



ASSOCIATION INCORPORATION ACT 1985 (SA)

Model Sporting Club Constitution

Last updated: August 2020

HOW TO USE THIS TEMPLATE

This model constitution has been prepared by the Office for Recreation, Sport and Racing as a guide for sporting clubs in the community who may want to become incorporated or update their existing constitution.

This template has been designed specifically for sport, so it is more detailed than the generic guidelines available on the Consumer and Business Services website. This template takes into account issues which a general, non-sport community organisation might not need to include. Sport often operates under a national system where the national body can make rulings and set policy that will flow through the sport and affect those playing at club level.

This model constitution assumes that the club will either be directly affiliated with the state peak body for that particular sport, or that the club will participate within a regional sport Club, which in turn is affiliated with the state body. Please ensure you are familiar with your own national, state and regional framework before referring, adopting or using any part of this model constitution. This model constitution will not be suitable to all.

The benefit of such a national structure is that all levels of the particular sport are working together for the betterment of the sport and therefore, they will share common purposes, structures, policies and procedures, have the ability to work together to address issues of joint concern, and to ensure that information can flow freely between all levels of the sport. It also enables the various levels of the sport to share common strategic goals and work together to maximise the ability of the sport to govern and market itself.

Finally, with the increasing amount of legislation affecting sport, it enables the club to enact consistent and complementary policies and strategies that address areas of common risk and know that these can flow effectively through the club.

To enable ease of use, this model constitution contains extensive footnotes and explanations on clauses and highlights sections that can be varied to suit each particular club and their circumstances. As you work through the model constitution, you should think not just of your current circumstances but where you envisage the club will be in 5 or 10 years. While constitutions should be reviewed and can be amended from time to time, it is preferable that the club considers, adopts and implements an appropriate constitution for its circumstances at the outset or as early as possible, so that the club can operate effectively, minimise risk and grow over time.

Following the development of a constitution, the club will then need to develop a set of regulations that provide more detail on particular sections of the constitution. Regulations, (sometimes called Rules or By-Laws), are more easily adjusted and have a more operational tone to them. This is where you have more detail in relation to policies and procedures that underpin the constitution, including for example, grievance and selection policies and procedures.

Within this template there will be references to sections that should ideally be further detailed in the regulations developed to accompany the constitution. These are marked by ®. This is not an exhaustive guide as to what should be in the regulations, so always think broadly in terms of your club and circumstances.

In reviewing, considering and using the model constitution (or parts of the model constitution), we strongly recommend that each club:

- refers to the Australian Sports Commission Governance Principles in the process of developing or updating the constitution;
- checks whether there are obligations under their affiliation with the national, state or regional body that may need to be taken into consideration in the process of developing or updating the constitution (e.g. obligatory inclusions or compliance requirements); and
- considers obtaining independent legal advice on the applicability of the model constitution (or parts of the model constitution) in light of the specific circumstances and requirements of the particular club and generally.

The comments /discussion boxes will need to be deleted from your final version.

We reiterate that this model constitution is a template and guide only and does not replace obtaining legal advice on the specific circumstances, legal structure and requirements applicable to the club and your sport.

DISCLAIMER: THE INFORMATION PROVIDED IN THIS MODEL CONSTITUTION IS FOR YOUR INFORMATION ONLY. THE OFFICE FOR RECREATION, SPORT AND RACING ACCEPTS NO RESPONSIBILITY FOR THE ACCURACY OF THE INFORMATION CONTAINED IN THIS MODEL CONSTITUTION OR ANY RELIANCE UPON IT.

LIQUOR AND GAMING LICENSES

A 'club licence' can generally only be held by a body that is a non-profit Club incorporated under the *Clubs Incorporation Act 1985*.

In order to prepare a constitution that satisfies the required criteria, the applicant for a licence must usually show that the rules of the Club provide for:

- appropriate provision for admission to membership of the club;
- the management of the Club's affairs by a board (management committee) elected by the general body of members;
- regular meetings of the general body of members and the board;
- the payment of subscriptions by the ordinary members of the Club; and
- keeping of proper records of the Club's proceedings and its financial affairs.

This template meets these requirements. However, applicants for licenses should consider obtaining independent legal advice in relation to their specific circumstances, legal structure and requirements and the application process generally.

For more information, visit the [Consumer Business Services – Liquor Licensing](#).

If the RSO holds or intends to hold a Liquor or Gaming Licence, it may be necessary to vary the qualifications and job descriptions that apply to board members under this template so that the aforementioned requirements are met.

This should be done in the regulations, not in the constitution itself ®.

DOES YOUR CLUB OPERATE OUTSIDE OF SOUTH AUSTRALIA?

While a Club that is incorporated under the *Clubs Incorporation Act 1985* can operate anywhere in Australia, if your Club wishes to carry on business in one or more States or Territories other than its home jurisdiction (South Australia), it must be registered under Part 5B.2 of the *Corporations Act 2001(Cth)*. This would, typically, be unlikely in relation to a club.

A Club which is registered under a State law not recognised in other States will generally be a registrable Australian body.

Whether a body is *carrying on business interstate* will depend on certain legal principles and on the circumstances of the case.

Where a body is in any doubt as to whether it may be *carrying on business interstate* it should seek its own legal advice. It is likely that having an affiliated member club located in another state, for example Broken Hill (NSW) or Mildura (Vic), could constitute *carrying on business interstate*.

For more information, visit the [Australian Securities and Investment Commission](#).

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ASSOCIATIONS INCORPORATION ACT 1985 (SA)

CONSTITUTION

of

[Insert name of sport club] INCORPORATED

*This is a template constitution for a South Australian RSO. The document complies with the Associations Incorporation Act 1985 (SA) (**Act**) (in particular – see section 23A of the Act as to what the rules of an incorporated club (or Constitution) should contain) and the Consumer and Business Services, (**CBS**) Model Rules. The document has also been drafted to take into account the Australian Sports Commission's (**ASC**) Governance Principles for Sporting Organisations (**ASC Principles**). Some of these ASC Principles are referred to within this template (and some are more appropriately matters for regulations or other governing documents).*

The document has been prepared on the basis that the club is a key part of the regional, state and national structure for the Sport and thus there are references to these governing bodies for the Sport.

The document is a template only and has a number of text boxes throughout the document, which sets out the rationale and/or explanation for particular clauses and highlight options for the club. You may not want to use all clauses or you may want to amend certain clauses to suit your club and circumstances.

There are also a number of comment boxes in the column which cross reference to the relevant sections of the Act or other legislation.

Please note the document should be tailored to the requirements of each club and not vice versa.

1. NAME OF CLUB

Within the Act, the term 'association' is used to refer to the organisation that is incorporated. While that still applies, in a sport setting we are more used to calling them clubs. Therefore, in this document the term 'Association' has been replaced by the term 'club'

Any reference to 'Association' will refer to a regional or district Association or the state body and will be duly titled.

The name of the club can be varied according to what the organisation requires. The name chosen should give a clear description of the nature of the club and should not be misleading or likely to be confused with another existing organisation.

The name of the club is **[Sport club] Incorporated (Club)**.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Constitution, unless the contrary intention appears:

Act means the *Associations Incorporation Act 1985 (SA)*.

Annual General Meeting means a meeting held once a year and of the kind described in **clause 7**.

Appointed Director means a Director appointed under **clause 8**.

Board means the body consisting of the Directors, who are effectively the management committee and who are entrusted to manage the affairs of the Club.

In the Act, the term 'committee' is used to describe the governing body of an incorporated Club. However, the term 'Board' is more commonly used in documents on governance and will be used throughout this document. The term 'Board' reflects a more professional and corporate approach to governance terminology. Also, the terms 'Board' and 'Directors' have been used in the regional and state sporting association templates too and we have maintained those terms in this document for consistency across the various levels of sport.

Constitution means this constitution of the Club.

Although the Act uses the term 'rules', the most common and accepted description of this document is 'constitution'. Again, the term 'constitution' reflects a more professional and corporate approach to governance terminology.

Director means a member of the Board and includes Elected Directors and Appointed Directors and any person acting in that capacity from time to time appointed in accordance with this Constitution.

Elected Director means a director appointed under **clause 8**.

The document refers to 'Directors' instead of committee members. The reason for this is that an incorporated Club is still a corporation and its management (whatever their title) owe duties to the Members and the Club. The document seeks to use true corporate governance terminology. There are also no 'offices' such as president, vice-president or treasurer. These terms, despite their cultural and historical use, are not of any constitutional relevance. There is nothing in the document, however, that precludes such titles being attached to a particular director's office.

