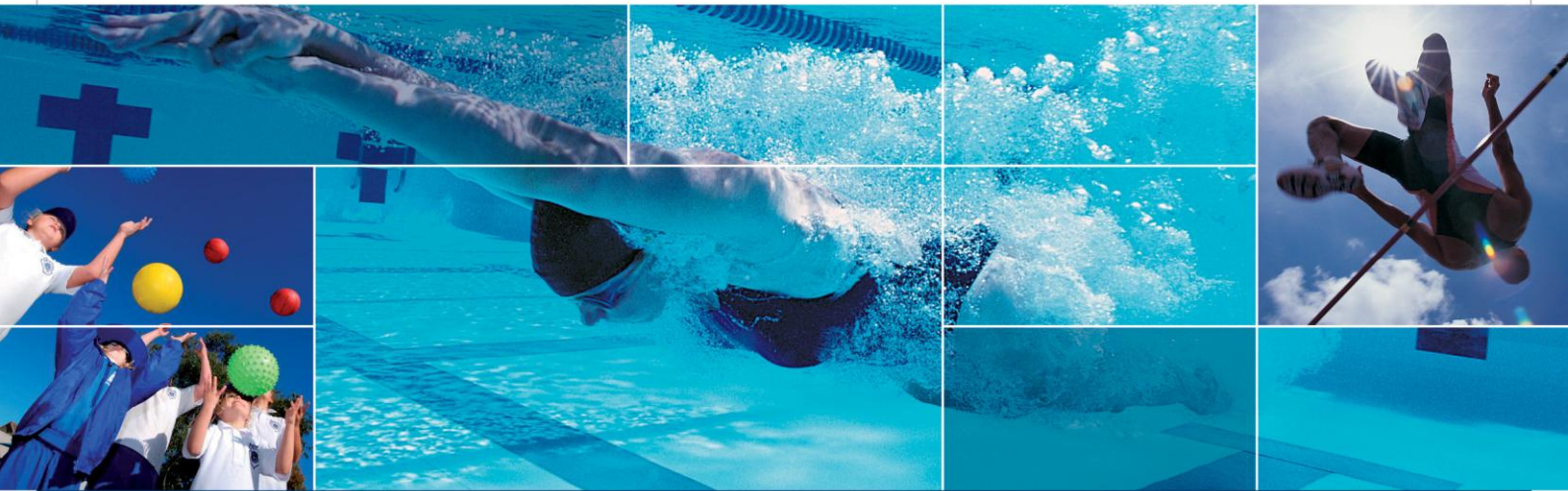




Australian Government
Australian Sports Commission

Template Constitution



CONSTITUTION
[SPORT AUSTRALIA LIMITED]

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This is a template corporate constitution for an Australian national sporting organisation ("NSO"). The NSO is a company limited by guarantee under the Corporations Act (2001) ("Act") and this document complies with the Act. The document also takes into account, and where relevant refers to, the Australian Sports Commission's ("ASC") Sports Governance Principles for Sporting Organisations ("Principles").

The document is a template only and has a number of text boxes throughout, which highlight options for sporting bodies or sets out the rationale and/or explanation for particular clauses. There are also a number of comment boxes which cross-refer to the relevant sections of the Act or other legislation.

A comment in a pink box contains specific requirements under the *Corporations Act 2001 (Cth)*.

A comment in a green box contains recommendations under the ASC Sports Governance Principles.

A comment in a yellow box contains general guidance considered to be best practice.

The document also contains a number of highlighted words, particularly Sport and ISF. These are to be replaced by the name of the actual NSO and its international federation.

According to Principle 1.3, the incorporated body should have a constitution which embodies the following key sections:

- interpretation — objects and powers
- members — membership and meetings of members (general meetings)
- the board — powers (including delegations), election and appointment of directors, other roles (chief executive officer and secretary) and meetings of the board
- reporting, recording and execution of company documents
- accounts
- auditors
- indemnity and insurance of directors
- winding up.

This document meets these requirements.

Please note the document should be tailored to the requirements of your organisation and not vice versa.

1. Definitions and Interpretations

1.1 Definitions

In this Constitution unless the context requires otherwise:

Affiliated Member means a sport club or association Registered with a Member State and admitted to the Company under **clause 5.5** and the Policies.

AGM or **Annual General Meeting** means the annual General Meeting of the Company required to be held by the Company in each calendar year under section 250N(2) of the Corporations Act.

A company limited by guarantee is a public company and must hold an AGM at least once in each calendar year and within 5 months after the end of its financial year (s. 250N of the Act).

Appointed Director means a Director appointed under **clause 13.10**.

CEO means a person appointed as chief executive officer of the Company by the Directors.

The title of the CEO may vary.

Chairperson or **Chair** means the person elected as the Chair of the Company under **clause 15.7(a)**.

Committee means a committee established by the Directors under **clause 19**.

Company Secretary means a person appointed as a company secretary of the Company by the Directors under **clause 18**.

A public company must have at least one company secretary. At least one company secretary must reside in Australia (s. 204A of the Act).

Constitution means this Constitution as amended from time to time, and a reference to a particular clause is a reference to a clause of this Constitution.

The term "constitution" is defined in section 9 of the Act.

Corporations Act means the *Corporations Act 2001 (Cth)* as modified and amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

Director means a director of the Company and includes Elected Directors and Appointed Directors.

Directors means, as the case requires, all or some of the Directors acting together in accordance with their powers and authority under this Constitution.

A public company must have at least three directors. At least two directors must reside in Australia (s. 201A of the Act).

Elected Director means a Director elected under **clause 13**.

First Appointed Directors means the persons referred to in **clause 13.2(b)**.

First Elected Directors means the persons referred to in **clause 13.2(a)**.

General Meeting means a general meeting of Members and includes the AGM.

Individual Member means a person admitted to the Company as an individual member under **clause 5.6**.

The document seeks to capture as Members of the Company, all individual persons who are members of clubs and/or Regional Associations and/or Member States.

ISF means the International Sport Federation.

To be amended to the sport's international governing body.

Life Member means a person admitted to the Company as a life member under **clause 5.4**.

Member means a member of the Company under **clause 5**.

Member State means a legal entity recognised by the Company under **clause 5.3** as representing a State.

Objects means the objects of the Company in **clause 2**.

Official Position means, in connection with any body corporate or organisation, a person who:

- (a) holds a position, whether elected or appointed, as president, vice president, secretary, treasurer, director or equivalent of that body corporate or organisation; or
- (b) has, directly or indirectly, a material ownership or financial interest in that body corporate or organisation.

Policy means a policy made under **clauses 7.2, 20.1(a) and 20.1(b)**.

Registration means registration or affiliation of an Individual Member or an Affiliated Member with a Member State, such registration being in the form of a signed application form and, in the case of Individual Members, their consent to

membership of the Company as required by **clause 5.2. Registered** has a corresponding meaning.

Representative means a person (other than a proxy) appointed in accordance with the Corporations Act to represent a Member State at a General Meeting of the Company.

A Member which is a corporate entity (for example, Member State) can attend a meeting by way of an attorney, representative or proxy. It is usual for a corporate to appoint a representative under s. 250D of the Act.

Sport means the “sport” of **[INSERT NAME OF SPORT]** as recognised and regulated by **ISF** from time to time and includes sport for athletes with disabilities.

Sporting Power means that power delegated to the Company by **ISF** for the exclusive control and management of the **Sport** in Australia.

Special Resolution means a resolution that must be passed by a majority of at least 75% of votes exercisable by Members entitled to vote at the relevant General Meeting in accordance with this Constitution and/or the Corporations Act.

Special Resolution is defined in s. 9 of the Act.

State means the States of Australia, which shall be deemed to include each of the Northern Territory and the Australian Capital Territory.

Statutes and Regulations means the statutes and regulations of **ISF** in force from time to time.

Telecommunications Meeting means a meeting held by telephone, video, any other technology (or any combination of these technologies), which permits each Director at a meeting of Directors or each Voting Member at a meeting of members to communicate with any other participant.

Such meetings are expressly recognised by s. 249S of the Act.

Voting Member means, in relation to a General Meeting, those Members present and entitled to vote.

1.2 Interpretation

In this Constitution unless the context requires otherwise:

- (a) a reference to the Company is a reference to **Sport Australia Limited ACN** a company limited by guarantee;

To be completed with details of the company when known.

