

Consultation Response Document

Overview of key outcomes and next steps

The consultation process for the proposed changes to the NZAF trust deed went live on 21 September 2020 and closed on 12 October 2020. As part of this process:

- 8 members completed responses to the online questionnaire;
- 1 person attended the virtual consultation meetings held on 8 and 10 October 2020;
- 1 person specifically requested and attended a face-to-face consultation meeting with Board members;
- 2 people submitted written feedback directly to Board members and/or the Chief Executive.

No current Board member participated in the consultation process themselves.

It is possible that some of the people who completed the online questionnaire also attended the virtual consultation meetings or submitted written feedback (this cannot be confirmed as questionnaire responses were anonymous). Total member participation was therefore between 8-14 members out of a total of 391 members who had kept email addresses up to date and were therefore able to receive the survey (a response rate of 2% - 3.5%).

All Board members have had access to all feedback that has been received:

- Responses to the questionnaire were compiled in an Excel spreadsheet and circulated (anonymously) to all Board members.
- The two virtual consultation meetings were recorded with the consent of all attendees.
- The direct written feedback that was received was also circulated to all Board members.

After consultation closed on 12 October 2020, the Board met virtually on 17 October 2020 to consider the results and to decide how to proceed in the light of the feedback received.

At that meeting the Board:

- noted the low response rate;
- agreed that the results of the online questionnaire should be treated with some caution as a result of this low response rate;
- agreed that, despite the low participation rate, the consultation process as a whole had been immensely valuable, with all members who participated submitting in good faith and many providing useful constructive feedback which the Board has taken into consideration;
- acknowledged the particularly helpful contributions of the two members who attended the virtual consultation meetings;
- agreed that the draft new purpose clause **should be retained**, but **subject to an amendment** making clear that the NZAF's core communities are people living with or affected by HIV;
- agreed that the draft new principles clause **should be retained**, but **additional clauses should be introduced** in the preamble to the deed to clarify the NZAF's commitment to the GIPA principle, the Ottawa Charter and the importance of equity; and have agreed to **amend the criteria for trustee appointment** to make consideration of the importance of diversity around the Board table and equity in the HIV response a mandatory consideration;
- agreed that the changes to the trustee appointment and deed amendment clauses **should be retained**, while committing to prepare and implement a Member and Key Stakeholder Engagement Policy with a view to increasing and optimising opportunities for members and all NZAF stakeholders to contribute meaningfully to the work of the NZAF in future;
- agreed that the changes to the winding up clause and other miscellaneous clauses in the deed **should be retained**.

The Board is currently preparing a final draft new deed which will incorporate the changes signalled above. The final draft will be circulated to members on **28 October 2020**, one month in advance of this year's AGM. Members will then have the opportunity to vote on whether they approve or disapprove of the final draft at the AGM. No decisions will be taken until the Board has had the further opportunity to reflect on member feedback on the final draft deed and the outcome of the AGM.

Detailed results of the consultation exercise, including member voting statistics and a summary of key points raised during the consultation process and the Board's responses to them, are set out in more detail below.

Online questionnaire responses *

* Note that the following should be seen in context of the total number of contactable members of the NZAF (391). A total of 6 responses is therefore 1.5% of all members, a total of 5 is 1.3%, and so on.

Q 1. Where in Aotearoa New Zealand do you call home?

	Responses
Northland	0
Auckland	6
Waikato & BOP	1
Central North Island	0
Wellington	1
West Coast, Tasman & Nelson	0
Canterbury	0
Otago & Southland	0

Q 2. How old are you?

	Responses
<18	0
18-24	0
24-35	0
35-50	2
50-65	6
65+	0

Q 3. How long have you been a member of the NZAF?

	Responses
Less than 1 year	0
1-2 years	1
2-5 years	0
5-10 years	4
10-20 years	2
20+ years	1

Q. 4 *Why did you decide to become a member of the NZAF?*

Submitters' responses included:

- a commitment to the mission of ending HIV
- being a PLHIV and seeing the NZAF as a source of potential support;
- believing in HIV as a social justice issue as much as a public health issue; and
- wanting to be "at the table" and offer constructive input to decision-making.

Q.5. *What does being a member of the NZAF mean to you?*

Submitters' responses included:

- keeping on top of the latest developments in HIV prevention and science;
- less and less, due to a perception that the organisation has been dominated by white gay men;
- a personal connection but also a belief in its importance from a public health perspective;
- a perception that NZAF was more about public health issues, and was less suited to providing support directly to PLHIV with the exception of counselling;
- a way of facilitating self-determination.

