback received, it seems that the processes have evolved beyond the Constitution but that the actual practise currently followed is understood by members to be correct.
114. Concerns have been raised by the inhouse legal team in relation to the need for greater clarity as to membership criteria, and who is eligible for insurance cover and representation. These comments reflect a concern about the increasing cost of insurance cover for a broad range of members, and whether that is intended and / or feasible longer term. They also identified the need for the organisation to be able to review such matters with a view to protecting the cover available over time.

115. Concerns were also raised about the risk of ad hoc constitutional changes affecting eligibility for services and cover on a non-planned basis. This specifically relates to the legal limitations of inhouse lawyers, and their inability to act for anyone who ceases to become a member and the need to understand those rules.

Schedule 1: Recommendations

116. We suggest that schedule 1 be divided into separate schedules or parts.
117. Admission to membership, general rights and obligations of members and termination of membership should be grouped together.
118. That the rights and responsibilities of members should be re-structured. Generic rights to information and obligations applicable to all members, should be separated from specific service entitlements and Industrial and insurance coverage.
119. The rules relating to Industrial bargaining and ratification should be provided for in a separate schedule or part.
120. The Industrial bargaining and ratification process should be streamlined to reflect current practises and voting methods. The ratification process flowchart would be significantly streamlined if it was redrafted to fit current practise.
121. The Constitution should also specifically prevent any change which affects membership status or eligibility for certain coverage or services without those provisions being reviewed by the NZNO legal team and any impact on coverage and representation identified and considered.
122. The Rules should also be streamlined so that issues such as deemed membership appear in one place instead of two. Clauses relating to who is entitled to coverage should also reference the deemed membership clauses so that these are not overlooked.

NZNO Structures - Clause 9, Schedule 7, Appendix 1 and Appendix 2

Clause 9: Content

123. Clause 9 sets out the structures of NZNO.
124. The AGM is identified as the highest decision-making authority of NZNO, subject only to the outcome of a ballot of financial members.
125. The Board of Directors is accountable to the AGM and responsible for governance between AGMs.
126. There are then two Standing Committees, the Membership Committee and Te Poari o Te Rūnanga.

127. Te Rūnanga or Aotearoa NZNO is described at this point in the document in a manner that is incongruent. Te Runanga is a partner organisation and not an internal structure of NZNO. The information regarding Te Runanga could be better located with the other similar information referred to as currently appearing in the definitions of Partnership and Kawa so that the Partnership aspects have clear structure.
128. There are then the following structures which are listed:
- (a) Regional Councils;
 - (b) Workplace and delegates;
 - (c) National Sections;
 - (d) NZNO Colleges;
 - (e) National Student Unit; and
 - (f) Health Professionals New Zealand.

Clause 9: Problems Arising

129. The provisions relating to the AGM are problematic as they lack consistency and clarity. Under the Constitution the AGM has a power of ratification of policies and actions taken by the Board in the preceding year, and in that context is a strategic decision-making authority. However, the AGM does not, independently of the Board or AGM business, have primary strategic authority.
130. The AGM is identified as the highest decision-making authority of NZNO, subject only to the outcome of a ballot of financial members. This is not consistent with the provisions for the ballot of financial members – which applies in different circumstances.
131. Te Rūnanga is given a description as to its role and function in clause 9 which is out of place in the context of the clause and is symptomatic of the “partner” entity being “inserted” into the Constitution and not provided a clear place where the various functions and acknowledgements regarding the partnership functions can be read together and understood.
132. The two Standing Committees are addressed as to function at clause 23, whilst the other structures are provided for in schedule seven. Finding the information relating to the structures requires perseverance, which is not conducive to providing clarity.

Clause 9: Survey and Consultation Feedback

133. In the Survey, participants were asked if they agreed with the statement that they understood the role of the committees. The preponderance of response was negative which reflected the information we gathered during the direct consultation. A number of participants were clear that they did not understand the functions of these Standing Committees or gave answers which demonstrated an understanding inconsistent with the Constitution.

134. The Survey question asking whether participants understood the roles of the different structures was similarly answered predominantly in the negative.
135. With every structure, there were significantly more persons who indicated that they were not engaged with the relevant structures than participants who indicated they were engaged. These answers are affected by the specialist nature of many of the structures. However, the regional structures were similarly lacking in identified numbers.
136. The Survey appendix contains a number of word clouds depicting the answers given as to the functions of NZNO structures. From those that responded positively to being members of a particular structure, there were clearly benefits that they could articulate but there were also a number of responses indicating they could not identify a benefit.
137. Many comments in respect of the Regional Councils indicated that there was no understanding of the structure as they currently operate and an indication that they were not currently functioning in a way that was understood, or were perhaps outdated. In particular, the relevance of the Regional Councils under the “one member one vote” regime has been questioned. On the other hand, those that do engage clearly identify a benefit from having a forum to meet and discuss. The Regional Councils are also the communication conduit from workplaces to the Membership Committee to the Board, although those not engaged appear not to appreciate that linkage. As this is not a structural review, we cannot comment on whether the function of the Regional Councils or any other structure should be changed but note that it will be important not to remove structures without identifying their relevance in relation to the communication processes in the organisation.

Clause 9: Recommendations

138. Describing the AGM as a “structure” is questionable and any statements about the authority of the AGM and member voting have to be made consistent with the rest of the Constitution. The function of the AGM as a meeting, also needs to become consistent with the requirements of that meeting in the legislation.
139. The description and role of Te Rūnanga should be moved to a Section dealing with the Partnership.
140. The reference to the Membership committee working “in partnership” should be clarified so that role is understood.
141. The list of structures should contain references to where the functions and roles of the structures are located.

Schedule 7: Content

- 142. Schedule 7 deals with the structures, excepting the Standing Committees, in more detail.
- 143. Clause 1 deals with Regional Councils, their establishment functions, powers, representations, meetings and election of representatives.
- 144. Clause 2 deals with workplaces and delegates.
- 145. Clause 3 deals with NZNO sections and Colleges.
- 146. Clause 4 deals with the National Student Unit.
- 147. Clause 5 deals with Health Professionals New Zealand.

Schedule 7: Problems Arising

- 148. There is a lot of information contained in Schedule 7, particularly in relation to how Regional Councils and Colleges and Sections operate. A lot of this information is repeated in the relevant handbooks.

Schedule 7: Survey and Consultation Feedback

- 149. The comments from the Survey suggest that there is confusion with the role of the Regional Councils and the “one member one vote” mechanism for voting.
- 150. There is also a general lack of understanding of the Membership Committee role with Survey responses confusing that role with an Audit and Risk Committee, or again, indicating that the structure had historic relevance that no longer works well.
- 151. Comments made also suggest that competition between the structures for resourcing is front of mind for many, and that is outside of the scope of this report.
- 152. The comments in respect of NZNO Sections and Colleges are divided between those who consider them to be essential in a professional body and those members who are of the view that the Organisation should function as an Industrial Union only.
- 153. There is a lack of clarity it seems as to the key differentiation between Colleges and Sections and if the distinctions remain necessary.
- 154. The comments in respect of the National Student Union are mixed. Some members think that membership should not be accorded to students, and others see this as an important aspect with a focus on growing leadership.
- 155. The comments in respect of Health Professionals New Zealand suggest a lack of understanding of the relevance of that category.

Schedule 7: Recommendations

156. If there is a desire for any of the structures to be reduced or changed, we suggest that specific proposals be put forward in a targeted consultation to identify if the specific changes are supported.
157. Any such Constitution should ideally identify the functions of the different structures and also the reporting and communication lines between structures and how they relate to or engage with each other, including who they report to and what outputs are reported upon. The current document does not contain reporting lines and intended outputs.
158. The Constitution could avoid setting out the operational procedures applicable to the Sections, including in the NZNO Regional Council and College/Section handbooks. The Constitution could instead address function and reference the handbooks as approved by the Board. That would enable greater flexibility in the operation of the structures and avoid cluttering up the Constitution with that material. These handbooks could also be treated as bylaws under the 2022 Act.

Appendix 1 and Appendix 2: Content

159. These Appendices list the Regions and set out the boundaries. We do not comment on these.

Board - Te Poari – Membership Committee Clauses 10 – 24, Schedule 3 and Schedule 4

Clause 10: Board - Content

160. Clause 10 sets out the Constitution of the Board and the terms for which Board Members may serve. Kaiwhakahaere and Tumu Whakarae are provided for separately, noting that they are elected to those positions under Nga Ture.
161. There is provision for co-chairs and for alternative chairing of meetings.
162. There are other provisions relating to vacancies, quorum, expectation of attendance and for an annual Board evaluation process.

Clause 10: Problems Arising

163. There are no specific legal issues that arise from clause 10.

Clause 10: Intersection with Governance Report Comments/Consultation and Survey Responses

164. The governance review included a series of recommendations for a change of Board structure. Several models were put forward, with the final recommendation being significantly different from what is provided for in the current Constitution.

165. If there is to be change from what is currently provided for, the alternative model or models should be put forward for a separate consultative vote outside of a general constitutional change process so that decision-making in respect of the Board model is not clouded by decision-making in respect of other matters. The outcome could then be included in the Constitution once identified.
166. Overall, the answers in the Survey are relatively neutral in respect of the Constitution of the Board.
167. We note that under the new Incorporated Societies Act it is a requirement that the majority of the committee (Board) are members.

Clause 11: Board Powers – Content

168. Clause 11 provides for the governance, supervision, management and control of the affairs of NZNO to be vested in the Board.
169. Clause 11.2 sets out the Powers of the Board. These include providing “wise stewardship” which is a function or duty and not a power.
170. Clause 11.2.13 allows the Board to place any issue which it considers requires consideration of the membership “to a ballot of financial members or a ballot at Regional Council meetings or any other democratic decision-making process which it decides on”.
171. Clause 11.2.15 states that notwithstanding clause 11.2.13, the Board does not have the power to change or amend Rules affecting the positions or functions of the Board or its individual members. All such changes or amendments shall be made by the AGM.

Clause 11: Problems Arising

172. Flowchart 8 in the Appendices reflects the Board powers and decision processes of clause 11.
173. Clauses 11.12.13 and 11.12.15 are somewhat problematic. There is no indication as to what the effect of a vote by members or Regional Councils or otherwise, made pursuant to clause 11.2.13 will be. It is unclear whether this is merely a method by which the view of the membership can be canvassed or whether it is intended to delegate decision-making powers through a broad range of decision-making processes. We think it is the former but you may consider members may have a different expectation.
174. Whilst the Board does not have the ability to change the Rules affecting the positions or functions of the Board or its members, there is a suggestion in clause 11.2.15 that such changes or amendments can be made by the AGM. However, there is no corresponding power provided to the AGM to enable this to happen.

Clause 11: Recommendations

175. The provisions of clauses 11.2.13 and 11.2.15 need to be reviewed. There is merit in having a process whereby the opinions of the members or the Organisation can be canvassed, individually or in voting groups preliminary to further work being carried out, or to canvas viewpoints. However, it should be made clear as to the effect of the vote which should not cut across the safeguards provided for in the remit processes.
176. There should not be any reference to the AGM being able to alter the Board functions or the positions of individual Board members. This has to occur through processes such as removal of officers which are dealt with in other clauses. References to the AGM having such a power should be removed as it is misleading.

Clause 12: Board Delegation/Content

177. This is a specific power to delegate the Powers of the Board to specified officers or subcommittees with certain exceptions relating to disciplinary or suspension processes.

Clause 12: Board Recommendations

178. There are no problems arising with this clause except that it would be better located immediately before the clauses dealing with the separate subcommittees.

Clause 13: Board Meetings – Content

179. Clause 13 deals with the processes for calling Board meetings, the ability to make interim decisions through telephone/audio links, decision-making and voting processes.
180. There are no specific problems identified with clause 13 and no adverse comment was made in the consultation process.

Clause 16: Appointment of Officers

181. This clause sets out the five officers of NZNO and how they are elected or appointment.

Clause 16: Problems Arising

182. There has been adverse comment which suggested a misunderstanding as to the election processes of the Kaiwhakahaere and Tumu Whakarae under Nga Ture and their accountability to Te Rūnanga and the Hui ā-Tau.

Clause 16: Recommendations

183. It would be preferable if the contents of clause 16, which identifies how members are elected, was relocated to clause 10 which references those election and appointment processes. Having all of this information together may avoid some misunderstandings and create an easier document to use.

Clauses 17 – 19: Powers and Role of Precedent, Kaiwhakahaere, Vice Precedent and Tumu Whakarae – Content

184. These clauses identify the joint heads of NZNO and their functions, along with the deputy functions. They also identify the Powers of the Chairperson in the meetings of the Board (clause 17.3).

Clauses 17 – 19: Problems Arising

185. There is again a repetition of content or subject matter which makes reading the Constitution difficult to comprehend.
186. Clause 10.5 deals with vacancies of the Board, whereas clauses 18.2 and 18.3 deal with vacancies in the office of the President, Vice President, Kaiwhakahaere and Tumu Whakarae. It would be preferable if all clauses dealing with Board vacancies were together or at least referenced so that the reader of the Constitution was aware that further relevant clauses are to be found further on.

Clauses 17 – 19: Recommendations

187. The provisions of clause 17.3, setting out the Powers of the Chairperson of the meeting, would be more appropriately contained in the Sections relating to Board meetings.

Clause 20: Chief Executive Office – Content

188. This clause sets out the appointment and general responsibilities of the Chief Executive Officer.

Clause 20: Chief Executive Office Recommendations

189. There are no problems identified with clause 20, except potentially the placement of this clause which is not well located in the midst of clauses regarding Board functionality.

Clause 21: Subcommittees and Task Forces of the Board – Content

190. Clause 21 deals with the establishment of subcommittees, task forces and working groups and provides a process for delegation of authority.

Clause 21: Subcommittees and Task Forces of the Board – Recommendations

191. There are no problems identified with clause 20, except potentially the need for this to be located with other related clauses.

Clauses 22 - 24: Standing Committees – Membership Committee Content

192. There are two identified Standing Committees in clause 22.1. There is no identified Audit and Risk Committee as a Standing Committee of the Board. This is not a legal requirement, and we mention it because we were asked to include the Audit and Risk committee in the Survey, which suggests it may have become a Standing Committee.
193. Clause 22.2 refers to a “common interest” of the Board and Standing Committees which is an unusual phraseology.
194. Clause 23 addresses the Membership Committee. Pursuant to clause 23.1, the Membership Committee is to “work in partnership to achieve NZNO’s strategic aims in giving effect to the Treaty of Waitangi” .
195. Clause 23.2 sets out further functionality of the Membership Committee which is to feed back to the Board on membership issues arising from the Regional College and Section, National Student Union membership and with an obligation to ensure that NZNO is responsive to the needs and issues of members.
196. Pursuant to clause 23.3, the Membership Committee is made up of representatives from the various member structures.
197. Clause 23.4 provides for elections for the Membership Committee to be in accordance with the provisions of Schedules 5 and 7.
198. Clause 23.7 provides for the Membership Committee Charter, which is to set out the objectives, responsibilities, membership and operations of the Membership Committee.
199. Clause 24 sets out the role and membership of Te Poari in a similar way to which the Membership Committee is set out.

Clauses 22-24: Problems Arising

200. The general intent of the Membership Committee as set out in the Constitution is relatively clear, although the partnership references need clarification.
201. The functions and role of the Committee should be within the Constitution, and the operation of the Committee should be within the Charter (similar to the way the handbooks operate for other structures) , and not have overlap.
202. The Membership Committee election process is difficult to follow. This refers to Schedule 5 (which is itself unclear) and specific provisions of Schedule 7. It should not be necessary to reference two different Schedules of the Constitution in order to identify how Committee members are elected.
203. There is no relationship identified between the two named Standing Committees, particularly in relation to the stated function of working in partnership to achieve NZNO’s strategic aims in giving effect to the Treaty of Waitangi.
204. There is no reference to the Audit and Risk committee.

Clauses 22 – 24: Consultation and Survey Feedback

205. The Survey feedback generally indicated that people were confused or did not understand the role of the Membership Committee and had not been able to identify how it operated. Some stated that the functionality of the Membership Committee had been affected through constitutional changes to the detriment of the Committee.
206. Some saw the two named committees as being opposing forces.
207. The comments in respect of the Membership Committee suggest its functions are not understood or that its potential is unrealised.
208. The comments received in respect of Te Poari indicate a general understanding of the relevance and functions of this group, but not that Te Runanga also has its own rules that it operates under. There was an underlying series of questions regarding the “democratic” appointment of the members of Te Poari which suggests a lack of understanding of the Te Rūnanga and Nga Ture election processes.
209. The feedback did not demonstrate an understanding of any synergies or working relationship between the Standing Committees.

Clauses 22 - 24: Recommendations

210. The detailed provisions in relation to the functions of the Membership Committee should be scheduled so that they do not take up space within the body of the Constitution and so that there is one place where the rules in respect of the Membership Committee and its Charter are referenced.
211. Operational matters should be contained in the Charter and committee elections should not need to reference two separate schedules.
212. There should be consideration of a review of the effectiveness of the Standing Committees in the same way that the Constitution provides for annual review of the performance of the Board (clause 10.8).

Clauses 25-28: AGM/SGM

Clause 25, 27, 28 & 30: AGM Content

213. Clause 25 of the Constitution contains both the Remit Committee and AGM matters. In this Section of the review, remit matters are excluded and dealt with in the Section below.
214. Clause 25.1 provides for the timing of the AGM. Clause 25.2 provides for the timing of notice of the AGM, with the NZNO structures receiving six months’ notice of that date.

215. Clause 25.3 provides for the business of the AGM. This records that the AGM establishes the overall strategic direction and policy of NZNO. This appears to be done through ratifying (or not) the decisions of the Board from the previous year with regard to actions and policy direction taken.
216. Clause 25.3.3 provides for the AGM to receive the outcome of member decisions to constitutional and policy remits.
217. The AGM also receives the annual report, financial statements, appoints the auditor and receives and considers the report of the CEO.
218. Under clause 25.4, the AGM may decide to put any question, including Constitution alterations, before financial members for voting either by ballot, at Region and/or workplace meetings or by individual member ballot in accordance with the balloting provisions.
219. Clause 27 deals with the representation at the AGM of the various structures, with voting at the AGM to be through the structures (AGM voting groups).
220. Clause 28 sets out the quorum of the AGM.
221. Clause 30 clause sets out how the voting and speaking roles work at the AGM.

Clause 25, 27, 28 & 30: AGM Problems Arising

222. The actual role of the AGM in relation to strategic direction needs clarification. Whilst there is a process for the AGM to ratify strategic directions or policies of the Board, there is no process for the AGM to actually establish a strategic direction or policy.
223. The provisions regarding the putting of questions, including constitutional alterations for voting by either ballot at Region or workplace meetings or individual member ballots, is inconsistent with other provisions of the Constitution which require a different process and individual voting. As noted earlier, processes for obtaining membership feedback on a proposal for change can be useful, but a vote for gauging support, and a vote to effect change have separate processes. This needs to be clarified.
224. Flowchart 1 depicts the AGM/SGM voting processes and identifies where the inconsistencies occur and the potential lack of clarity as to outcome.

Clause 25: AGM Survey Feedback

225. The consultation feedback identified significant anxiety and confusion as to the role and power of the AGM. There was a general lack of certainty as to how the mandate for voting at the AGM was given to the voting groups. There was also confusion as to whether or not the “one member one vote” mechanism had replaced voting for some matters that are dealt with at the AGM.

226. The Survey feedback in respect of AGM voting suggests support for the voting groups at the AGM. A minority of people answered question 71 to say that they did not support voting at the AGM on a representational basis.
227. Of those people, the majority of them wanted all voting to be a “one member one vote” basis. This leaves the majority supporting the concept of regional voting and voting groups at the AGM.
228. The opposite answer was provided for SGMs where a significant majority of members believed SGMs should be “one member one vote” and not the same as an AGM.

Clause 25: AGM Recommendations

229. The business of the AGM should be clarified and the function of that meeting not overstated.
230. The function of the AGM as an identified “structure” within NZNO, having the primary decision-making power and establishing the overall strategic direction and policy needs review in light of Powers and functions of the Board and the limited business to be conducted at the AGM.
231. The ability of the AGM to put a matter out to the wider membership by various means needs clarity as to the purpose of that power and the effect of any such vote.
232. If AGMs are to move away from a representative based meeting, the entire meeting structure would need to be reviewed, including how notice is given and how the meeting itself would be conducted. We note that a meeting is a forum for communication and discussion, which is not able to be replaced by voting papers alone. Voting in the absence of discussion may also result in unforeseen outcomes. We do not think it practicable or appropriate for *all* AGM voting matters to be by single member vote. For example, appointment of auditors, receiving and accepting reports and voting on matters discussed at the AGM meeting would suit the representative voting model.

Clause 26: Special General Meeting – Content

233. Clause 26.1 sets out how a Special General Meeting (SGM) can be called. As is the case with most entities, an SGM is called for a specific purpose and notice of that purpose is given and the meeting is limited to that specific purpose.
234. The voting at an SGM is the same as at an AGM.

Clause 26: SGM Survey Feedback

235. There seems to be an expectation that matters at an SGM are voted for individually by members, although the Constitution still provides for some matters to remain voted on by voting groups.

236. If voting at an SGM was to change to “one member one vote”, then the notice of the meeting should also be to each member.
237. The location of the SGM clause is also somewhat problematic as it is in the middle of AGM clauses. It would make more sense for it to follow the AGM clauses.

Clause 26: SGM Recommendations

238. Consider clarifying what matters can be voted on at an SGM by one person one vote and what matters, if any, can be by voting groups as with an AGM.
239. Move the location of the SGM clause so that it does not sit in the middle of the AGM clauses.

Remits - Clauses 25, 29 and 31

Clause 25, 29 and 31 – Remits: Content

240. The processes for remits are contained across clauses 25, 29 and 31.
241. Flowchart 2 has been developed representing the interaction of these clauses. It is clear from that flowchart that the system is convoluted and confusing.
242. Clause 25.2.1.2 provides for remits to be called for six months before the AGM.
243. Clause 25.2.2 provides that these are to be received at least four months before the AGM. They are received by the CEO.
244. Clause 25.2.3 provides for the Remit Committee to review the remits and then consider a range of issues at clause 25.2.3.3. These include:
- (a) Alignment with NZNO’s strategic aims, mission and vision statements;
 - (b) Risks associated with remit and consequences of the remit intended and unintended;
 - (c) Provision for the remit to be presented for endorsement at Hui ā-Tau if they “affect” Te Rūnanga or are inconsistent with Nga Ture;
 - (d) Financial impact.
245. Clause 25.2.3.4 then states that work or information may be available from the Organisation which will assist and inform the submitting group to submit an informed and considered remit. (That should likely occur before the remit is submitted).
246. Clause 25.2.3.6 provides for all identified risks and impact, both financial and otherwise, to be included in the information distributed with the proposed remit to voters.