- (b) **(presence of a Member)** a reference to a Member present at a General Meeting means the Member present in person or by proxy or Representative;
- (c) **(document)** a reference to a document or instrument includes any amendments made to it from time to time and, unless the contrary intention appears, includes a replacement;
- (d) **(gender)** words importing any gender include all other genders;
- (e) **(person)** the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (f) **(successors)** a reference to an organisation includes a reference to its successors;
- (g) **(singular includes plural)** the singular includes the plural and vice versa;
- (h) **(instruments)** a reference to a law includes regulations and instruments made under it;
- (i) **(amendments to legislation)** a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by a State or the Commonwealth or otherwise;
- (j) **(include)** the words include, includes, including and for example are not to be interpreted as words of limitation;
- (k) **(signed)** where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Directors; and
- (l) **(writing)** writing and written includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise.

1.3 Corporations Act

- (a) In this Constitution, unless the context requires otherwise, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act.
- (b) The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

1.4 Headings

Headings are inserted for convenience and do not affect the interpretation of this Constitution.

2. Objects

The objects of the NSO are important and must be carefully considered. The objects are the NSO's reasons for existence and although this can be simply stated as "promotion and encouragement of the Sport" the changes in regulatory and commercial, as well as sporting, landscapes require a 21st century sporting body to have broad objects. The objects must also recognise the relationship between the NSO and its parent International Federation.

ISF is the sole international sporting authority entitled to make and enforce regulations for the encouragement and control of Sport. So that the above authority may be exercised in a fair and equitable manner, ISF has drawn up the Statutes and Regulations governing Sport.

Each national federation, including the Company belonging to ISF, shall be presumed to acquiesce in and be bound by the Statutes and Regulations. Subject to such acquiescence and restraint, one single national federation per country shall be recognised by ISF as the sole international sporting power for the enforcement of the present Statutes and Regulations and control of Sport in its own country. The Company has been so recognised by ISF and delegated by ISF with exercising the Sporting Power for Australia.

The Objects of the Company shall be to:

- (a) adopt and exercise the Sporting Power as the national federation for the Sport in Australia and act as the sole Australian affiliated member of ISF in accordance with the Statutes and Regulations;

The purpose of object (a) is to recognise the "sporting authority" which follows from being part of an ISF-recognised sport. To be part of the "authorised sport" an organisation must be part of or affiliated with the international body.

- (b) conduct, encourage, promote, advance, control and manage all levels of Sport in Australia interdependently with Members and others;
- (c) adopt, formulate, issue, interpret and amend Policies for the control and conduct of Sport in Australia;

Ideally a sport will operate under consistent regulations and policy framework. This is the responsibility of the NSO, as the technical "rules of the game" are essentially the responsibility of the ISF. Generally, Member States would be responsible for implementation of policies that are developed by the NSO and

would develop local policies for implementation by affiliated clubs and associations.

Principle 1.9 provides that NSOs and their member bodies should have aligned objects and purposes to ensure effective and efficient achievement of sport outcomes.

- (d) encourage the provision and development of appropriate facilities for participation in Sport;
- (e) maintain and enhance standards, quality and reputation of Sport for the collective and mutual benefit and interests of members and Sport;
- (f) promote the sport of Sport for commercial, government and public recognition and benefits;
- (g) be the only body entitled to prepare and enter Australian teams in international Sport competitions;
- (h) promote, control, manage and conduct Sport events, competitions and championships;
- (i) have regard to the public interest in its operations; and

Generally, rules made in the “public interest” are less susceptible to challenge, therefore, this object reminds members of the moral obligation to be mindful of the community when operating the Company.

- (j) undertake other actions or activities necessary, incidental or conducive to advance these Objects.

3. Powers

Solely for furthering the Objects under **clause 2**, the Company, in addition to the Sporting Power and any other powers it has under the Corporations Act, has the legal capacity and powers of a company limited by guarantee as set out under section 124 of the Corporations Act.

Section 124 of the Act gives the Company all the powers of a natural person.

4. Income and Property of Company

4.1 Sole Purpose

The income and property of the Company will only be applied towards the promotion of the Objects of the Company.

4.2 Payments to Members

No income or property will be paid or transferred directly or indirectly to any Member except for payments to a Member:

- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
- (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent; or
- (c) of reasonable rent for premises let to the Company by them.

Clauses 4.1 and 4.2 above and clause 25 establish the Company as a not-for-profit, tax exempt entity.

5. Membership

The members of the NSO and their rights and responsibilities are set out under this clause. The member categories and their respective rights and responsibilities may, of course, vary. Under this template the Member States are the voting Members, whilst Life Members, Affiliate Members and Individual Members are also Members and are bound by the Constitution but with no voting rights at General Meetings of the Company.

Principle 5 sets out key principles regarding an NSO's stakeholder relationship and reporting.

5.1 Categories of Members

Members of the Company shall fall into one of the following categories:

- (a) Member States;
- (b) Life Members;
- (c) Affiliate Members;
- (d) Individual Members; or
- (e) Such other category of Member as may be created by the Board. Any category of Member created by the Board under this **clause 5.1(e)** may not be granted voting rights.

5.2 Admission of Members

A person will become a Member, and the Directors will direct the Company Secretary to record their name in the register of Members kept by the Company, only upon meeting the criteria applicable to the relevant category of membership

set out in this Constitution and provided the Member has submitted an application, which is accepted by the Directors, in which the Member undertakes to:

- (a) be bound by this Constitution, the Statutes and Regulations and the Policies (including Policies specific to the relevant category of Membership);
- (b) pay the fees and subscriptions determined to apply to the Member under **clause 9**; and
- (c) support the Company in the encouragement and promotion of its Objects.

A company must keep a register of Members (s.168(1)(a) of the Act). The register must contain the Member's name and address and the date on which the Member's name was entered in the register (s. 169 of the Act).

The Directors may establish a Policy providing greater detail of the actual process.

5.3 Member States

- (a) The Company will recognise only one entity in each State as the controlling body responsible for ensuring the efficient administration of **Sport** in the whole of that State in accordance with the Objects. Member States must be legal entities.

This is applicable for a standard federated structure.

- (b) Unless otherwise determined by the Company and subject always to **clause 5.2**, at the time of adoption of this Constitution, the first Member States of the Company will be those entities which are currently recognised by the Company as the recognised controlling body for the Sport in their respective State.
- (c) Each Member State will:

The following is consistent with ASC Principle 1.9. This encourages national and uniform behaviour in a federated structure.

- (i) have objects that align with those of the Company as stated in **clause 2** and do all that is reasonably necessary to enable the Objects to be achieved, having regard to any legislation applicable to that Member State;
- (ii) effectively promulgate and enforce the Constitution and Policies of the Company and the Statutes and Regulations;

- (iii) at all times act for and on behalf of the interests of the Company, the Members and Sport;
- (iv) be responsible and accountable to the Company for fulfilling its obligations under the Company's strategic plan as revised from time to time;
- (v) provide the Company with copies of its audited accounts, annual report and associated documents immediately following its Annual General Meeting;

This is required to ensure national funding is being properly delivered in states.

- (vi) provide the Company with copies of its business plans and budgets from time to time and within 14 days of request by the Directors;
- (vii) be bound by this Constitution and the Policies and the Statutes and Regulations;
- (viii) act in good faith and loyalty to maintain and enhance the Company and Sport, its standards, quality and reputation for the collective and mutual benefit of the Members and Sport;
- (ix) at all times operate with and promote mutual trust and confidence between the Company and the Members, promoting the economic and sporting success, strength and stability of each other and work cooperatively with each other in the pursuit of the Objects;
- (x) maintain a database of all clubs, officials and members Registered with it in accordance with the Policies and provide a copy to the Company upon request from time to time by the Directors in such means as may be required;

A collective member database is essential for the commercial viability of the sport.

- (xi) not do or permit to be done any act or thing which might adversely affect or derogate from the standards, quality and reputation of Sport and its maintenance and development; and
- (xii) advise the Company as soon as practicable of any serious administrative, operational or financial difficulties, assist the Company in investigating those issues and cooperate with the Company in addressing those issues in whatever manner, including by allowing the Company to appoint an administrator to conduct and manage its business and affairs, or to allow the Company itself to conduct all or part of the business or affairs of the relevant Member State and on such conditions as the Company considers appropriate.

(d) Constitutions of Member States

This section entrenches and strengthens the relationship between the Company and its Member States. It is also consistent with ASC Principle 1.9. This encourages national behaviour in a federated structure.