Q.6. *Please provide any feedback about how NZAF engages with members. What are we doing well? How could we improve? What would you want to see in future?*

[Addressed in detailed feedback/response section below]

Q.7. *Do you support the proposed changes to the purpose clause (cl 5.2) of the NZAF trust deed?*

	Responses
Yes	2
No	4
Other	2

Q.8. *Do you support the proposed changes to the principles clause (cl 6) of the NZAF trust deed?*

	Responses
Yes	4
No	3
Other	1

Q.9. *Do you support the proposed changes to the way in which trustees are appointed (from a mixed elected/appointed model to an appointed model)?*

	Responses
Yes	3
No	2
Other	2

Q 10. Do you support the proposed changes to the way in which the NZAF trust deed may be amended (from a mandatory SGM/AGM and consultation on each change, to optional consultation)?

	Responses
Yes	2
No	5
Other	1

Q 11. Do you support the proposed change to the winding up clause (cl 21)?

	Responses
Yes	2
No	5
Other	1

Q 12. Please provide any additional feedback on the draft new deed, including on other changes not addressed in the questions above.

[Addressed in detailed feedback/response section below]

Key points raised and Board responses

Purposes

Key points	Board response
<p>Several responses raised concerns that the draft new purpose clause suggested that the Board had decided to move the NZAF away from an HIV-focused organisation with HIV as its central function, toward being a gay male or Rainbow sexual health organisation.</p> <p>One member asked about the inclusion of non-MSM, non-takataapui, non-trans women queer communities in the definition of “core communities” in particular, pointing out that many of these communities are not directly affected by HIV.</p> <p>Some members indicated they opposed any shift to a gay male or Rainbow health organisation outright.</p> <p>Others said that, if this was the Board’s intention, this should be made clear, and members should be asked to have a debate about that, rather than changes being made “by stealth”.</p>	<p>The proposed changes were not intended to signal a shift from the Board’s current strategic direction toward becoming an MSM or Rainbow-focused health organisation. Rather, they were intended to ensure the NZAF has the necessary legal authority to do what it is currently doing and can continue to innovate in future in support of its existing strategic goals. Whether and how that direction should change in future will be a matter for future Boards.</p> <p>The key issue driving the changes to the purpose clause is that the NZAF’s work in service of people living with or affected by HIV has expanded in recent years. It now includes a focus on preventing STI transmissions and addressing wider health issues affecting members of these communities as well as more foundational work. These issues are important if the NZAF is to achieve its mission of eliminating the transmission of HIV and making New Zealand a place where all people living with or affected by HIV flourish, stigma is absent and the wellbeing of those most affected by HIV is maximised. The current trust deed provides some foundation for the NZAF to address these issues but it is not as clear as it could be.</p>

	<p>The draft deed included specific reference to other queer communities among the definition of “core communities” for the avoidance of doubt. Some of the NZAF’s more prolific community engagement and fundraising activities of late (for example, the Big Gay Out and Sweat With Pride) have involved increased engagement and partnership with organisations which serve these communities more directly (for example, the NZAF’s partnership with Rainbow Youth on the Sweat With Pride campaign). Through the consultation process it has become clear that including reference to these groups has been interpreted by members as a decision to expand the work of the organisation to focus on those groups specifically. That was not intended.</p> <p>For these reasons, the Board has decided to retain the new purpose clause in cl 5.2, but amend the definition of “core communities” in cl 1.1 to refer only to “people living with or affected by HIV”.</p>
<p>Some members raised concerns that the new purposes meant that the NZAF’s resources would be diverted away from core HIV prevention work and work supporting PLHIV, to work addressing STIs and other health issues. One submitter pointed out they did not disagree this other work was important, but felt it was not “core” and there is always more “core” work to do than can be done with resourcing available.</p> <p>Submitters raised particular concern about the need to ensure equity in HIV interventions, to move beyond traditionally targeted groups to identifying “pockets of risk” in more marginalised communities, and to ensure that the voices and needs of African and Asian communities in particular were heard and uplifted.</p>	<p>The Board sees addressing the rise of STIs and wider health issues such as addiction and poor mental health among all people living with or affected by HIV as a necessary and important part of our work.</p> <p>The Board is confident that the organisation has the capability to do this work as well as more foundational work, including testing and providing support to people living with or affected by HIV. While there will always be questions about how best to allocate scarce resources across both areas, the Board does not agree the solution is to abandon STI and wider health issue work entirely.</p> <p>The Board sees equity and equality of outcomes as guiding all of its work. The NZAF has long had programmes targeted at non-Pākehā MSM communities, in particular African communities. The Board is confident this work will continue in future. To reinforce this commitment, the Board has decided to amend the preamble to the deed to reaffirm the importance of equity in programme and service delivery, and to amend cl 10.7 of the deed prescribing the criteria to be considered when appointing new Board members, to make diversity and the ability to ensure equity in programme and service delivery mandatory considerations.</p>
<p>Several submitters said that the proposed changes in the new deed indicated that it was time for the NZAF to adopt a new name. The submissions received were generally in favour of a name change, but were concerned/questioning about why this was not being proposed as part of the new deed and subject to full consultation.</p>	<p>The Board sees the proposed changes to the trust deed as separate from the issue of name/branding. The proposed changes are about ensuring the NZAF has the lawful authority to achieve its current strategic goals and to operate efficiently and effectively as a Board, not to change the current strategic direction of the organisation.</p> <p>That said, the Board agrees that after more than 30 years, it is in the interests of the organisation as a whole to take stock and evaluate the effectiveness</p>

