Report on Feedback on Policy 2.3 - Eligibility to Receive Services

November 2021

At its meeting on 1 May 2021, the Board approved this policy in draft form for circulation to stakeholders for comment. It should be noted that policy 2.3 is not currently a mandatory policy, which means there is no requirement in the Constitution for the Board to have a policy on eligibility for services. However, while recent changes to the Constitution were discussed around August last year, the Board agreed to a request from Blind Citizens NZ that a new policy 2.3 would be needed and it would need to be a mandatory policy. This would create an obligation to consult widely before making any changes to this policy. Ultimately, the Board cannot dictate the constitutional process but the Board has agreed to include a proposal to make this policy mandatory when the Constitution is next reviewed.

It may be helpful to first outline the constitutional framework that applies with respect to services. The Constitution does not directly define who is eligible for services. The starting point is the Objects of the organisation in rule 3. Here it states: “*the objects of the Foundation are the following exclusively charitable objects as they relate to blind people in New Zealand*”. In the section on definitions, rule 2.1.4 says that “‘blind’ is the term used in this Constitution to describe those who regard themselves as either blind, vision-impaired, partially sighted, partially blind, deafblind, having low vision or in some other manner consistent with sight loss, but whose degree of sight loss qualifies them as a Member of the Foundation in terms of this Constitution”. Thus the definition of “blind”, which ultimately determines the people we can serve, is linked to the criteria for qualifying as a member of the RNZFB as an incorporated society.

Rule 2.1.34 is the primary rule that provides the criteria for qualifying as a member. This rule was expanded last year to cover functional blindness. It states:

2.1.34 “Qualifying Person” means:

2.1.34.1 a person who, in the opinion of a registered optometrist or ophthalmologist, has visual acuity not exceeding 6/24 in the better eye with correcting lenses or serious limitations in the field of vision generally not greater than 20 degrees in the widest diameter; or

2.1.34.2 a person who, in the opinion of a registered optometrist, ophthalmologist, dispensing optician, orthoptist or general medical practitioner, is unsafe or distressed due to being functionally blind or non-functionally sighted, finding it difficult to:

2.1.34.2.1 read and write or visually identify familiar objects; or

2.1.34.2.2 carry out familiar tasks; or

2.1.34.2.3 manoeuvre on their own without a blindness mobility aid;

This rule not only sets out the criteria for qualifying as a member in terms of visual acuity and in terms of functional blindness but it also specifies which professionals can provide the opinion that a given individual meets the criteria and qualifies for membership.

The Board is required to pursue the Constitutional Objects of the RNZFB. This policy 2.3 is intended to indicate clearly to the Chief Executive who is eligible to receive services from the RNZFB, and perhaps more importantly, who is not eligible to receive services. The Board must ensure this policy gives effect to the Constitution. In this case, the most relevant clause is clause 2 and the wording is distilled from rule 2.1.34 of the Constitution that determines who qualifies for membership. It must be understood, however, that there is no requirement to be a member in order to receive services. A person simply has to meet the same criteria.

The Board has received comments that some aspects of the draft policy 2.3 conflict with the Constitution. The Board agrees that a society cannot do things that stray outside the objects of its Constitution. However, what a society actually does do will depend on the society's own assessment of priorities and the resources it has at its disposal. The policy under discussion may state who is eligible to receive services, but it is left to the Chief Executive to take full responsibility for implementing those services. The Board is aware that under the Constitution, if a person presents an appropriate document from a recognised professional that shows the person meets the criteria for a qualifying person, then as long as there is no manifest error or reason to doubt the authenticity of the assessment, that person can demand to be admitted as a member of the Royal New Zealand Foundation of the Blind Incorporated. But when it comes to services, that same document, again in the absence of error etc., simply indicates that the person is eligible to receive RNZFB services. The Board is unsure whether it can actually be compelled by someone to deliver them a service. The Board has decided to seek legal advice to better understand relevant legal obligations and implications relating to service delivery.

This proposed policy generated a considerable response, with comments from 14 individuals and three consumer organisations, some responses being quite detailed. While most responses support the policy as is, there are some suggestions for change and some strongly critical comments. Though not all comments are specifically referred to, this report now summarises the feedback received and the Board's actions. At this stage, the Board is still investigating some points made and has not formally updated the policy. We are withholding the names of individuals who commented, but we do refer to consumer organisations by name.

1. A member suggested an alternative wording for clause 3. The current wording is: “The Chief Executive will report to each main Board meeting the total number of clients currently receiving full service and the number of clients currently receiving full service due to being functionally blind or non-functionally sighted.”. The suggested alternative wording is: “The Chief Executive will report to each main Board meeting firstly the number of clients currently receiving full service and secondly the number of clients currently receiving full service due to being functionally blind or non-functionally sighted.”

The Board has accepted this suggestion.

