



Memo to Members: Changes to the NQLC Rulebook

The NQLC Board is proposing significant changes to the NQLC Rulebook. These changes will fundamentally change the way NQLC is managed, including the role of directors, the role of the CEO, ward representation and the makeup of the board. This document provides a brief summary of those changes.

Summary

1. The Proposed Rulebook published on the NQLC Website fundamentally changes NQLC's board and Executive Officer powers, the board's function, and the internal operations of NQLC. The Proposed Rulebook removes the Separation of Powers principle from the current rulebook and provides:
 - (a) the removal of responsibility from the CEO for managing the affairs of the Corporation; and
 - (b) the Board, Executive Committee and Chair control over all affairs of the Corporation; and
 - (c) the ability for the Board to direct senior employees and the CEO;none of which is permissible under the current rulebook.
2. This advice has been considered by Executive Management and does not consider how the Proposed Rulebook will impact:
 - (a) NQLC's Head Funding Agreement provides; *If the NQLC alters its constitution, structure, management or operations in a way that the Commonwealth considers will affect the NQLC's ability to comply with its agreement with NIAA, the Commonwealth may terminate the Head Agreement and/or any Project Agreement immediately.*
 - (b) The NQLC Enterprise Agreement (**EA**) between the Corporation and its employees. The Proposed Rulebook will significantly impact NQLC internal operations regarding approvals and management lines of authority. The Proposed Rulebook is a 'Major Change' under the EA and will require staff consultation regarding how the proposed rulebook will impact operations such as;
 - i. which decisions will be made by the board/executive committee;
 - ii. how will employees seek directors' approval if directors aren't employees;
 - iii. who will employees report to; and
 - iv. what will be the function of managers.

NQLC employees have not been consulted in relation to the Proposed Rulebook.

The Proposed Rulebook may create a legal liability for NQLC if it is found to adversely impact employee's employment rights under the EA. The CEO and board have not offered any advice

in this regard.

- (c) In relation to individual employment contracts the Proposed Rulebook may create employment law issues as the Proposed Rulebook makes significant changes to the operations of NQLC which may impact individual employee contracts, especially for professional service employees such as lawyers, anthropologists and accountants. For example, lawyers are not primarily responsible to the Board. Lawyers are primarily responsible to the Courts, then their clients, then the corporation.

The directors, as beneficiaries of NQLC, will need to establish robust policies to manage conflicts of interest and staff providing professional services. The Board issuing directions and making decisions about the delivery of professional services may make those professional service positions untenable which may constitute constructive dismissal.

The Proposed Rulebook may create a legal liability for NQLC if it is found to adversely impact employee's employment rights under their employment contracts. The CEO and board have not offered any advice in this regard.

- (d) The Proposed Rulebook contains no provisions for managing conflicts of interest. Removing the separation of powers from the rulebook removes the mechanism for managing conflicts of interest between the Board and NQLC operations.

Conflicts and perceived conflicts of Interest will not be managed under the Proposed Rulebook.

The board has not provided a process to managing conflicts or perceived conflicts of interest without the Separation of Powers.

- (e) All internal Operational Policies will need to be re-drafted detailing how and when the directors will make decisions about the *affairs of the Corporation*.

The CEO and Board have not provided any policy drafting for the members to consider. How decisions about the affairs of the Corporation will be made by directors who are not employees is yet to be considered. How the directors will be able make operational decisions as non-employees is yet to be considered.

Separation of Powers

3. Under the Current Rulebook there is a clearly defined Separation of Powers principle (Rule 15) between the Board, who is responsible for the strategic plan; and the CEO who is responsible for the operations and day-to-day management of the corporation.
4. Rule 15 of the Current Rulebook has been completely replaced in the Proposed Rulebook by Rule 12.1 which provides Directors with all powers of the Corporation, except those required to be made in a general meeting.
5. The Proposed Rulebook provides directors with the ability to make any decision of the Corporation and manage all affairs of the Corporation including operational decisions.
6. The Proposed Rulebook provides the Board and Executive Committee may delegate to directly to senior staff (Proposed Rule 12.13.4 (a) (iii)) without the need to go through the CEO as is required under the Current Rulebook.