Titles of director positions and job descriptions can be included in the accompanying regulation documents, if desired.

Executive Officer means the Executive Officer of the Club for the time being appointed under this Constitution. Where the Club does not have an Executive Officer, the Club secretary or public officer will, subject to confirmation by the Board, assume the functions of the Executive Officer under this Constitution.

The title of the Executive Officer may vary and this definition acknowledges that some organisations may not even have an Executive Officer.

Financial year means the year ending on the next 30 June following incorporation and thereafter a period of 12 months commencing on 1 July and ending on 30 June each year.

The financial year can be varied to suit your Club; for example, a winter sport may choose to run 1 January to 30 December.

General Meeting means any general meeting of Members other than the Annual General Meeting or Special General Meeting.

IF means [Sport International Federation].

As noted previously, the document seeks to embrace the whole of the sport relevant to the Club including the international federation.

Individual Member means a registered, financial member of the club who is at least 18 years of age.

The document seeks to capture as 'members of the club' all individual persons who are members of the Club and assumes that the Club would normally be a member of a regional Association and/or the state Association.

Intellectual Property means all rights subsisting in copyright, business names, names, trademarks (or signs), logos, designs, equipment (including computer software), images

(including photographs, videos or films) or service marks relating to the Club or any activity of or conducted, promoted or administered by the Club in the region.

It is important for a Club to recognise and protect its intellectual property; thus, the inclusion of this definition.

Junior Member means a registered member of the club who is younger than 18 years of age.

Local Area means the geographical area for which the Club is responsible and as recognised by the Club.

Life Member means an Individual Member appointed as a life member of the Club under **clause 5.3**.

Meeting means either an Annual General Meeting, Special General Meeting or General Meeting

Member means a member for the time being of the Club under **clause 5**.

NSO means [Sport National Sporting Organisation].

The Sport's NSO needs to be included here.

Objects means the objects of the Club in **clause 3**.

Regulations means any regulations made by the Board under **clause 10.4**.

RSO means the regional sporting association that conducts and manages competitions in the Sport.

Seal means the common seal of the Club.

Special General Meeting means a meeting (other than a General Meeting or Annual General Meeting) to discuss extraordinary issues.

Special Resolution means a special resolution defined in the Act.

Sport means the sport of [insert].

If the Club conducts more than one Sport (so a multi-sport regional body), then all of the Sports should be included here. For example: football and netball.

SSO means the [State Sporting Organisation].

2.2 Interpretation

In this Constitution:

- (a) a reference to a function includes a reference to a power, authority and duty;
- (b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing any gender include other genders;
- (e) references to persons include corporations and bodies politic;

- (f) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any legislative authority having jurisdiction);
- (h) a reference to 'writing' shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail; and
- (i) any doubt arising as to the application or meaning of any clause or wording therein shall be decided by a vote at a General Meeting, which decision shall be final and conclusive.

2.3 Severance

If any provision of this Constitution or any phrase contained in it is invalid or unenforceable, the phrase or provision is to be read down if possible, so as to be valid and enforceable, and otherwise shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Constitution.

2.4 The Act

Except where the contrary intention appears, in this Constitution, an expression that deals with a matter under the Act has the same meaning as that provision of the Act. Model rules under the Act are expressly displaced by this Constitution.

3. OBJECTS OF THE CLUB

The Objects of the Club are important and must be carefully considered. The Objects of the Club are the reasons for the existence of the Club and although this can be simply stated as 'promotion and encouragement of the sport', the changes in regulatory, commercial and sporting landscapes require a current sporting body to have relatively broad Objects.

The Objects are expressed to apply to the region in which the Club operates and/or over which it has jurisdiction. It may be beneficial to check the objects of your regional association or State body as a guide when developing those of the Club.

The Objects listed here include more than would be preferred by most Clubs but have been included in full to assist the Club in compiling the Constitution.

*The criteria for eligibility for the Office for Recreation, Sport and Racing 'Active Club' Grant Program requires that the objects of a Club, as represented in the Constitution, **must** reflect that the core business of the Club is to 'provide active recreation and sport programs and services'. Object (a), below, has been written to encompass that requirement.*

The objects of the Club are, within the Local Area and South Australia generally (where applicable), to:

- (a) conduct, encourage, promote, advance and administer the Sport;

The wording in this Object (a) also reflects the language of the Income Tax Assessment Act, which recognises sporting bodies as income tax exempt organisations. Recreation organisations using this template may not be subject to the same income tax exemptions and should obtain their own advice on this matter.

- (b) act, at all times, on behalf of and in the interest of the Members and the Sport;

- (c) affiliate and otherwise liaise with the RSO and SSO (and NSO where applicable) and comply with the constitutions, regulations and rules of these bodies to further these Objects;
- (d) adopt and implement such policies as may be developed by the SSO or the NSO, including (as relevant and applicable) Member protection, anti-doping, health and safety, player and child welfare, junior sport, infectious diseases and such other matters as may arise as issues to be addressed in the Sport;
- (e) abide by, promulgate, enforce and secure uniformity in the application of the rules of the Sport;

Ideally a sport will operate under consistent regulations and policy framework. This is the responsibility of the NSO as the technical "rules or laws of the game" are essentially the responsibility of the IF. Generally, the Club would be responsible for implementation of policies that are developed by the NSO and will develop local policies for implementation by affiliated RSOs and Clubs.

- (f) advance the operations and activities of the Club;
- (g) maintain and enhance the reputation of the Club and the Sport and the standards of play and behaviour of participants in the Sport;
- (h) promote at all times mutual trust and confidence between the Club, the RSO, the SSO, the NSO and the Members in pursuit of these Objects;
- (i) promote the economic and community service success, strength and stability of the Club, the Members and the Sport;
- (j) use and protect the Intellectual Property appropriately;

The importance of protecting intellectual property (IP) cannot be emphasised enough at the Club level. Your IP is what separates you from other SSO's. Please ensure you seek legal advice in relation to your IP.

- (k) pursue such commercial arrangements, including sponsorship and marketing opportunities, as are appropriate to further the interests of the Club;
- (l) have regard to the public interest in the operations of the Club;

Generally, rules made in the 'public interest' are less susceptible to challenge; therefore, this object reminds club members of the moral obligation to be mindful of the community when operating the club

- (m) undertake and or do all such things or activities which are necessary, incidental or conducive to the advancement of these Objects;
- (n) do all that is reasonably necessary to enable these Objects to be achieved and enable Members to receive the benefits which these Objects are intended to achieve; and
- (o) promote the health and safety of Members and all other participants in the Sport.

4. POWERS OF THE CLUB

Solely for furthering the Objects, the Club has the rights, powers and privileges conferred on it under section 25 of the Act, namely to:

- (a) acquire, hold, deal with, and dispose of, any real or personal property;
- (b) administer any property on trust;
- (c) open and operate ADI accounts;

- (d) invest its moneys —
 - (i) in any security in which trust moneys may, by Act of Parliament, be invested; or
 - (ii) in any other manner authorised by the rules of the Club;
- (e) borrow money upon such terms and conditions as the Club thinks fit;
- (f) give such security for the discharge of liabilities incurred by the Club as the Club thinks fit;
- (g) appoint agents to transact any business of the Club on its behalf; and
- (h) enter into any other contract it considers necessary or desirable.

An incorporated association is a type of incorporated legal structure made under the Act. A company limited by a guarantee is another type of incorporated legal structure made under the Corporations Act 2001 (Cth). Both are suitable legal structures for not-for-profit groups in SA. In deciding the appropriate structure for your Club, you should consider such factors as where the Club will operate and carry out activities, whether the Club will be a charity, the ability of the Club to pay fees and various other obligations including annual reporting, audits and reviews. You should obtain independent legal and other advice in this regard. This template has been prepared on the basis of the Club being an incorporated association under the Act.

Please also note the ASC recommends that NSOs be incorporated as a company limited by guarantee under the Corporations Act 2001 (Cth) (ASC Principle 1.2)

5. MEMBERSHIP ®

The Members of the Club and their rights and responsibilities are set out under this clause. The Member categories and their respective rights and responsibilities may of course vary depending on your Club structure.

The Board can create new categories of Members such as corporate members, but any new category cannot be granted voting rights unless approved by the Members.