- (i) Each Member State shall take all steps necessary to ensure its constituent documents conform, and amendments conform, with this Constitution and the Policies, subject to any prohibition or inconsistency in any legislation applicable to that Member State.
- (ii) The constituent documents and any proposed amendments to the constituent documents of each Member State shall be subject to the approval of the Company.
- (iii) It shall be the duty of the Company to approve, without delay, such constituent documents and proposed amendments to constituent documents as may be submitted by the Member States provided that the said constituent documents and proposed amendments conform with this Constitution or the Policies.
- (iv) If the constituent documents do not conform with this Constitution or the Policies, the relevant Member State shall, without delay, take all steps necessary to address the inconsistency so that those documents conform with this Constitution and the Policies.
- (v) For the avoidance of doubt, if any inconsistency remains between the constituent documents of a Member State and this Constitution or the Policies, this Constitution and the Policies shall prevail to the extent of that inconsistency.

The constituent documents of a Member State must require the Member State to:

- (A) advise the Company as soon as practicable of any serious administrative, operational or financial difficulties the Member State is having;
- (B) assist the Company in investigating those issues; and
- (C) cooperate with the Company in addressing those issues in whatever manner, including by allowing the Company to appoint an administrator to conduct and manage the Member State's business and affairs, or to allow the Company itself to conduct all or part of the business or affairs of the Member State and on such conditions as the Company considers appropriate.

- (e) The Board may develop and implement Policies which may set out:
 - (i) the membership criteria to be met by Member States; and

- (ii) the privileges and benefits of Member State membership which may include the right to receive notice and attend, and the right to vote at, General Meetings.

5.4 Life Members

- (a) Life Membership is the highest honour that can be bestowed by the Company for longstanding and valued service to **Sport** in Australia.
- (b) Any Member may forward a proposed nomination to the Directors for its consideration.
- (c) On the nomination of the Directors, any individual may be elected as a Life Member at any AGM by Special Resolution, subject to that individual completing an application in accordance with **clause 5.2**.
- (d) Nominations for Life Membership shall include a written report outlining the history of services of any nominee, together with comments on the suitability of the honour.
- (e) The Policies will set out:
 - (i) the categories of Life Membership which exist;
 - (ii) the criteria to be met by each category of Life Member; and
 - (iii) the privileges and benefits of each category of Life Member which shall include the right to receive notice and attend, but not the right to vote at, General Meetings.
- (f) A person may be posthumously recognised as a Life Member.
- (g) Subject to **clause 5.2**, at the time of adoption of this Constitution, the first Life Members of the Company shall be the persons listed in **Schedule 1** to this Constitution.

5.5 Affiliate Members

The Affiliation process for Affiliate members is very important, as it should be seen that Affiliate Members are joining and rejoining the Company each year. The process can be varied to suit the Company's requirements. Clubs and regional associations can be members to ensure national policies can be enforced on clubs and regional associations.

- (a) Only a legal entity may become an Affiliate Member.
- (b) In order to become an Affiliate Member, a legal entity must submit an application accompanied by an up-to-date copy of that legal entity's constituent documents.

- (c) Affiliate Membership may be granted by the Directors in respect of an application made under **clause 5.5(b)** on such terms and conditions as the Directors may see fit.
- (d) Affiliate Membership may be suspended or cancelled by the Directors provided that the Directors comply with the procedure set out in the relevant Policy.
- (e) The Policies will set out:
 - (i) the categories of Affiliate Membership which exist;
 - (ii) the criteria to be met by each category of Affiliate Member;
 - (iii) the privileges and benefits of each category of Affiliate Member which shall not include the right to receive notice, attend or to vote at, General Meetings; and
 - (iv) the procedure for suspending or cancelling Affiliate Membership.
- (f) Subject to **clause 5.2**, at the time of adoption of this Constitution, the first Affiliate Members of the Company shall be those persons recorded in the minutes of the relevant meeting.

5.6 Individual Members

- (a) No individual shall be Registered with the Company as an Individual Member except in accordance with this **clause 5.6**. The Company may at its discretion refuse to accept a person as an Individual Member and shall not be required or compelled to provide any reason for such rejection.

Individuals being Members assists enforcement of national policies. Individuals must actually consent to membership; they cannot automatically become Members upon joining a State Member or an Affiliate.

Like any discretion which may be exercised, the Board must act lawfully, reasonably and in good faith. This is particularly so in the context of considering applications for membership.

- (b) Subject to **clause 5.6(a)**, an individual may apply to become an Individual Member of the Company and is subject to the provisions of this Constitution.
- (c) In addition to the effect of membership set out in **clause 5.2**, an Individual Member must comply with this Constitution and the Policies and support the Company and the Objects.
- (d) An Individual Member is entitled to any benefits of membership prescribed to apply to Individual Members in the Policies but, in any event, shall not be entitled to receive notice, attend or vote at General Meetings.

5.7 General

- (a) The Company must keep a register of all Members in accordance with the Corporations Act.

See ss. 168 and 169 of the Act.

- (b) No Member whose membership ceases has any claim against the Company or the Directors for damages or otherwise arising from cessation or termination of membership.
- (c) Membership is personal to each Member. No Member shall, or purport to, assign the rights comprising or associated with membership to any other person and any attempt to do so shall be void.
- (d) A Member must treat all staff, contractors and representatives of the Company with respect and courtesy at all times.
- (e) A Member must not act in a manner unbecoming of a Member or prejudicial to the Objects and interests of the Company or the **Sport**, or both.

5.8 Limited Liability

Members have no liability in that capacity except as set out in **clause 25**.

6. Cessation of Membership

6.1 Cessation

A person ceases to be a Member on:

- (a) resignation;
- (b) death;
- (c) the termination of their membership according to this Constitution or the Policies;
- (d) a body corporate being dissolved or otherwise ceasing to exist;
- (e) and without limiting the foregoing:
 - (i) in the case of Members who are not Member States, that Member no longer meeting the requirements for membership according to **clause 5**; and
 - (ii) in the case of Members who are Member States, that Member ceasing to be a Member in accordance with **clause 8**.

6.2 Resignation

For the purposes of **clause 6.1(a)**, a Member may resign as a member of the Company by giving 14 days written notice to the Directors. Where a Member State seeks to resign as a member of the Company the written notice must be accompanied by a copy of the special resolution passed by the Member State's members resolving that the Member State resign from the Company.

6.3 Forfeiture of Rights

A Member who or which ceases to be a Member shall forfeit all right in and claim upon the Company or the Directors for damages or otherwise, or claim upon its property including its intellectual property rights.

7. Grievances and Discipline of Members

7.1 Jurisdiction

All Members will be subject to, and submit unreservedly to, the jurisdiction, procedures, penalties and appeal mechanisms of the Company whether under the Policies or under this Constitution.

Policies should be developed in respect of these matters as soon as possible after adoption of this Constitution.

7.2 Policies

- (a) The Directors may make a Policy or Policies:
 - (i) for the hearing and determination of:
 - (A) grievances by any Member who feels aggrieved by a decision or action of the Company (or a Member State or Affiliated Member); and
 - (B) disputes between Members relating to the conduct or administration of Sport;
 - (ii) for the discipline of Members;
 - (iii) for the formation and administration of an Appeals Tribunal which must be independent of any party before it on the matter which is the subject of the appeal in question; and
 - (iv) for the termination of Members (except in respect of Member States).
- (b) The Directors in their sole discretion may refer an allegation (which in the opinion of the Directors is not vexatious, trifling or frivolous) by a complainant (including a Director or a Member) that a Member has:

- (i) breached, failed, refused or neglected to comply with a provision of this Constitution, the Policies or any other resolution or determination of the Directors or any duly authorised committee; or
- (ii) acted in a manner unbecoming of a Member or prejudicial to the Objects and interests of the Company or Sport, or both; or
- (iii) prejudiced the Company or Sport or brought the Company or Sport or themselves into disrepute;

for investigation or determination either under the procedures set down in the Policies or by such other procedure and/or persons as the Directors consider appropriate.

- (c) During investigatory or disciplinary proceedings under this **clause 7**, a respondent may not participate in Sport, pending the determination of such proceedings (including any available appeal) unless the Directors decide continued participation is appropriate having regard to the matter at hand.
- (d) The Directors may include in any Policy or Policies a final right of appeal to an independent body outside the control of the Sport.

8. Termination of membership of Member State

8.1 Sanctions for Discipline of Member States

Without limiting matters that may be referred to in the Policies, any Member State that is determined by the Directors to have acted in a manner set out in **clause 7.2(b)** shall be liable for the sanctions set out in that Policy, including termination of Membership (which shall only take place in accordance with the procedure set out in this **clause 8**).

8.2 Termination of Membership of Member States

- (a) No recommendation can be made by the Directors under this **clause 8** unless all avenues of appeal available to the relevant Member State under the Policies have been exhausted.
- (b) Subject to compliance with **clause 8.2(a)** (and the Policies), the Directors may recommend to a General Meeting to terminate the membership of a Member State.
- (c) Upon recommendation from the Directors under **clause 8.2(b)**, a General Meeting may, by Special Resolution, terminate the membership of a Member State.