The removal of the separation of powers is a significant change to the management and operations of NQLC that may impact NQLC's funding agreement(s) and individual employment contracts.

The CEO

7. The current rulebook Rule 15 (ii) provides:

The Executive Officer appointed by the Board to manage the affairs of the Corporation is responsible for implementing the policies and general planning set by the Board and in conducting the day-to-day business of the Corporation.
8. As noted above, Rule 15 has been replaced by Rule 12 in the Proposed Rulebook which provides:
 - 12.1 *The directors oversee the running of the Corporation on behalf of all members and make decisions about the affairs of the Corporation; and*
 - 12.13 *The operational business of the Corporation is to be managed by the Chief Executive Officer (CEO) at the **direction** of the Directors.*
9. The replacement of Current Rule 15 with Proposed Rule 12 has the effect of removing all discretion from the CEO at the direction of the Board. Decisions about “*affairs of the corporation*” would be for the directors under the Proposed Rulebook. Whereas, “*affairs of the corporation*” are for the CEO under the Current Rulebook. This is a significant change from the Current Rulebook that will fundamentally change how NQLC operates.

The Board

10. Under the Current Rulebook, Rule 15, the Board’s role is effectively limited to planning and policy. Under the Proposed Rulebook, the board is responsible for *all affairs of the corporation*.
11. Whilst the removal of the separation of powers is a significant change in itself; other changes to the makeup of the Board further magnify the removal of the separation of powers and create a concentration of power in the executive committee and chairperson as detailed below.

Board Quorum & Representation

12. The Current Rulebook (Rule 11.1) provides the board shall have 12 directors. The 12 directors are representatives of the NQLC’s 10 Wards per Schedule 1. Rule 11 effectively restricts the board from making a decision it is not lawfully required to make without 12 directors appointed to the board. A quorum (7/12 directors) provides directors representing the 10 wards, the opportunity to attend a board meeting, for a board decision to be validly made.
13. The Proposed Rulebook provides no such mandate or requirement to have 12 directors and/or representation from all 10 Wards on the board. This is a significant deviation from the current Rulebook and will fundamentally change how the NQLC board can make decisions and how the Members are represented.
14. The board may appoint RNTBC and independent Directors.
15. The chair will have a casting vote and the ability to appoint directors to the executive committee as detailed under the heading *Executive Committee and The Chair*.

Number of Directors

16. As noted above, the Current Rulebook provides the Board shall have 12 directors. The Proposed Rulebook provides for up to 15 directors. 12 Member Directors, 2 RNTBC Directors and 1 independent director.
17. The inclusion of Independent Directors and RNTBC Directors is new. Independent directors are appointed and removed at the discretion of the Board without a requirement to be affirmed by the members at an AGM.

18. The CATSI Act prohibits boards of more than 12 directors without an exemption from the Registrar (CATSI s243.5). The board has not sort advice from ORIC regarding whether NQLC can have 15 directors.

Delegation of Directors Powers

19. In the Current Rulebook the members have positively affirmed the separation of powers by:
- (a) boldened text the words “**Separation of Powers**” in the Current Rulebook. It is important to note, “Separation of Powers” is the only boldened text in the entire current rulebook;
*The principle of the **Separation of Powers** applies to the functioning of and the carrying out of the Corporations business.*
 - (b) preventing the Board from communicating with staff Rule 15(3);
The mode of communication between members of Staff of the Corporation and the Board shall at all times be through the Executive Officer; and
 - (c) providing for the appointment of the Executive Officer who is responsible for implementing the policies and general planning set by the Board and in conducting the day-to-day business of the Corporation.
20. The Proposed Rulebook Rule 12.13.4 (a) (iii) Delegation of Directors’ powers provides; *The board may delegate any of its power to any other person including employees and subcommittees established by the board.*
21. Rule 12.13.4 is a significant deviation from the Current Rulebook which prevents Directors from communicating with staff. The Proposed Rulebook is the opposite and allows the board to delegate work to staff without the knowledge of the CEO.
22. The impact of the Proposed Rulebook on staff employment contracts and NQLC operational policies requires further investigation.