To grant voting rights is effectively a change in the Constitution and therefore any proposed change must be submitted to a General Meeting and dealt with by Special Resolution

5.1 Categories of Members

The Members of the Club shall consist of:

- (a) **Individual Members**, who subject to this Constitution, shall have the right to receive notice of Meetings and to be present, to debate and to vote at Meetings;
- (b) **Junior Members**, who subject to this constitution, shall have no right to receive notice of Meetings and no right to be present or debate or vote at Meetings;

Your Club may choose to refine your definition of 'Junior Members' to allow Junior Members who are aged 16 years and older to attend and vote at Meetings, or at least the Annual General Meeting.

If your Club is primarily a junior competition club or you have a high proportion of Junior Members, you may need to consider membership categories that ensure that your membership has representation in decision-making. One possibility is to make a parent/guardian of any Junior Member a Member in his or her own right with the right to attend, participate and vote at Meetings (or the Annual General Meeting). This ensures the Club has adequate adult members to maximise the potential for volunteer recruitment and the requirement that Board members are also Members of the Club.

This also has the added benefit of making those parents/guardians subject to the Club's code of behaviour and therefore able to be disciplined for breaching those codes, e.g. dealing with sideline issues.

- (c) **Life Members**, who subject to this constitution, shall have the right to receive notice of Meetings and to be present, to debate and to vote at Meetings

Please note, however, there is a trend towards making life members 'non-voting' while still bestowing on them the other rights and privileges of membership.

- (d) such new categories of Members as may be created by the Board. Any new category of Member created by the Board cannot be granted voting rights without the approval of the Club in a Meeting.

5.2 Life Members ®

- (a) Life membership is the highest honour that can be bestowed by the Club for longstanding and valued service to the Club or to the Sport in South Australia.
- (b) Any Member may recommend a person for Life Membership by notice in writing to the Board as detailed in the Regulations.
- (c) A person may be appointed a Life Member only by Special Resolution put to an Annual General Meeting by the Board.
- (d) A Life Member has the right to receive notice of Meetings and to be present, to debate and to vote at Meetings.
- (e) A Life Member cannot be required to pay fees or subscriptions (other than fees that are required to be paid by a participant in the Sport in his or her capacity as a participant in the Sport).

5.3 Application for Membership ®

- (a) Subject to this **clause 5**, an applicant candidate for membership must apply to the Board in writing.
- (b) The application must:
 - (i) be in a form approved by the Board;
 - (ii) contain full particulars of the name and address and contact details of the applicant;
 - (iii) identify the category of membership for which the applicant is applying; and
 - (iv) contain any other information prescribed by Regulation for an application for membership in that category.

5.4 Discretion to Accept or Reject Application

- (a) The Club may accept or reject an application for membership whether or not the applicant has complied with the requirements in this **clause 5**. The Club shall not be required or compelled to provide a reason for accepting or rejecting the application.
- (b) Where the Club accepts an application, the applicant shall become a Member. Membership shall be deemed to commence upon acceptance of the application by the Club. The Executive Officer/executive director/secretary [*appropriate person to be nominated*] shall amend the register accordingly as soon as practicable.

- (c) Where the Club rejects an application, any fees forwarded with the application will be refunded and the application shall be deemed rejected.

5.4 Renewal

Members (other than Life Members) must renew their membership annually in accordance with the procedures set down by the Club or in the Regulations from time to time.

5.5 Deemed Membership

- (a) All Members which or who are, prior to the operation of this Constitution, Members of the Club, shall be deemed Members from the time of the operation of this Constitution.
- (b) Members shall provide the Club with such details as are reasonably required by the Club under this Constitution within one month of the operation of this Constitution.
- (c) Any Members of the Club, prior to the operation of this Constitution, who are not deemed Members under **clause 5.5(a)** shall be entitled to carry on such functions equivalent to their previous functions as are provided for under this Constitution.

5.6 Obligations of Members

Each Member must:

- (a) treat all staff, contractors and representatives of the Club, the RSO, the SSO, the NSO and all those involved with the Sport with respect, decency and courtesy at all times;
- (b) maintain and enhance the standards, quality and reputation of the Club, the RSO, the SSO, the NSO and the Sport;
- (c) not act in a manner:
 - (i) unbecoming of a Member or prejudicial to the Objects or the interests or reputation of the Club, the RSO, the SSO, the NSO or the Sport; or
 - (ii) that is likely to bring the Club, the RSO, the SSO, the NSO or the Sport into disrepute or which might adversely affect or derogate from the standards, quality and reputation of the Club, the RSO, the SSO, the NSO or the Sport and its maintenance and development; and
- (d) recognise the Club as the authority for the Sport in the local area and the RSO as the authority for the Sport in the region and the SSO as the authority for the Sport in South Australia and the NSO as the authority for the Sport nationally;
- (e) adopt and implement such policies as may be developed by the Club;
- (f) have regard to the Objects in any way pertaining to the Sport;

The ASC recommends that the NSO and its member bodies have aligned objects and purpose to ensure effective achievement of sport outcomes (ASC Principle 1.9) These obligations are in accordance with the RSO and SSO templates.

5.9 Club to Keep Register

Subject to the Act, confidentiality considerations and privacy laws:

- (a) the Club must keep and maintain a register of Members, which shall contain, at least;

- (i) the full name, address, category of membership and date of entry to membership of each Member and Director; and
 - (ii) where applicable, the date of termination of membership of each previous Member.
- (b) the Register may contain such other information as the Board considers appropriate;
 - (c) Members must provide the Club with the details required by the Club to keep the register complete and up to date; and
 - (d) Members shall provide notice of any change and required details to the Club within one month of such change.

The Club Register of Members may include additional information pertaining to important member protection or welfare issues e.g. First Aid Certification, parents names for juniors, emergency contacts, identification of membership type and if a volunteer, specialised skills etc

Although it is unlikely that your Club will be required to abide by the Commonwealth Privacy Act (2000), it is good practice to inform your members of the process of collection and security of personal data. This is especially important if you are passing on personal information to a third party, such as the RSO or SSO, and in some cases, the NSO.

The Australian Sports Commission has developed National Privacy Principles to assist organisations with handling this. This is available on the website: www.ausport.gov.au

Details of your Club Privacy Policy and procedures for handling and securing personal details of members can be outlined in the Club Regulations and policies, such as the Member Protection Policy. Your respective RSO and SSO may have information that will assist you in developing this too.

5.10 Inspection of Register

Subject to the Act, confidentiality considerations and privacy laws, an extract of the register, excluding the address or other direct contact details of any Member, shall be available for inspection (but not copying) by Members who make a reasonable request for a proper purpose.

5.11 Use of Register

Subject to the Act, confidentiality considerations and privacy laws, the register may be used to further the Objects, in such manner as the Board considers appropriate.

5.12 Effect of Membership

This clause reconfirms the requirements of the Act and that the Constitution is a contract between the Club and its Members.

Members acknowledge and agree that:

- (a) this Constitution forms a contract between each of them and the Club and that they are bound by this Constitution and the Regulations and policies of the Club (as well as the constitutions, regulations and policies of the RSO, the SSO and the NSO, where applicable);
- (b) they shall comply with and observe this Constitution and the Regulations and policies of the Club and also any determination, resolution or decision, which may be made or passed by the Board or other entity with delegated authority on behalf of the Club;

- (c) by submitting to this Constitution and the Regulations and policies of the Club, they are subject to the jurisdiction of the Club, the RSO, the SSO and the NSO (where applicable);
- (d) the Constitution and the Regulations and policies of the Club are necessary and reasonable for promoting the Objects and particularly the advancement and protection of the Sport in the Region and South Australia; and
- (e) they are entitled to all benefits, advantages, privileges and services of being a Member of the Club.

5.13 Resignation of Membership

- (a) A Member who has paid all arrears of fees payable to the Club may resign or withdraw from membership of the Club by giving one month's notice in writing to the Club, subject to the clauses below.
- (b) Once the Club receives notice of resignation of membership given under this **clause 5.13 (a)**, it must make an entry in the register that records the date on which the Member who or which gave notice ceased to be a Member.

5.14 Discontinuance of Membership for Breach

- (a) Membership of the Club may be discontinued by the Board upon breach of any clause of this Constitution or the Regulations or the policies of the Club. This includes, but is not limited to, the failure to pay any monies owed to the Club, disciplinary matters, and the failure to comply with the Regulations or any resolutions or determinations made or passed by the Board or any duly authorised committee.
- (b) Membership shall not be discontinued by the Board under **clause 5.14(a)** without the Board first giving the relevant Member sufficient opportunity to explain the breach and/or remedy the breach.
- (c) A Member may not be expelled unless the Member has been afforded natural justice in accordance with the Act and procedural fairness generally.
- (d) Where a Member fails, in the Board's view, to adequately explain or remedy the breach, that Member's membership shall be discontinued under **clause 5.14(a)**. The Club shall give written notice of the discontinuance to the Member. The register shall be amended to reflect any discontinuance of membership under this **clause 5.14** as soon as practicable.

