

Explanatory Memorandum

Proposed Amendments to the SLSNSW Constitution

Background:

Several drafting anomalies have been identified in the current SLSNSW Constitution (adopted September 2020 and last updated November 2022). The anomalies relate to the tenure of Directors, whereby the Rules are either contradictory or ambiguous and require amendments which provide greater clarity in the event of particular scenarios should they arise.

1. Rule 32(g)(iii) A-C

The purpose of this Rule was to set out the timeline of the initial Directors being required to resign their position and their office being open for election (post the September 2020 adoption of the new Constitution). This timeline created a stagger such that there would be an orderly and on-going rotation of Directors who would be required to resign and re-stand for election (or who would reach their maximum tenure and be required to step off the Board). The Rule is very prescriptive and reads such that the timing of each Directorship MUST comply with the stated timings on-going and into the future.

The wording of this Rule contradicts the Casual Vacancy Rule 32(i) which states where a Casual Vacancy exists, the appointed individual may only remain in the role until the very next Election State Council Meeting. In the event the resigning Director who has created the Casual Vacancy has more than one (1) year to run on their term, the two clauses become contradictory.

To resolve this conflict the Board has proposed amending the Casual Vacancy Rule 32(j) to state the individual appointed to the Casual Vacancy will remain in the role as per the term of the departing Director who created the Casual Vacancy.

The following re-worded Rule 32(g)(i) addresses this issue. Further, as the transition period from the former Constitution to the new Constitution has now passed given all initial Directors have been through an election cycle, Rules 32(g)(iii) A-C can be removed as they are now redundant.

2. Effective Time

The Effective Time Rule and Definition is important with respect to the timing of maximum tenure of the initial Directors (post the adoption of the new Constitution in 2020). The original intent of the Effective Time Definition when read in conjunction with Rule 32g(iii) A-C, was to create a stagger of Director's reaching their maximum tenure and stepping off the Board. However, the wording of the Effective Time Definition reads such that all initial Directors's maximum six (6) year tenure would conclude concurrently at the Election meeting of 2017. As it stands this would mean five (5) of the seven (7) Directors would all have reached their maximum tenure in 2017 and be required to all step off the Board at the same time. This was not the intent of the Rule.

The revised wording of Rule 32(h)(ii) addresses this issue and ensures a stagger of Director's maximum tenure being reached, thus providing for a more orderly transition of Directors off the Board, where a maximum of two (2) would reach their maximum tenure in any one year.

3. Schedule One - Electoral Procedure

Schedule One, Electoral Procedure clause 7 (incorrectly identified as clause 6 due to a typographical error) allows an existing Director to stand for a Specified Director position. This clause needs to be read in conjunction with Rule 32(g)(i), which states a Director's term shall be until the third Election State Council Meeting after their election.

There is ambiguity as to if the currently standing Director (if successful in election as a Specified Director), should continue in the term they were initially elected to, or if they re-commence into a new three (3) year term.

This can best be explained by way of example:

If at the 2024 election one of the current Directors not up for election (who was last elected in 2023) wishes to stand for the Deputy President position and is successful, will they continue on their current term and be required to stand down in 2026 or will they re-set their term and continue in the role of Deputy President until the Election State Council Meeting of 2027 (subject to the maximum tenure provisions)?

The Board is of the view the original intent of the clause was for the latter, ie the Director would re-set their term for a new three year period and continue in that role until the next Election State Council Meeting of 2027, subject to the maximum tenure provisions

The following re-worded Schedule One (Clause 7) clarifies this intent.

Summary

The purpose of these amendments is not to materially change the intent and operation of the Constitution, but rather ensure there are no conflicting Rules nor Rules which are unclear or silent on scenarios which are probable to occur at some point in the future.



REVISED RULES

The Following Rules are proposed to be amended. The strikethroughs are the deleted wording and the underlined/highlighted are proposed additional/changed wording.