	<p>of the NZAF name and brand. It notes the issue of a name/branding change has been floated by several successive Boards over the past decade without any action being taken. It also notes the current Strategic Plan includes reviewing the branding of the organisation as an action item.</p> <p>For these reasons, the Board has recently begun the process of reviewing the NZAF name and branding, with a view to potentially changing that name and branding if this is determined to be in the best interests of the organisation in the short to medium term. This work is in very early stages. The Board has agreed to engage an independent expert to assist with preparing a proposal that can be put to agencies interested in tendering for this work. After this has been done and an agency engaged, the Board will outline in more detail the member and stakeholder consultation process that will be followed. Further updates will be provided to members and stakeholders via email and over the NZAF website.</p>
<p>One submitter suggested that the proposed new purposes might be under-inclusive, because they do not properly capture activities such as advocating for PLHIV in areas such as travel, healthcare and reform of the criminal law and other laws; and addressing stigma and discrimination.</p>	<p>The Board does not agree the draft new purposes are under-inclusive or omit reference to these important objectives. Indeed, these objectives are not clearly provided for in the current deed, and were deliberately included in clauses 5.2(c)(iv) and (v) of the draft new deed because of their centrality to our mission.</p>

Principles

Key points	Board response
<p>Very few submitters commented on the changes to the principles clause in the deed.</p> <p>Two submitters noted that with the removal of the principles clause, there was no longer any reference to GIPA in the trust deed. They said this indicated to them that the voices of PLHIV were no longer being valued.</p>	<p>The Board remains fully committed to the GIPA principle. To the extent the streamlining of the principles clause had the effect of focusing the Board on the NZAF’s mission, vision and values, this was not intended to be at the expense of any commitment to GIPA.</p> <p>The Board has decided to amend the preamble to the deed to expressly recognise its commitment to the principle, as well as its commitment to the Ottawa Charter for Health Promotion.</p>

Member involvement in governance

Key points	Board response
<p>Several members raised concerns about the Board not being accountable under the proposed new appointed trustee model. They said that something of real value would be lost if members could not provide a “check” on the decision-making of the Board.</p>	<p>The Board makes three general points by way of response.</p> <p>First, the Board agrees with submitters that having elected Board members and giving members the right to attend AGMs and submit remits provides an ability to check or directly influence the decision-</p>

One submitter helpfully distinguished between two hypothetical situations where member elections could provide a useful “check”:

1. where an elected Board acts improperly or unlawfully; in contrast with
2. where the Board decides to take the organisation in a strategic direction that members disagree with.

The member asked: what would the accountability mechanisms be in these scenarios?

making of the Board, in principle. The problem is that for this to operate effectively, two things need to be in place: the member base needs to be sufficiently diverse and representative of all the communities we serve and key stakeholders; and it needs to be sufficiently engaged and willing to participate on a regular basis. Perfection is not required, but a minimum level of engagement is. The data we have, set out in the “explainer” document, suggests that these things are not in place currently and most members have not been exercising their rights under the trust deed for many years.

Second, if the proposals in the draft deed were implemented, the Board would still be subject to several overlapping accountability mechanisms. These would include:

- **Regulation by DIA Charities Services.** As a registered charity the NZAF is subject to regulation under the Charities Act 2005. Board members are fiduciaries and owe strict duties of loyalty to the NZAF. Charities Services has strong powers to investigate and reprimand the organisation and Board members if there is any suggestion of wrongdoing, or the misapplication of funds. Members and community members have the right to complain to Charities Services if they are concerned there has been any wrongdoing or breach of the rules governing charities by the Board.
- **Oversight by Ministry of Health.** NZAF has deliverables it must meet under its contract with the Ministry of Health. These are tied to the NZAF’s HIV-related strategic objectives.
- **Internal governance systems.** The NZAF already has a robust system of internal governance. This includes the procedures set out in the current and proposed trust deeds, the Board Code of Conduct and the Governance Manual. Responding to the submitter’s second hypothetical situation of how a community member might voice disapproval of the Board’s strategic direction in the future, we are mindful of the need to provide clear channels to receive this feedback. The Board has therefore committed to **drawing up and making public a Member and Key Stakeholder Engagement Policy** to provide a transparent framework for engaging with members and other key stakeholders on important issues in the future. This policy