5.15 Member to Re-Apply for Membership

A Member whose membership has been discontinued under **clauses 5.13 or 5.14**:

- (a) may seek renewal or re-apply for membership in accordance with this Constitution; and
- (b) may be re-admitted as a Member at the discretion of the Board.

5.16 Forfeiture of Rights

- (a) A Member who or which ceases to be a Member, for whatever reason, shall forfeit all rights in and claims upon the Club and its property and shall not use any property of the Club including Intellectual Property.
- (b) Any Club documents, records or other property in the possession, custody or control of that Member shall be returned to the Club immediately.

5.17 Membership May be Reinstated

Membership which has been discontinued under this **clause 5** may be reinstated at the discretion of the Board, with such conditions of membership as the Board deems appropriate.

5.18 Refund of Membership Fees ®

Membership fees or subscriptions paid by the discontinued Member may be refunded on a pro-rata basis to the Member upon discontinuance.

5.19 Subscriptions and Fees ®

The subscriptions and fees of the Club are the sole area of the Board NOT the membership. Should the Members seek to interfere or assume responsibility for the setting of subscriptions, fees and/or budgets, they risk potential liability, including for Club debts incurred as a result of the incorrect setting of subscriptions or fees to meet Club costs.

- (a) The Board may:
 - (i) fix annual membership subscriptions;
 - (ii) fix such other fees or levies as the Board considers prudent for the effective and sustainable management of the affairs of the Club; and
 - (iii) determine the time for and manner of payment of the subscriptions, fees and levies by Members to the Club.
- (b) The Board may fix subscriptions, fees or levies at different rates for different categories of membership and may determine that no subscriptions are payable by one or more of the categories for any year.
- (c) The Board may also authorise payment of subscriptions, fees or levies by instalments for some or all of the categories of membership and it may prescribe different terms of instalments for different categories of membership.
- (d) On admission to membership, a new Member must pay the current full year's subscription unless the Board agrees to accept payment in instalments.
- (e) The Board may waive all or part of a Member's subscriptions, fees or levies and may agree terms of payment for a Member different from those applicable to other Members of the same category if the Board is satisfied that there are special reasons to do so.

6. DISCIPLINE AND DISPUTE RESOLUTION ®

6.1 Regulations

- (a) The Board may make Regulations governing the hearing and determination of internal disputes, protests or complaints made by or against Members or participants or the Club or disciplinary matters generally or any other matter involving the enforcement of this Constitution or the Regulations or policies of the Club against Members or participants or the Club (including, but not limited to, matters which involve Members acting in a manner unbecoming of a Member or prejudicial to the Objects or interests of the Club and/or Sport or Members bringing other Members, the Club and/or Sport into disrepute).
- (b) A Regulation made under this **clause 6.1** may:
 - (i) provide for one or more judiciary committees or tribunals to hear and resolve cases falling under this **clause 6.1**;

- (ii) prescribe penalties for breaches of this Constitution or the Regulations or policies of the Club;
 - (iii) invest a judiciary committee or tribunal with power to impose penalties; and
 - (iv) otherwise prescribe the procedures for dealing with cases falling under this **clause 6.1**.
- (c) Despite any Regulation made under this **clause 6.1**, and unless otherwise specified, the Board may itself deal with any disciplinary matter referred to it or appoint a judiciary committee or tribunal to do so.

6.2 Natural Justice and Procedural Fairness

- (d) All proceedings relating to matters falling under **clause 6.1** must be conducted according to the rules of natural justice in accordance with the Act and procedural fairness generally.

6.3 Process

- (e) The dispute resolution procedure set out in this clause applies to disputes between a Member and:
- (i) another Member; or
 - (ii) the Club.
- (f) Any disputes between Members and other Clubs or the RSO or the SSO are to be dealt with by the RSO, the SSO or NSO, where applicable.
- (g) In this clause 'Member' includes any former Member who was a Member not more than six months before the dispute occurred and who is involved in the dispute.
- (h) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within fourteen (14) days after the dispute comes to the attention of all parties.
- (i) If the parties are unable to resolve the dispute at the meeting or if a party fails to attend that meeting, then the parties must, within ten (10) days after the scheduled meeting, refer the dispute to the Association or the State Sport Dispute Centre (if applicable to the Club) to resolve the dispute in accordance with **clause 6.1**.
- (j) The Committee may prescribe additional grievance procedures in Regulations under **clause 6.1**.

The process for complaints and dispute resolution set out above is a brief example. These procedures should, ideally, be set out in more detail in the Regulations.

The State Sport Dispute Centre is operated by the South Australian Sports Federation (Sport SA). The services are provided to Clubs who's SSO is a member of Sport SA. Should your Club not wish to utilise this service you will need to amend this clause accordingly and insert a different Dispute Resolution process. Please check with your RSO or SSO to determine if this applies to your Club.

7. MEETINGS

7.1 Types

The Meetings that can be convened where Members have the opportunity to express opinions and vote on various matters are:

- (a) General Meetings - which may be held on a regular basis;

- (b) Annual General Meeting - which must be held in accordance with the Act and this Constitution and on a date and at a venue to be determined by the Board; and
- (c) Special General Meeting – which are special meetings that are convened to discuss extraordinary issues.

7.2 Attendance

Unless this Constitution expressly provides otherwise, Members (including the Board) and the auditor are entitled to attend Meetings but only Members are entitled to vote at Meetings.

7.3 Notice

- (a) Notice of Meetings must be given to Members and the auditor by the means authorised in **clause 10.5**.
- (b) A notice of a Meeting must specify the place, day and hour of the Meeting and state the nature and order of the business to be transacted at the Meeting.
- (c) At least twenty-one (21) days' notice of a Meeting must be given to those Members entitled to receive notice, together with:
 - (i) the agenda for the Meeting; and
 - (ii) any notice of motion received from Members entitled to vote.

The number of days' notice is optional. 21 days is considered reasonable within most Clubs.

7.4 Business

The modern practice is for the Directors, rather than the Members, to appoint the auditor at a General Meeting. This template reflects this approach.

- (a) The ordinary business to be discussed at the Annual General Meeting includes, but is not limited to, the consideration and approval of financial and other accounts and the reports of the Board (and those of any auditors), the election of Directors and auditors and any amendments to this Constitution.
- (b) All business that is discussed at a Special General Meeting or an Annual General Meeting, other than those matters referred to in **clause 7.4(a)**, is special business.
- (c) No business other than that stated on the notice for an Annual General Meeting or Special General Meeting may be discussed at those meetings.
- (d) Special or other business can be tabled without notice at a General Meeting.

7.5 Notices of Motion

Members entitled to vote may submit notices of motion for inclusion as special business at a Meeting. All notices of motion must be submitted in writing to the CEO not less than fourteen (14) days prior to the Meeting.

7.6 Quorum

The quorum for a Meeting can be varied. The number or percentage of Members required must be realistic so that a meeting can proceed. e.g. If there are 50 Clubs then it may be appropriate to have 25 plus 1 Clubs or maybe 55% of Members.

The actual number for a quorum is optional. It is generally best practice to have more than 50% of eligible voting Members in attendance at that meeting as a minimum to make decisions.

No business may be discussed or transacted at a Meeting unless a quorum is present at the time when the Meeting proceeds to business. Subject to **clause 7.8(b)(ii)**, a quorum for Meetings is **[insert number or percentage]** of Affiliate Members plus 1.

7.7 Chairperson to Preside

- (a) The chairperson of the Board will, subject to this Constitution, preside as chairperson at every General Meeting except:
 - (i) in relation to any election for which the chairperson of the Board is a nominee; or
 - (ii) where the chairperson of the Board has a conflict of interest.
- (b) If the chairperson of the Board is not present or is unwilling or unable to preside, the Members present must appoint another Director to preside as chair for that General Meeting only.