- (d) Where the membership of a Member State is terminated in accordance with this **clause 8.2**:
 - (i) the Directors may recommend to the General Meeting that the Company admit another body, which meets the requirements in **clause 5.3(a)**, as the Member State to represent the relevant State; and
 - (ii) the General Meeting may, by Special Resolution, admit the recommended body as the Member State to represent the relevant State, subject to **clause 5.2**.

9. Fees and Subscriptions

9.1 Membership Fee

- (a) The Directors must determine from time to time:
 - (i) the amount (if any) payable by an applicant for membership;
 - (ii) the amount of the annual subscription fee payable by each Member, or any category of Members;
 - (iii) any other amount to be paid by each Member, or any category of Members, whether of a recurrent or any other nature; and
 - (iv) the payment method and the due date for payment.
- (b) Each Member must pay to the Company the amounts determined under this **clause 9** in accordance with **clause 9.1(iv)**.

Membership fees and finances must be the province of the Board. This is also consistent with Principles 1.1, 1.3, 1.7 and 4.4.

9.2 Non-Payment of Fees

Subject to **clause 5.3(a)**, the right of a Member to attend and vote at a General Meeting is suspended while the payment of any subscription or other amount determined under **clause 9** is in arrears greater than 90 days.

9.3 Deferral or reduction of subscriptions

- (a) The Directors may defer the obligations of a Member to pay a subscription or other amount, or reduce (including to zero) the subscription or other amount payable by a Member, if the Directors are satisfied that:
 - (i) there are reasonable grounds for doing so;
 - (ii) the Company will not be materially disadvantaged as a result; and

- (iii) the Member agrees to pay the deferred or (if greater than zero) the reduced subscription or other amount within a time fixed by the Directors.
- (b) If the Directors defer or reduce a subscription or other amount payable by a Member under this **clause 9.3**, that Member will retain their rights to attend and vote at a General Meeting, unless otherwise specified by the Directors.

10. General Meetings

10.1 Annual General Meeting

AGMs of the Company are to be held:

- (a) according to the Corporations Act; and
- (b) at a date and venue determined by the Directors.

See ss. 250N to 250T of the Act.

10.2 Power to convene General Meeting

- (a) The Directors may convene a General Meeting when they think fit and must do so if required by the Corporations Act.

See s. 249C of the Act.

- (b) The Voting Members may convene a General Meeting, which must comply with the requirements under the Corporations Act.

Section 249D of the Act sets out the circumstances where a General Meeting must be called at the request of Members and s. 249E sets out the rights of Members to call a General Meeting.

10.3 Notice of a General Meeting

- (a) Notice of a General Meeting of Members must be given:
 - (i) to all Members entitled to attend the General Meeting, the Directors, and the auditor of the Company; and
 - (ii) in accordance with **clause 23** and the Corporations Act.

See ss. 249H to 249M of the Act.

- (b) At least 45 days prior to the proposed date of the AGM, the CEO will request from Voting Members notices of motions, which must be received no less than 28 days prior to the AGM.

These time frames are recommended as good practice.

- (c) At least 21 days notice of the time and place of a General Meeting must be given, together with:

This is the minimum period specified under s. 249H of the Act.

- (i) all information required to be included in accordance with the Corporations Act;
- (ii) in the case of a proposed Special Resolution, the intention to propose the Special Resolution and the terms of the proposed Special Resolution;
- (iii) where applicable, any notice of motion received from any Voting Member or Director in accordance with the Corporations Act; and

See s. 249N of the Act.

- (iv) where applicable, a list of all nominations received for positions to be elected at the relevant General Meeting.

10.4 No other business

No business other than that stated in the notice of meeting may be transacted at a General Meeting.

Note that “Other business” or “General business” should NOT be included in the agenda of the Annual General Meeting or a Special General Meeting.

10.5 Cancellation or postponement of General Meeting

Where a General Meeting (including an AGM) is convened by the Directors they may, if they think fit, cancel the meeting or postpone the meeting to a date and time they determine. This clause does not apply to a General Meeting convened by:

- (a) Members according to the Corporations Act;
- (b) the Directors at the request of Members; or
- (c) a court.

10.6 Written notice of cancellation or postponement of General Meeting

Notice of the cancellation or postponement of a General Meeting must state the reasons for doing so and be given to:

- (a) each Member entitled to attend the General Meeting; and

- (b) each other person entitled to notice of a General Meeting under the Corporations Act.

See s. 249J of the Act.

10.7 Contents of notice postponing General Meeting

A notice postponing a General Meeting must specify:

- (a) the new date and time for the meeting;
- (b) the place where the meeting is to be held, which may be either the same as or different to the place specified in the notice originally convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to hold the meeting in that manner.

10.8 Number of clear days for postponement of General Meeting

The number of clear days from the giving of a notice postponing a General Meeting to the date specified in that notice for the postponed meeting must not be less than the number of clear days notice of that General Meeting required to be given by **clause 11.8** or the Corporations Act.

10.9 Business at postponed General Meeting

The only business that may be transacted at a postponed General Meeting is the business specified in the notice originally convening the meeting.

10.10 Representative, proxy or attorney at postponed General Meeting

Where:

- (a) by the terms of an instrument appointing a Representative, proxy or attorney that appointed person is authorised to attend and vote at a General Meeting on behalf of the appointing Member to be held on a specified date or at a General Meeting or General Meetings to be held on or before a specified date; and
- (b) the date for the meeting is postponed to a date later than the date specified in the instrument,

then that later date is substituted for the date specified in the instrument appointing that appointed person, unless the appointing Member notifies the Company in writing to the contrary at least 48 hours before the time at which the postponed meeting is to be held.

10.11 Non-receipt of notice

The non-receipt of a notice convening, cancelling or postponing a General Meeting by, or the accidental omission to give a notice of that kind to, a person entitled to receive it, does not invalidate any resolution passed at the General Meeting or at a postponed meeting or the cancellation or postponement of the meeting.

This is consistent with s. 249J of the Act.

10.12 Right to appoint representative

- (a) In accordance with the Corporations Act, each Voting Member is entitled to appoint an individual as their Representative to attend General Meetings, provided that the Voting Member has not appointed a proxy under **clause 10.13**, and to exercise the powers of the Voting Member in relation to resolutions to be passed without meetings.

See s. 250D of the Act.

- (b) A Voting Member may appoint more than one Representative but only one Representative may exercise the Voting Member's powers at any one time.
- (c) In addition to each Voting Member's appointed Representative, each Voting Member shall be entitled to appoint one further representative to attend meetings on their behalf but not vote.

10.13 Right to appoint proxy

- (a) A Voting Member entitled to attend a General Meeting of the Company is entitled to appoint a person as their proxy to attend the meeting in their place in accordance with the Corporations Act.

See s. 249X of the Act.

- (b) A proxy may be revoked by the appointing Member at any time by notice in writing to the Company.

10.14 Form of proxy

The instrument appointing a proxy may be in form determined by the Directors from time to time provided it complies with the requirements under the Corporations Act.

Section 250A of the Act requires the form to be signed and include: Member's name and address, Company's name, proxy's name, and the meeting at which it may be used.

10.15 Attorney of Member

A Member may appoint an attorney to act on the Member's behalf at all or any meetings of the Company.

10.16 Lodgment of proxy or attorney documents

- (a) A proxy or Attorney may vote at a General Meeting or adjourned or postponed meeting (as the case may be) only if the instrument appointing the proxy or attorney, and the original or a certified copy of the power of attorney or other authority (if any) under which the instrument is signed, are received by the Company:
 - (i) at the office, the facsimile number at the office or at such other place, facsimile number or electronic address specified for that purpose in the notice of meeting; and
 - (ii) at least 48 hours before the scheduled commencement time for the meeting or adjourned or postponed meeting (as the case may be) at which the person named in the instrument proposes to vote. The scheduled commencement time is as specified in the notice of meeting.
- (b) An undated proxy is taken to be dated on the day that it is received by the Company.

This is a requirement of s. 250B of the Act.

