

# Governing Documents Proposal

## Background

In 2011, NCA began the process of reviewing its current governing documents. This work was motivated by a routine effort to ensure that our governing documents continue to facilitate the most effective governance possible in evolving internal and external environments. The review revealed several specific problems with our current governing documents and one fundamental, overarching problem—that our current governance structure does not allow for exercise of fiduciary duties (see Appendix A for details).

Over the next few years, several proposals addressing smaller issues and the fiduciary problem were brought to the LA and the membership for consideration. While substantial feedback from the membership was incorporated each time and the votes were very close, ultimately none of the proposals were approved at the majorities required.

The most recent version to be considered was one presented to the Legislative Assembly in 2015. The LA initially approved the proposal for membership consideration with some amendments that were made on the floor. The LA then recognized that the proposed amendments could end up having unintended consequences. As such, on the second day of the 2015 LA meeting, a motion was made to rescind the bylaws revision and that motion passed. There was general agreement that the next steps would involve:

1. Developing a new proposal for consideration by the LA in 2016 that addresses all of the identified concerns with the current governing documents *except* the fiduciary responsibility issue (given that lack of consensus since 2011 has been almost entirely about proposals for addressing the fiduciary responsibility problem)
2. Forming a Diversity Working Group to:
  - a. Think through the 2016 proposal with a focus on issues of diversity
  - b. Subsequently think through ways in which the fiduciary responsibility issue can be addressed with sensitivity to concerns about diversity and inclusion.

Then-President Carole Blair appointed the Diversity Working Group. Its members include Blair, Justin Boren, Navita James, Roseann Mandziuk, and the Executive Director. In the spring of 2016, the group reviewed the history of this effort and the initial draft of the 2016 revision. Their substantial feedback is incorporated in the draft that is presented for your consideration on the next pages. This proposal also reflects the substantial work of the Legislative Assembly's Executive Committee; they have unanimously brought forth this proposal for the 2016 LA agenda.

Again, this proposal does not address the concern with fiduciary responsibility. It maintains the vesting of such responsibility with the Legislative Assembly, with no fundamental changes to the governance structure of the organization. It does address the many smaller issues of updating and clarification that have been identified. The proposed changes are consistent with those proposed in drafts considered by the LA over the past few years, which have not generated concern or disagreement. By decoupling the issue of fiduciary responsibility from the other,

more routine items, we can move forward with routine, necessary updates prior to determining the best way to address the broader fiduciary concern.

### Key Proposed Changes—Rationale

On the following pages, please find the proposed governing documents revision. The key changes include:

#### *The structure of our governing documents*

**1. The current constitution and bylaws are replaced with a single bylaws document.**

NCA currently has two governing documents, a constitution and bylaws. In general, an organization's governing documents describe the organization's purpose and structure, contain rules relating to the organization's governance, and define the rights and responsibilities of its members. The practice of addressing these matters in two documents can create difficulty in locating the rule applicable to any particular organizational issue and increases the potential for conflicts between two governing documents. Consolidation into a single governing document called "bylaws" is the recommendation of our legal and parliamentary counsels and is current best practice.

**2. Several policy and procedural functions from the constitution and bylaws documents are moved into policy and procedures documents.** Our current governing documents include not only governance issues, but also policy and procedural matters. This comingling creates confusion and lack of organizational flexibility over time and could raise unnecessary legal questions. No changes are proposed to any current policies or procedures. The proposed bylaws move several policy and procedural functions into policy and procedures documents where they are more appropriate. The proposed change is simply about the appropriate location for these items, not about the content of the items. Among the items to move out of the bylaws, for example, are details about interest group administration, specific benefits for membership types, and editor terms and duties (i.e., NCA Bylaws, Article I, Article IV, Section 4., Article VI).

#### *The composition of our governing bodies*

**3. The composition of the Legislative Assembly remains the same, with two exceptions.**

First, currently the LA includes "other Directors on the National Office staff without vote" (NCA Constitution, Article VI, Section 2). These Directors have been removed from the LA. Positions and their titles at the National Office change over time, and those with the title "Director" may change for reasons that have nothing to do with organizational governance. Further, it is highly unusual for staff members, aside from the Executive Director, to serve on an organization's governing body. Second, the current governing documents include specifications regarding the types of representatives who serve on the LA from each of the regional communication associations (NCA Constitution, Article VI, Section 2). At the request of the leadership of these associations, those specifications have been removed. It is difficult for some of the regional associations to find representatives who fit the current requirements. The number of representatives from each region has not been changed in this proposal.

**4. The composition of the Executive Committee of the Legislative Assembly remains the same, with one exception.** The Affirmative Action Intercaucus Committee has been renamed the Diversity Council (see below for rationale). Given that all of the other council chairs serve on the EC of the LA, the chair of the Diversity Council has been added to the current composition of the EC (NCA Proposed Bylaws, Article III, Section 6, cl. A).

**5. Two officers are added.** At present, the officers include the President, First Vice President, Second Vice President, and Executive Director. In practice, we typically include all of the people in the presidential succession in officer discussions, including the Immediate Past President (IPP). This practice is formalized in the proposal with the inclusion of the IPP as an officer. At present, the Executive Director serves as both Secretary and Treasurer. In the proposed revision, the role of Treasurer is held by the Chair of the Finance Committee, thereby making the Chair of the Finance Committee an officer as well (NCA Proposed Bylaws, Article IV, Section 1).