7.8 Adjournment

- (a) If within half an hour from the time appointed for the Meeting, a quorum is not present, the Meeting must be adjourned until the same day in the next week at the same time and place or to such other day, time and place as the chairperson determines.
- (b) If at the adjourned Meeting a quorum is not present within half an hour from the time appointed for the adjourned Meeting:
 - (i) if the Meeting was convened on the requisition of Members under **clause 7.13**, the Meeting will lapse and will not be adjourned or reconvened; and
 - (ii) in any other case, those Members present will constitute a quorum.
- (c) The chairperson may, with the consent of any Meeting at which a quorum is present, and must, if directed by the Meeting, adjourn the Meeting from time to time and from place to place but no business may be transacted at any adjourned Meeting other than the business left unfinished at the Meeting from which the adjournment took place.
- (d) When a Meeting is adjourned for thirty (30) days or more, notice of the adjourned Meeting must be given as in the case of an original Meeting.
- (e) Except as provided in **clause 7.8(c)**, it is not necessary to give any notice of an adjournment or the business to be discussed or transacted at any adjourned Meeting.

7.9 Voting Procedure

Voting at 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.

- (a) At any Meeting a resolution put to the vote of the Meeting will be decided on a show of hands unless a poll is (before the show of hands) demanded by:
 - (i) the chairperson; or
 - (ii) a simple majority of Members present at the General Meeting.
- (b) Each Member is entitled to one (1) vote at Meetings.
- (c) The chairperson may not exercise a casting vote at Meetings.

7.10 Proxy Voting

Proxy voting has not been provided for in this template. It is optional and does not need to be provided for under the Act. Some care is needed in deciding to allow Proxy voting as this may not ensure appropriate representation by the Members.

Proxy voting may be appropriate where an organisation's Members are geographically challenged to attend the meetings. Therefore, it may be applicable to RSOs, rather than Clubs.

Should you choose to allow proxy voting we recommend that you adopt different clauses, along these lines: "A Member shall be entitled to appoint in writing a natural person who is also a Member of the Club to be their proxy and attend and vote at any Meeting of the Club."

7.11 Recording of Determinations

A declaration by the chairperson that a resolution has, on a show of hands, been carried (either unanimously or by a particular majority) or lost and an entry to that effect in the minutes of the proceedings of the Club is conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution.

7.12 Special General Meetings

This template states that 10% of Members can requisition a Special General Meeting. This amount can be varied. The total number of Members may determine this number. e.g. If there are 150 Members then 10% represents 15 Members. If there are 500 Members, then 10% represents 50 Members. It needs to be a material amount so that a very few cannot destabilise the Club or unnecessarily requisition Meetings.

- (a) The Board may, whenever it thinks fit, convene a Special General Meeting of the Club.

7.13 Requisition of Special General Meetings by Affiliate Members

- (a) On the requisition in writing of **[insert number or percentage]** of the total number of Members, the Board must, within one month after the receipt of the requisition (and provided notice is given in accordance with **clauses 7.3 and 10.5**), convene a Special General Meeting for the purpose specified in the requisition.
- (b) Every requisition for a Special General Meeting must be signed by requisitioning Members, state the purpose of the meeting and be sent to the Club. The requisition may consist of several documents in a like form, each signed by one or more of the Members making the requisitions.
- (c) If the Board does not cause a Special General Meeting to be held within one month after the receipt of the requisition, the Members making the requisition may convene a Special General Meeting to be held not later than three (3) months after the receipt of the requisition.
- (d) A Special General Meeting convened by the Members under this Constitution must be convened in the same manner, or as nearly as practical to the same manner, as a meeting convened by the Board and for this purpose the Board must ensure that the Members making the requisition are supplied free of charge with particulars of the Members entitled to receive a notice of meeting. The reasonable expenses of convening and conducting such a meeting must be borne by the Club.

8. MANAGEMENT

Some of the material below is taken from the ASC Principles.

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

The Board's role includes determining the Club'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.

There should be no overlap in the powers of any two bodies (i.e. the Board and another body) or individuals in the governance of the Club.

The governance structure should feature a clear separation of powers and responsibilities between the Board and the CEO and their staff (ASC Principle 1.5)

8.1 Deemed Board

The Members of the administrative or governing body (by whatever name it is called) of the Club in office immediately prior to approval of this Constitution under the Act shall continue in those positions until the next Annual General Meeting following such adoption of this Constitution, and thereafter the positions of Board shall be filled, vacated and otherwise dealt with in accordance with this Constitution.

8.2 General powers of Board

- (a) The Board constitutes the Committee for the purposes of the Act.
- (b) Subject to the Act and this Constitution, the business and affairs of the Club must be managed by the Board, which may exercise the powers of the Club for that purpose.
- (c) The Board must perform its functions in the pursuit of the Objects and in the interests of the Club and Members as a whole, having regard to the Club's position and role in the structure and reputation of the Sport in the Region and South Australia.
- (d) The Board may not cause the Club to disaffiliate from the RSO or SSO or NSO or the Sport in any way unless decided by resolution of the Members at a Meeting.

8.3 Composition of the Board ®

The numbers on the Board may vary. This template has seven Elected Directors and up to two 'external' Appointed Directors who may be appointed by the Elected Directors.

The Club needs to ensure it has a Board size and composition that meets its needs.

The ASC states that each Board should be structured to reflect the complex operating environment facing the modern sporting organisation (ASC Principle 1.8). Normally, it is envisaged that a Board will:

-comprise between five and nine directors

-have a sufficient blend of expertise, skills, gender and diversity necessary to effectively carry out its role

-have all directors being independent, regardless of whether they are elected or appointed

- have the ability to make a limited number of external appointments to the Board to fill skills gaps*
- institute a staggered rotation system for Board members with a maximum term in office to encourage Board renewal while retaining corporate memory*
- be broadly reflective of the organisation's key stakeholders, but not at the expense of the Board's skills mix and the organisation's objectives*

There is a strong community expectation that sporting boards will comply with the ASC Principles.

As an Club, there are a number of sub-committees that could exist and it is appropriate to ensure fair representation across all Affiliate Members. Each sub-committee approved by the Board will have a Board Appointed Director

The Board will comprise of:

- (a) up to seven (7) Elected Directors who must all be Members and who shall be elected under **clause 8.5**; and
- (b) up to two (2) Appointed Directors who need not be Members and who may be appointed under **clause 8.9**.

The numbers on the Board will vary. This template has seven elected Board Directors and up to two 'external' appointed Board Directors who may be appointed by the Elected Directors.

The club needs to ensure it has a Board size and composition that meets its needs.

8.4 Portfolios ®

The Board may allocate portfolios to Directors.

The trend in sporting organisations is not to entrench portfolios in the Constitution. If the Club decides to allocate portfolios to Directors, discretion should simply be retained by the Board. This maintains flexibility and does not require constitutional change if a portfolio is no longer required or needs to be added. Structure, participation and operation of portfolios can be documented in the Club's Regulations.

8.5 Nominations for Elected Directors ®

- (a) The Board must call for nominations for Elected Directors at least forty-nine (49) days prior to the Annual General Meeting.
- (b) The Board may, when it calls for nominations, indicate which portfolios on the Board it wishes to fill, the job descriptions for those portfolios and the qualifications or experience it considers desirable for those portfolios.

8.6 Form of Nominations ®

Nominations must:

- (a) be in writing;
- (b) be in the prescribed form (if any) provided for that purpose;
- (c) be signed by the nominee;
- (d) disclose any position the nominee holds in the Club, including as an officer, a participant, a Delegate or an employee; and
- (e) be delivered to the Club not less than twenty-eight (28) days before the date fixed for the Annual General Meeting.

8.7 Elections ®

The process for electing and appointing Directors is not typically entrenched in the Constitution. It should be set out in the Regulations and can be by such process as the Club deems appropriate.

There is no reason why the Club cannot advertise for people with the skills they are seeking or approach potential Directors directly with an invitation to find out more about the Club. It is important if this approach is adopted that the potential Director must be a member of a Club.

- (a) If the number of nominations received for the Board is equal to the number of vacancies to be filled or if there are insufficient nominations received to fill all vacancies on the Board, then those nominated shall be declared elected only if approved by the majority of Members entitled to vote at the Annual General Meeting.
- (b) If the number of nominations exceeds the number of vacancies to be filled, an election must be conducted at the Annual General Meeting.
- (c) Voting shall be conducted in such a manner and by such a method as determined by the Board from time to time.

Typically, such voting is conducted by secret ballot.

- (d) If at the close of the Annual General Meeting, vacancies on the Board remain unfilled, the vacant position(s) will be deemed casual vacancies under **clause 8.13**.
- (e) If a person nominated at the Annual General Meeting is not approved by the majority of Members under **clause 8.7(a)**, he or she will not be entitled to take office until approved by the Members at an Annual General Meeting.