	<p>will cover matters such as consultation on strategic decision-making.</p> <ul style="list-style-type: none"> • Membership of professional organisations. Some Board members have memberships with director institutions which have Codes of Practice and other accountability standards members must adhere to. • Social and moral obligations. <p>Third, while moving to an appointed-only model has trade-offs, it is also important to recognise it brings with it clear benefits. As mentioned in the “explainer” document, it gives the Board the flexibility to appoint new Board members who bring the relevant skills that are needed on the Board at the particular point in time. It can also be used to ensure a more diverse range of voices around the Board table. The Board can reassure members that engagement will remain a key priority for the work of the NZAF.</p>
<p>One response signalled concern that members would no longer have a right to be consulted on every proposed change to the trust deed. This proposed change also received a majority vote of disapproval on the online questionnaire.</p>	<p>The same three points made above in relation to member engagement in trustee elections apply with even greater force to the redrafted amendment clause.</p> <p>It is also important to note one additional control that applies to future amendments to the trust deed. As a matter of law, the NZAF cannot change its deed and purposes in such a way that it prevents the organisation from achieving the general scope of the organisation as it was established under its initial deed. That is to say, it can <i>expand</i> its purposes provided the expansion is consistent with the general scope of the founding purposes, but it cannot <i>contract</i> them to exclude the achievement of those purposes. In practical terms, this means that future Boards will not be able to amend the deed to prevent the NZAF from achieving its founding objects of serving all communities living with or most affected by HIV/AIDS (limiting the ability of the organisation to focus on MSM only, for instance). However, future Boards could expand the organisation provided it continued to serve these communities.</p> <p>The Board has made sure to write this requirement in to the current draft cl 23.2.</p>

Other provisions

Key points	Board response
<p>One submitter raised concern about cl 10.5 of the new deed, which provides that a trustee could be removed after receiving written notice, without any</p>	<p>This was not a new change introduced in the draft new deed – the clause is already in the current deed. It stems from general principles of trust law</p>

entitlement to any reasons for the decision. The submitter suggested that was contrary to natural justice and should be changed.	that trustees are not required to give reasons for their decisions. To the Board’s knowledge it has never been relied upon. The Board has agreed it should be removed , as well as a similar provision in the clause governing the removal of Patrons and Vice Patrons in cl 14.2.
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Feedback on membership

The online questionnaire included several questions aimed at finding out more about why members had decided to join the NZAF, what membership means to them now, and what the Board has done well/less well/could be doing to better engage with members in future. Unfortunately, because the overall response rate to the questionnaire was very low, and even those who did respond did not always respond fulsomely to each question, the Board was not able to get even a general steer of the more common answers to these questions. The responses to these questions should therefore be taken with caution. Nonetheless, the feedback provided by members can be summarised as follows:

- Most members who explained why they joined NZAF mentioned their general interest in the *kaupapa* of ending HIV transmissions and supporting people living with or affected by HIV.
- Only one response mentioned wanting to contribute to the decision-making of the Board or the wider organisation – the importance of being “at the table”.
- No submitters mentioned that they joined the NZAF in order to vote for a candidate for election.
- In terms of what membership means to them now, several submitters indicated that they wanted to be kept up to date about what the organisation was doing.
- One submitter indicated that membership meant “increasingly less” to them, because they perceived the organisation as responding more to the needs of Pākehā gay men and less to other communities affected by HIV.
- No submitters mentioned that membership meant electing new Board members or being able to attend and participate at annual meetings.
- In terms of rating the NZAF’s engagement with members, there was positive and constructive feedback. Some submitters praised the regular newsletters and acknowledged it was increasingly difficult to get members’ attention, while others suggested this engagement was a bit “pro forma” and not frequent enough.
- One submitter recommended that the Board consider more “human” ways of building connections between the Board and members, such as “meet the Board” events.
- Two submitters mentioned they were concerned that with the proposed changes to the role of members in the organisation there would be a further loss of “community” and the Board should take steps to foster that community if the changes proceed.

The Board will continue to reflect on this feedback in the weeks ahead, while drafting the Member and Key Stakeholder Engagement Policy.

Next steps

As mentioned above, the Board will produce a final draft new trust deed which incorporates the amendments signalled in this consultation response document by 28 October 2020. Members will then have the opportunity to consider this final draft and share their views at the 2020 AGM.