247. Clause 25.2.3.7 provides for reasonable efforts to be made to allow submitting groups to achieve deadlines if clarification or additional information is requested.
248. Clause 25.2.4 provides a requirement of at least two months before the AGM date for all proposed alteration and remits to be made available to all AGM delegates.
249. Clause 29 provides for voting on the constitutional and policy remits, and that is to be “one member one vote” in accordance with clause 2 of Schedule 5.
250. Clause 31 is a second set of clauses which deals with the process for amending the Constitution and for policy remits. This refers to the process set down in clause 29 (one member one vote).
251. Clauses 31.2 and 31.3 reference certain things that may not be changed and matters that need endorsement by Hui--Tau in accordance with clause 25.2.3.32.
252. Clause 31.6 specifies who may put forward policy and Constitution remits (being the NZNO structures).
253. Clause 31.7 provides for proposed policy alterations and remits to be forwarded to the membership at least six weeks prior to the AGM.
254. Clause 31.7.1 states that if the matter is already in the Constitution or existing policy, the submitter will be notified of this and may alter or clarify the remit “after the three month time limit”.
255. Clause 31.7.2 provides that if the remit requires more research, it may be returned to the submitter who may research and clarify that “after the three month time limit”.
256. Clause 31.7.3 provides for alterations “adopted by NZNO” to be forwarded to the Registrar of Societies with policy remits to come into effect immediately after the AGM or time specified in the remit. Clause 31.7.3 finishes by stating “The interpretation of the remit or policy must reflect the remit that was passed at the AGM at the time of voting”.

Clause 25, 29 and 31 – Remits: Problems Arising

257. The problems arising with these clauses are pretty much self-evident. There is a repetitious and inconsistent process within the Constitution that doubles back on itself with several inconsistencies, and areas where there is a lack of sufficient clarity.
258. The timeframes provided are inconsistent. The timeframe provided for the work of the Remit Policy Committee is very short in circumstances where the remit may involve something of some substance. References to extended timeframes are inconsistent with the process for the AGM and voting notices.
259. The resourcing of the Remit Committee to identify all potential consequences, both intended and unintended, in respect of every remit is somewhat onerous.

- 260. The matters that require remit to a Hui-a-Tau are inconsistently defined in two different Sections, with no process provided to assist the Hui-a-Tau to work with the Organisation.
- 261. There is no limit on the number of remits that might be put forward including resubmission of unsuccessful remits.
- 262. There is no provision for consequential amendments required to the Constitution to be identified or proposed.
- 263. There are inconsistencies in the language between clause 2 of schedule 5 and clause 29 that create procedural issues.
- 264. The operational impact of the one member one vote process on policy remits is potentially at odds with the operation of the Board and the stated role of the AGM in respect of ratification of policy decision. The outcomes and impact of a vote are very uncertain.

Clause 25, 29 and 31 – Remits: Consultation and Survey Feedback

- 265. The consultation feedback we received was generally that the remit process is onerous and confusing. There is a lack of trust around that process and how it is conducted.
- 266. The Survey feedback was not specific in relation to the remit process, with comments tending to focus on whether or not voting should be “one member one vote” which has already been established.

Clause 25, 29 and 31 – Remits Recommendations

- 267. We suggest that policy remits be separated entirely from constitutional change processes.
- 268. The general provisions in relation to the remit committee reviewing and reporting on policy remits should be contained in one place, potentially in a separate schedule with a clear process and grounds to follow for the remit committee to be able to advance a remit to vote, or alternatively reject a remit for vote.
- 269. The one member one vote process can apply to policy remits as part of the voting that is received at the AGM.
- 270. The process needs an extended time frame to address issues with the result that calling remits should be received earlier
- 271. Insofar as constitutional remits are concerned, the Constitution should address the underlying core structure of the Organisation. In our view it is inappropriate to have the Constitution subjected to an annual ad hoc remit change process as currently occurs.
- 272. The individual membership vote on a constitutional change will need to be identified as a vote within the AGM process to avoid requiring a greater majority.

273. The Organisation should always obtain legal advice in respect of constitutional reverts to identify consequential changes required or inconsistencies that may arise. We note it is inappropriate for the Organisation to require the NZNO legal team to provide that advice, as constitutional structures is not their field of practice.
274. Many organisations provide for constitutional review on a five to seven year basis following member consultation. NZNO should consider transitioning to a more structured review process such as this, leaving the remit committee to address policy reverts on an annual basis.

Admin Clauses 32 – 36, Schedules 2 and 8

Clauses 32 – 36: Content

275. These are administrative provisions which are not contentious.
276. There are some references to redundant processes such as cheques.
277. There is duplication of issues dealt with elsewhere involving membership arrears with subscriptions and membership termination (clause 32.10).
278. Rules in respect of the remuneration of the President and Kaiwhakahaere and the leave of absence from their current position are in clauses 32.11 and 30.12. and would be better placed with the other clauses dealing with those positions.
279. Clause 33 provides for the registered office.
280. Clause 34 provides for the common seal.
281. Clause 35 provides for mediation as an option to resolve disagreement.
282. Clause 36 is a standard winding up clause.
283. Schedule 2 sets out details in respect of levies and subscriptions. The level of subscriptions is determined by the AGM but with power of reduction by the Board. The Board may also approve annual CPI based increases.
284. Schedule 8 provides for amalgamation with another organisation.

Clauses 32 – 36: Problems Arising

285. Issues continue to be dealt with in more than one place in the Constitution which makes it hard to read and use. These include termination of membership for non-payment of fees and provisions in relation to the President and Kaiwhakahaere.
286. The determination of subscription levels is not provided for in the business of the AGM at clause 25.

287. The clauses in schedule 8 dealing with amalgamation should be contained within the body of the Constitution.

Clauses 32 – 36: Recommendations

288. Clauses that deal with subject matter covered elsewhere in the Constitution should be removed from the administrative provisions and relocated to appropriate places. Preferably, each subject matter should be dealt with in one place, so that the reader of the Constitution is able to locate appropriate information and understand the processes involved.
289. Move amalgamation clause so that it sits with the winding up clause in the body of the Constitution.

Election Ballots Schedule 5: Content

Schedule 5: Content

290. Schedule 5 has three parts. These are:
- (a) Election ballots;
 - (b) Ballots by members; and
 - (c) Ballots of AGM voting groups.
291. The issues arising in these processes have been depicted in the flowcharts 4, 5 and 6.

Schedule 5: Part 1 - Election Ballots: Problems Arising

292. Clause 1.1 refers to a Structure of the Organisation appointing the Returning Officer for the relevant election. It is unclear when or why the AGM or SGM would be appointing a Returning Officer.
293. Clause 1.2 provides for all concerned parties to appoint their own scrutineers. If this did occur, the process could be somewhat difficult in light of electronic voting.
294. Clause 1.5 provides for two separate four week periods, which creates duplication.
295. Clause 1.9 provides for casual vacancies and provides that where a vacancy will extend for more than than six months then an election ballot will be conducted in accordance with Schedules 5 and 7. Reference to the two Schedules is unhelpful, as it is difficult to navigate which parts of the two schedules apply.

Part 2: Decision by Ballot of all Members: Problems Arising

296. Clause 2.1 specifies that every ballot is to be held in accordance with the procedure in clause 2 (eligible members) except for specified ballots which are to be conducted under Schedule 1. This does not recognise Part 3 of the Schedule which refers to ballots by AGM voting groups.
297. Clause 2.2 provides for a body within NZNO deciding to put a question to individual members. This is inconsistent with the remit process which provides for the CEO to operate that process.
298. Clause 2.4 provides for the Returning Officer to despatch a ballot at least 30 days prior to the closing date of the ballot. This is inconsistent with the requirements in respect of clause 29 and the remit votes which require a six week process.
299. Clause 2.7 provides for ballot papers to be retained physically for three months or longer, which is potentially now obsolete.
300. Clause 2.8 contemplates the conduct of a ballot using electronic or mechanical means “so long as the privacy of each vote is assured”.
301. The provision for voting using Part 2 of Schedule 5 is referred to in other parts of the Constitution, but those specific Sections and the individual rules in Part 2 of Schedule 5 are inconsistent.
302. The Rules contemplate electronic voting as the exception rather than the rule and need to provide for the electronic process as the primary means of voting

Clause 3 of Schedule 5: Decision by Ballot of AGM Voting Groups: Problems Arising

303. The use of the terminology “AGM voting groups” does not appear elsewhere, but it is clear from the Rules that it is intended to apply to the various structures that attend the AGM. This could be simplified by use of a definition.
304. The voting groups are eligible to cast votes that they were eligible to cast at the “most recent conference of NZNO”. The conference is not identified in the Constitution.
305. The threshold for passing a voting group ballot is two thirds of the votes eligible to be cast.
306. Clause 3.5 specifies that other requirements regarding ballots “in the clause above” apply with necessary modifications.
307. The intent of clause 3.5 is insufficiently clear to provide any assistance.

Schedule 5: Survey Feedback

308. The feedback gained on elections reflected the fact that those commenting tended to assume their understanding of how voting occurs was correct. In many instances it was not correct, which suggests that there is a widespread lack of understanding of some voting issues.
309. Voting for elections seems the best understood of the voting processes.

Schedule 5: Recommendations

310. The types of elections which can occur under the Constitution should be clarified and the process simplified, taking into account the method by which voting now takes place.
311. The ballot by all members process needs to be simplified so that it can be applied to all relevant situations and is not in conflict with other parts of the Constitution.
312. Overall, the Constitution should be clear as to when each voting process is used and this should not be repeated in different parts of the Constitution and the schedules themselves, which need simplification.

Schedule 6: Removal of Officers and Other Position Holders

Schedule 6 – Removal of Officers: Content

313. Flowchart 7 depicts the process for removal of officers as provided for in Schedule 6.
314. Clauses 1.1 to 1.5 provide for the way in which a resolution for removal of a Board member or officer can be advanced.
315. Clause 1.6 requires the CEO to inform the person whose removal is sought of the resolution and the process outlined in the Constitution to decide the matter.
316. Clause 1.7 requires the CEO to inform all parts of the Organisation entitled to vote at an AGM and to either initiate a SGM or a ballot.
317. Clause 1.8 requires the CEO to inform the person affected of the vote and the time of the SGM, and that person is entitled to speak at the meeting.
318. If the ballot is passed for removal, then the position is deemed vacant.

Schedule 6 – Removal of Officers: Problems Arising

319. It is problematic that the CEO can choose to call a SGM or a ballot when there is an entitlement to be heard at the SGM. There is no guidance for that decision.
320. The ballot process without a meeting could give rise to a failure of natural justice if there is no clear process to enable the member to respond to the allegations in writing and for that to be circulated.
321. It is noted that Survey respondents suggested that the removal of officers should come back to the members on a “one member one vote” basis. If that is the case, then the SGM is merely receiving the vote and is not the decision-making forum. That needs to be made clear.

Schedule 6 – Removal of Officers: Survey Feedback

322. Participants who answered this Section suggested that removal of officers should be on a one member one vote basis. As noted above, there are natural justice issues that arise with that suggestion and the function of the SGM needs clarification in those circumstances.

Schedule 6: Recommendations

323. If all voting at an SGM will become one member one vote, this schedule needs to be rewritten to enable a fair process to occur.

New Incorporated Societies Act 2022

324. Following a report from the New Zealand Law Commission published in 2013, the new Incorporated Societies Act 2022 has been enacted. This new Act affects all incorporated societies in New Zealand and will require all incorporated societies to re-register and to adopt a Constitution that complies with the requirements of the new Act. This means that NZNO will need to re-register by 1 December 2025 with a compliant Constitution.
325. Accordingly, we have considered the changes in the new Act with respect to constitutional requirements.
326. Whilst the new Act introduces a number of new requirements, most of these are either met by the existing Constitution or can be met with minor amendments.
327. A table addressing the requirements of the 2022 Act against the Constitution is set out below.
328. A key change will be the provisions regarding amending the Constitution. Under the old Act, a society could change its rules in the manner it determined as set out in its rules. The new Act has a mandatory overlay, requiring that any constitutional amendment is approved either by a simple majority of eligible voters that vote at general meeting, or by a 75% majority of eligible voters by written resolution.
329. We note that it the prospect of getting 75% of members to vote on any issue is likely impossible. Therefore, the Constitution will need to be explicit about making the conduct of the electronic ballot of members part of the meeting process where member voting is required so that the member votes are taken as occurring at as part of a general meeting. That will allow a simple majority of those who do vote to pass a resolution.
330. For the sake of completeness, we note that there are a number of Union specific provisions in the new Act. These generally provide exceptions for provisions that would be inconsistent with how unions generally operate. More particularly, these are:
- (a) Collective bargaining activities and activities in the ordinary course of its activities as a union do not amount to a purpose for the financial gain of its members;
 - (b) Allowing for limiting attendance at AGMs to delegates and representatives of members;
 - (c) Allowing for a union to effect indemnity insurance for members in relation to liability that may arise in the course of the members employment with a third party employer.
331. Enforcement provisions don't override other legislation that relates to the same subject matter – for example the Employment Relations Act 2000.

Table of requirements of 2022 legislation vs constitution

Incorporated Societies Act 2022 – S26

The constitution must contain the following matters:

NZNO Constitution 2020-2021

(a) The name of the society	Complies
(b) The purposes of the society	Complies
(c) How a person becomes a member of the society, including a requirement that a person must consent to be a member	Complies <ul style="list-style-type: none"> • Schedule One: Membership and Bargaining • 5. Admission to Membership
(d) How a person ceases to be a member of society	Complies <ul style="list-style-type: none"> • Schedule One – 7. Termination of Membership
(e) Arrangements for keeping the society’s register of members up to date	Complies <ul style="list-style-type: none"> • Schedule One - 8. Register of Members
(f) The composition, roles, functions, powers and procedures of the society including: <ul style="list-style-type: none"> • The number of members that must or may be on the committee • <i>Every society must have a committee with 3 or more officers who are qualified to be elected or appointed under section 47 (s45)</i> • <i>A majority of the officers on the committee must be made up of either or both of the following – members of the society and/or representatives of bodies corporate that are members of the society (s45)</i> • The election or appointment of officers • The terms of office of the officers • The functions and powers of the committee • Grounds for removal from office of officers • How the chairperson (if any) will be elected or appointed and whether that person will have a casting vote if there is an equality of votes • The quorum and procedure for committee meetings, including voting procedures 	Complies <ul style="list-style-type: none"> • 16. Appointment of officers • Schedule Three: Election of Board members (includes terms of directors/officers) • Schedule Six: Removal of officers

<p>(g) How the contact person or persons will be elected or appointed</p> <ul style="list-style-type: none"> • Every society must at all times have at least 1 contact person (and may have up to 3 contact persons)(s113) • The purpose of the contact person is for every society to have a person whom the Registrar can contact when needed (s112) 	<p>To be updated</p> <ul style="list-style-type: none"> • Needs provision for Contact person. (suggest identifying that to be the CEO would be the logical choice)
<p>(h) How the society will control and manage its finances</p>	<p>Complies</p> <ul style="list-style-type: none"> • 32. Control and Investment of Funds
<p>(i) The method by which the constitution may be amended</p> <p>Every amendment to the constitution must be in writing, approved at a general meeting of the society by a resolution passed by the relevant majority (simple majority of eligible voters that vote at an AGM or by a 75% majority of eligible voters by written resolution) and otherwise made in accordance with its constitution (s30)</p>	<p>To be updated</p> <ul style="list-style-type: none"> • 31. 25, 29 and 31. Need to clarify that voting process is part of the meeting at which changes occur.
<p>(j) Procedures for resolving disputes, including providing for how a complaint may be made</p> <ul style="list-style-type: none"> • s38 outlines what a dispute or complaint means • Procedures in a society's constitution for resolving disputes must be consistent with rules of natural justice (s39) • A society may choose to include all or any of the procedures in clauses 2 to 8 of Schedule 2 in its constitution (but is not required to). • A society's constitution may provide that all or certain kinds of disputes must or may be submitted to any type of dispute resolution, including consensual dispute resolution (e.g. mediation, tikanga-based practice) or determinative dispute resolution (e.g. arbitration or adjudication) • If a society's constitution provides that a dispute must or may be submitted to arbitration under the Arbitration Act, the relevant provisions of the constitution must be treated as an arbitration agreement that is binding on the society and the affected member or officer 	<p>Complies</p> <ul style="list-style-type: none"> • 9. Disciplinary Matters • 10. Representation • 11. Negotiation and Ratification

- The constitution may provide for whether and if so how a decision made under the procedures for resolving disputes may be subject to an appeal or a review.

(k) Arrangements and requirements for general meetings, including:

- The intervals between annual general meetings (no later than 6 months after the balance date of the society and not later than 15 months after the previous annual general meeting (s84))
- The information that must be presented at general meetings, including an annual report on the operations and affairs of the society during the most recently completed accounting period, the financial statements of the society for that period, advise the conflicts of interest disclosed by committee members during the accounting period to which the financial report relates (s86)
- When minutes are required to be kept
- The manner of calling general meetings (s87)
- Whether and, if so, how written resolutions may be passed in lieu of a general meeting for the purposes of section 89
- The time within which, and manner in which, notices of general meetings and notices of motion must be notified
- The quorum and procedure for general meetings, including voting procedures (for example, whether votes may be cast by post or by electronic means) procedures for proxies (if any) and whether the quorum takes into account members present by proxy or casting postal votes or votes by electronic means
- The arrangements and requirements for special general meetings under section 64(3)(unless provision has been negated under section 67).

- (l) The nomination of a not-for-profit entity, or a class or description of not-for-profit entities, to which any surplus assets of the society should be distributed on a liquidation of the society or on, or to enable, the removal of the society from the registry.**

To be updated

- Need reference to when minutes are required to be kept
- Need to tie all resolution processes to a meeting so that votes (even if electronic) are part of the meeting process.
- Need reference to whether written resolutions can be passed in lieu of a general meeting (noting threshold of at least 75% of the members entitled to vote to pass resolutions is realistically unlikely to ever be achieved) .
- Need reference to the manner of meetings, specifying whether a meeting quorum may be presented in person, or by participating via audio link, audio-visual link, or other electronic communication.
- Need to include provisions for ways of signing or giving their approval in another manner (e.g. constitution may provide for a member to indicate approval of a resolution by electronic means).

To be updated

- 36. Winding up and disposal of assets needs greater clarity as to where assets can be disposed.

<p>s27. Constitution must not give members rights or interests in society's property</p> <ul style="list-style-type: none"> • “The constitution must not purport to confer on any member any right, title, or interest (legal or equitable) in the property of the society”. 	<p>To be updated</p> <ul style="list-style-type: none"> • 36.3 addresses this on winding up but not otherwise.
<p>s28. Bylaws, and tikanga, kawa, culture, or practice and other matters</p> <ol style="list-style-type: none"> 1. The constitution may contain any other matters that are not inconsistent with the Act or any other legislation, including providing for – <ol style="list-style-type: none"> a) Whether and, if so, how the society can make bylaws; b) The society to express its tikanga, kawa, culture or practice; c) Reasonable penalties may be imposed on any member (and for the consequences of the non-payment of any subscription nor penalty): and d) Any other matter relevant to the society's operations or affairs. 2. A bylaw made by a society has no effect to the extent it contravenes or is inconsistent with the Act, other legislation nor the society's constitution 	<p>To be updated</p> <ul style="list-style-type: none"> • Need to identify ability to pass bylaws, content and process.

Requirements for Registration

332. To re-register under the new Act, NZNO will need to submit an application to the Registrar containing the following:
- (a) Contain, or be accompanied by, the information prescribed by the regulations; and
 - (b) Include the proposed name of the society; and
 - (c) Contain the name and contact details of at least 1 contact person; and
 - (d) Contain, or be accompanied by, a copy of the society's proposed constitution; and
 - (e) Contain or be accompanied by information about every person named as an officer, including the person's consent to be an officer and a certificate that the person is not disqualified from being elected or appointed or otherwise holding office as an officer of the society; and

- (f) Be accompanied by the fee prescribed in the regulations; and
 - (g) Otherwise, be made in the manner prescribed by the regulations.
333. The Registrar must, as soon as practicable after the Registrar receives a properly completed application for incorporation, enter the society's name in the Register, issue a certificate of incorporation and register the society's constitution. The Registrar can refuse an application for incorporation if the constitution does not comply with the Act.
334. If NZNO does not reregister by the final transition date (1 December 2025), NZNO will no longer be incorporated.

Recommendation for Implementation of review

Recommended replacement of constitution

335. The first step after presentation of this report is for the NZNO Board to consider its own process and what information will be provided to members.
336. The sheer number of prior ad hoc changes, and internal inconsistencies in the Constitution as it currently exists have led us to conclude that is not possible to provide solutions by way of additional recommended wording or through new clauses to address the issues identified. This is because the structure of the document itself is internally inconsistent and confused to the point where we believe that adding anything additional would only serve to exacerbate the issues.
337. We note that the Organisation will have to alter its Constitution and register under the Incorporated Societies Act 2022 before December 2025.
338. The Incorporated Societies Act 2022 allows for amendments to constitutions to be made under the old Act in the interim, where that process is part of moving toward compliance under the 2022 Act. We recommend delaying registration under the 2022 Act until further regulations under the 2022 Act are released and for there to be time for the impact of the 2022 Act to be better understood. In our view, there is no advantage to be gained by being an early adopter of the 2022 Act.
339. The recommendations for change in this report are intended to achieve a clear and internally consistent constitution that is also consistent with the stated mission and objects of the Organisation. In that way, the Constitution would become fit for purpose.
340. Providing for a constitution that adopts these recommendations should enable members to have clarity on what a constitution that provides for the current Organisation looks like before separately addressing technical changes required as a result of a legislation change or considering any additional reviews.

First Step

341. We recommend that the first step be the development of a new constitutional document providing for the existing structure but adopting the recommendations (if accepted) in this report and removing the repetition and inconsistencies that currently exist.
342. That will allow the organisation to achieve some immediate clarity. The members can then vote on adoption of that document, with clear guidance that this is not a structural review process. We note that any constitutional document should be available for review by the inhouse legal team in relation to their technical requirements for a legal service provision. The document also needs to be addressed under the current rules, including the remit committee process.

343. We recommend that the change document be proposed by the Board, rather than have some other structure within the Organisation responsible for the conduct of the change process.
344. We also recommend that the document be provided with a recommended compliance process for the remit committee to follow so that the remit committee can work with clarity and not need to work out the requirements of the current rules as a separate process. This would involve needing support of the Hui-a- Tau.
345. That process would then culminate in a vote of all members.

Second Step

346. We suggest that once that process is complete, that work start on a second process to identify what areas if any should be addressed further by way of targeted consultation for change proposals (if any) to be developed for feedback. For example, specific proposals may be put relating to the potential to:
- (a) amend the function or processes of any of the current Structures;
 - (b) make changes to the Board numbers;
 - (c) Other proposals that can be responded to on a yes / no basis.
347. We would expect any such consultation to put forward specific options so that it can be ascertained if the majority of responses favoured any particular change. All proposals would have to be capable of being adopted, so care will need to be taken that this is the case.