Executive Committee and The Chair

23. As detailed above, the Current Rulebook provides for the Separation of Powers between the Board and the Executive Officer. Under the Proposed Rulebook, Rule 12 the Chair and Executive Committee have effective control over the management, delegations and operational decisions.
24. Under the Proposed Rulebook (Rule 12.20 (c)) the Chair has a casting vote which was prohibited under the current rulebook (Rule 20 (5)).
25. Proposed Rule 12.14 Executive Committee; provides for a notable concentration of power in the executive committee. The Executive Committee will be made up of up to 4 directors and will include:
- (i) Chairperson;
 - (ii) the Deputy Chairperson;
 - (iii) Secretary; and
 - (iv) Treasurer.
26. Proposed Rule 12.14 gives authority to the Chair to appoint other directors to form a quorum of the executive committee which has the power to make all decisions regarding the affairs of the Corporation, specifically including the authority to:
- direct the CEO to instruct senior staff including the Principal Legal Officer and any other staff*

as requested to attend Executive Committee meetings to keep the Directors informed of the Corporation's performance and strategic affairs.

27. Current Rule 13 Executive Committee & Other Sub Committees, limits the Executive Committee's power to exercise board authority to where an "urgent decision is required" and there is:
 - (i) *insufficient time to call a Board meeting for the purpose; or*
 - (ii) *the calling of a Board meeting would involve the incurring of expenses to the Corporation that in the reasonable opinion of the Chairperson is unwarranted in all the circumstances.*
28. Current Rule 13 (5) provides Quorum for the Executive Committee is 4 and shall include the Chair, Treasurer, Deputy Chair and Secretary.
29. The Proposed Rulebook provides no such limit on the Executive Committee's power to exercise Board authority and instead allows the Executive Committee to make operational decisions and instruct employees effectively at the discretion of the Chair and any two directors. This is a significant concentration of power in the Chairperson that is not allowed under the current rulebook.
30. The Proposed Rulebook provides:
 - 12.14 (d)(i) *Subject to any other delegated powers decided by resolution at a Directors' meeting, the main purpose and delegated powers of the Executive Committee is to meet and make urgent decisions to maintain the business of the Corporation between Directors' meetings;*
 - 12.14 (f) *A quorum for an Executive Committee meeting is a majority. The Chairperson may appoint other directors to make a quorum.*
 - 12.14 (e) *The Executive Committee may direct the CEO to instruct senior staff including the Principal Legal Officer and any other staff as requested to attend Executive Committee meetings to keep the Directors informed of the Corporation's performance and strategic affairs.*
31. The culmination of Proposed Rule 12.14 with:
 - (a) Proposed Rule 12.1 Role of the Directors;
 - (b) Proposed Rule 12.9 reduced board quorum requirements of the board; and
 - (c) Proposed Rule 12.13.4 (a) (iii) the power to delegate to employees;provides the Executive Committee, and specifically, the Chair (with the support of any two directors) authority to oversee the running of the Corporation, and make decisions about the affairs of the Corporation at all operational levels without the knowledge or support of the board or CEO.
32. Under the Proposed Rulebook, the powers of the Executive Committee and the Chairperson are significantly increased; the autonomy of all staff, specifically the CEO, and management are significantly reduced.

NQLC's Funding Agreement

33. Current Rule 11 (3) provides a person cannot be elected or hold office as a member of the Board if they would be ineligible under the terms of the Performance Funding Agreement.

The Proposed Rulebook provides no such prohibition. Whilst the NIAA head funding agreement provides clause 69:

The Commonwealth may direct the Provider to remove Personnel, including Key Personnel, from a task relating to any Grant, Project or Project Agreement on any reasonable ground, and will give written reasons for the removal.

34. The removal of Rule 11 (3) creates a significant risk to the Corporation. Under the Current Rulebook, an ineligible officer is automatically disqualified.

Under the Proposed Rulebook, an ineligible officer remains in office and NQLC funding becomes subject to the dispute resolution clause under the Head Funding Agreement.

This is a significant change to the Current Rulebook that invites significant risk and disruption to the Corporation.