8.8 Term of Appointment for Elected Directors

Under this template, Elected Directors' terms are for two years, although this can be changed depending on the Club or circumstances.

- (a) Directors elected under **clause 8** shall be elected for a term of two (2) years. Subject to provisions in this Constitution relating to early retirement or removal of Directors, Elected Directors shall remain in office from the conclusion of the Annual General Meeting at which their relevant election occurred until the conclusion of the second Annual General Meeting following.
- (b) At least half of the Elected Directors shall retire in each odd year and the balance of the Elected Directors shall retire in each even year until, after two (2) years the original elected Directors have all retired.
- (c) The sequence of retirements under **clause 8.8(b)**, which is designed to ensure rotational and staggered terms, shall be determined by the Board.
- (d) Following the adoption of this Constitution, no person who has served as an Elected Director or Appointed Director for a period of ten (10) years shall be eligible for election as an Elected Director until the next Annual General Meeting following the date of conclusion of their last term as an Elected Director.
- (e) If the law requires the Elected Director to have a particular qualification or clearance (for example, police clearance), the Elected Director's term will not begin until the qualification or clearance has been established.

8.9 Appointment of Appointed Directors

The principle behind the appointment of "Appointed" Directors is that Elected Directors often require new Directors with additional skills that may facilitate or assist the Board with a particular issue in time. For example, an Club may require marketing or lobbying skills. It can then approach and invite an appropriately skilled person to join the Board as an Appointed Director.

The Elected Directors may appoint up to two (2) Appointed Directors, at their sole discretion.

8.10 Qualifications for Appointed Directors

In appointing Appointed Directors, the Elected Directors should have regard to which personal and professional skills, diversity (including, but not limited to gender, ethnicity and age) and experience the Elected Directors believe will complement the Board composition.

8.11 Term of Appointment

The term of office of each Appointed Director must be fixed by the Elected Directors at the time of the Appointed Director's appointment but it cannot exceed one (1) year.

8.12 Chairperson

The Board shall appoint a chairperson from amongst its Elected Directors. The chairperson shall be the nominal head of the Club and will act as chair of any Board meeting at which they are present. If the chairperson is not present or is unwilling or unable to preside at a Board meeting, the remaining Directors shall appoint another Director to preside as chair for that meeting only.

There is a strong argument for either a Chairperson or President. The President potentially provides the Club with a "leadership figure" in the community who can represent the Club publicly. In the community, the term 'President' is a more commonly accepted.

The ASC recommends that the chairperson should be selected by the Board (ASC Principle 1.6)

8.13 Casual Vacancies

Subject to **clause 8.7** any casual vacancy occurring in the position of Director may be filled by the remaining Directors from among appropriately qualified persons. Any casual vacancy may only be filled for the remainder of the Director's term under this Constitution.

8.14 Duties of Directors

In accordance with Division 3A of the Act, Directors must:

- (a) not, in the exercise of their powers or the discharge of their duties, commit an act with intent to deceive or defraud the Club, Members or creditors of the Club or creditors of any other person or for any fraudulent purpose;
- (b) not make improper use of information acquired by virtue of their position in the Club so as to gain, directly or indirectly, any pecuniary benefit or material advantage themselves or any other person, or so as to cause a detriment to the Club;
- (c) not make improper use of their position as such an officer or employee so as to gain, directly or indirectly, any pecuniary benefit or material advantage for themselves any other person, or so as to cause a detriment to the Club; and
- (d) at all times act with reasonable care and diligence in the exercise of their powers and the discharge of the duties of their office.

8.15 Grounds for Termination of Director

- (e) The office of a Director becomes vacant if the Director:
- (i) dies;
 - (ii) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
 - (iii) suffers from mental or physical incapacity;
 - (iv) cannot obtain or retain office under section 30 of the Act;
 - (v) resigns his or her office by notice in writing to the Club;
 - (vi) is absent without the consent of the Board from meetings of the Board held during a period of six (6) months;
 - (vii) holds any office of employment with the Club;
 - (viii) is directly or indirectly interested in any contract or proposed contract with the Club and fails to declare the nature of his or her interest (and which amounts to a conflict of interest);
 - (ix) in the case of an Appointed Director, is removed from office by the Elected Directors;
 - (x) is removed by the Members in General Meeting; or
 - (xi) would otherwise be prohibited from being a director of a corporation under the *Corporations Act 2001 (Cth)*.
- (f) If a Director is removed by resolution of the Members, the Director cannot be reappointed to the Board as an Appointed Director without a further resolution of Members authorising the appointment.

It is important that Directors are aware that, like the Members, they have a responsibility to adhere to the Club's Constitution, Regulations, Policies and Codes of Behaviour.

Failure to do so should lead to the same discipline being taken as it would for any other Member.

8.16 Board May Act

If there are any vacancies on the Board, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of the Board, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute a quorum.

8.17 Board to Meet

These clauses of the template have been drafted so that they comply with the law, but also so that they provide the board maximum flexibility in terms of how it meets. The ASC Principles recommends that a Board meet no less than six times per year and as often as monthly. A small Club may only need to meet bi-monthly to properly conduct its business. In alternate months it may meet not as a board, but as a committee to address operational issues thereby keeping separate the strategic and operational dimensions of running the Club. Alternatively, it may meet monthly during the season but less often between seasons.

- (a) The Board must meet as often as it considers necessary in every calendar year for the dispatch of business (and must meet at least as often as is required under the Act) and in accordance with principles of good governance. Subject to this

Constitution, the Board may adjourn and otherwise regulate its meetings as it thinks fit.

- (b) Any Director may at any time convene a meeting of the Board on reasonable notice to the other Directors.

8.18 Decisions of Board

This template does not give the chairperson a discretionary casting vote. This is optional.

The ASC Principles recommend that 'votes taken at Board or General Meetings should be passed by a majority of director/members and not be subject to a casting vote. The principle is based on the premise that if a majority cannot agree on an issue then the issued should be forfeited'.

Subject to this Constitution, questions arising at any meeting of the Board may be decided by resolution of the Directors. Each Director has one (1) vote on any question. The chair does not have a casting vote.

8.19 Circulatory Resolutions ®

- (a) A resolution in writing, signed or assented to by email, facsimile or other form of visible or other electronic communication by all the Directors for the time being present in Australia shall be as valid and effectual as if it had been passed at a meeting of Directors duly convened and held. Any such resolution may consist of several documents in like form each signed or assented to by one (1) or more of the Directors.
- (b) A resolution may not be passed under **clause 8.19(a)** if, before it is circulated for voting under **clause 8.19(a)** the Board resolves that it can only be put at a meeting of the Board.
- (c) A resolution passed under this clause must be recorded in the minute book.

8.20 Resolutions not in Meeting

- (a) Without limiting the power of the Board to regulate its meetings as it thinks fit, and subject to **clause 8.21**, a meeting of the Board may be held where one or more of the directors is not physically present at the meeting, provided that:
 - (i) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously whether by means of telephone or other form of communication;
 - (ii) notice of the meeting is given to all the Directors entitled to notice in accordance with the usual procedures agreed upon or laid down from time to time by the Board or this Constitution. The notice will specify that Directors are not required to be present in person;
 - (iii) if a failure in communications prevents **clause 8.20(a)(i)** from being satisfied by the number of Directors which constitutes a quorum (**clause 8.21**), and none of such Directors are present at the place where the meeting is deemed by virtue of the further provisions of this rule to be held, then the meeting shall be suspended until **clause 8.20(a)(i)** is satisfied again. If such condition is not satisfied within fifteen minutes from the interruption, the meeting shall be deemed to have been terminated or adjourned; and
 - (iv) any meeting held where one or more of the Directors is not physically present shall be deemed to be held at the place specified in the notice of the meeting, provided a Director is there in person. If no Director is there in person, the meeting shall be deemed to be held at the place where the chairperson of the meeting is located.

8.21 Quorum

The quorum for a Board meeting can be varied. It should be at least half plus one of the Directors in office. For example, if there are six Directors the quorum should be four. If there are seven Directors the quorum should also be four. If there are ten Directors the quorum should be six and so on.