Third Step

348. Once those change proposals (if any) were tested, a further constitution could be prepared incorporating the further supported changes with the additional minor matters that the 2022 Act requires. That process would need to be completed by the 2025 AGM.

Schedule of clause by clause changes

Constitutional provision	Recommendation (consistency and legal analysis)	Recommendation Bi-cultural / Partnership analysis
<p><u>Definitions</u></p> <ul style="list-style-type: none"> • Clause 2 	Relocate those parts of the definitions that contain operative acknowledgements or other matters so that they can be seen and understood. Relates to “Partnership” issues which could have its own Section.	Address what is meant by Bi-cultural in the context of NZNO.
<p><u>Objectives / Powers</u></p> <ul style="list-style-type: none"> • Clause 3 – 7 	<p>Introduction to include entity history statement .</p> <p>Objects to be clarified and re-ordered for clarity. ;</p> <p>Powers of NZNO itself to reflect the Powers needed to operate under the constitution.</p>	Retain unambiguous statement in clause 6.13.
<p><u>Membership / Bargaining</u></p> <ul style="list-style-type: none"> • Clause 8 • Schedule 1 	<p>Separate schedule 1 into two distinct parts –</p> <ul style="list-style-type: none"> - Membership – entry and exit, rights and obligations; - Bargaining and ratification process. <p>Industrial bargaining processes to reflect current voting practices.</p> <p>Changes that affect who is covered by insurance and who can legally be provided with professional services must be subject to legal review</p> <p>Rules generally re-ordered for clarity.</p>	Membership to act in a manner that supports NZNO giving effect to te Tiriti o Waitangi.
<p><u>Structures</u></p> <ul style="list-style-type: none"> • Clause 9 • Schedule 7 • Appendix 1 • Appendix 2 	<p>Clarify status of AGM (as a meeting not a structure)</p> <p>References to role of Te Runanga to be relocated.</p> <p>Reference to Membership committee “working in partnership” to be clarified.</p> <p>Structures to be identified with cross referencing to relevant roles and functions.</p>	<p>Clause 9.1.4 be amended to read:</p> <p>“Te Runanga will assist the New Zealand Nurses Organisation to give effect to the principle of partnership under te Tiriti o Waitangi”.</p> <p>Recognising that the Partnership is not reflected by one side without the other.</p>

	<p>Create consistency as to how structures are treated in Constitution and clarify function of structures , functions and accountabilities;</p> <p>Remove operational rules for structures from Constitution – retaining in the handbooks.</p>	
<p><u>Board/ Te Poari / Membership Committees</u></p> <ul style="list-style-type: none"> • Clauses 10 – 24 • Schedule 3 • Schedule 4 	<p>Address purpose and outcome of 11.2.13 and 11.2.15 regarding Powers of AGM and referral of matter for voting to clarify limitations of that process.</p> <p>Re-order clauses relating to Board and Officers to appear in logical order and to avoid duplication or splitting subject matter.</p> <p>Remove reference to AGM having power to alter Board functions or positions of individual members.</p> <p>Bring relevant information regarding officers together in one section.</p> <p>Relocate provisions regarding CEO Standing Committee functions to be addressed consistently and include review function as with Board.</p> <p>Consider Audit and Risk committee as a Standing Committee.</p>	<p>Clause 10.3.1 be amended to read:</p> <p>“The term of the Kaiwhakahaere and Tumu Whakarae directors shall align with the respective terms of office as provided in Nga Ture”.</p> <p>Continuation of co-chair provisions.</p> <p>That issues to be submitted for member consideration by the Board have been first considered in the context of alignment with te Tiriti principles.</p> <p>To provide a mechanism for the Board to obtain advice on alignment with te Tiriti principles including external advice.</p> <p>..</p> <p>Desirable skills for Board members to include an understanding of Te Tiriti o Waitangi Principles</p>
<p><u>AGM / SMG</u></p> <ul style="list-style-type: none"> • Clauses 25 – 28 • Clause 30 	<p>Clause 25 to be restructured to remove the Remit process from within the AGM clause.</p> <p>Powers of AGM to be clarified and limitations of inconsistent process regarding constitutional changes clarified.</p> <p>All Powers of AGM including setting of fees under schedule 2 to be clarified as AGM business.</p> <p>Voting by members to be brought within meeting process</p> <p>SGM - SGM issues could be voted on by individual members as the default process .</p> <p>SGM clauses to be moved to follow AGM.</p>	

<p><u>Remits</u></p> <ul style="list-style-type: none"> • Clause 25 • Clause 29 • Clause 31 	<p>Remit process to be rewritten and set out in one place.</p> <p>Separate the process of policy remit from constitutional change.</p> <p>Clarify remit committee function, powers and timeframes.</p> <p>Constitutional review be a planned process, and not by way of ad hoc annual remits.</p> <p>Constitutional changes that affect membership must be subject to legal review</p>	<p>That the assessment of remits address risks to the partnership under te Tiriti o Waitangi</p>
<p><u>Admin</u></p> <ul style="list-style-type: none"> • Clause 32 – 36 • Schedule 2 • Schedule 8 	<p>Clauses contained in the admin Section relating to other areas such as Board vacancies to be relocated and made consistent.</p> <p>Schedule 8 clauses to be included in main body of document.</p>	
<p><u>Elections / Ballots</u></p> <ul style="list-style-type: none"> • Schedule 5 	<p>Voting methods to be simplified with inconsistencies removed and greater clarity as to when each method applies.</p> <p>One voting process should not be referred across two schedules. Duplication of processes between main body of Constitution and schedules to be removed.</p>	
<ul style="list-style-type: none"> • Schedule 6 	<p>Removal of officer process needs to have clarity of process. Provision for means of response to be consistent with the identification of those who are able to vote.</p>	

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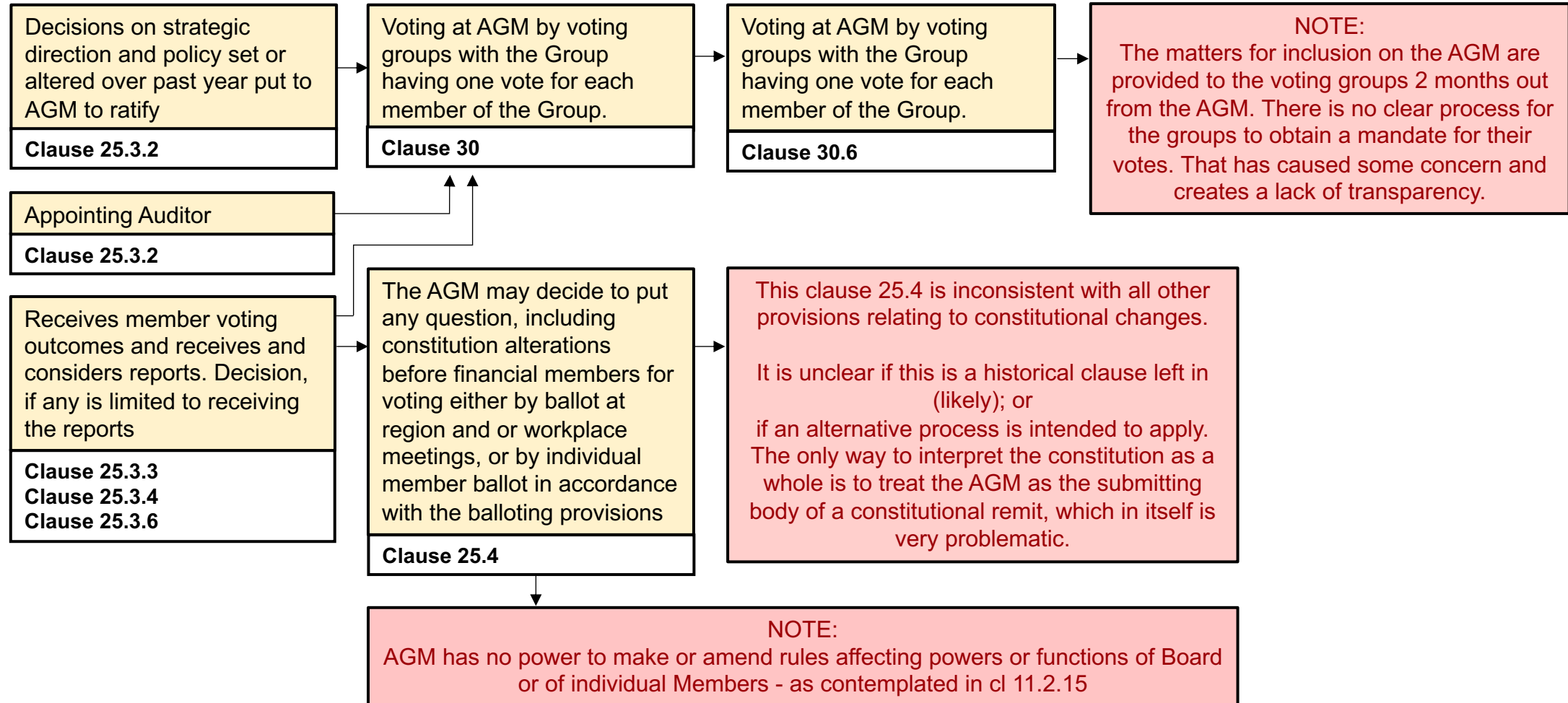
Appendices

Voting / Decision making process

Flow Charts

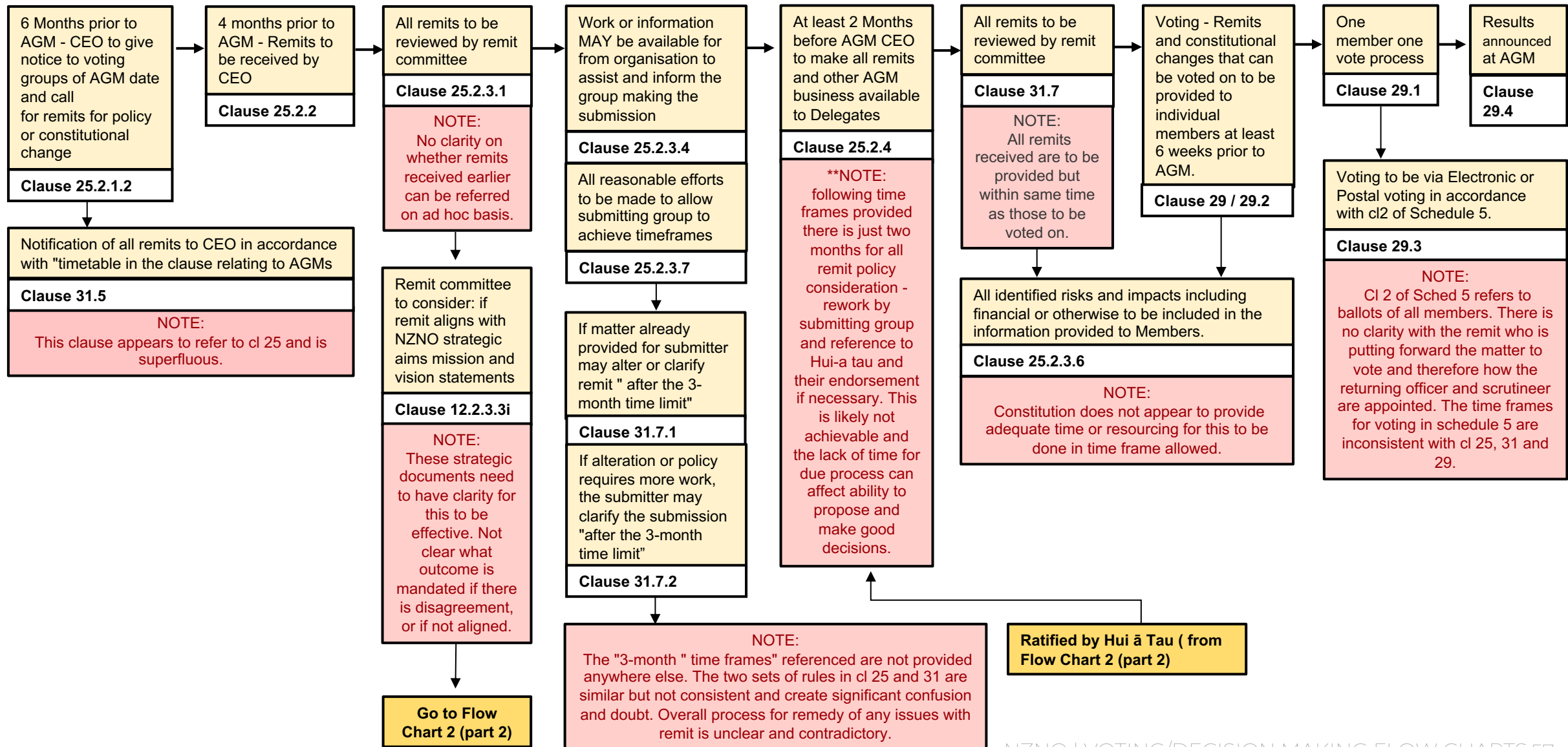
Flow Chart 1

AGM / SGM voting - cl 25 - Decision types provided for at AGM



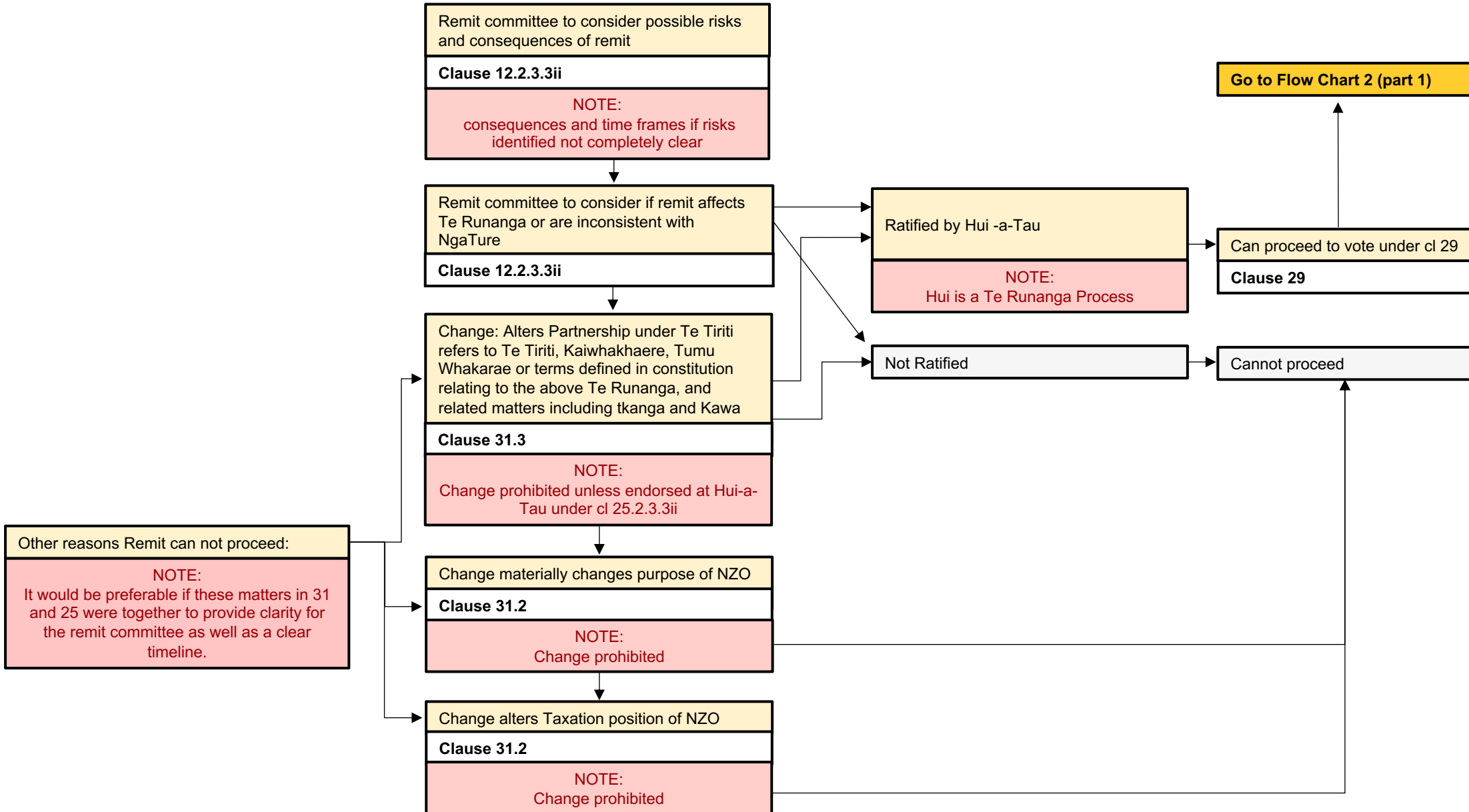
Flow chart - 2 (part 1)

Remits and Constitutional Changes Clauses 25, 29 and 31 (Chart 1)



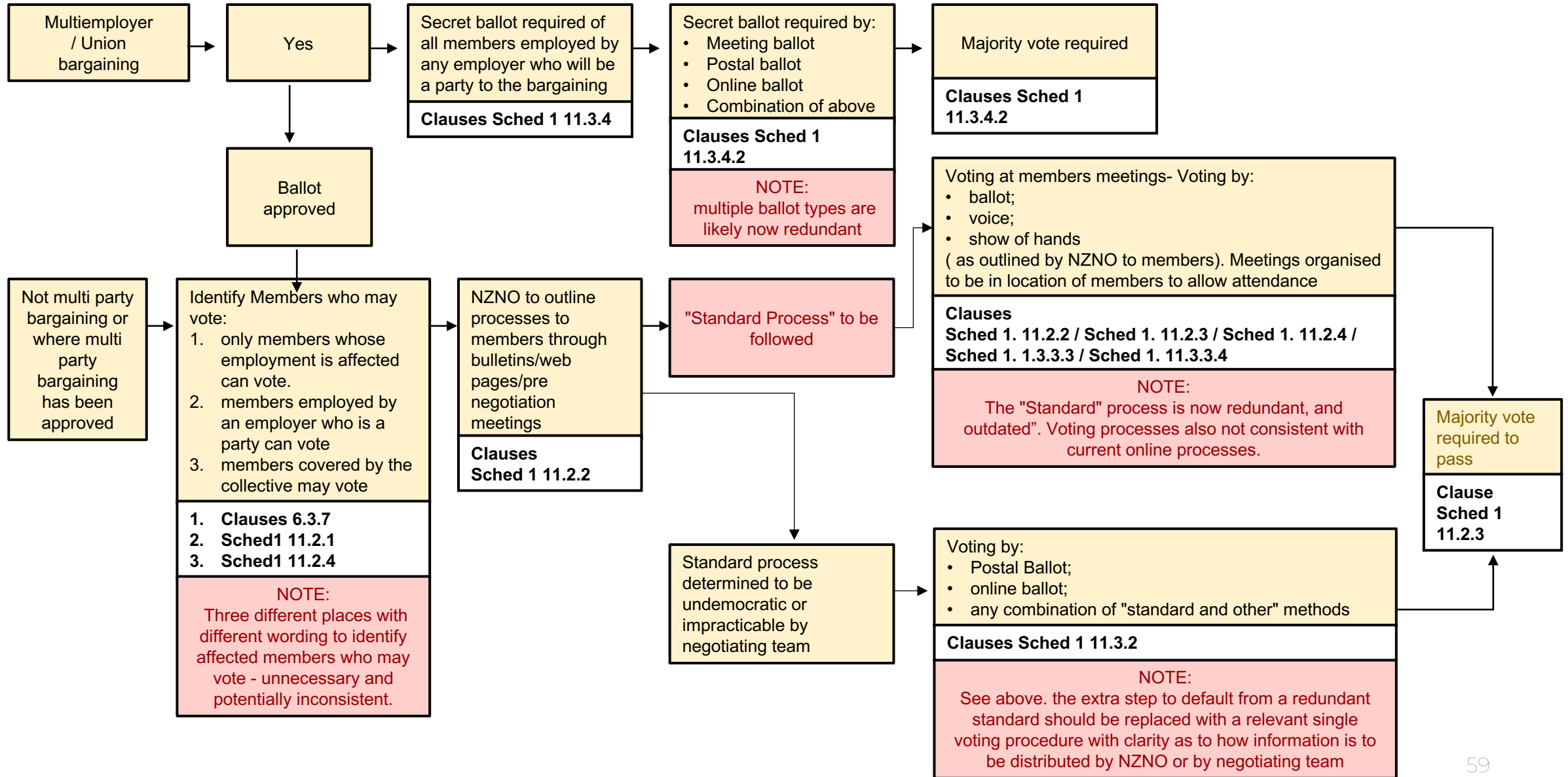
Flow Chart 2 (part 2)

Remits and Constitutional Changes Clauses 25, 29 and 31 (Chart 2)



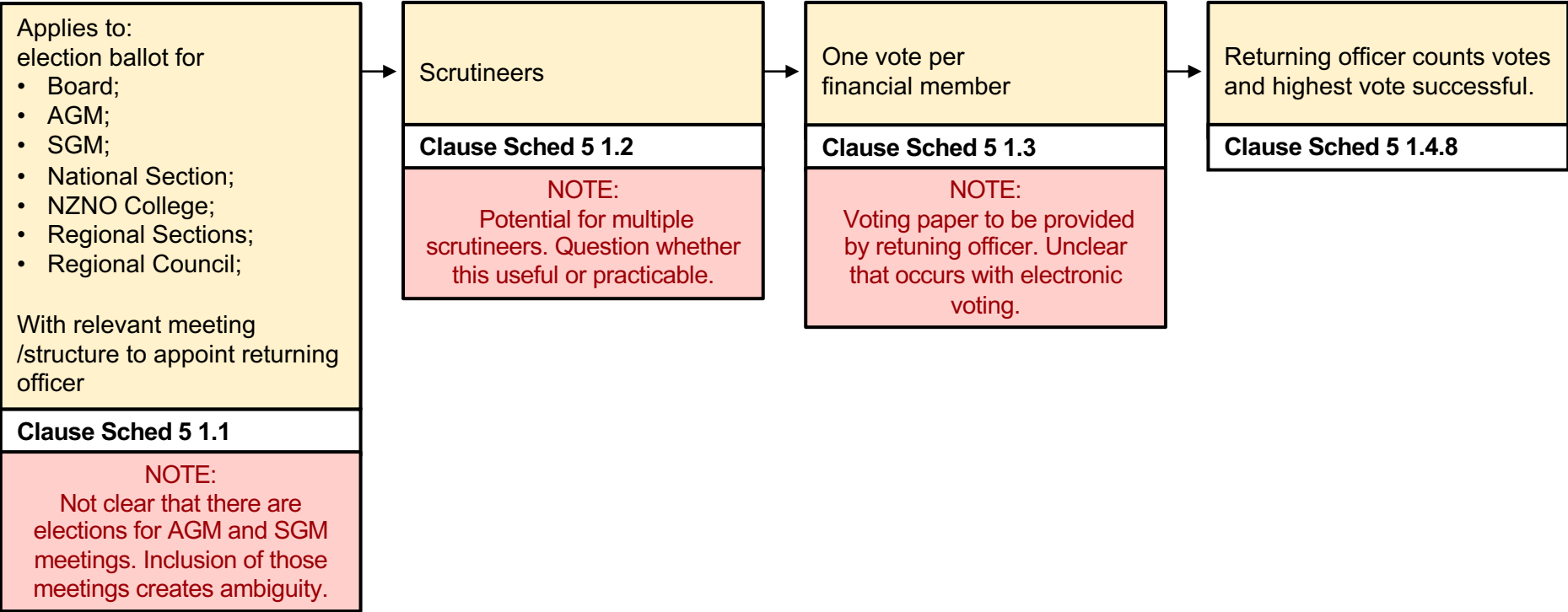
Flow Chart 3

Schedule 1 Ratification process for industrial bargaining.