10.17 Authority given by appointment

- (a) Unless the terms of the appointment specify to the contrary, an appointment by a Voting Member confers authority on a proxy, attorney or Representative:
 - (i) to agree to a General Meeting being convened by shorter notice than is required by the Corporations Act or by this Constitution;
 - (ii) to speak to any proposed resolution; and
 - (iii) to demand or join in demanding a poll on any resolution.
- (b) Unless the terms of the appointment specify to the contrary, even if the instrument of appointment refers to specific resolutions and directs the proxy, attorney or Representative on how to vote on those resolutions, the appointment is taken to confer authority:

- (i) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (ii) to vote on any procedural motion; and
 - (iii) to act generally at the meeting.
- (c) Unless the terms of the appointment specify to the contrary, if the instrument of appointment refers to a specific meeting to be held at a specified time or venue and the meeting is postponed or adjourned or changed to another venue, then the appointment confers authority to attend and vote:
 - (i) at the postponed or adjourned meeting; or
 - (ii) at the new venue.
- (d) An appointment of a proxy may be a standing proxy — that is, the appointment under the proxy remains valid until it is revoked by the Voting Member that made the appointment.
- (e) The instrument appointing a proxy may provide for the Chairperson to act as proxy in the absence of any other appointment or if the person or persons nominated fails or fail to attend the meeting.
- (f) The instrument appointing a proxy may direct the manner in which the proxy is to vote in respect of a particular resolution.
- (g) If a proxy is appointed to vote on a particular resolution by more than one Voting Member and the instruments appointing the proxy direct the proxy to vote on the resolution in different ways, then the proxy must not vote on a show of hands taken on the resolution.

11. Proceedings at General Meeting

11.1 Number for a quorum

The number of Member States who must be present and eligible to vote for a quorum to exist at a General Meeting is four.

A quorum of four is advisable where there are eight Member States as the Voting Members. This could change for different Voting Member structures.

11.2 Requirement for a quorum

An item of business may not be transacted at a General Meeting unless a quorum is present at the commencement of, and remains throughout, the General Meeting.

The quorum for a General Meeting can be varied. The number or percentage of Members required must be realistic so that a meeting can proceed.

11.3 Quorum and time

If, within 30 minutes after the time appointed for a General Meeting, a quorum is not present, the meeting:

- (a) if convened by, or on requisition of, Members, is dissolved; and
- (b) in any other case stands adjourned to such other day, time and place as the Chair determines.

11.4 Adjourned meeting

If a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, those members then present shall constitute a quorum.

11.5 Chairperson to preside over General Meetings

- (a) The Chairperson is entitled to preside as Chair at General Meetings.

Every meeting must have a chair to conduct the meeting.

- (b) If a General Meeting is convened and there is no Chair, or the Chair is not present within 15 minutes after the time appointed for the meeting, or is unable or unwilling to act, the following may preside as Chair (in order of entitlement):
 - (i) a Director (or other person) chosen by a majority of the Directors present;
 - (ii) the only Director present; or
 - (iii) a Representative of a Voting Member who is entitled to vote and is chosen by a majority of the Voting Members present.

11.6 Conduct of General Meetings

- (a) The Chair:
 - (i) has charge of the general conduct of the meeting and of the procedures to be adopted;
 - (ii) may require the adoption of any procedure which in his or her opinion is necessary or desirable for proper and orderly debate or discussion or the proper and orderly casting or recording of votes; and
 - (iii) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever he

considers it necessary or desirable for the proper conduct of the meeting.

- (b) A decision by the Chair under this **clause 11.6** is final.

11.7 Adjournment of General Meeting

- (a) The Chair may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting.
- (b) The adjournment may be either to a later time at the same meeting or to an adjourned meeting at any time and place agreed by vote of the members present.
- (c) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

11.8 Notice of adjourned meeting

- (a) It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for 30 days or more.
- (b) In that case, at least the same period of notice as was originally required for the meeting must be given for the adjourned meeting.

See s. 249M of the Act.

11.9 Questions decided by majority

Subject to the requirements of the Corporations Act and except in the case of a Special Resolution, a resolution is carried if a simple majority of the votes cast on the resolution are in favour of it.

11.10 Equality of votes

Where an equal number of votes are cast in favour of and against the resolution, the resolution is not carried.

This is consistent with the commentary to Principle 1.4.

11.11 Declaration of results

- (a) At any General Meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is properly demanded and the demand is not withdrawn.

- (b) A declaration by the Chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minutes of the meetings of the Company, is conclusive evidence of the fact.
- (c) Neither the Chair nor the minutes need state, and it is not necessary to prove, the number or proportion of the votes recorded for or against the resolution.

11.12 Poll

- (a) If a poll is properly demanded in accordance with the Corporations Act or by the Chair of the meeting, it must be taken in the manner and at the date and time directed by the Chair, and the result of the poll is the resolution of the meeting at which the poll was demanded.

Section 250L of the Act provides at least 5% of the members can demand a poll.

- (b) A poll demanded on the election of a Chair or on a question of adjournment must be taken immediately.
- (c) A demand for a poll may be withdrawn.
- (d) A demand for a poll does not prevent the General Meeting continuing for the transaction of any business other than the question on which the poll was demanded.

11.13 Objection to voting qualification

- a) An objection to the right of a person to attend or vote at a General Meeting (including an adjourned meeting):
 - (i) may not be raised except at that meeting; and
 - (ii) must be referred to the Chair, whose decision is final.
- b) A vote not disallowed under the objection is valid for all purposes.

11.14 Chair to determine any poll dispute

If there is a dispute about the admission or rejection of a vote, the Chair must decide it and the Chair's decision made is final.

12. Votes of Members

12.1 Votes of Members

- (a) At a General Meeting, on a show of hands and on a poll, each of the Voting Members shall have the votes set out in this **clause 12.1**.
- (b) Each Member State will receive one vote.

- (c) No Member other than Member States shall be entitled to vote at General Meetings.

This is consistent with the commentary to Principle 1.4.

Voting at General Meetings will depend upon which Members have voting rights. It may vary where Members have different rights or, for example, where a Member is not financial.

12.2 Election of Directors

See Principles 1.3 and 1.4.

Select one of these alternatives for the election of directors.

[Alternative 1 – Multiple ballots]

Alternative 1 – multiple ballots. Use this where there is a desire to have a vote to fill each Elected Director position.

- (a) Elections for Elected Directors shall be by exhaustive ballot in accordance with this **clause 12.2** at the relevant General Meeting on papers prepared by the CEO.
- (b) Save where there is only one nominee for each position of Elected Director to be filled, the exhaustive ballot will be conducted as a poll as follows:
- (i) rounds of voting for each position of Elected Director to be filled will be held, the first of which will include all nominees for that position;
 - (ii) the nominee with the fewest number of votes will be eliminated from the second and each subsequent round;
 - (iii) in the event that more than one nominee has an equal number of votes and that number of votes is the least number of votes, then:
 - (A) provided that there remains at least one other nominee for the subsequent round, all of those nominees with the least amount of votes will be eliminated from each of the subsequent rounds of voting;
 - (B) if eliminating all nominees with the least number of votes would result in there being no nominees remaining then, subject to the direction of the Chair (who may call for a re-vote of the last round of voting), the position up for election will be treated as a casual vacancy to be dealt with in accordance with **clause 13.14**;

- (iv) rounds of voting will be continued with one or more nominees being eliminated from each round until only two nominees remain;
- (v) in the last round of two nominees, a resolution is passed in favour of the election of the nominee who receives the majority of votes; and
- (vi) in the event that the last round of voting has only one nominee remaining, then a resolution is still required to be passed in favour of the election of that nominee in order for the nominee to be elected.

[Alternative 2 – Single ballot]

Alternative 2 – single ballot. Use this where there is a desire to fill all Elected Director positions open on a first-past-the-post basis.

- (a) Elections for Elected Directors shall be by ballot in accordance with this **clause 12.2** at the relevant General Meeting on papers prepared by the CEO.
- (b) The ballot for an election to fill one or more Elected Director positions will be conducted in accordance with the following procedure:
 - (i) if at the close of nominations for an election to fill one or more Elected Director positions the number of eligible nominees is equal to or less than the number of positions to be filled, then no election is to take place and those eligible nominees will be taken to be elected to fill one or more of the Elected Director positions; and
 - (ii) if at the close of nominations for an election to fill one or more Elected Director positions there are more eligible nominees than the number of positions to be filled, a ballot will be conducted as a poll and the eligible nominee/s who receives the highest number of votes will be elected to fill the Elected Director positions. If two or more nominees get the same number of votes and at the relevant time there is only one Elected Director position to be filled then the CEO is to draw the name of one of those nominees by lot. That nominee is to be elected as an Elected Director.

12.3 Resolutions not in General Meeting

- (a) If all Members entitled to vote sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms is deemed to have been passed at a General Meeting of the Company held at the time on which the document was signed by the last Member entitled to vote.