1. Referring to clause 4, a member commented that there can be no power for the Chief Executive to suspend services unless power is first delegated to the Chief Executive.

The Board feels there is already a wide range of delegations to the Chief Executive. With respect to services, there is the budget set each year by the Board which authorises the Chief Executive to apply the RNZFB's resources in an agreed manner to provision of a specified set of services. This policy simply clarifies who can receive those services. However, in response to the point raised, the Board has amended clause 1 to clearly indicate that the Chief Executive is authorised to provide a range of rehabilitation and support services in accordance with the “Objects” in the Constitution and prioritised in the current Strategic and Annual Business Plans.

1. A comment was made that there were major errors in the preamble to the draft policy. In particular, some aspects of the preamble conflict with the Constitution and this could cause feedback to be skewed. The preamble stated “BLVNZ is required to accept the written opinion of a registered optometrist or ophthalmologist, orthoptist, dispensing optician or general medical practitioner as conclusive evidence that a person meets the eligibility criteria, unless it is clearly wrong”. The person stated in response: “it is the medical professional who has been empowered by the Constitution to determine if a person is clearly safe or unsafe or distressed or not distressed. There is no rule in the Constitution indicating that the Board has the authority to override or ask the Chief executive to override the decision of those medical professionals who are constitutionally empowered to provide conclusive evidence that a person meets the eligibility criteria. The Board is in no position to ask the Chief Executive to adjudicate on the evidence provided by a medical professional that states a person is distressed or unsafe. It is concerning that the Board considers that it can claim that the medical professional’s decision can be considered “clearly wrong”, and the statement should not have been included in the preamble”.

The words in the preamble are based on rule 5.3.2 of the Constitution, which states: “unless the information is already held by the Foundation, every application for admission as a Member must be accompanied by a written opinion from a registered optometrist, ophthalmologist, orthoptist, dispensing optician or general medical practitioner in terms of the criteria of a Qualifying Person. The Board must, in the absence of Manifest Error, accept the opinion as conclusive”. The words “in the absence of manifest error” were paraphrased as “unless it is clearly wrong” to hopefully be more user-friendly to people reading the material we circulated.

The Board points out that rule 5.4 of the Constitution gives the Board authority to ask for a re-assessment if there are reasonable grounds to believe that an individual no longer meets the criteria for a qualifying person. The Board believes the Constitution does allow for the possibility that a medical opinion can be questioned and we took care to ensure that this is translated into our policy that will guide the Chief Executive. Through the legal advice referred to earlier, the Board hopes to clarify the exact nature of any link between eligibility for membership of the society and eligibility for services.

1. A member commented strongly that “the notion that a person cannot be functionally blind and still drive is flawed and requires careful rethinking. The Constitution is very clear about who may be eligible for services due to being distressed or unsafe because of their functional blindness. No indication is given in the Constitution as to the social, environmental or physical conditions under which a person is deemed distressed or unsafe from being functionally blind. While a person may be able to drive in certain conditions, that same person, in other circumstances, may well be distressed or unsafe because of their functional blindness. The Board and Management will not be cognisant of the correct or full facts and it is this very reason why the Constitution empowers medical professionals and not the RNZFB Board or Management to certify eligibility”.

The Board comments in response that at least regarding membership, the Constitution does allow for a medical opinion to be questioned. This clause provides for the same possibility regarding eligibility for services. But the intention of clause 4 is simply to clearly give the Chief Executive the power to question. It does not mean that a person who is driving will automatically have services suspended, nor that they will automatically be found to be ineligible to receive full service. A fresh opinion may well clarify the situation for that client to the Chief Executive's satisfaction.

1. This person went on to say “With the Constitution providing no avenue for the Board to override the medical professional’s decision, I consider that it is inappropriate for the Board to usurp the authority of those who are designated with the constitutional power to certify eligibility and may well expose the Board to litigation”. This person concludes by suggesting that “the Board should take both legal and medical professional advice before continuing down the track of claiming that because a person can drive, they cannot be functionally blind. The Constitution does not indicate the multitude of circumstances and conditions under which a person may be deemed to be functionally blind. It is my understanding that a person can carry out certain “sighted” tasks successfully and, at other times or in other circumstances, can be assessed as functionally blind according to the Constitution”.

The Board says in response that this policy does not claim that because a person can drive, they cannot be functionally blind, although there is a concern that if a person is deemed safe to drive, there must not be any risk that they may become functionally blind while driving. The point in dispute appears to be what power the Board does or does not have to question a medical opinion. Given the Board is trying to find a balance here between competing points of view that do impact on demand for our services, the Board has agreed to reach out to the medical profession for comment, along with seeking the legal advice as noted above.