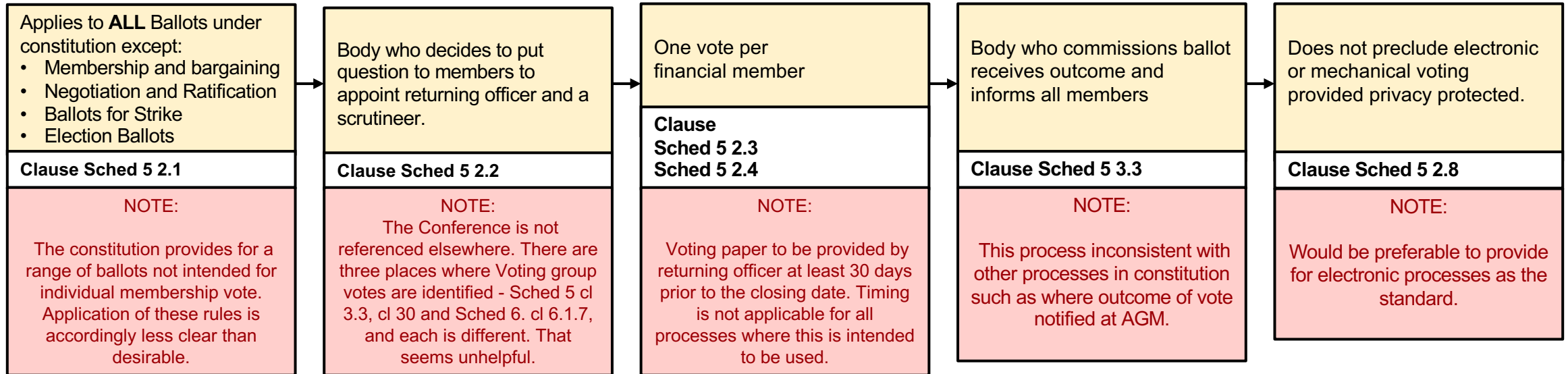
Flow Chart 4

Schedule 5 Clause 1. Election Ballots



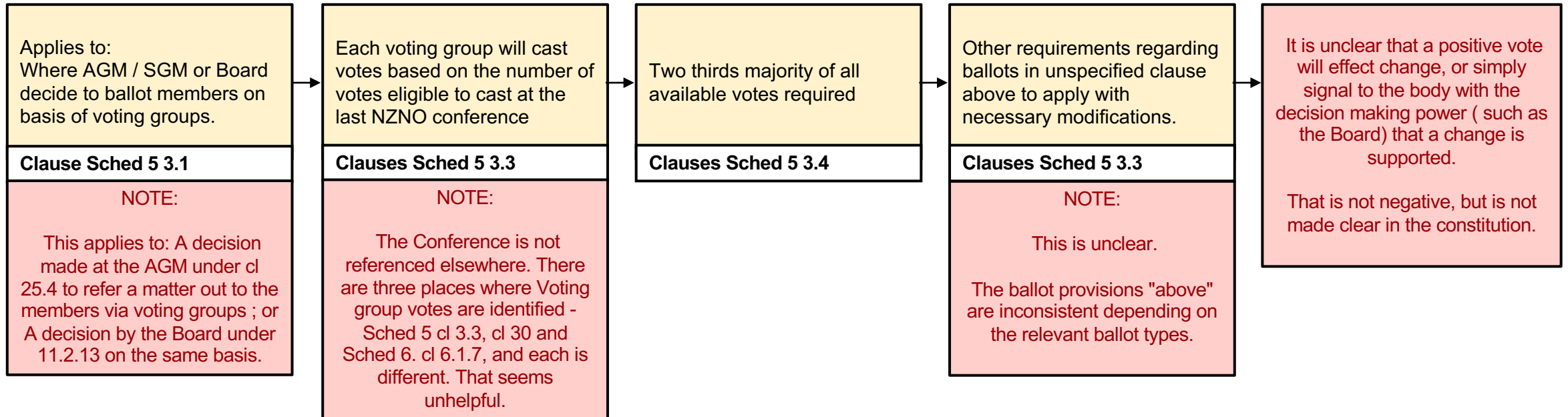
Flow Chart 5

Schedule 5 Clause 2. Decision by Ballot of all Members



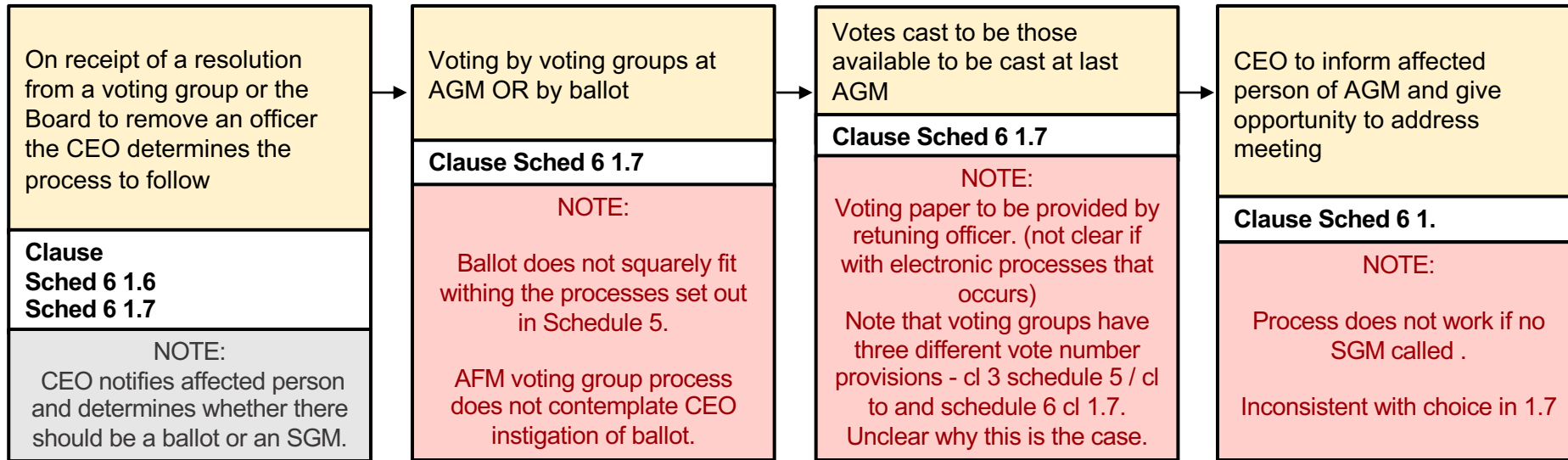
Flow Chart 6

Schedule 5 Clause 3 Ballot of AGM voting groups



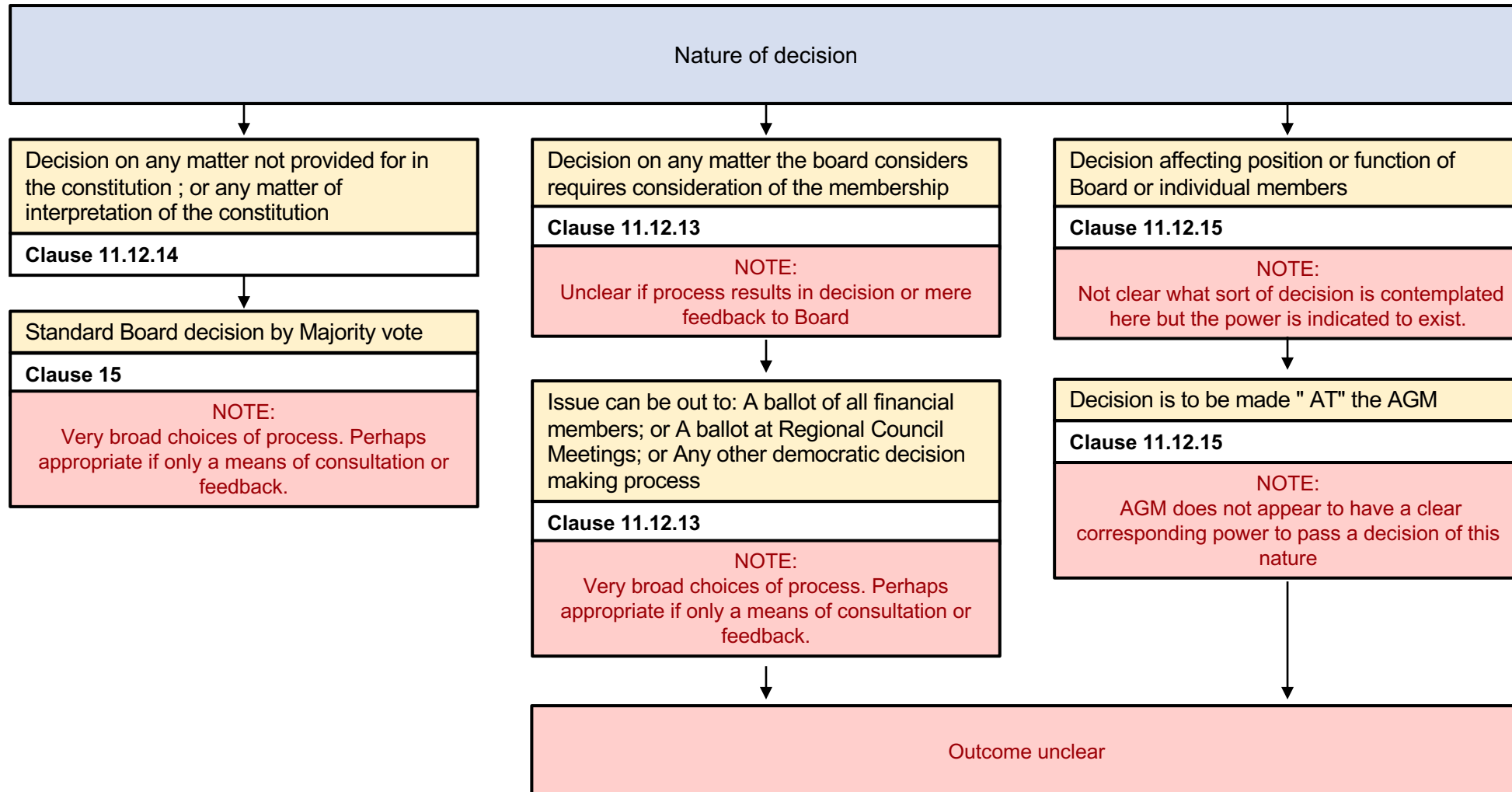
Flow Chart 7

Schedule 6 Removal of Officers



Flow Chart 8

Specific decision processes specified within board powers

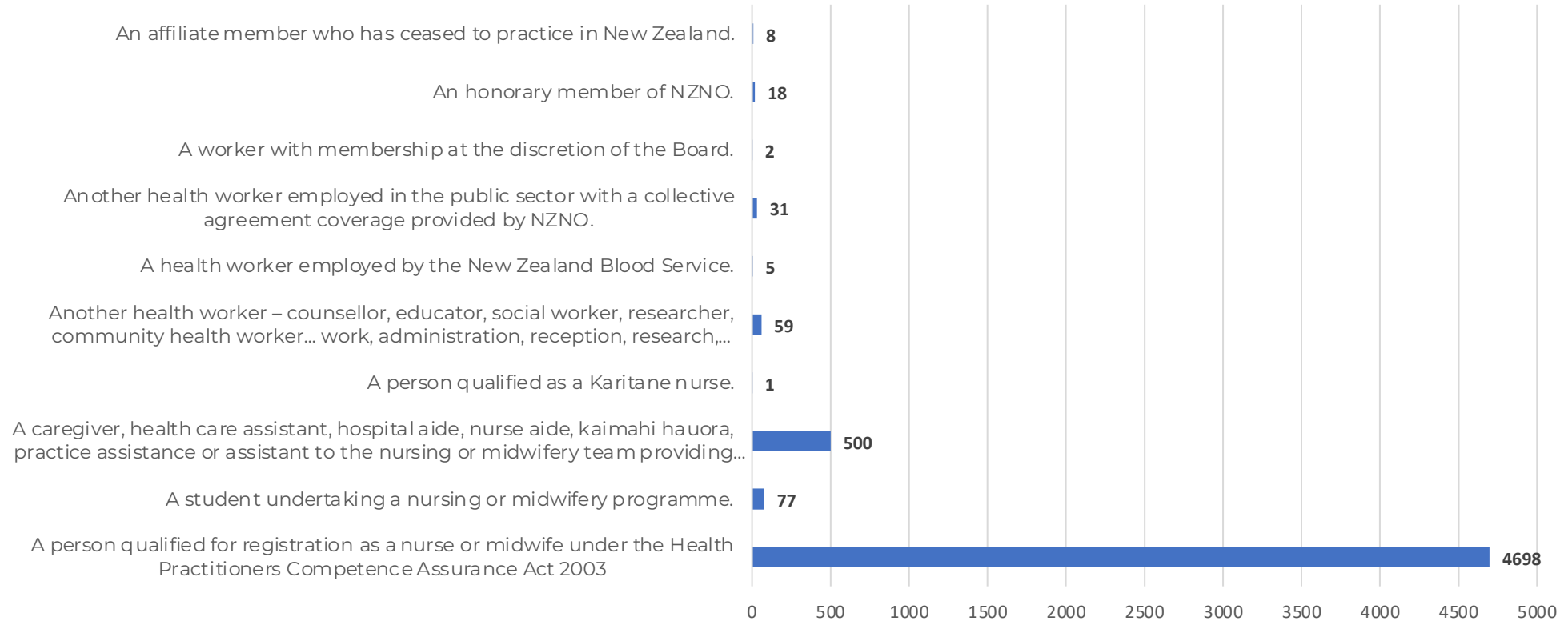


Appendices

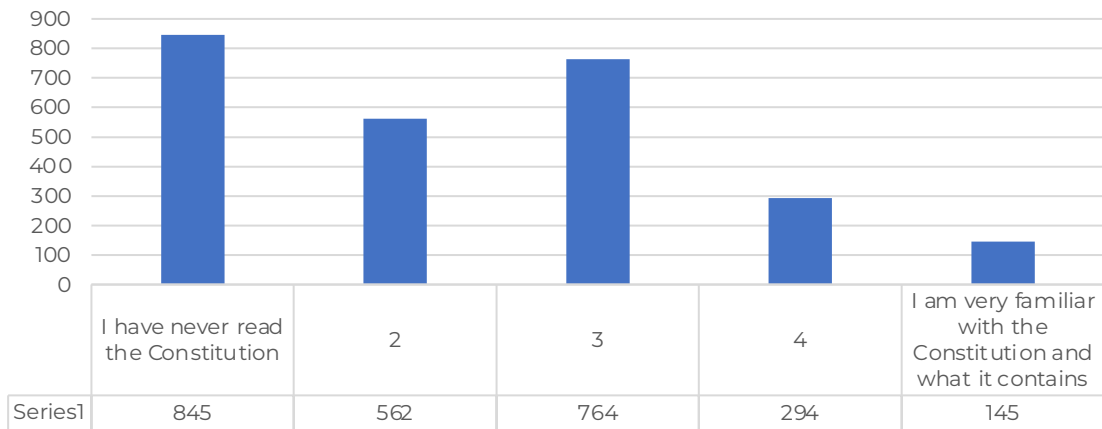
Survey Result Summary

5411 total responses // 90 Questions

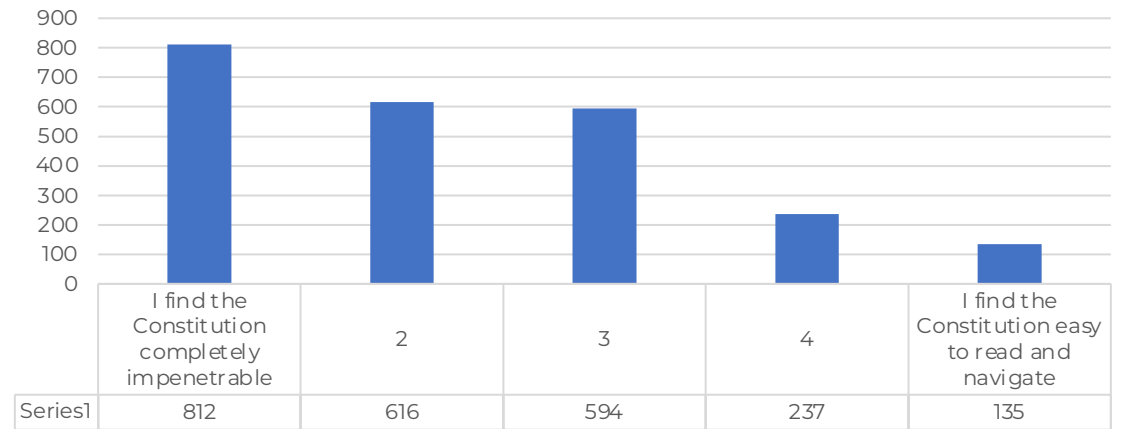
Q1 - I am entitled to be a member of NZNO because I am:



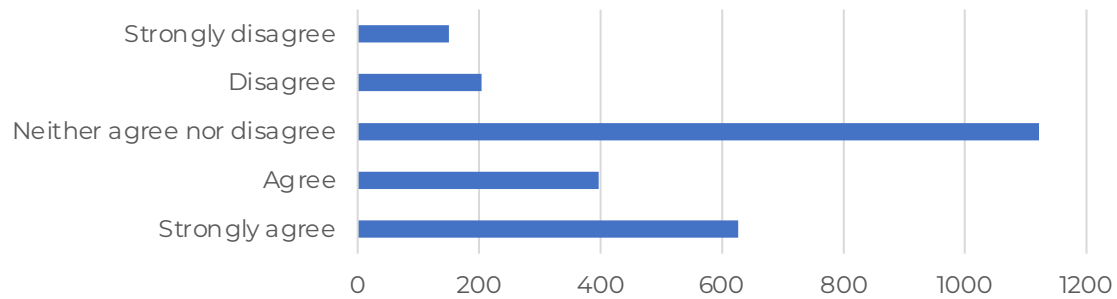
Q3 - What is your general understanding of the Constitution?



Q4 - Do you find the Constitution easy to understand?

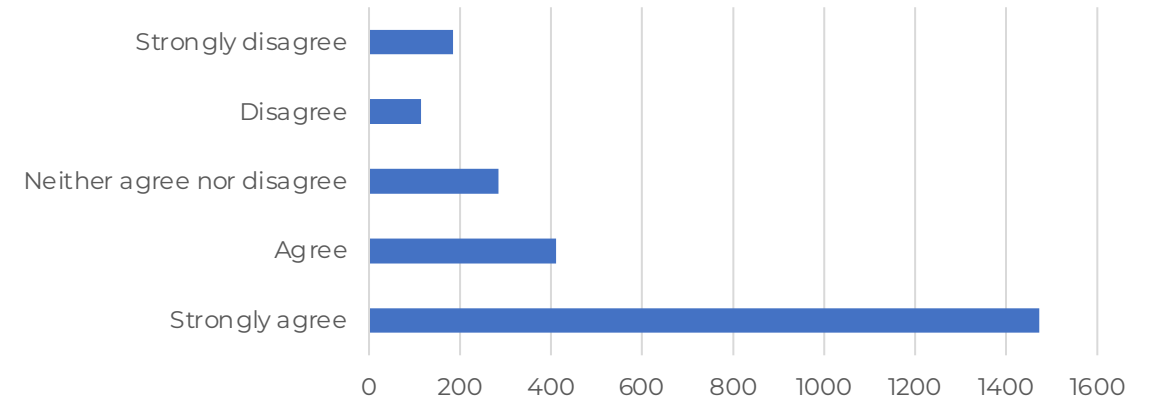


Q5 - I think the Constitution should reflect the history and whakapapa of the Organisation to enable those referring to, and using, the Constitution to be informed of that context:



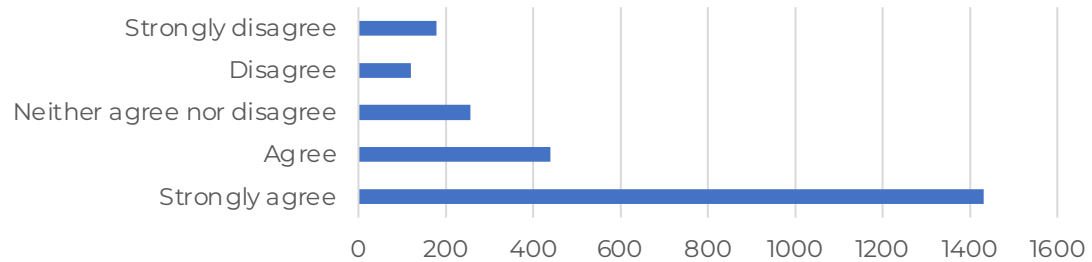
	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Series1	626	397	1122	204	150

Q6 - The Constitution should clearly set out the underlying purpose and objectives of the Organisation:



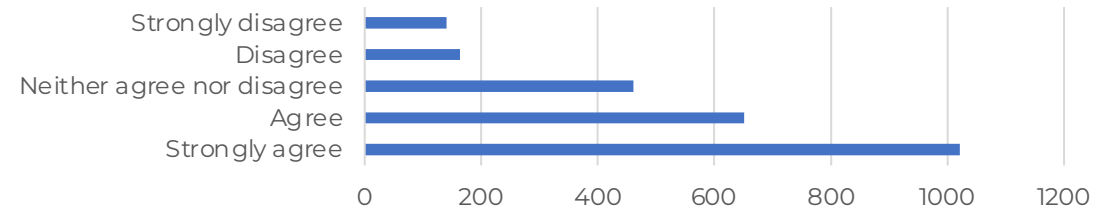
	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Series1	1472	411	285	114	185