- (b) For the purposes of **clause 12.3(a)**, two or more separate documents containing statements in identical terms, each of which is signed by one or more Members entitled to vote, are deemed together to constitute one document containing a statement in those terms signed by those Members on the respective days on which they signed the separate documents.
- (c) A facsimile transmission or other form of visible or other electronic communication purported to be signed by a Member for the purpose of this clause is deemed to be a document in writing signed by that Member.

13. Directors

13.1 Number of Directors

- (a) There must be not less than five Directors and not more than nine Directors.
- (b) Subject to **clause 13.1(a)**, not more than seven Directors are to be elected by the Members (**Elected Directors**), and not more than two Directors are to be appointed under **clause 13.10**.

This is consistent with Principle 1.8.

The numbers on the Board will vary. This template has seven elected directors and up to two “external” appointed directors who may be appointed by the elected directors, through the nomination committee. The Company needs to ensure it has a board size and composition that meets its needs.

See also Principle 1.13, which states that: The chief executive officer will not normally be a director of the board. This enables and supports a clear separation of power between the board and management.

13.2 First Directors

This clause will vary if this is a replacement constitution. That is, there may already be a board in place.

- (a) The First Elected Directors are:
 -
 -
 -
 -
 -
 -

-
- (b) The First Appointed Directors are:
 -
 -
- (c) Subject to the Corporations Act and **clause 13.3**:
 - (i) at the first Annual General Meeting following the adoption of this Constitution, two of the First Elected Directors will retire from office (and in the absence of agreement as to who will retire, those to retire will be determined by lot from the First Elected Directors) and an election will be held to elect two Elected Directors. Those retiring First Elected Directors will, subject to the requirement of this Constitution, be eligible for re-election;
 - (ii) at the second Annual General Meeting following the adoption of this Constitution, two other First Elected Directors will retire from office (and in the absence of agreement as to who will retire, those to retire will be determined by lot from the First Elected Directors) and an election will be held to elect two Elected Directors. Those retiring First Elected Directors will, subject to the requirement of this Constitution, be eligible for re-election; and
 - (iii) at the third Annual General Meeting following the adoption of this Constitution, the remaining First Elected Directors will retire from office and an election will be held to elect that number of First Elected Directors that have retired. Those retiring First Elected Directors will, subject to the requirement of this Constitution, be eligible for re-election.

13.3 Eligibility

- (a) For the period from the date of this Constitution a person who:
 - (i) is an employee of the Company, a Member State or an Affiliated Member; or
 - (ii) holds an Official Position with a Member State or an Affiliated Member; or
 - (iii) was a Director of the Company and **clause 13.8** applies, **(each a disqualifying position)** may not hold office as a Director.

This is consistent with Principle 1.8; Directors must be independent.

- (b) A Director who accepts a disqualifying position must notify the other Directors of that fact immediately and is deemed to have vacated office as a Director.

- (c) A person elected or appointed as a Director at the time of holding a disqualifying position must resign from that disqualifying position within 30 days.
- (d) No person shall be eligible to stand for an Elected Director position if, during the proposed term of office, they would be in breach of **clause 13.8**.
- (e) The Board may determine position or role descriptions or necessary qualifications for Director positions.

13.4 Nomination for election

Please note Principle 3.9 (and the commentary to this Principle), which states that: The board should establish a nomination committee and that its role be set out by formal charter/terms of reference.

- (a) At least 45 days prior to the proposed date of the Annual General Meeting at which a resolution or resolutions will be proposed to fill a vacancy in an Elected Director position, the CEO will request from Members nominations (which comply with this **clause 13.4**) for elections to positions falling vacant, which must be received no less than 28 days prior to the AGM.

These time frames are recommended as good practice.

- (b) Any Member may nominate a person to fill a vacancy in an Elected Director position that is to be the subject of an election at the next AGM.
- (c) A nomination must:
 - (i) be in the form required by the Directors; and
 - (ii) signed by the nominator and nominee.

13.5 Term of office of Directors generally

Subject to **clauses 13.2, 13.8 and 13.9**, an Elected Director will hold office for a term of three years.

This is consistent with the commentary to Principle 1.8.

13.6 Office held until end of meeting

A retiring Elected Director holds office until the end of the meeting at which that Elected Director retires but, subject to the requirement of this Constitution, including **clause 13.8**, is eligible for re-election.

13.7 Elected Director elected at General Meeting

- (a) At a General Meeting:
 - (i) at which an Elected Director retires; or
 - (ii) at the commencement of which there is a vacancy in the office of an Elected Director,there will be a vote of the Members conducted in accordance with **clause 12.2** to fill the vacancy by electing someone to that office.
- (b) Subject to **clauses 13.8** and **13.13**, an Elected Director elected under this **clause 13.7** takes office at the end of the meeting at which they are elected for a period of three years.

13.8 Maximum term of office for Directors

- (a) A Director may not serve more than three consecutive terms as a Director, including where one of the terms is as an Appointed Director.
- (b) For the purpose of **clause 13.8(a)**, service:
 - (i) by a person filling a casual vacancy in an Elected Director position under **clause 13.9(b)** for any period will be treated as a term;
 - (ii) by a person in an Appointed Director position under **clause 13.10** for any period will be treated as a term; and
 - (iii) by a First Elected Director prior to their resignation in accordance with **clause 13.2(c)** will be treated as a term.
- (c) A Director who has served a maximum term in accordance with **clause 13.8(a)** shall not be eligible to be a Director for six years following the completion of their maximum term.
- (d) A Director shall not be eligible to serve more than three terms in any fifteen-year period.

13.9 Casual vacancy in ranks of Elected Directors

- (a) The Directors may at any time appoint a person to fill a casual vacancy (as defined in **clause 13.14**) in the rank of the Elected Directors.
- (b) A person appointed under **clause 13.9(a)** holds office until the next Annual General Meeting at which time they can offer themselves for re-election.

13.10 Appointed Directors

The principle behind Appointed Directors is to provide the Elected Directors with additional skills that may facilitate or assist the Board with a particular issue

over time. For example, a Company may require marketing or lobbying skills. It can then approach and invite an appropriately skilled person to join the Board as an Appointed Director.

- (a) In addition to the Elected Directors, the Directors may themselves appoint up to two persons to be Directors because of their special business acumen and/or technical skills. These persons will be known as the “**Appointed Directors**”. The first Appointed Directors are set out in **clause 13.2(b)**.

This is consistent with Principle 1.8: Appoint a limited number of external Directors to fill identified skill gaps.

- (b) Subject to **clauses 13.8** and **13.13**, an Appointed Director holds office for a term determined by the Directors not to exceed three years and the appointment will be on such other terms as the Directors determine.
- (c) A person may only serve two terms as an Appointed Director but, subject to the other requirement of this Constitution, are otherwise eligible to be elected to an Elected Director position.
- (d) The Directors may at any time appoint a person to fill a casual vacancy (as defined in **clause 13.14**) in the rank of the Appointed Directors on whatever terms the Directors decide.

13.11 Remuneration of Directors

Subject to **clause 13.14**, a Director may not be paid for services as a Director but, with the approval of the Directors and subject to the Corporations Act, may be:

- (a) paid by the Company for services rendered to it other than as a Director; and
- (b) reimbursed by the Company for their reasonable travelling, accommodation and other expenses when:
- (i) travelling to or from meetings of the Directors, a Committee or the Company; or
 - (ii) otherwise engaged in the affairs of the Company.

13.12 Honorarium

The Company may in General Meeting by ordinary resolution determine to pay a Director an ex-gratia payment.

13.13 Removal of Director

- (a) Subject to the provisions of the Corporations Act, the Company may in General Meeting by ordinary resolution remove any Director prior to the expiration of that Director's term of office.

See Principle 5.2 and s. 203D of the Act.

- (b) Unless otherwise resolved at a General Meeting, a Director removed in accordance with **clause 13.13(a)** cannot be re-appointed as a Director within three years of their removal.

This is permitted under s. 203D of the Act.

13.14 Vacation of office

The office of a Director becomes vacant when the Corporations Act says it does and also if the Director:

- (a) is removed in accordance with **clause 13.13**;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (c) resigns from office by notice in writing to the Company;
- (d) accepts appointment to, or becomes the holder of, a disqualifying position as set out in **clause 13.3** and does not resign from that position within 30 days;
- (e) is not present at three consecutive Directors' meetings without leave of absence from the Directors; or
- (f) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Act.

13.15 Alternate Director

A Director cannot appoint an alternate.

The prohibition on appointment of alternative directors is to ensure that only Elected Directors and Appointed Directors are involved in the Company's decision-making.