1. Blind Citizens NZ reminded the Board of their submission last year regarding the proposed change to the Constitution that was ultimately approved which extends the eligibility criteria for membership and, by implication, for services. Their concern at that time could be stated: if New Zealand’s primary provider of blindness services is unable to meet the needs of individuals who meet its medical criteria then, if these are broadened in any way, people will wait longer than they do currently to receive services. Referring to the proposed draft policy 2.3, Blind Citizens NZ commented “there is no recognition of the fact that individuals in need of services and whose visual acuity does not exceed 6/24 will be treated any differently or prioritised in any way with respect to individuals who are neither functionally-blind or non-functionally sighted”. They go on to state that the policy should recognise individuals who meet the RNZFB’s medical criteria will not be disadvantaged, including that service delivery will be of a timely manner.

The Board feels this concern is unfounded as there is no intention to deliver a significant level of service to people who are neither functionally blind nor non-functionally sighted. Also given that the Constitution now formally recognises functional blindness, the Board feels that a person who meets the criteria for functional blindness has the same eligibility for full service as someone who meets the vision criteria. After that, an individual's access to services such as rehabilitation services will depend on an assessment of their individual circumstances and needs. That is a matter of implementation and is not covered by this policy.

1. Blind Citizens NZ goes on to point out that the Policy is silent on the eligibility of individuals who are neither functionally-blind nor non-functionally sighted to vote in RNZFB Board Director elections. It is Blind Citizens NZ’s understanding they are not eligible to do so.

The Board agrees. Voting in elections is a function of becoming a member. This is dealt with in some detail by section 5 of the Constitution but is not relevant to this policy which deals with eligibility to receive services. But Blind Citizens NZ is correct in that a person who is neither functionally blind nor non-functionally sighted and who also does not meet the vision criteria cannot become a member, so cannot vote in elections.

1. Parents of Vision Impaired advised that they understand the need for clarity on who is entitled and not entitled to full services from the RNZFB, but express concern that significant barriers still exist regarding children registering for services. They highlighted discrepancy between kāpō children who are enrolled with BLVNZ (they said about 700) and those enrolled with BLENNZ (they said about 1,500), and feel this is evidence that these barriers still exist. They said kāpō children are underserved by BLVNZ. Similarly, a parent of a client described the proposed policy as “clearly a nonsense. Proposals to micro-manage the RNZFB Management over eligibility are a real concern. The list of professionals should include qualified professional staff from BLENNZ”.

The Board comments in response that during the discussion that led to the new criteria being adopted in the Constitution, we took care to explore the issue of children enrolled with BLENNZ. BLENNZ will, no doubt, have its own criteria which perhaps arises from their funding agreement with the Ministry of Education. There may well be good reason why BLENNZ might provide services to some children who fall outside the new RNZFB criteria. However, the Board and the Chief Executive were confident that the new criteria are broad enough to include those children currently in education whose visual acuity is outside the RNZFB vision criteria but who are dealing with significant functional blindness. Even for those children who do not meet the criteria, clause 5 of the proposed policy still gives the Chief Executive discretion to provide limited services where the Chief Executive is satisfied that this is covered by the RNZFB Objects and is an appropriate use of available resources. The policy cannot extend the criteria beyond the constitutional provision because the Board must operate within the organisation's Objects. But the Board hopes this policy, based on the new criteria, will significantly improve the accessibility of RNZFB services to most of the children being referred to here.

1. Parents of Vision Impaired pointed out that the very process of obtaining an assessment from an appropriate professional creates additional barriers for parents/whānau. They pointed to costs for parents/whānau who are typically already experiencing additional financial strain. They referred to the example of cerebral vision impairment which they said is often misunderstood, particularly in Māori children, and requires a functional assessment. They recommended “that the RNZFB Board considers how to re-word policy 2.3 to ensure that kāpō children and their parents/whānau are not denied access to services or limited by rigid applications that exclude kāpō children and their parents/whānau”.

The Board accepts this argument has some validity. But the Board is still constrained by the need to ensure that the RNZFB's resources are applied to pursuing the Objects as they relate to “blind” people and the Board must work with the definition of “blind” in the Constitution. Given that the range of professionals who can now verify eligibility has been significantly broadened, the Board hopes that this is less of a barrier than it may once have been. We do not know what kind of professional would carry out a functional assessment of CVI and whether that would be a professional other than an optometrist, ophthalmologist, dispensing optician, orthoptist or general medical practitioner. But given that the Constitution is clear on this list of professionals, the Board feels it cannot address this concern without a change to the Constitution. Ideally, this point should have been raised for full discussion when the proposed changes to the Constitution were circulated last year. The Board feels that if the Chief Executive was presented with a child who appeared to be eligible for service, that child should not be denied service purely because the whānau could not or would not take the child to be assessed by a recognised professional. In such a situation, the Board feels the Chief Executive can authorise RNZFB funds to pay for the needed assessment.

In conclusion, the Board will continue to clarify its thinking on the points that have been raised. A further update can be expected in due course and this may include a new draft policy for further comment from stakeholders. The Board thanks everyone for their contributions.