- (a) At meetings of the Board the number of Directors whose presence is required to constitute a quorum is:
 - (i) if the number of Directors then in office is an even number, half of the number of Directors plus one; or
 - (ii) if the number of Directors then in office is an odd number, half of the number of Directors rounded up to the next whole number.
- (b) The chairperson of the Club will act as chairperson of any Board meeting or Meeting at which he or she is present and unless the Board decides otherwise, is the nominal head of the Club. If the chairperson is not present or is unwilling or unable to preside at a Board meeting, the remaining Directors must appoint another Director to preside as chair for that meeting only.

8.22 Conflict of Interest ®

- (c) The Directors must comply with sections 31 and 32 of the Act regarding disclosure of interests and voting on contracts in which a Director has an interest.
- (a) A Director shall declare his or her interest in any contractual, selection, disciplinary, or financial matter in which a conflict of interest arises or may arise and shall, unless otherwise determined by the Board, absent themselves from discussions of such matters and shall not be entitled to vote in respect of such matters. If the Director casts a vote, the vote shall not be counted.
- (b) In the event of any uncertainty as to whether it is necessary for a Director to absent themselves from discussions and refrain from voting, the issue should be immediately determined by vote of the Board. If this is not possible, the matter shall be adjourned or deferred.

8.23 Disclosure of Interests

- (a) The nature of the interest of a Director must be declared at the meeting of the Board at which the relevant matter is first taken into consideration, if the interest then exists. In any other case, the interest should be revealed to the Board at the next meeting of the Board. If a Director becomes interested in a matter after it is made or entered into, the declaration of the interest must be made at the first meeting of the Board held after the Director becomes interested.
- (b) All disclosed interests must also be disclosed to each Annual General Meeting in accordance with the Act.

8.24 General Disclosure

A general notice stating that a Director is a member of, or associated with, any entity and that he or she is 'interested' in all transactions with that entity is sufficient declaration under **clause 8.23**. After the distribution of the general notice, it is not necessary for the Director to give a special notice regarding any particular transaction with that firm or company.

8.25 Recording Disclosures ®

Any declaration made, any disclosure or any general notice given by a Director in accordance with **clauses 8.22, 8.23** and/or **8.24** must be recorded in the minutes of the relevant Meeting.

8.26 Delegations

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

The Act requires that a 'Public Officer' be appointed (section 56 of the Act). That person may also assume the responsibilities of the 'Secretary' or this may be another person. A Treasurer may be appointed or instead, a finance committee may assume that role.

Clause 8.26 refers to an 'instrument in writing' which outlines delegations. The standard practice is that the instrument is a list/register of delegations, which is subject to a formal resolution of the Board. In addition to the register of delegations, the resolution to approve the delegations is to be clearly recorded in the Board minutes.

Delegations can and should in some cases include the authority to spend the Club's funds in accordance with the agreed budget.

(a) **Board May Delegate Functions**

The Board may, by instrument in writing, create or establish or appoint special committees, individual officers and consultants to carry out such duties and functions. The Board will also determine what powers these entities are given.

(b) **Delegation by Instrument**

The Board may, in the establishing instrument, delegate such functions as are specified in the instrument, other than:

- (i) this power of delegation; and
- (ii) a function imposed on the Board or the Executive Officer by the Act or any other law, or this Constitution or by resolution of the Club in a Meeting.

(c) **Delegated Function Exercised in Accordance with Terms**

A function, the exercise of which has been delegated under this clause, may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.

(d) **Procedure of Delegated Entity**

The procedures for any entity exercising delegated power shall, subject to this Constitution and with any necessary or incidental amendment, be the same as that applicable to meetings of the Board. The entity exercising delegated powers shall make decisions in accordance with the Objects. It shall promptly provide the Board with details of all material decisions and shall provide any other reports, minutes and information as the Board may require from time to time.

(e) **Delegation May be Conditional**

A delegation under this clause may be made subject to such conditions or limitations as to the exercise of any function. These may be specified in the delegation.

(f) **Revocation of Delegation**

By instrument in writing, the Board may at any time revoke wholly or in part any delegation made under this clause and it may amend or repeal any decision made by such body or person under this clause.

8.27 Seal

In addition to recording the use of the seal in the Board minutes, the Club may like to consider establishing a register for the use of the seal. A seal is to be used when the club is entering into a contract.

You can obtain a seal from a rubber stamp maker. Section 26(1)(a) of the Act deals with contracts made under common seal.

In addition to recording the use of the seal in the Board minutes, the Club may like to consider establishing a register for the use of the seal, which will record the date, contract details and Directors witnessing the use of the seal.

- (a) The Club will have a Seal on which its corporate name appears in legible characters.
- (b) The Seal may not be used without the express authorisation of the Board and every use of the Seal must be recorded in the minute books of the Club. The affixing of the Seal must be witnessed by two (2) Directors or by one Director and another person authorised by the Board for that purpose.

8.28 Appointment of CEO

Many Clubs may not want or need to appoint a CEO. The option is there to leave this reference in or to change it to refer to the Secretary or Public Officer, if those terms are more appropriate. Please ensure you understand what these various roles entail. A Club CEO is only likely to be necessary for large Clubs with sufficient resources and Members.

Circumstances will vary between Clubs, as some Clubs may not even have an Executive Officer. The duties of the CEO will be set out not only in the Constitution but also in any employment contract that he or she may have with the Club.

- (a) A CEO may be appointed by the Board for such term and on such conditions as the Board thinks fit.
- (b) 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.

The ASC Principle 1.5, states that: The governance structure should feature a clear separation of powers and responsibilities between the Board and the CEO and their staff.

- (c) 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.
- (d) Subject to the terms and conditions of the appointment, the Directors may suspend or remove the CEO from that office.

The ASC Principle 1.13 states the CEO should attend meetings but not have a vote.

- (e) 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 Club. The delegation will include the power and responsibility to:
 - (i) 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;
 - (ii) manage the financial and other reporting mechanisms of the Club;
 - (iii) approve and incur expenditure subject to specified expenditure limits;

- (iv) sub-delegate his or her powers and responsibilities to employees or internal management committees of the Club;
 - (v) prepare agendas for Board and General Meetings;
 - (vi) attend all Board and General Meetings;
 - (vii) report regularly on the activities of, and issues relating to, the Club;
 - (viii) in consultation with the Board, employ such personnel as are deemed necessary or appropriate from time to time; and
 - (ix) have any other powers and responsibilities which the Directors consider appropriate to delegate to the CEO.
- (f) The CEO is entitled, subject to a determination otherwise by the Directors, to attend all meetings of the Club, all meeting of the Directors and any Committees and may speak on any matter, but does not have a vote.

8.29 Appointment of Secretary

- (a) There must be at least one Secretary who is to be appointed by the Directors.
- (b) The Directors may suspend or remove a Secretary from that office.
- (c) A 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.

Either the CEO or Secretary will usually assume the role of the Public Officer of the Club and will need to administer and manage the Club in accordance with the Act and the Constitution. You should specify who has this role in your Constitution.

9. RECORDS AND ACCOUNTS

9.1 Accounts to be Kept and Distributed

- (a) The Club must keep such accounting records as correctly record and explain the transactions and financial position of the Club.
- (b) The Directors will cause proper accounting and other records to be audited and distributed in accordance with Division 2 of the Act, including all documents required to be distributed to the Members for the purpose of the Annual General Meeting.

For instance, you may want to add further detail on what is kept and distributed i.e. copies of the statements of account, the Board's report, the auditor's report and other documents required under the Act (if any), to all persons entitled to receive notice of Annual General Meetings in accordance with this Constitution.

- (c) The Club must lodge with the Corporate Affairs Commission such periodic returns, containing accounts and other information relevant to the affairs of the Club, as the Act and associated regulations (Associations Incorporation Regulations 2008) may require.

Where an Executive Officer is not appointed, the Board should appoint one of the Directors to fulfil the position of "Treasurer" or "Finance Director". This person could also be, for example, the chairperson of the Board Finance Committee

9.2 Transaction Accounts

- (d) The Club shall open and keep at least one transaction account as the Board may from time to time determine, and all monies belonging to the Club shall, as soon

as practicable after the same shall be received, be paid and deposited to the credit of those account(s) of the Club.

- (e) No withdrawal shall be made from, and no cheques shall be drawn on, any transaction account in the name of the Club unless the withdrawal form, cheques or electronic transfer is signed or password-activated, as appropriate, by any two of the persons appointed by the Board for such purposes. All extraordinary and capital expenditure must be unequivocally ratified by the Board.