Q7 - The Constitution should clearly set out organisation structures and their purpose:



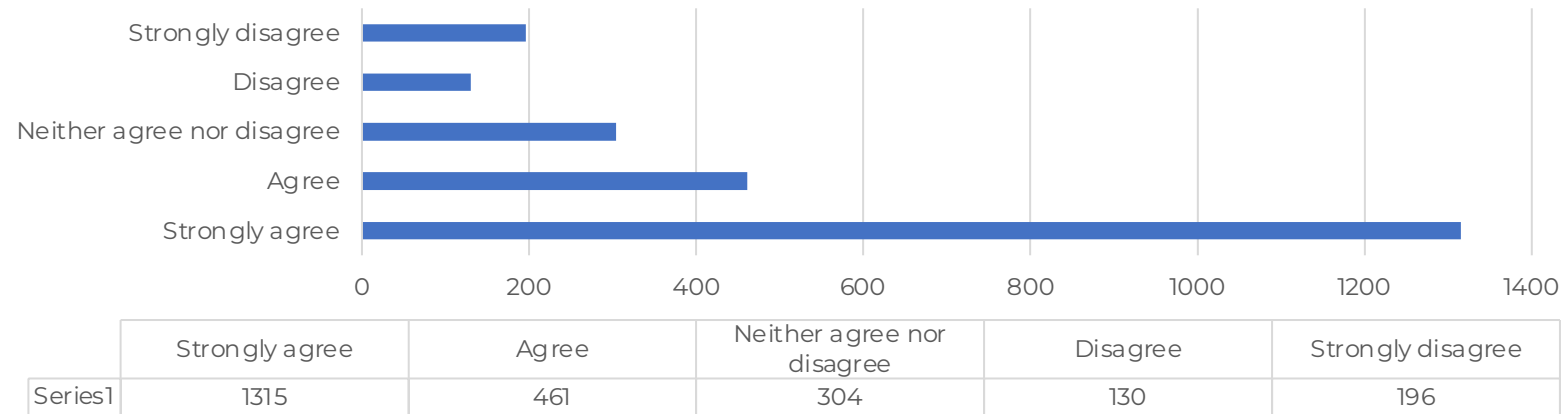
	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Series1	1431	440	257	120	179

Q8 - The Constitution should retain some flexibility so that the Organisation can grow and develop within the bounds of the constitution:

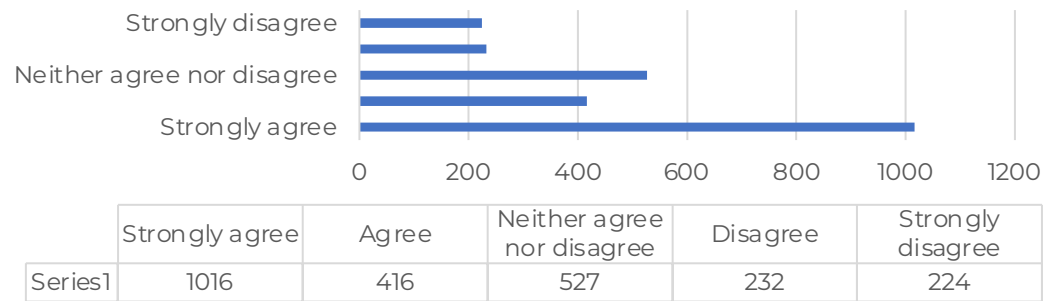


	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Series1	1021	651	461	164	140

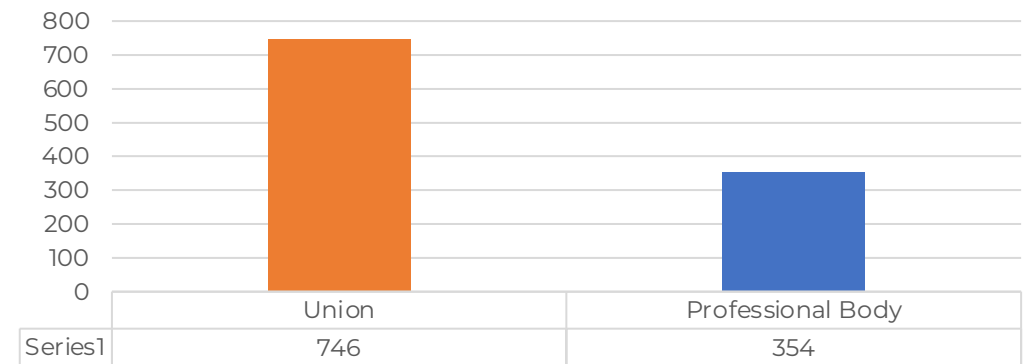
Q9 - The Constitution should reflect the role of the Organisation as being both a union and a professional organisation:



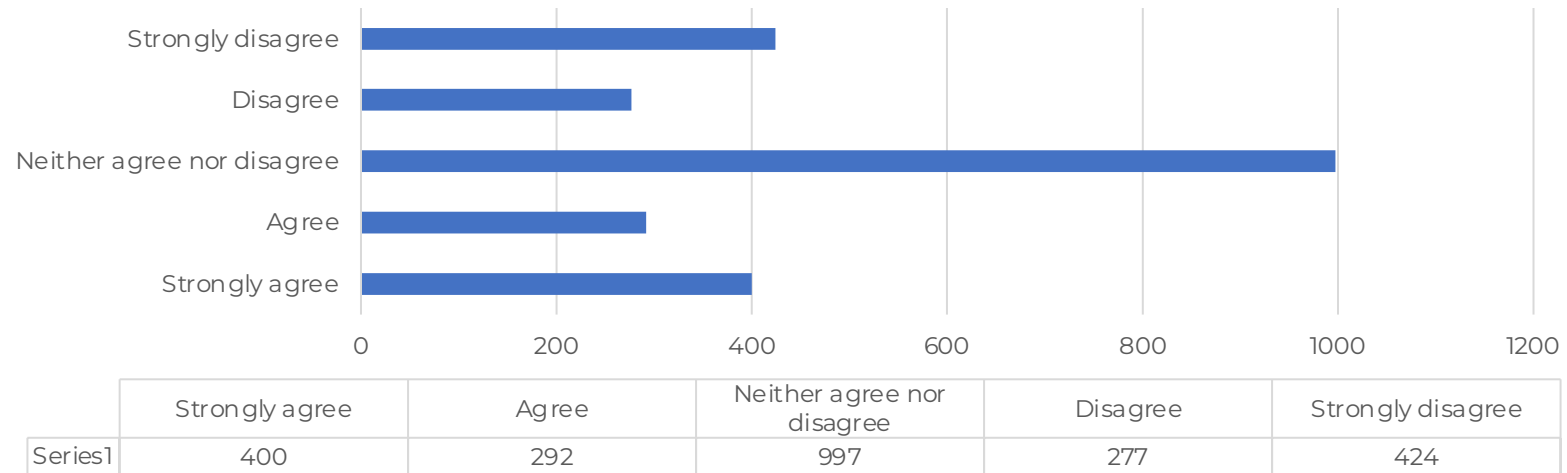
Q10 - The functions of the Union and the functions of the professional organisation should be equal in status and importance:



Q11 - If you disagree, which of the functions of the organisation are the most critical?:



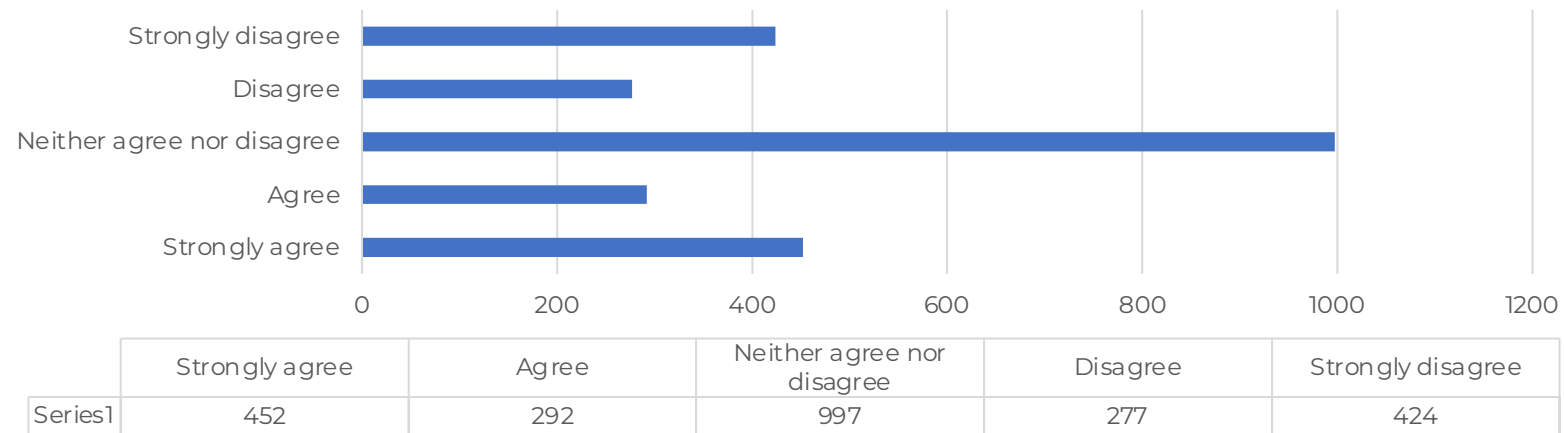
Q12 - I understand the role of Te Poari o Te Rūnanga as a permanent standing committee:



Q13 - What do you think the most important functions of Te Poari o Te Rūnanga Standing Committee are:



Q14 - I understand the role of the Membership Committee as a permanent standing committee:



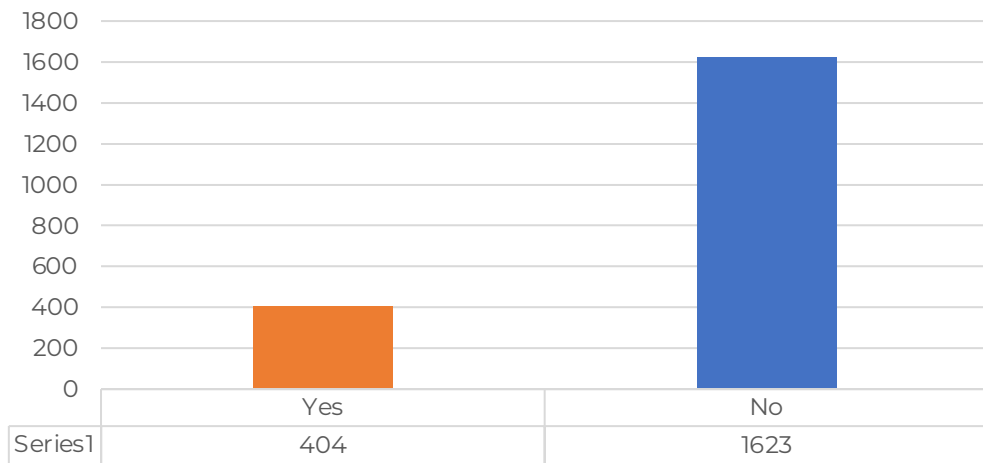
Q15 - What do you think the most important functions of the Membership Committee are:



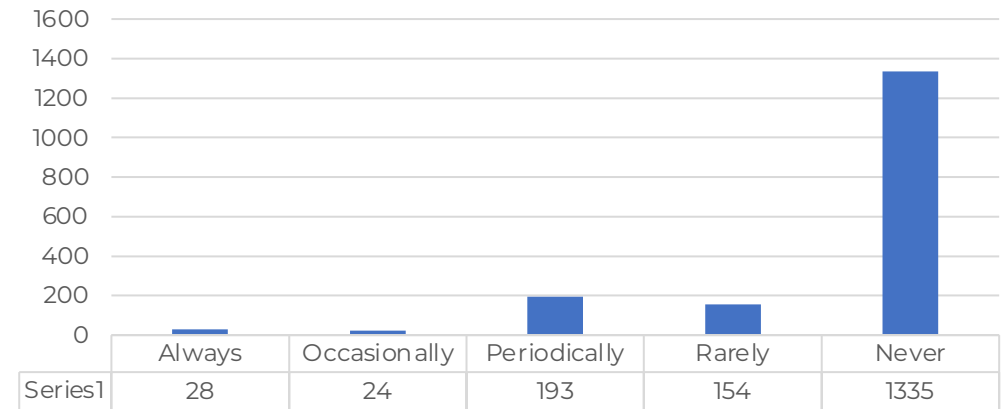
Q16 - The main benefits I receive from my membership(s) that I want the Constitution to protect are:



Q17 - I belong to a Regional Council:



Q18 - I attend Regional Council meetings:



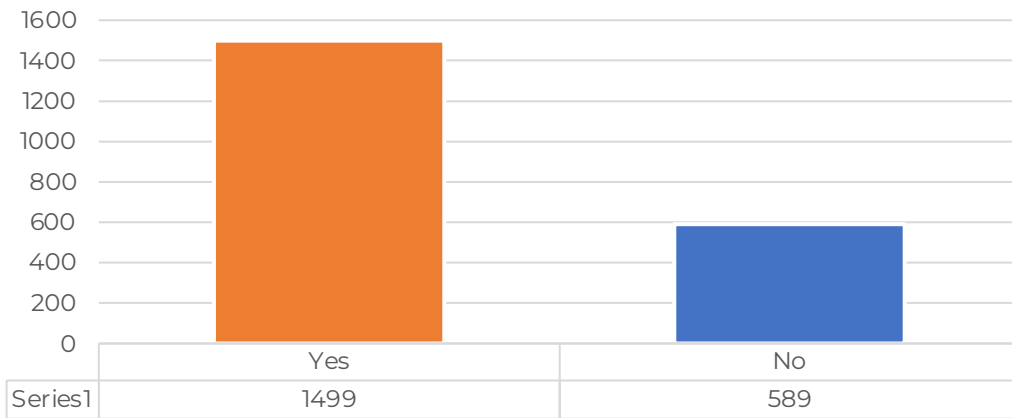
Q19 - The benefits that I obtain from a Regional Council are as follows:



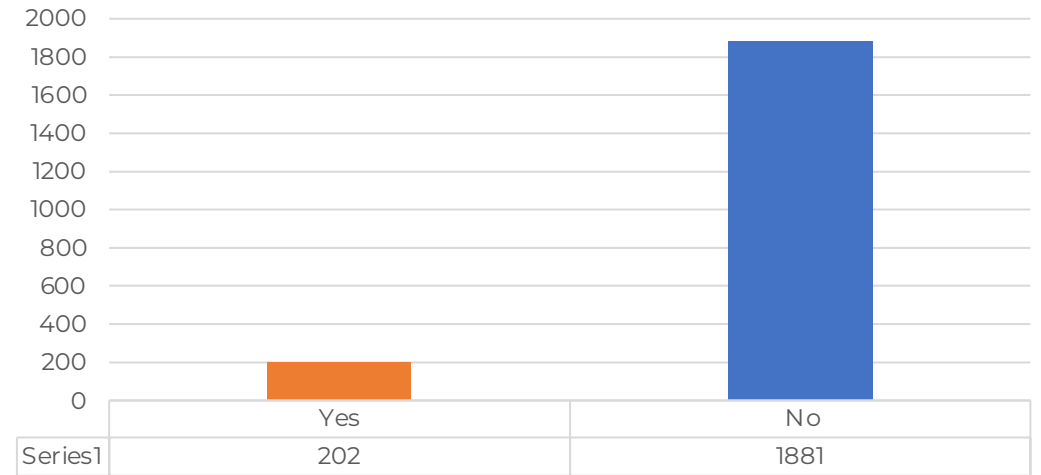
Q20 -The most important functions of a Regional Council are as follows:



Q21 - Do you know who your “workplace” delegate is:



Q22 - Are you a delegate:



Q23 - If you are a delegate, what do you do:



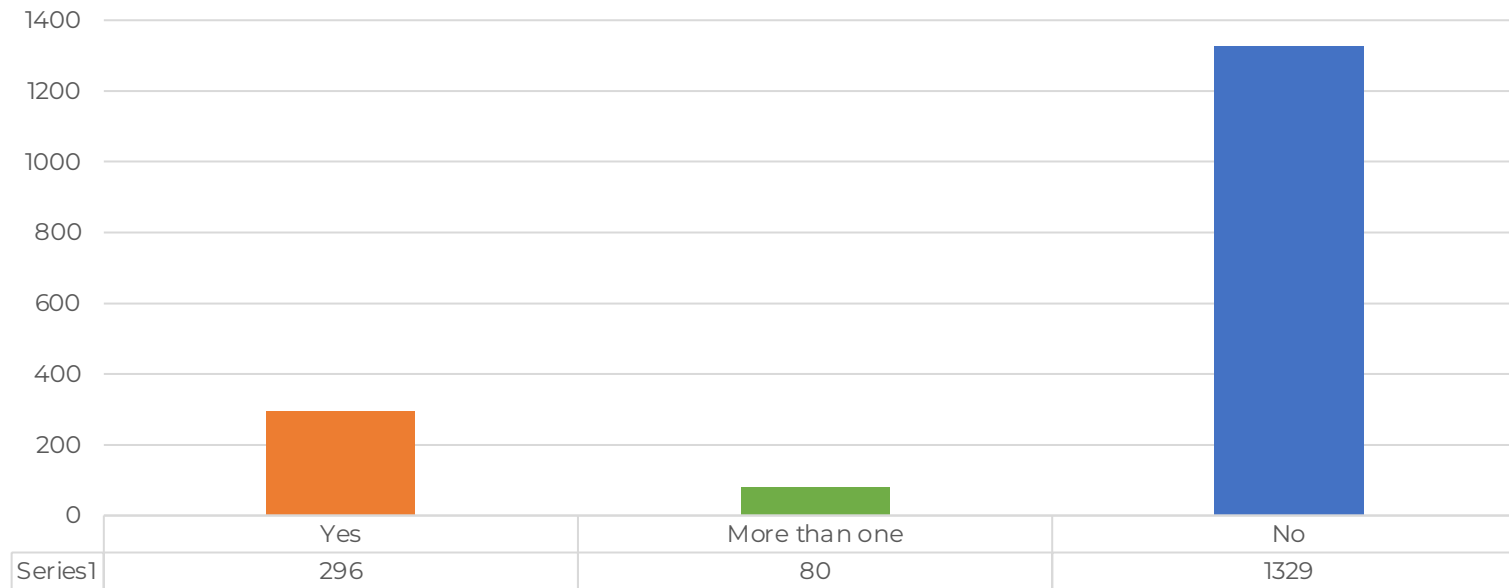
Q24 - The benefits that I obtain through the workplace are as follows:



Q25 - The important functions of a delegate in a workplace are as follows:



Q26 - I belong to a section(s):



Q27 - The benefits that I obtain from the section(s) are as follows:



Q28 - The most important functions of the section(s) are as follows:



Q29 - I am part of a College(s):



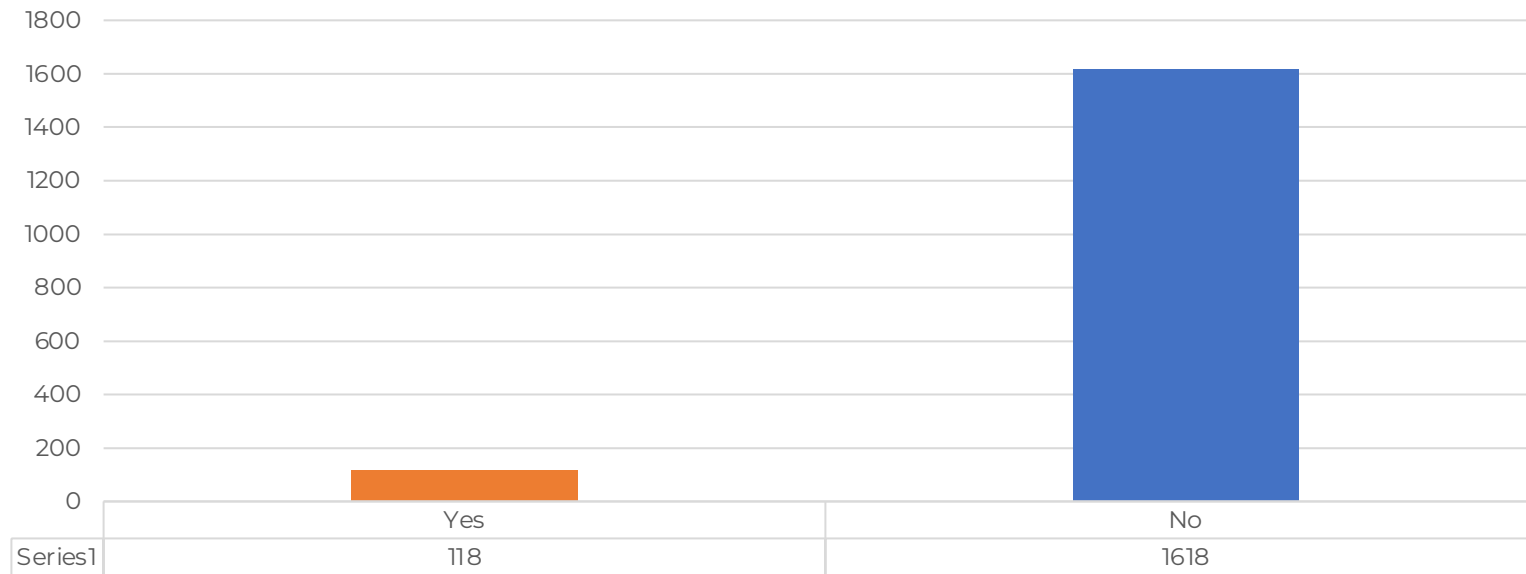
Q30 - The benefits I receive from the College(s) are as follows



Q31 - The most important functions of the College(s) are as follows:



Q32 - I am a member of Te Rūnanga o Aotearoa:



Q33 - The benefits I receive from Te Rūnanga o Aotearoa are as follows:



Q34 - The most important functions of Te Rūnanga o Aotearoa are as follows:



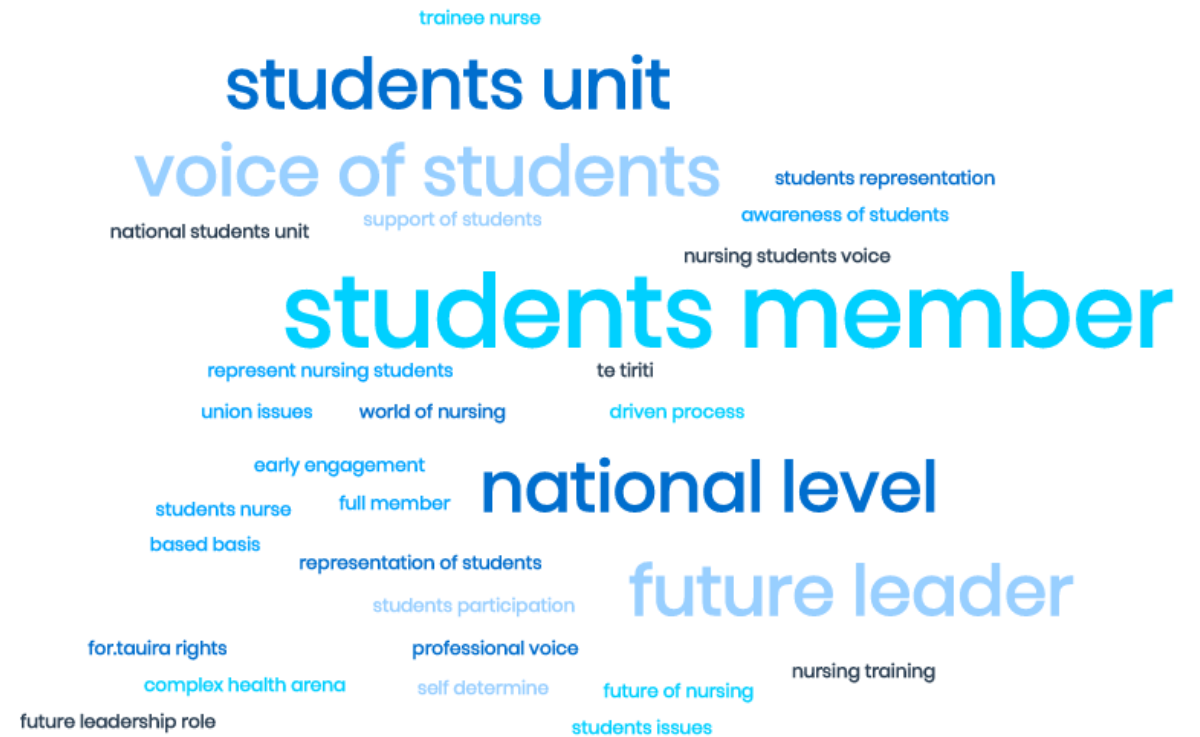
Q35 - I am part of the National Student Unit:

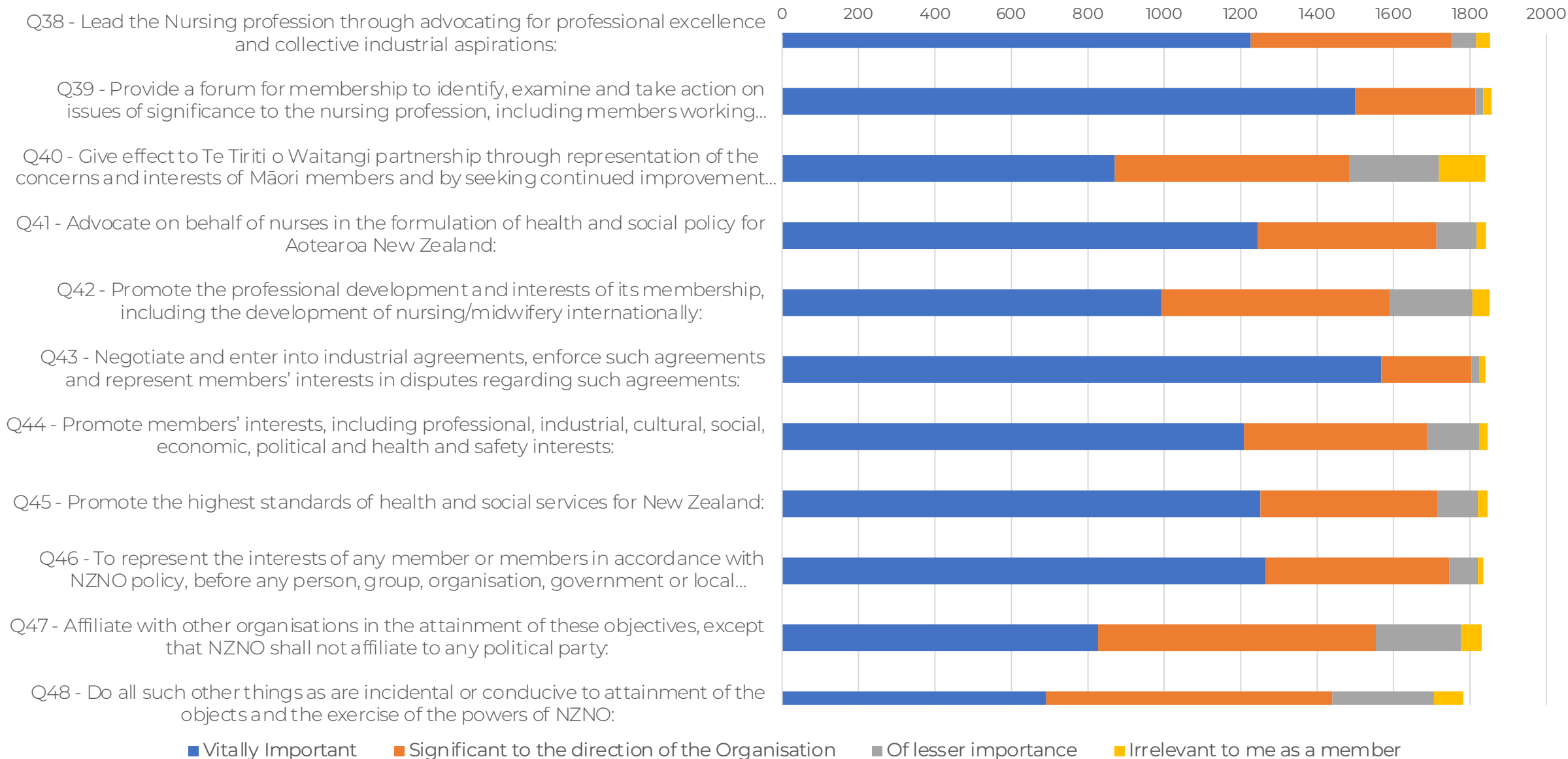


Q36 - The benefits I receive from the National Student Unit are as follows:

students advocacy
date information
nil na
young one

Q37 - The most important functions of the National Student Unit are as follows:

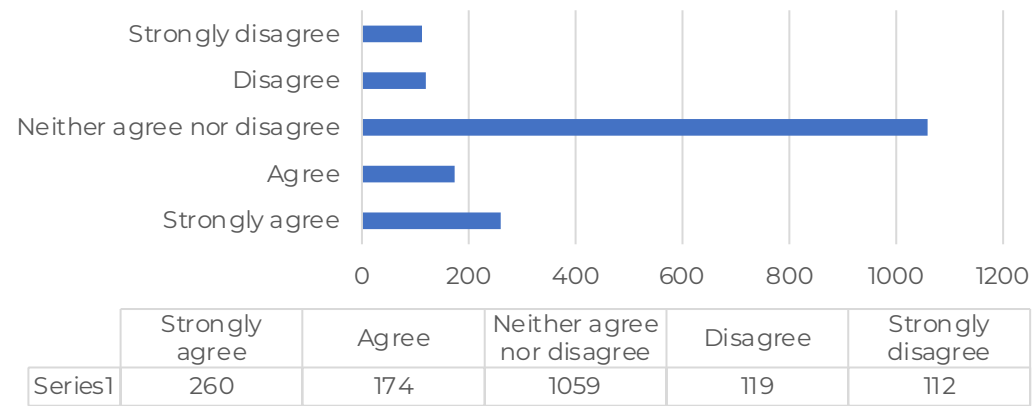




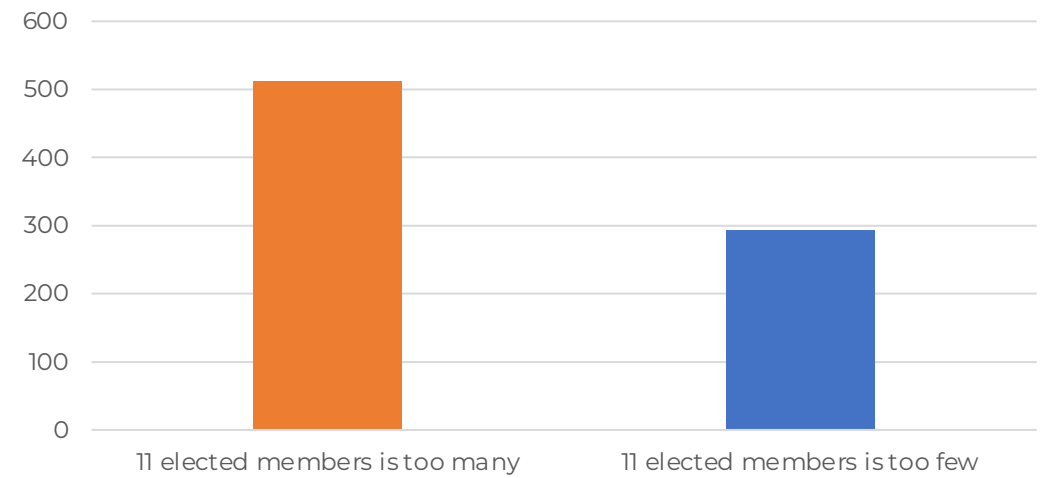
Q49 - Is there any other critical objective that you think should be included in the Constitution, please indicate below:



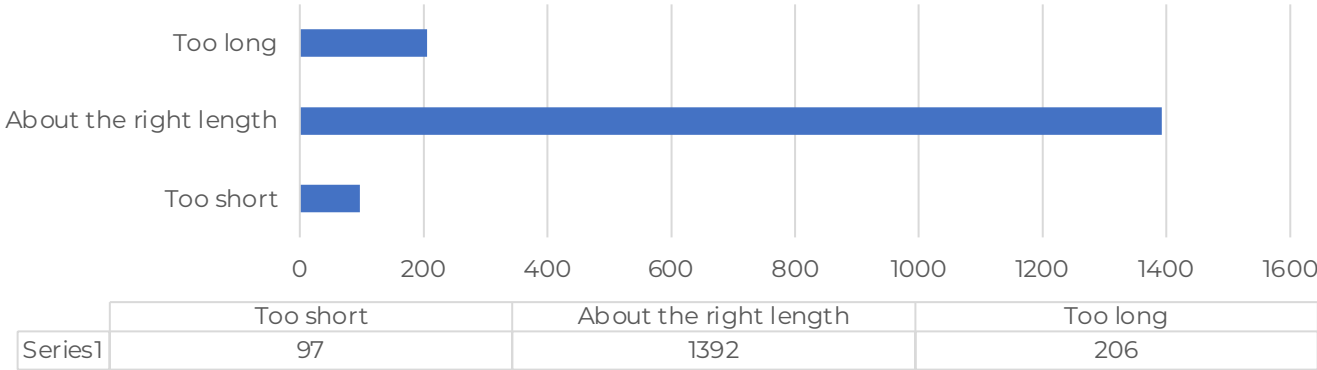
Q50 - The Board size of 11 elected member directors is the right size:



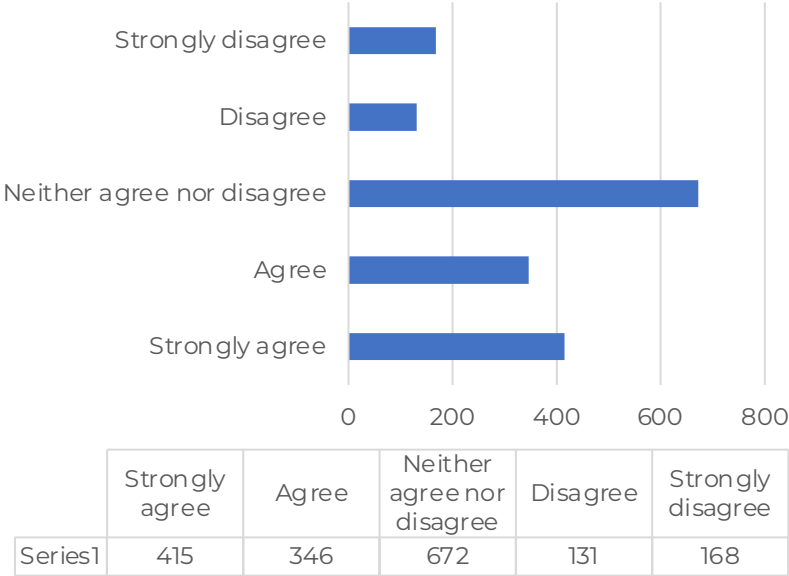
Q51 - Do you think:



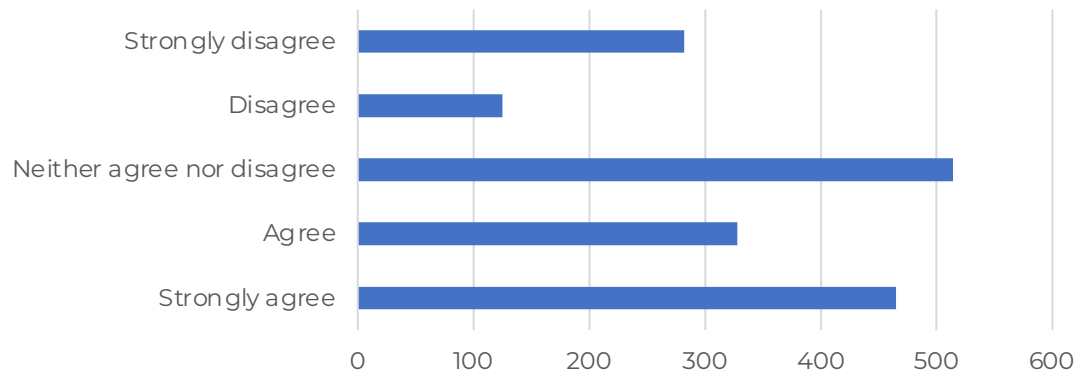
Q52 - The current term for board members, with the exception of the Kaiwhakahaere and the Tumu whakarae is three years, with a right of re-election for a further consecutive three years in any one position. A director may serve up to two terms in any one



Q53 - I understand the process for Board elections:

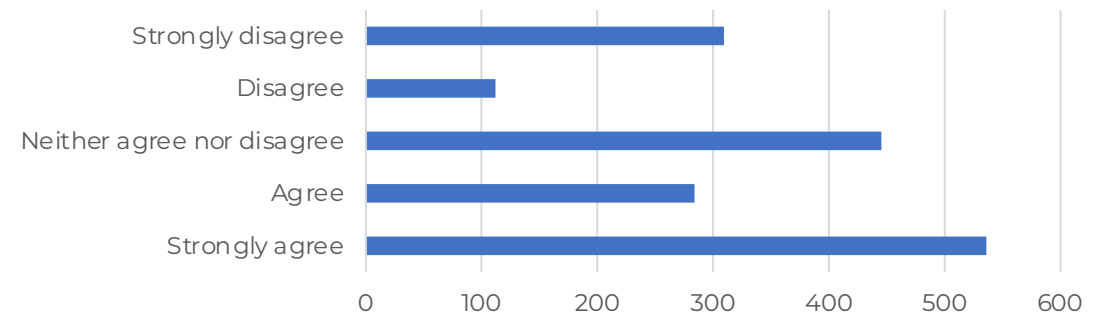


Q54 - I participate in the process for Board elections:



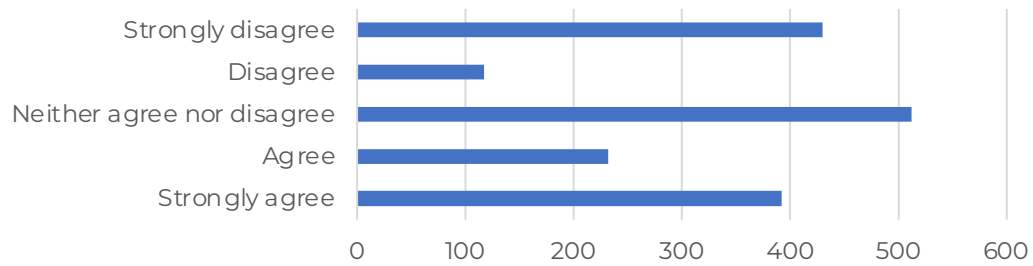
	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Series1	465	328	514	125	282

Q55 - I have voted for the positions of the President and the Vice President on a regular basis:



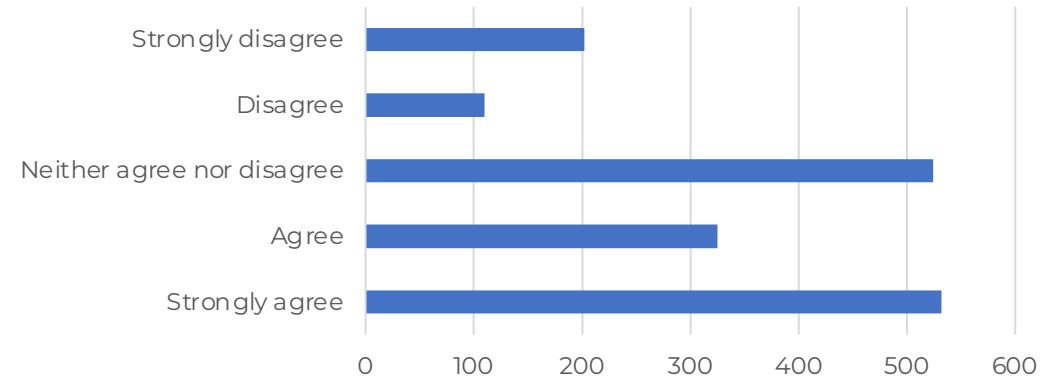
	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Series1	536	284	445	112	309

Q56 - I have voted for the 7 non-officer directors on a regular basis (every Neither agree nor disagree years):



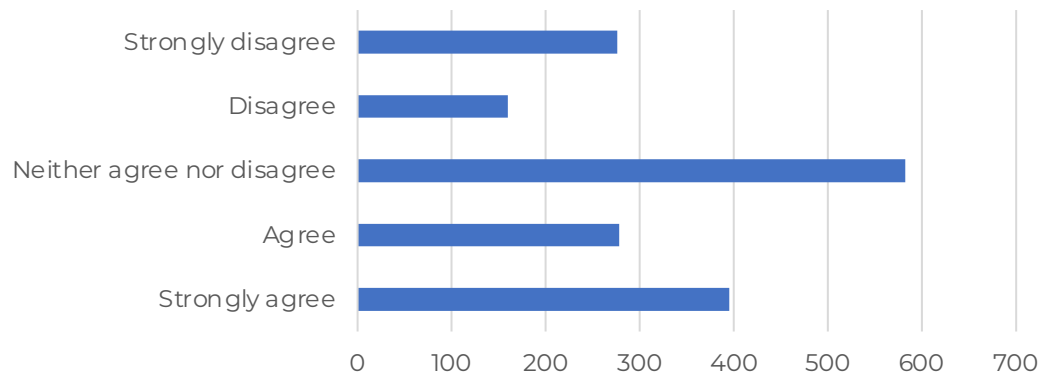
	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Series1	392	232	512	117	430

Q57 - I understand the election and ballot process well:



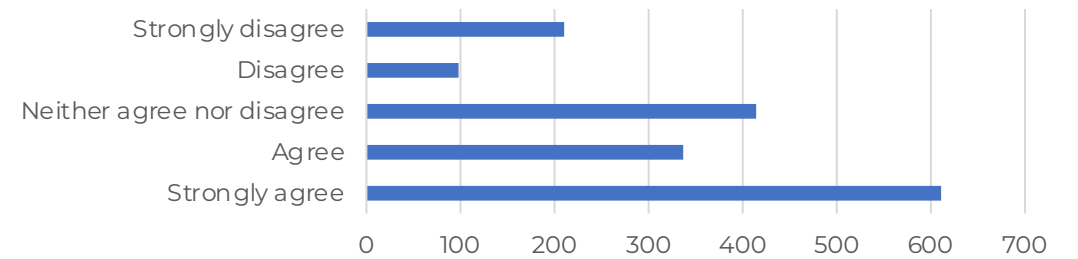
	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Series1	532	325	524	110	202

Q58 - I understand the nomination process for directors:



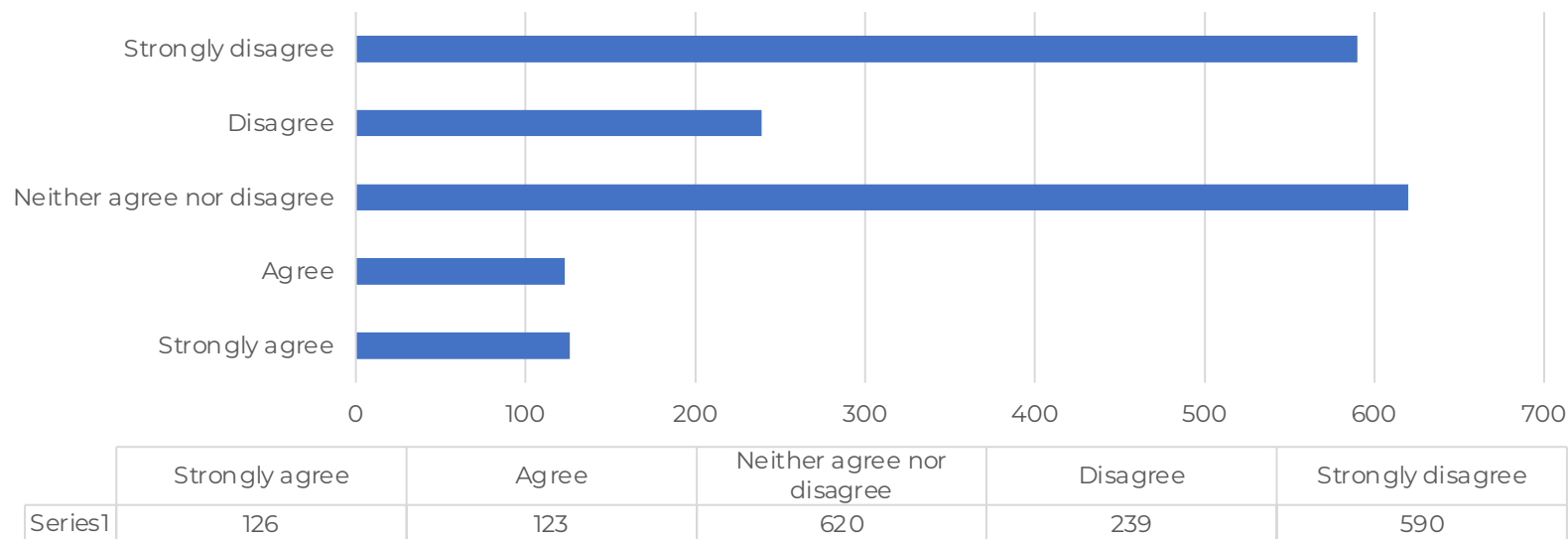
	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Series1	395	278	582	160	276

Q59 - I read the candidates statements against the eligibility criteria in Schedule 4 carefully before voting