**6. More consistent provisions for vacancies are provided.** In the current governing documents, there are inconsistent practices for filling mid-term vacancies in leadership positions. The current provisions are either cumbersome or place substantial power in the hands of a few. The proposed bylaws would place responsibility for filling all vacancies in the hands of small groups that are nimble and prepared for quick action, but interim replacements would only serve for relatively short periods of time until regular processes can be followed for long-term replacements (NCA Proposed Bylaws, Article III, Section 5).

*Other routine updates and clarifications*

**7. Terminology is amended for clarity.** Several of the names of bodies and positions described in our current constitution and bylaws can lead to confusion in practice. The proposed bylaws amend the terminology for clarity. For example, the committees that are currently called “Boards” are now called “Councils.” In most other organizations, the word “Board” implies Board of Directors. In addition, Councils are standing committees, but in order to highlight the special importance of these particular committees they are called Councils. The current Educational Policies Board is renamed the Teaching and Learning Council, Research Board is Research Council, and Publications Board is Publications Council. At the recommendation of the Diversity Working Group, the Affirmative Action Intercaucus Council is renamed the Diversity Council. Using “intercaucus” defines the group in relation to organizational structure rather than mission, and “affirmative action” is a term that has political implications and varying degrees of salience over time. The current Finance Board, which is a subset of the LA, is renamed the Finance Committee of the Legislative Assembly.

**8. The role of the Legislative Assembly as the body with fiduciary responsibility for the organization is clarified.** In Article III, Section 3 it says that “[t]he Legislative Assembly shall exercise fiduciary responsibility over the affairs of NCA and is responsible for the overall strategic direction and policymaking of the Association.” This does not represent a change in responsibility, but simply clarifies the role of the body.

**9. Provisions for holding meetings using telephone or other electronic means are incorporated.** Despite being a national organization with leadership spread across the country, our current governing documents do not explicitly provide specifications for the conduct of meetings by telephone or other electronic means. Such specifications are provided in this proposal.

**10. The Committee on the Agenda and accompanying agenda restrictions are removed.** The existing bylaws (Article III, Section 2) specify the selection of a Committee on the Agenda and several restrictions on the formation and publication of the agenda for a pending Legislative Assembly meeting. Historically, it has been difficult to elicit nominees for the Committee on the Agenda; the work of the Committee is largely carried out by the President, consulting with the Executive Director. The proposed bylaws codify that process and remove provisions for advanced publication of the agenda and the submission of agenda items. The agenda is distributed in advance of the Legislative Assembly meeting as a matter of policy and there are no restrictions in the proposed bylaws on additions to the agenda by the Legislative Assembly.

**11. The Convention Committee is added to the list of standing committees.** Given the recency of its development, our existing constitution and bylaws do not include an active and important committee—the Convention Committee. This committee provides recommendations on issues related to convention locations, including site selection and conflict resolution. The proposed bylaws add the Convention Committee as a standing committee. With status as a standing committee, members would be elected by the Legislative Assembly from a slate of candidates developed by the Committee on Committees.

**12. The process for making committee appointments that do not align with the recommendations of the Councils (currently Boards) has been amended.** At present, current Board members select new colleagues when routine vacancies occur. Those choices are then passed along to the Committee on Committees (ConC) “with presumption” that they will be accepted and then ratified by the LA. For the Committee on Committees or LA to reject a recommendation requires arguing against presumptive “Board-designated” nominees. In practice, this has meant that presumptive nominees are not typically rejected by the ConC, no matter how qualified another candidate might be. In addition, this provision has the tendency of ensuring a similarity of attitudes, backgrounds, and demographic characteristics in Board nominees. However, there is strong recognition that the Councils do have the best understanding of which skills, knowledge, and experience are most needed on the Councils at a given point in time. As such, the Committee on Committees will continue to consult with the respective Councils before providing a slate to the LA for consideration.

**13. Several details are updated and/or made less specific (thereby requiring less updating in the future) and/or made more consistent.** There are several items in the current governing documents that are outdated or could quickly become outdated because of the level of detail to which the documents refer. The proposed bylaws remove references to no longer existing items and make language in other areas more generic to ensure endurance over a longer period of time. Inconsistencies are also addressed. The outdated items include, for example, that NCA no longer has a placement service and library journal subscription fees are determined through contractual terms with our external publisher. Among the several updates made in the

document is the elimination of sustaining and patron membership categories, which were eliminated by the LA in past years but never removed from the governing documents. In addition, the number of signatures required for a petition to create a new division or section has been increased from 100 to 200 given the ease of gathering signatures in the era of electronic communication. Among the inconsistencies addressed are the lack of inclusion of caucuses in the planning for the annual convention and the lack of caucuses and some organizational representative positions in allowing for proxies on the LA. The document now specifies that each interest group will have a role in planning the convention program, and proxies are eliminated (offering consistency and also in recognition of the fact that there cannot be substitute fiduciaries). The definition of caucuses has also been updated.