14. Powers and Duties of Directors

Taken from the commentary to Principle 1.7:

The board's primary responsibility is one of trusteeship on behalf of its stakeholders, ensuring that the legal entity, the organisation, remains viable and effective in the present and for the future.

The board's role includes determining the organisation's strategic direction, core values and ethical framework, as well as key objectives and performance measures. A key critical component of this role is the board's ultimate authority and responsibility for financial operations and budgeting to ensure the achievement of strategic objectives.

See also Principles 1.1 and 1.5.

14.1 Directors to manage the Company

The Directors are to manage the Company's business and may exercise those of the Company's powers that are not required, by the Corporations Act or by this Constitution, to be exercised by the Company in General Meeting.

14.2 Specific powers of Directors

Without limiting **clause 14.1**, the Directors may exercise all the Company's powers to borrow or raise money, to charge any property or business or give any other security for a debt, liability or obligation of the Company or of any other person.

14.3 Time, etc

Subject to the Corporations Act, where this Constitution requires that something be done by a particular time, or within a particular period, or that an event is to occur or a circumstance is to change on or by a particular date, the Directors may at their absolute discretion extend that time, period or date as they think fit.

14.4 Appointment of attorney

The Directors may appoint any person to be the Company's attorney for the purposes, with the powers, authorities and discretions, for the period and subject to the conditions they think fit.

14.5 Provisions in power of attorney

A power of attorney granted under **clause 14.4** may contain any provisions for the protection and convenience of persons dealing with the attorney that the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions of the attorney.

14.6 Delegation of powers

See Principle 2.6 (and commentary to it), which states that: The board and each committee established by the board should have terms of reference or a charter.

See also Principle 3.10 (and commentary to it), which states that: Since ultimate decision-making power rests with the board, the board should clearly document all delegations of authority to the chief executive officer and other individuals, committees or groups. This document, or delegations register, should be regularly reviewed and updated. It should be the subject of a formal board resolution.

The delegations clause recognises that the Board has to delegate functions and tasks to the CEO or other employees of the Company. This clause sets out how such delegations should be made and how they operate.

- (a) Without limiting **clause 17.4** the Directors may, by resolution or by power of attorney or writing under seal, delegate any of their powers to the CEO or any employee of the Company or any other person as they think fit.
- (b) Any delegation by the Directors of their powers:
 - (i) must specify the powers delegated, any restrictions on, and conditions attaching to, the exercise of those powers and the period during which that delegation is to be in force;
 - (ii) may be either general or limited in any way provided in the terms of the delegation;
 - (iii) need not be to a specified person but may be to any person holding, occupying or performing the duties of a specified office or position; and
 - (iv) may include the power to delegate.
- (c) If exercising a power depends on a person's opinion, belief or state of mind, then that power may be exercised by the delegate on the delegate's opinion, belief or state of mind about that matter.
- (d) Any power exercised by a delegate is as effective as if it had been exercised by the Directors.

A company operates by the directors delegating their powers to officers of the company or other persons. The delegation must be recorded in the minute books of the Company: s. 251A of the Act.

14.7 Code of Conduct

The Directors must:

- (a) adopt a code of conduct for Directors; and
- (b) periodically review the code of conduct in light of the general principles of good corporate governance.

See Principles 3.2 and 3.3.

Good corporate governance requires that the Directors develop and publish a code of conduct for themselves and officers of the Company.

15. Proceedings of Directors

See Principles 2.1, 2.2, 2.4 and 4.4.

Good corporate governance requires that the Directors develop and publish a code of conduct for themselves and officers of the Company.

15.1 Directors meetings

- (a) Subject to **clause 15.1(b)**, the Directors may meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit.
- (b) The Directors must meet at least six times in each calendar year.

This is consistent with Principle 2.1.

15.2 Questions decided by majority

A question arising at a Directors' meeting is to be decided by a majority of votes of the Directors present in person and entitled to vote. Each Director present has one vote on a matter arising for decision by Directors.

15.3 Chair's casting vote

The Chair of the meeting will not have a casting vote.

The Chair is first amongst equals, so should encourage collegiate decision-making as opposed to voting.

15.4 Quorum

Five Directors present in person constitutes a quorum.

15.5 Effect of vacancy

- (a) The continuing Directors may act despite a vacancy in their number.
- (b) However, if the number of Directors is reduced below the number required for a quorum, the remaining Directors may act only for the

purpose of filling the vacancies to the extent necessary to bring their number up to that required for a quorum or to convene a General Meeting.

15.6 Convening meetings

- (a) A Director may, and the CEO on the request of a Director must, convene a Directors' meeting.
- (b) Notice of a meeting of Directors must be given individually to each Director (except a Director on leave of absence approved by the Directors). Notice of a meeting of Directors may be given in person, or by post or by telephone, facsimile or other electronic means.
- (c) A Director may waive notice of a meeting of Directors by giving notice to that effect to the Company in person or by post or by telephone, facsimile or other electronic means.
- (d) A person who attends a meeting of Directors waives any objection that person may have in relation to a failure to give notice of the meeting.
- (e) The non-receipt of a notice of a meeting of the Directors or the accidental omission to give notice of a meeting to a person entitled to receive notice does not invalidate any thing done (including the passing of a resolution) at a meeting of Directors.

15.7 Election of Chairperson

Principle 1.6 recommends that the Directors should select their own Chair as opposed to having a President elected by the members.

- (a) The Directors may elect one of their number to be the Chairperson by a majority vote.
- (b) The Director elected to be Chairperson under **clause 15.7(a)** will remain Chairperson for the duration of their term of office as Director and shall chair any meeting of Directors unless the resolution electing a person as the Chairperson specifies a fixed term for the appointment.
- (c) Despite **clause 15.7(b)**, if:
 - (i) there is no person elected as Chair; or
 - (ii) the Chair is not present within 15 minutes after the time appointed for the holding of the meeting; or
 - (iii) the Chair is unwilling to act,the Directors present may elect one of their number to be Chair of the meeting.

15.8 Circulating resolutions

- (a) The Directors may pass a resolution without a Directors' meeting being held if notice in writing of the resolution is given to all Directors and a majority of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of Directors) sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of the document may be used for signing by the Directors if the wording of the resolution and statement is identical in each copy. A facsimile transmission or other document produced by electronic means under the name of a Director with the Director's authority is taken to be a document signed by the Director for the purposes of **clause 15.8(a)** and is taken to be signed when received by the Company in legible form.
- (c) The resolution is passed when the last Director signs.

15.9 Validity of acts of Directors

Everything done at a Directors' meeting or a Committee meeting, or by a person acting as a Director, is valid even if it is discovered later that there was some defect in the appointment, election or qualification of any of them or that any of them was disqualified or had vacated office.

15.10 Directors' Interests

- (a) A Director shall declare to the Directors any material personal interest or related party transaction, as defined by the Corporations Act, as soon as practicable after that Director becomes aware of their interest in the matter.
- (b) Where a Director declares a material personal interest or in the event of a related party transaction, that Director must absent himself or herself from discussion of such matter and shall not be entitled to vote in respect of such matter unless otherwise determined by the Directors.
- (c) In the event of any uncertainty in this regard, the issue shall immediately be determined by a vote of the Directors or, if this is not possible, the matter shall be adjourned or deferred to the next meeting.
- (d) The CEO shall maintain a register of declared interests.

See Principle 1.11. Also ss. 180-184 of the Act.

15.11 Minutes

The Directors must cause minutes of meetings to be made and kept according to the Corporations Act.

See s. 251A of the Act.

16. Telecommunication Meetings of the Company

16.1 Telecommunication Meeting

- (a) A General Meeting or a Directors' Meeting may be held by means of a Telecommunication Meeting, provided that:
 - (i) the number of Members or Directors (as applicable) participating is not less than a quorum required for a General Meeting or Directors' Meeting (as applicable); and
 - (ii) the meeting is convened and held in accordance with the Corporations Act.
- (b) All provisions of this Constitution relating to a meeting apply to a Telecommunication Meeting in so far as they are not inconsistent with the provisions of this **clause 16**.

16.2 Conduct of Telecommunication Meeting

The following provisions apply to a Telecommunication Meeting of the Company:

- (a) all persons participating in the meeting must be linked by telephone, audio-visual or other instantaneous means for the purpose of the meeting;
- (b) each of the persons taking part in the meeting must be able to hear and be heard by each of the other persons taking part at the commencement of the meeting and each person so taking part is deemed for the purposes of this Constitution to be present at the meeting;
- (c) at the commencement of the meeting each person must announce his or her presence to all other persons taking part in the meeting;
- (d) a person may not leave a Telecommunication Meeting by disconnecting his or her telephone, audio-visual or other communication equipment unless that person has previously notified the Chair;
- (e) a person may conclusively be presumed to have been present and to have formed part of a quorum at all times during a Telecommunication Meeting unless that person has previously notified the Chair of leaving the meeting; and

- (f) a minute of proceedings of a Telecommunication Meeting is sufficient evidence of the proceedings and of the observance of all necessary formalities if the minute is certified to be a correct minute by the Chair.