	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Series1	611	337	414	98	210

Q60 - I only vote for the people I know:



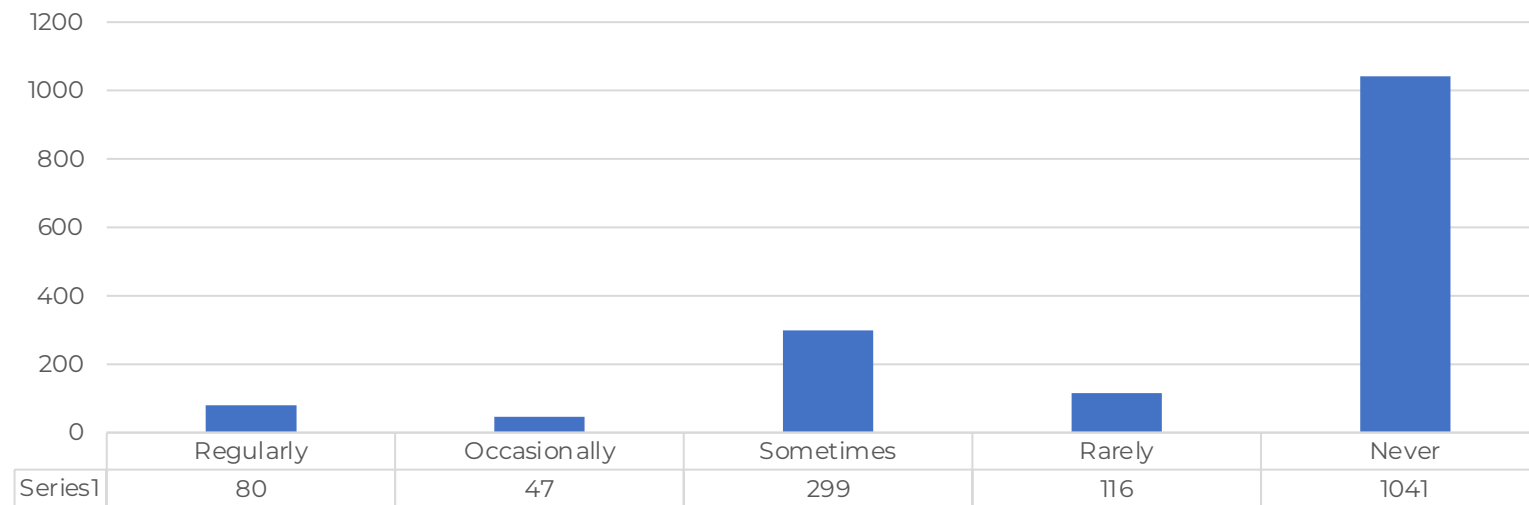
Q61 - Please indicate if you think the criteria for Board of Directors set out in Schedule 4 should be amended in any way, and if so, how:



Q62 - If I could propose one process involving the Board that would benefit me as a member, that process would be:



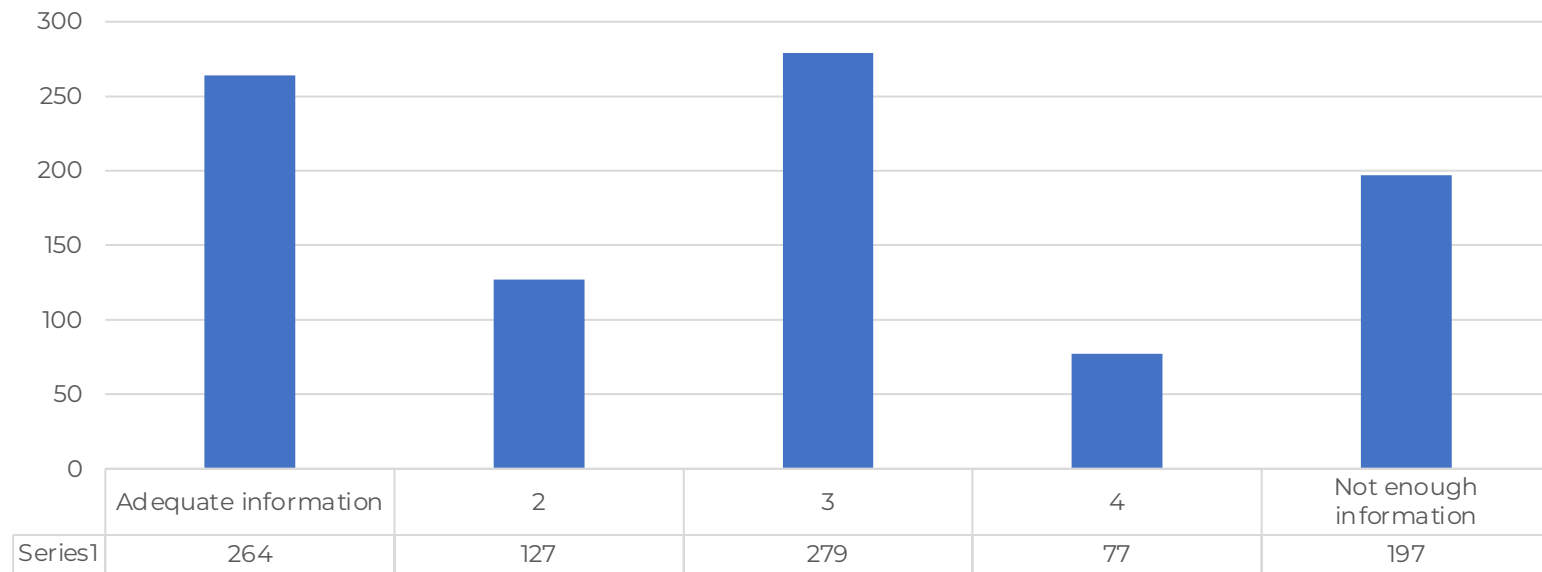
Q63 - I have been involved in a Constitutional remit process:



Q64 - What would improve your experience?



Q65 - When I voted in a remit I received:



Q66 - What would assist you in voting?



Q67 - Is there anything that is voted on by one member one vote method that you think should not be?



Q68 - Is there anything that is not voted as one member one vote that you think should be voted on in this way?



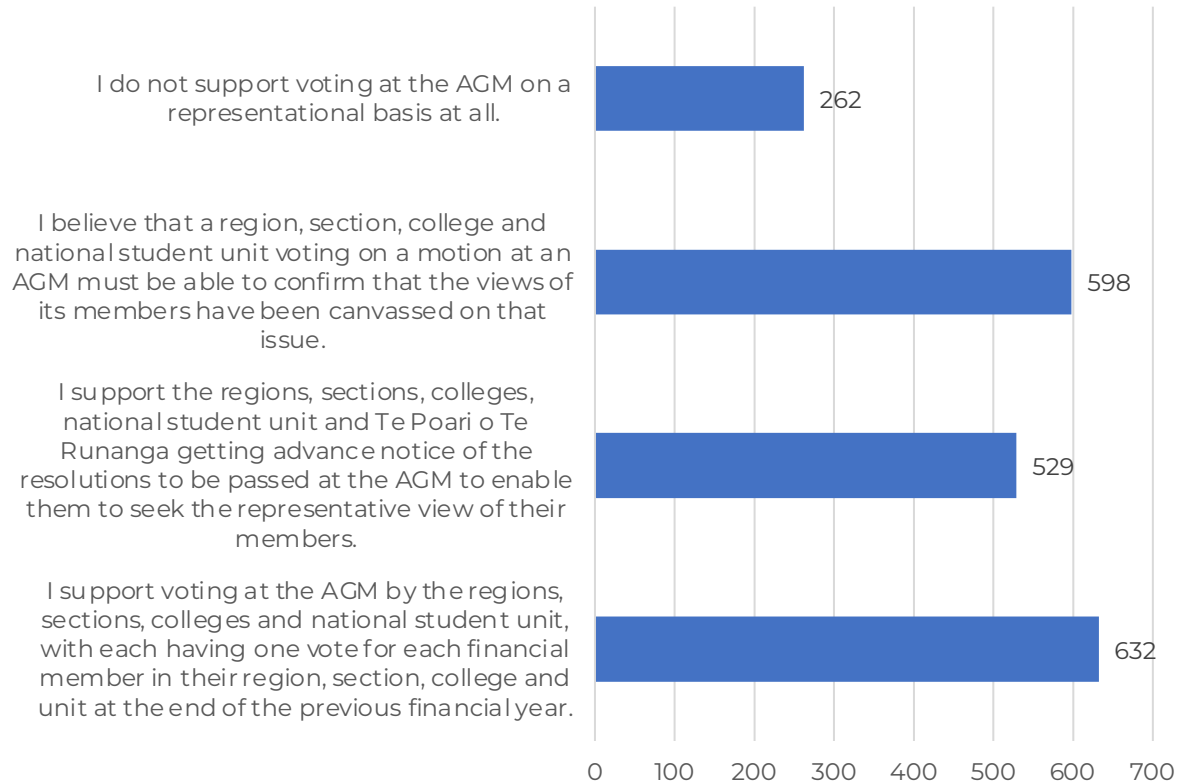
Q69 - Please explain your reasons for these answers



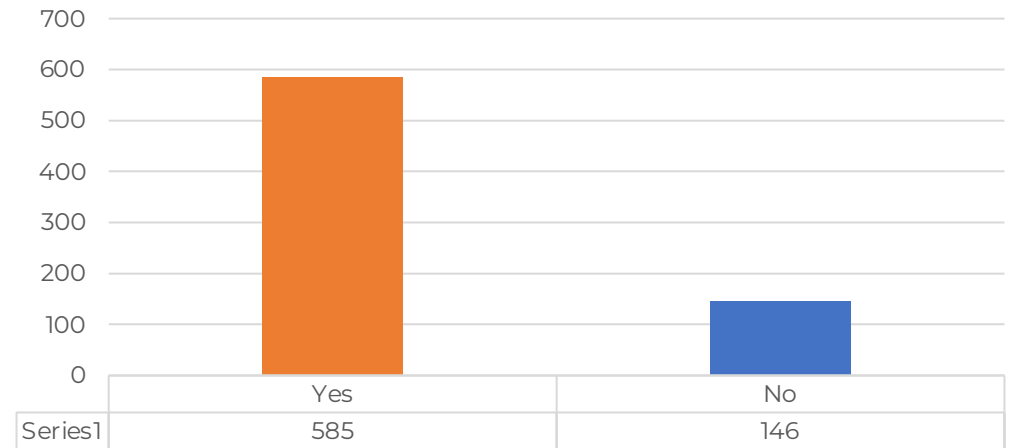
Q70 - I participate in the AGM as follows:



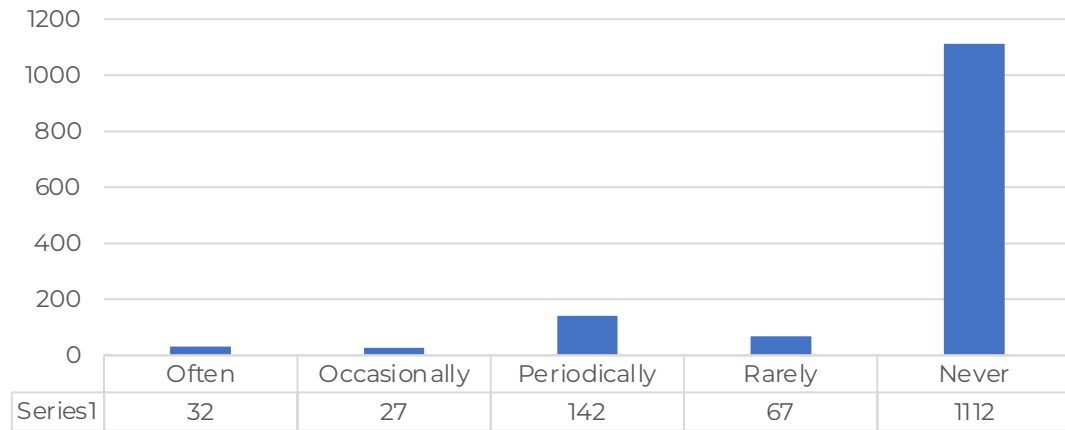
Q71 - Please tick all that apply:



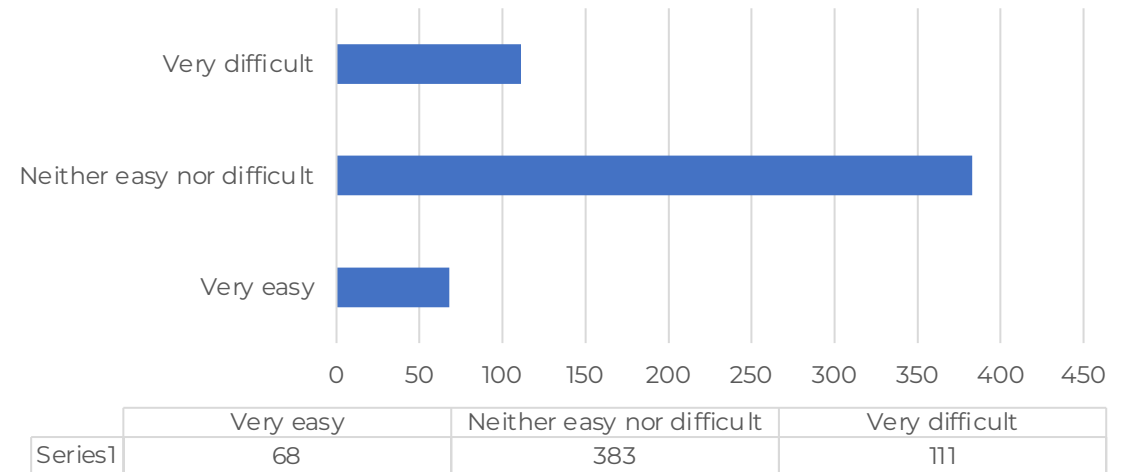
Q72 - If you do not support voting at the AGM on a representational basis at all, then please answer the following. Bearing in mind the business of the AGM, do you support one member one vote on AGM matters:



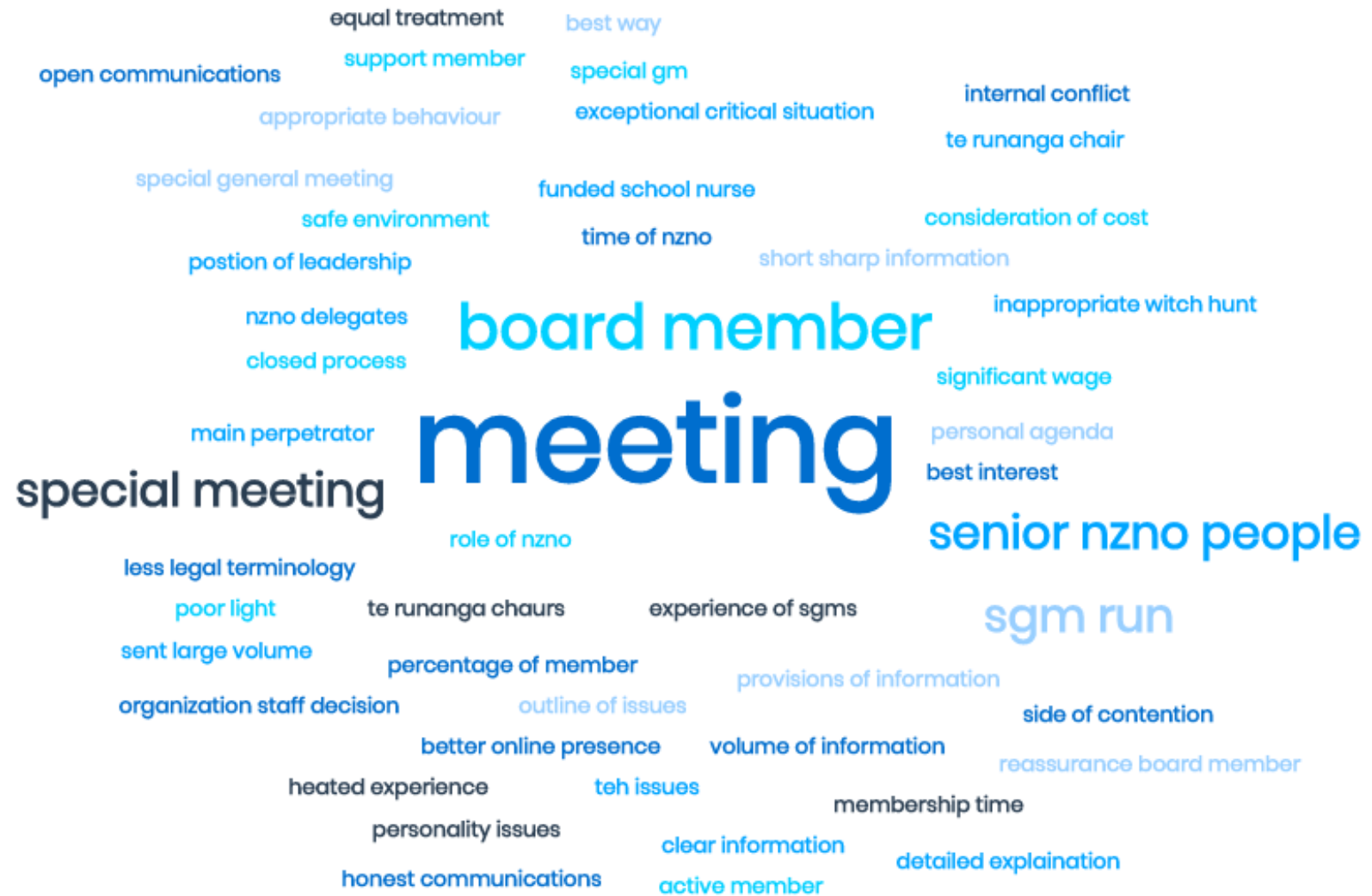
Q73 - I have participated in proposing a Special General Meeting:



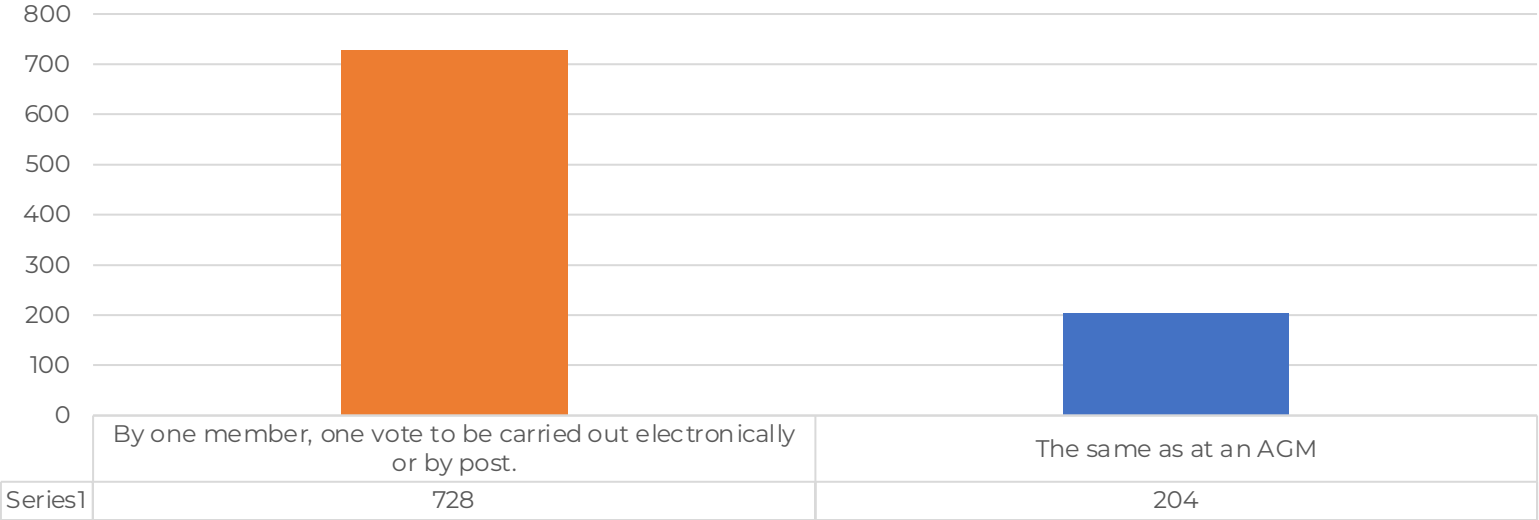
Q74 - I found the experience:



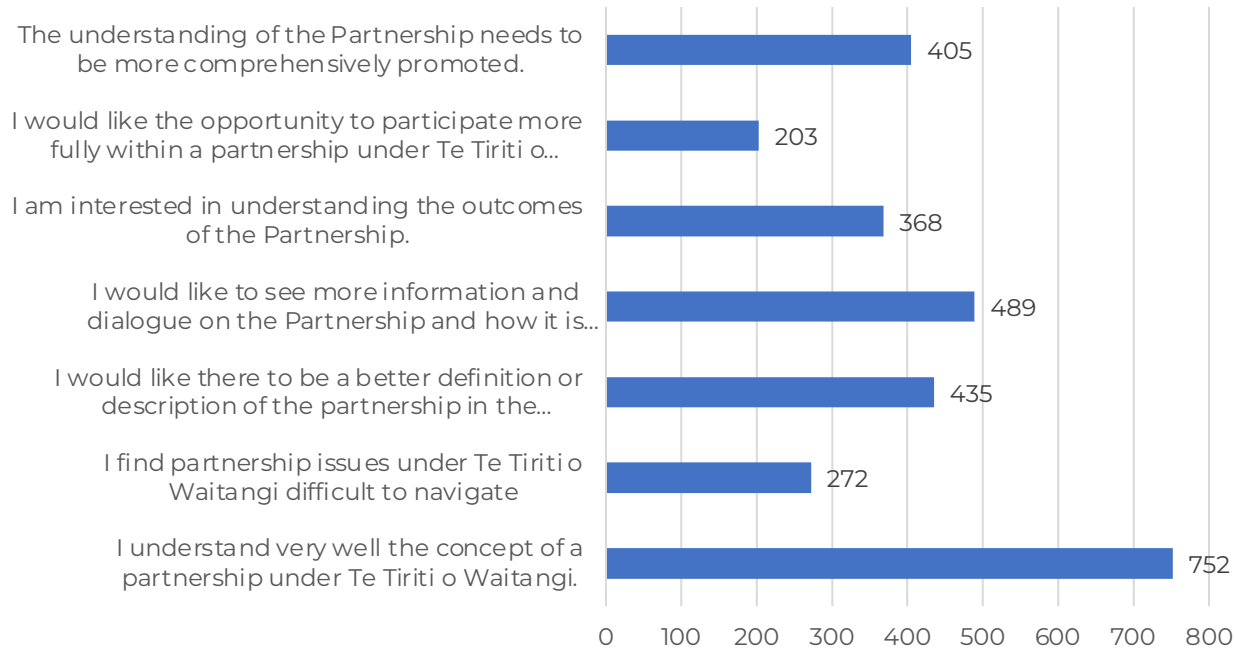
Q75 - What would improve your experience?