32(g) *The Directors of SLSNSW shall be elected in accordance with this Constitution, and subject to this Constitution, shall hold office:*

(i) ~~Subject to paragraph (iii),~~ *In the case of Elected Directors from the conclusion of the Election State Council Meeting at which they were elected until the conclusion of the third following Election State Council Meeting. Directors may be re-elected such that they may hold office for a period of six (6) continuous years.*

(ii) *In the case of Appointed Directors from the conclusion of the Board meeting at which they were appointed until the conclusion of the Board meeting first occurring after the third anniversary of their appointment (or such shorter term determined by the Board). Appointed Directors may be appointed for a second term not exceeding three (3) years, provided that they may not serve more than six (6) continuous years; and*

~~(iii) Commencing from the Effective Time, the terms for and election of Elected Directors will run on a three (3) year cycle as follows:~~

~~A. At the first Election State Council Meeting occurring after the Effective Time (and then every 3 years thereafter) the Deputy President and at least one Elected Director (who has either resigned or whose name is drawn from a hat by the CEO) will resign and their offices are open for election;~~

~~B. At the second Election State Council Meeting occurring after the Effective Time (and then every 3 years thereafter) the Director of Lifesaving and at least one Elected Director (who has either resigned or whose name is drawn from a hat by the CEO) will resign and their offices are open for election. For the purpose of this clause, the Elected Director required to resign will not include a person elected at the previous Election State Council Meeting; and~~

~~C. At the third Election State Council Meeting occurring after the Effective Time (and then every 3 years thereafter) the President and at least two Elected Directors (who are the two longest serving Elected Directors) will resign and their offices are open for election.~~

(h) *The calculation of service as a Director does not include:*

(i) *any service as a casual vacancy Director; and*

(ii) *any service by a person as a Director prior to the first Election State Council Meeting at which the Director was elected after the Effective Time.*



- (i) *In the event of a casual vacancy on the Board occurring from time to time, the Board may appoint (by simple majority vote and subject to first consulting with and considering any recommendations and reports from the Nominations Committee) any Individual Member, in the case of a vacant Elected Director position, to fill the casual vacancy for the duration of the term of the retiring Director whose position they are filling, until the next Election State Council Meeting at which time any Director appointed to fill a casual vacancy must retire and. The Director filling the casual vacancy may then nominate for any vacant Board position (as relevant) in accordance with this Constitution.*

Schedule One – Electoral Procedure

6-7. Determination of Specified Directors Positions

Following the announcement of the successful nominee(s) elected as Unspecified Director(s), the election scrutineer shall then confirm to the meeting which of the successful nominees had also nominated for a Specified Director position.

If there is only one (1) nominee for a Specified Director position, they shall be deemed elected to the Specified Director position.

If there is more than one (1) nominee for a Specified Director position (including a nominee who is successful in the Unspecified Director election or otherwise), the State Council shall conduct an election of the Specified Director position(s) by secret ballot with votes cast at the Election State Council Meeting, in which case the exhaustive system shall be used. For the avoidance of doubt, incumbent Elected Directors may nominate for a vacant Specified Director position and if successful:

- a) their existing office is vacated and becomes a casual vacancy*
- b) shall hold office in the Specified Director position for the term (and subject to the maximum tenure of six (6) continuous years) specified in Rule 32(g)(i)*

If those incumbent Elected Directors are unsuccessful, they continue in their existing office. State Councillors are not required to obtain direction in relation to their votes in an exhaustive run-off for the election of Specified Directors.

If there are no nominees for a Specified Director position who are successful in the Unspecified Directors election, the State Council will immediately call for nominations from the Board of Directors who will be in place as at the close of the Election State Council Meeting. For the avoidance of doubt, nominations may not be received from any otherwise departing Director whose appointment must cease at the close of the Election State Council Meeting (as per rule 32(g) of the Constitution). The Election State Council Meeting Chair may adjourn the meeting to allow Directors and State Councillors the requisite time to consider their position, but the Election State Council Meeting must be concluded by the end of that calendar day.

The State Council shall then determine the election of Specified Directors position/s by secret ballot, and the exhaustive system shall be used.

If there is only one (1) nominee for a Specified Director position from the Board, they shall be deemed elected to the Specified Director position.

If there are no nominations for the Specified Director position, it will be considered a casual vacancy which will be filled in accordance with the Constitution.