17. Chief Executive Officer

17.1 Appointment of CEO

The Directors shall appoint a CEO.

17.2 Powers, duties and authorities of CEO

See Principle 1.5, which states that: The governance structure should feature a clear separation of powers and responsibilities between the board and the chief executive officer and their staff.

See also Principle 1.12.

- (a) The CEO holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, delegated to them by the Directors.
- (b) The exercise of those powers and authorities, and the performance of those duties, by the CEO are subject at all times to the control of the Directors.

17.3 Suspension and removal of CEO

Subject to the terms and conditions of the appointment, the Directors may suspend or remove the CEO from that office.

This is consistent with Principle 1.13; the CEO should attend meetings but not have a vote.

17.4 Delegation by Directors to CEO

The Directors may delegate to the CEO the power (subject to such reservations on the power as are decided by the Directors) to conduct the day-to-day management and control of the business and affairs of the Company. The delegation will include the power and responsibility to:

- (a) develop business plans, budgets, strategies, policies, processes and codes of conduct for consideration by the Directors and to implement them to the extent approved by the Directors;
- (b) manage the financial and other reporting mechanisms of the Company;
- (c) approve and incur expenditure subject to specified expenditure limits;

- (d) sub-delegate his or her powers and responsibilities to employees or internal management committees of the Company; and
- (e) any other powers and responsibilities which the Directors consider appropriate to delegate to the CEO.

The Directors should delegate these and other powers and responsibilities to the CEO.

17.5 CEO to attend meetings

The CEO is entitled, subject to a determination otherwise by the Directors, to attend all meetings of the Company, all meeting of the Directors and any Committees and may speak on any matter, but does not have a vote.

18. Company Secretary

18.1 Appointment of Company Secretary

There must be at least one Company Secretary who is to be appointed by the Directors.

See s. 204A-204G of the Act. Also s. 188 of the Act.

18.2 Suspension and removal of Company Secretary

The Directors may suspend or remove a Company Secretary from that office.

18.3 Powers, duties and authorities of Company Secretary

A Company Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, delegated to them by the Directors.

19. Committees

19.1 Committees

The delegations clause recognises that the Board has to delegate functions and tasks to special committees. In sport these are common. For example, rules and technical committee, selection committee and judicial committee. This clause sets out how such delegations should be made and how they operate.

The Directors may delegate any of their powers to Committees consisting of those persons they think fit (including Directors, individuals and consultants), and may vary or revoke any delegation.

19.2 Powers delegated to Committees

- (a) A Committee must exercise the powers delegated to it according to the terms of the delegation and any directions of the Directors.
- (b) Powers delegated to and exercised by a Committee are taken to have been exercised by the Directors.

This is consistent with Principle 2.6. It should be noted that an audit committee is a requirement under Principle 3.8 and a nominations committee is a requirement under Principle 3.9.

19.3 Committee meetings

Unless otherwise determined by the Directors, committee meetings are governed by the provisions of this Constitution dealing with Directors' meetings, as far as they are capable of application.

20. Policies

The Policies are the key “delegated legislation” of the Company (sometimes referred to as By-Laws or Regulations). These are key rule and policy documents, which can address a whole range of issues for the Company. These include disciplinary regulations, election procedures, policies including member protection and anti-doping (subject to ISF requirements), financial management and particular sporting matters.

20.1 Making and amending Policies

- (a) In addition to policies made under **clause 7.2**, the Directors may from time to time make policies:
 - (i) that are required to be made under this Constitution; and
 - (ii) which in their opinion are necessary or desirable for the control, administration and management of the Company's affairs and may amend, repeal and replace those policies.
- (b) The Company in General Meeting may amend, repeal or replace any policy made by the Directors without affecting the validity of acts or decisions made by the Directors or anyone authorised to act pursuant to that policy.
- (c) The Policies referred to in **clauses 7.2** and **20.1(a)** take effect 28 days after the service of the Policy on the Member and shall be of force and effect on that date.

20.2 Effect of Policies

A Policy:

- (a) is subject to this Constitution;
- (b) must be consistent with this Constitution;
- (c) when in force, is binding on all Members and has the same effect as a provision in this Constitution; and
- (d) may be overruled if a resolution to that effect is passed by the Members at a General Meeting.

21. Inspection of Records

21.1 Right of the Members to Inspect Records

A Member does not have the right to inspect any document of the Company (including registers kept by the Company) except as required by law.

There is no right under the Act for members to inspect Company records.

22. Accounts

22.1 Accounting Records

The Directors will cause proper accounting and other records to be kept and will distribute copies of financial statements as required by the Corporations Act.

This is consistent with Chapter 2M of the Act.

22.2 Auditor

A properly qualified auditor or auditors shall be appointed by the Directors and the remuneration of such auditor or auditors fixed and duties regulated in accordance with the Corporations Act.

23. Service of Documents

23.1 Document includes notice

In this **clause 23**, document includes a notice.

23.2 Methods of service on a Member

The Company may give a document to a Member:

- (a) personally;
- (b) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or
- (c) by sending it to a facsimile number or electronic address nominated by the Member.

23.3 Methods of service on the Company

A Member may give a document to the Company:

- (a) by delivering it to the Registered Office;
- (b) by sending it by post to the Registered Office; or
- (c) by sending it to a facsimile number or electronic address nominated by the Company.

23.4 Post

A document sent by post if sent to an address:

- (a) in Australia, may be sent by ordinary post; and
- (b) outside Australia, or sent from an address outside Australia, must be sent by airmail,

and in either case is taken to have been received on the second business day after the date of its posting.

23.5 Facsimile or electronic transmission

If a document is sent by facsimile or electronic transmission, delivery of the document is taken to:

- (a) be effected by properly addressing and transmitting the facsimile or electronic transmission; and
- (b) have been delivered on the business day following its transmission.

24. Indemnity

24.1 Indemnity of officers

- (a) This **clause 24** applies to every person who is or has been:
 - (i) a Director, CEO or Company Secretary of the Company; and
 - (ii) to any other officers, employees, former officers or former employees of the Company or of its related bodies corporate as the Directors in each case determine.

Each person referred to in this paragraph **(a)** is referred to as an “**Indemnified Officer**” for the purposes of the rest of **clause 24**.

- (b) The Company will indemnify each Indemnified Officer out of the property of the Company against:
 - (i) every liability (except a liability for legal costs) that the Indemnified Officer incurs as an Officer of the Company or of a related body corporate of the Company; and

- (ii) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the Indemnified Officer becomes involved as an officer of the Company or of a related body corporate of the Company,

unless:

- (iii) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
- (iv) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

This is consistent with s. 199A of the Act.

See also Principle 1.3.

24.2 Insurance

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring an Indemnified Officer against liability that the Indemnified Officer incurs as an officer of the Company or of a related body corporate of the Company including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

See Principles 1.3, 3.4 and 3.5.

24.3 Deed

The Company may enter into a deed with any Indemnified Officer or a deed poll to give effect to the rights conferred by **clause 24.1** on the terms the Directors think fit (as long as they are consistent with **clause 24**).

25. Winding Up

25.1 Contributions of Members on winding up

- (a) Each Voting Member must contribute to the Company's property if the Company is wound up while they are a Member or within one year after their membership ceases.
- (b) The contribution is for:

- (i) payment of the Company's debts and liabilities contracted before their membership ceased;
 - (ii) the costs of winding up; and
 - (iii) adjustment of the rights of the contributories among themselves,
 - (iv) and the amount is not to exceed \$1.00.
- (c) No other Member must contribute to the Company's property if the Company is wound up.

25.2 Excess property on winding up

- (a) If on the winding up or dissolution of the Company, and after satisfaction of all its debts and liabilities, any property remains, that property must be given or transferred to another body or bodies:
- (i) having objects similar to those of the Company; and
 - (ii) whose constitution prohibits (or each of whose constitutions prohibit) the distribution of its or their income and property among its or their members to an extent at least as great as is imposed under this Constitution.
- (b) That body is, or those bodies are, to be determined by the Voting Members at or before the time of dissolution or, failing that determination, by a judge who has or acquires jurisdiction in the matter.

SCHEDULE 1

Life Members (at date of Constitution)