9.3 Auditor

- (a) 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 Act.
- (b) The following people may not be appointed as an auditor:
 - (i) an officer of the Club, including a Director (and any partners, employers or employees of officers); or
 - (ii) an employee of the Club, including the CEO (and any partners, employers or employees of employees).
- (c) The auditor may be removed by the Directors.
- (d) The auditor has a right of access at all reasonable times to the accounting records and other records of the Club and is entitled to require from any officer of the Club such information and explanations as he or she desires for the purpose of an audit.
- (e) The auditor must provide the Board with reports that comply with the Act with sufficient time for the Board to lay such material before the Members as and when required (including for the Annual General Meeting).
- (f) The reasonable fees and expenses of the auditor are payable by the Club.

Only Clubs that are "prescribed associations" need to appoint an auditor. See section 3 of the Act for the definition of a 'prescribed association' and also section 4 of the Associations Incorporation Regulations 2008.

The gross receipts threshold level at which an association is identified as a prescribed association is \$500,000 per annum.

What this means is that an association in South Australia with a turnover of less than \$500,000 per annum is no longer legally required to arrange for an auditor to assess the Club's books annually. Nor is the Board required to lay this report before the Members at the AGM. It does not, however, take away the requirement that the Club keeps proper accounts and records of the financial position of the Club.

*For a non-prescribed association, **clause 9.3** could be kept or could be replaced with:*

"Auditor

The Club shall prepare and make available to the Members an annual financial report comprising; an annual profit and loss statement, a balance sheet, a statement of cash flows and a directors' report."

NOTE: There may be a requirement from your NSO to submit audited financial documents as part of your affiliation

9.4 Application of Income

- (a) The income and property of the Club shall be applied solely towards the promotion of the Objects.
- (b) Except as prescribed in this Constitution or the Act:

- (i) no portion of the income or property of the Club shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise to any Member; and
 - (ii) no remuneration or other benefit in money or money's worth shall be paid or given by the Club to any Member who holds any office of the Club.
- (c) Nothing in **clauses 9.4(a)** or **9.4(b)** shall prevent payment to any Member for:
- (i) any services actually rendered to the Club whether as an employee, Director or otherwise; or
 - (ii) goods supplied to the Club in the ordinary and usual course of operation;
 - (iii) interest on money borrowed from any Member;
 - (iv) rent for premises demised or let by any Member to the Club; or
 - (v) any out-of-pocket expenses incurred by the Member on behalf of the Club.

provided that any such payments shall not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction and there is no conflict of interest in making the payment.

10. ADMINISTRATION

10.1 Winding Up

The Association may be wound up in a manner provided for in the Act.

10.2 Distribution of Assets and Property on Winding Up

- (a) If upon winding up or dissolution of the Club, there remains, after satisfaction of all its debts and liabilities, any assets or property, the same shall not be paid to or distributed to its Members, but instead, those assets or property must be given or transferred to another organisation(s) that has objects similar to the Objects of the Club.
- (b) Those organisation(s) must prohibit the distribution of income and property among its members to an extent at least as great as that imposed on the Club by this Constitution.
- (c) The organisation(s) is to be determined by the Members in a Meeting at or before the time of dissolution. If this does not occur, the decision will be made by a judge of the Supreme Court of South Australia or other court as may have or acquire jurisdiction in the matter.

The provision above may require amendment to comply with requirements of the Australian Taxation Office and the Australian Charities and Not-for-profits Commission. Please check these requirements and relevant requirements for your Club generally.

10.3 Amendment of Constitution

This Constitution shall not be amended except by Special Resolution.

10.4 Regulations

The Regulations are the key 'delegated legislation' of the Club (sometimes referred to as by-laws). These are key rule and policy documents, which can address a whole range of issues for a Club. These include disciplinary regulations, election procedures, policies including member protection and anti-doping (subject to the Club and NSO requirements), financial management and particular sporting matters.

(a) **Board to Formulate Regulations**

The Board may formulate, issue, adopt, interpret and amend such Regulations for the proper advancement, management and administration of the Club and the advancement of the purposes of the Club and the Sport in South Australia as it thinks necessary or desirable. Such regulations must be consistent with the Constitution, the constitutions of the RSO, SSO or NSO (and any regulations made by them) and any policy directives of the Board.

(b) **Regulations Binding**

All Regulations are binding on the Club and all Members.

(c) **Regulations Deemed Applicable**

All clauses, rules, by-laws and Regulations of the Club in force at the date of the approval of this Constitution (as long as such clauses, rules, by-laws and Regulations are not inconsistent with, or have been replaced by, this Constitution) shall be deemed to be Regulations and shall continue to apply.

(d) **Bulletins Binding on Members**

Amendments, alterations, interpretations or other changes to Regulations shall be advised to Members by means of bulletins approved by the Board and prepared and issued by the Executive Officer. The matters in the bulletins are binding on all Members.

10.5 Notice

(a) Notices may be given by the Club to any person entitled under this Constitution to receive any notice. Notices will be sent by pre-paid post or facsimile transmission or, where available, by electronic mail (email) to the Member's registered address or facsimile number or email address. Notices to Delegates will be sent to the last notified address, facsimile number or email address.

(b) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting the notice. Service of the notice is deemed to have been effected six (6) days after posting.

(c) Where a notice is sent by facsimile transmission, service of the notice shall be deemed to be effected upon receipt of a confirmation report confirming the facsimile was sent to/or received at the facsimile number to which it was sent.

(d) Where a notice is sent by email, service of the notice shall be deemed to be effected the next business day after it was sent.

(e) Notices given to the Club are subject to **clauses 10.5(a), (b), (c) and (d)**.

10.6 Patrons and Vice Patrons ®

At a General Meeting, the Club, on the recommendation of the Board, may annually appoint a chief patron and the number of patrons, as it considers necessary. This is subject to approval of that person or persons.

10.7 Indemnity

- (a) The Directors of the Club shall be indemnified out of the property and assets of the Club against any liability incurred by them in their capacity as Director in defending any proceedings, whether civil or criminal.
- (b) The Club shall indemnify its Directors against all damages and losses (including legal costs) for which any such Director may be or become liable to any third party in consequence of any act or omission except wilful misconduct performed or made while acting on behalf of and with the authority, express or implied, of the Club.

10.8 Authority to Trade

The Club is authorised to trade in accordance with the Act.

This section makes it clear that all trade and transactions must be in accordance with the Act

10.9 Colours of The Club ®

The colours of the Club are [insert Colours]

10.10 Transitional Provisions

This section provides for continuity of the Club, its officers, membership and regulations on implementing a new constitution

(a) Continuing Membership

Each Member that is a Member of the Club on the day on which this Constitution is adopted will automatically be admitted to membership as a Member.

(b) Directors

For the purpose of determining when the term ends for each Director in office on the day on which this Constitution is adopted, time served in the Director's current term will be counted as if this Constitution had been in place at the commencement of that term.

(c) Regulations deemed applicable

All rules, by-laws, policies and Regulations of the Club in force at the date of the adoption of this Constitution are to be deemed to be Regulations and continue to apply unless they are inconsistent with, or have been replaced by this Constitution.

10.11 Status and Compliance of Club

This section entrenches and strengthens the relationship between the Club and the RSO and/or SSO.

(a) Recognition of Club

The Club is a member of the [insert RSO and/or SSO] and is recognised by the [insert RSO and/or SSO] as the entity responsible for the delivery of the Sport in the local area. Subject to compliance with this Constitution and the constitutions of the [insert RSO and/or SSO],

the Club shall continue to be so recognised and it shall administer the Sport in the local area in accordance with the Objects.

(b) **Constitution of the Club**

This Constitution will clearly reflect the objects of the [insert RSO and/or SSO] and will conform to the constitution of the [insert RSO and/or SSO], subject always to the Act.

(c) **Operation of [insert RSO and/or SSO] Constitution**

- (i) The Club will take all reasonable steps to ensure this Constitution conforms to the constitution of the [insert RSO and/or SSO], subject always to the Act; and
- (ii) The Club shall provide a copy of this Constitution and all amendments to this Constitution to the [insert RSO and/or SSO]. The Club acknowledges and agrees that the [insert RSO and/or SSO] has power to veto any provision in its Constitution which, in the opinion of the [insert RSO and/or SSO] and acting reasonably, is contrary to the Objects of the [insert RSO and/or SSO].

Constitution Version Control

All changes to the Constitution should be recorded here to allow for clear, concise and easy retrieval of those changes to the Constitution which can be cross-referenced to General Meeting minutes.

Date	Clauses amended	Description of change	General Meeting Date
xx/xx/20xx	Entire Constitution		Xx/xx/20xx