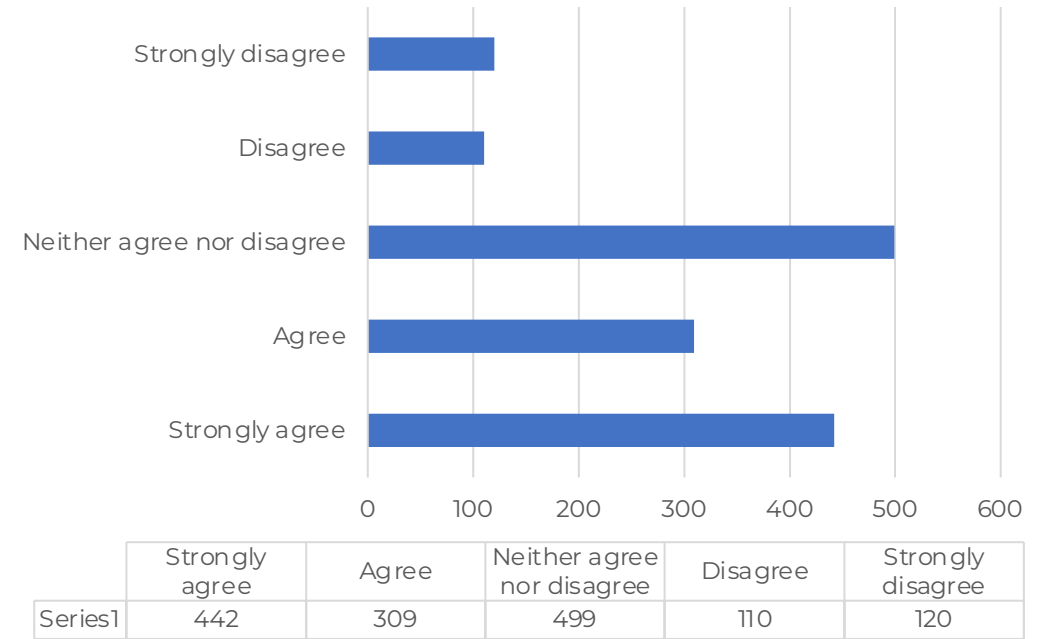
Q76 - Voting at a special general meeting should be:



Q77 - The Constitution provides that it cannot be altered in a way that alters the Partnership under Te Tiriti o Waitangi. As a member, the following statements apply to me:



Q78 - I am aware of my rights and responsibilities of membership and the services for which I am eligible under Schedule 1 of the Constitution:



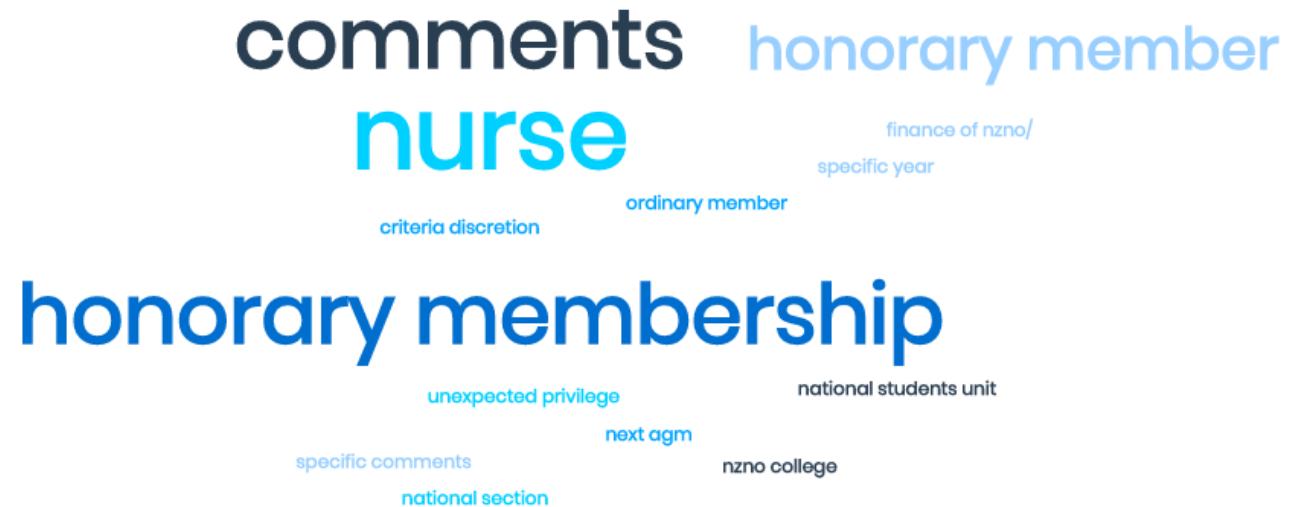
Q79 - 1 – Membership of NZNO

Indicate below if you have a specific comment with respect to any of the following in Schedule 1:



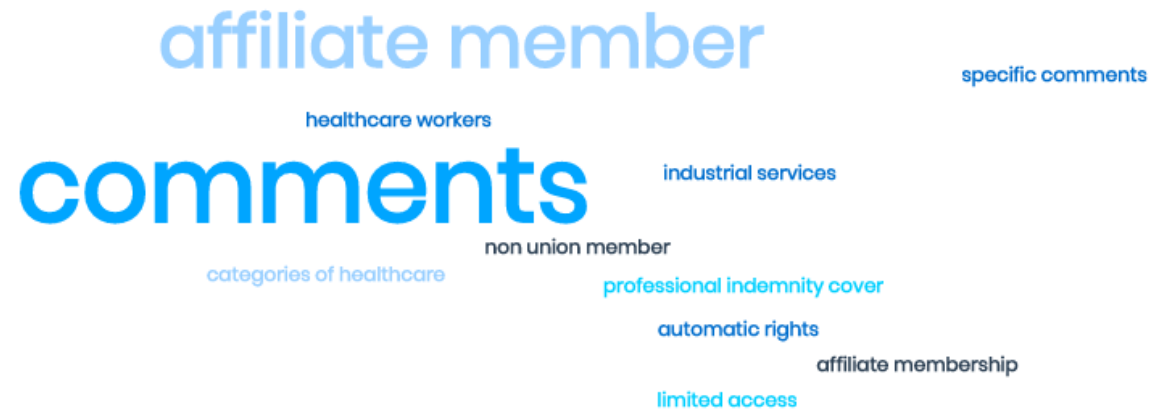
Q79 – 2 – Honorary Membership

Indicate below if you have a specific comment with respect to any of the following in Schedule 1:



Q79 – 3 – Affiliate Membership

Indicate below if you have a specific comment with respect to any of the following in Schedule 1:



Q79 – 4 – Eligibility to Industrial Services

Indicate below if you have a specific comment with respect to any of the following in Schedule 1:



Q79 – 5 – Admission to Membership

Indicate below if you have a specific comment with respect to any of the following in Schedule 1:



Q79 – 6 – Rights and Responsibilities of Membership

Indicate below if you have a specific comment with respect to any of the following in Schedule 1:



Q79 – 7 – Termination of Membership

Indicate below if you have a specific comment with respect to any of the following in Schedule 1:

Q79 – 8 – Disciplinary Matters

Indicate below if you have specific comment with respect to any of the following in Schedule 1:



Q79 – 9 – Representation

Indicate below if you have a specific comment with respect to any of the following in Schedule 1:

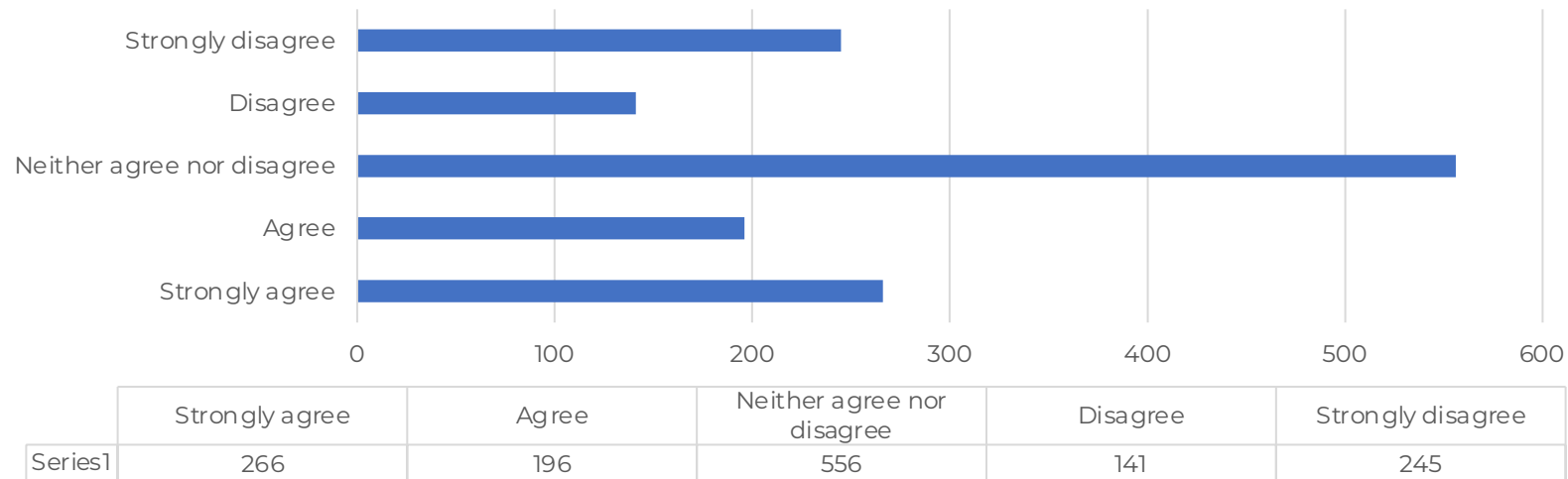


Q79 – 10 – Negotiation and Ratification

Indicate below if you have a specific comment with respect to any of the following in Schedule 1:



Q80 - I understand the process for approving levies and subscriptions:



Q81 - Indicate below if you have a specific comment in respect of Schedule 2 relating to subscriptions and levies:



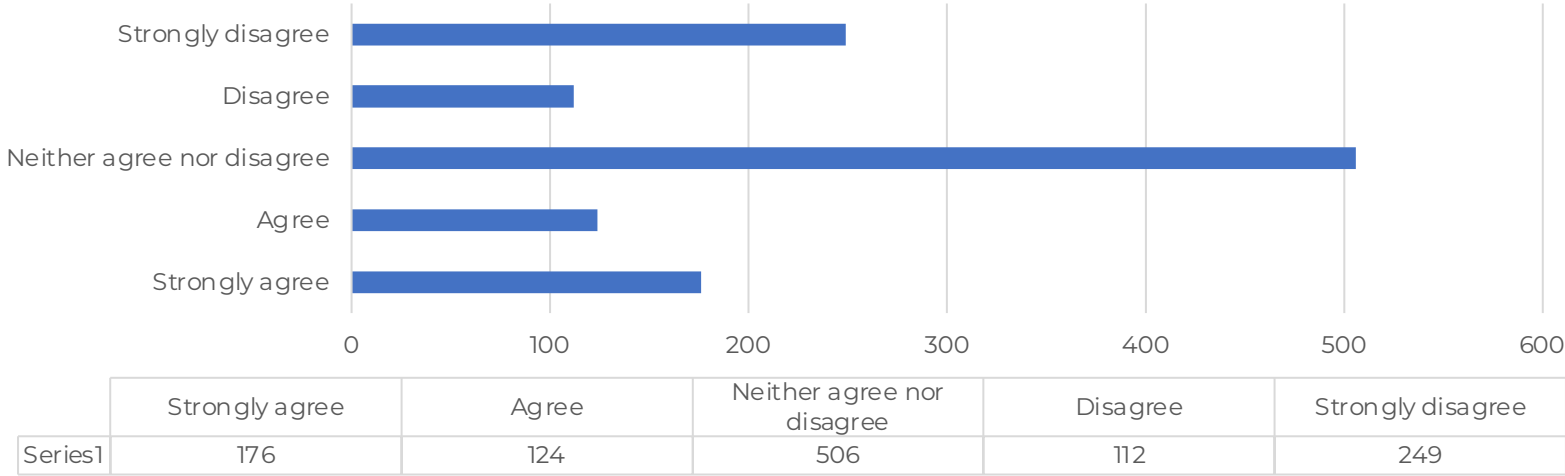
Q82 - Indicate below if you have a specific comment in respect of Schedule 2 relating to subscriptions and levies:



Q83 - Indicate below if you have a specific comment in respect of Schedule 4 relating to the criteria for the board of directors:



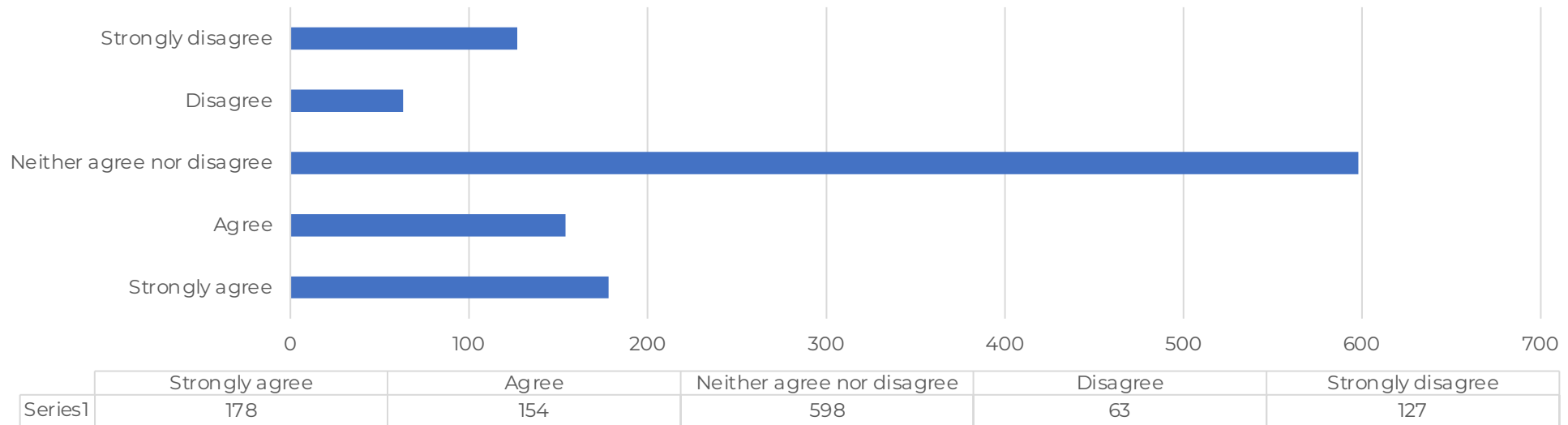
Q84 - I understand the processes for non-election ballots:



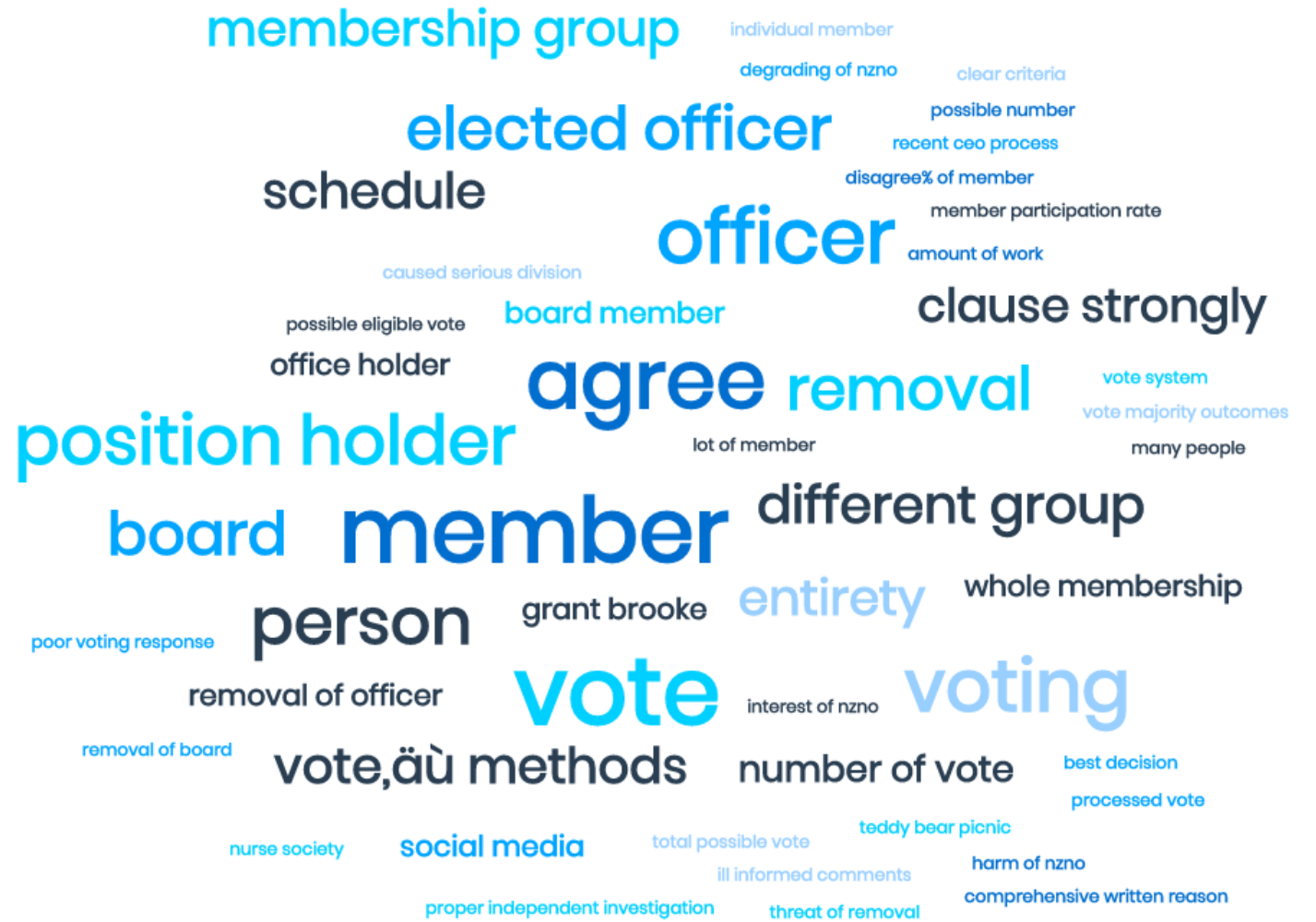
Q85 - Indicate below if you have a specific comment in respect of Schedule 4 relating to the criteria for the board of directors:



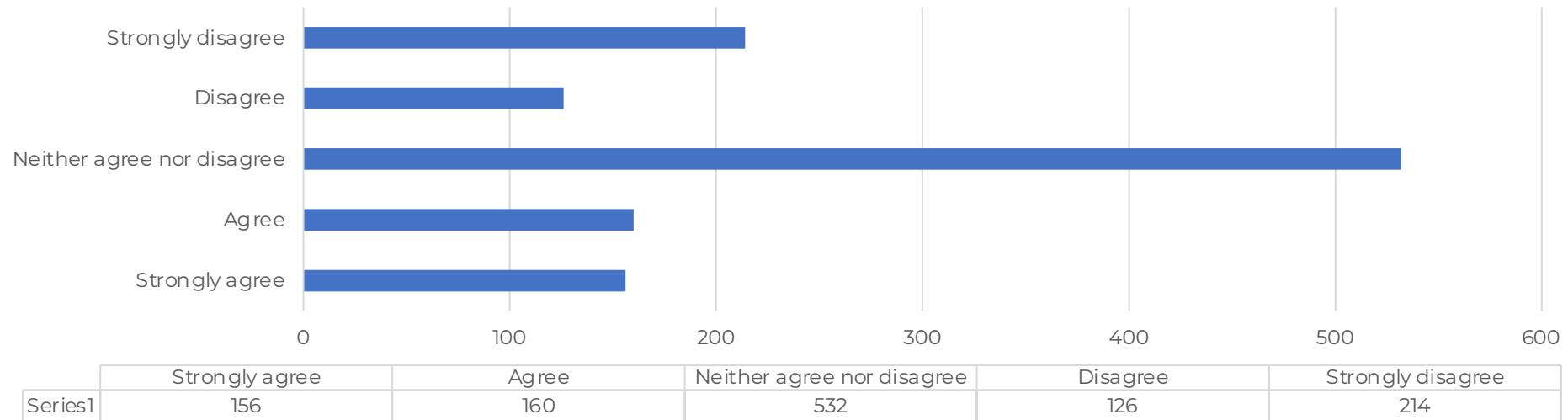
Q86 - If a ballot is called for the removal of an officer/position holder (rather than holding an SGM) each voting group has the number of votes they had at the previous AGM, and a two-thirds majority of eligible votes is required for removal. Is the majo



Q87 - Indicate below if you have a specific comment in respect of Schedule 6 relating to the removal of officers and other held positions:



Q88 - I understand the roles of each of the NZNO structures as provided in Schedule 7:



Q89 – 1 – Regional Councils

Indicate below if you have any comment in respect of a specific structure:



Q89 – 2 – Workplaces and Delegates

Indicate below if you have any comment in respect of a specific structure:



Q89 – 3 – NZNO Sections

Indicate below if you have any comment in respect of a specific structure:

democrative decision
constitutional change national section
professional side nzno college defined area
amount of vounteer part of nzno nursing practice
limited understanding new zealand nurse union pay
structural review committee area of practice support section
sure college board of director special place
nurse organisation college side of nzno
zealand nurse organisation vounteer commitment
clinical practice shall standard of practice nzno structure
amazing amount separate entity
nzno section women health
amalgamate section

Q89 – 4 – NZNO Colleges

Indicate below if you have any comment in respect of a specific structure:



Q89 – 5 – National Student Unit

Indicate below if you have any comment in respect of a specific structure:



Q89 – 6 – Health Professionals New Zealand

Indicate below if you have any comment in respect of a specific structure:



Q89 – 7 – Membership Committee

Indicate below if you have any comment in respect of a specific structure:



Q89 – 8 – Te Poari o Te Rūnanga

Indicate below if you have any comment in respect of a specific structure:



Q89 – 9 – Audit and Risk Committee

Indicate below if you have any comment in respect of a specific structure:



Q90 - Are there any other comments you would like to make in respect of the Constitution of the Organisation:



ACKNOWLEDGEMENTS

Those responsible for the work:

Helen Nathan | Partner

Matthew Whimp | Partner

Curtis Bidois | Partner

Darcy Pinder | Solicitor

Sarah Dysart | Solicitor

MorrisonKent | Lawyers

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