

ASSOCIATIONS ACT (NT)

Drafting Guide – Model Constitution for Regional Sporting Association

Prepared by:
Minter Ellison Lawyers
Level 1, 60 Smith St
Darwin NT 0800
Tel: (08) 8901 5900

HOW TO USE THIS DRAFTING GUIDE

The Model Constitution for a Regional Sporting Association (**Model Constitution**) has been prepared for the Department of Tourism and Culture to be used as a template for regional sporting associations (**Associations**) in the Northern Territory. The Model Constitution can either be adopted on the incorporation of the Association or used by the Association to update its existing constitution.

If your Association has an existing constitution, the new Model Constitution can be either adopted as a replacement to your existing constitution or it can be used by the Association to make selective amendments.

The Model Constitution complies with the *Associations Act* (NT) (**Act**). However, the Model Constitution has been designed specifically for a sporting association and so is more detailed than the generic model constitution in the Schedule to the *Association (Model Constitutions) Regulations*. The document has been also drafted to take into account the Australian Sports Commission's '*Sports Governance Principles*' (March 2012) (**ASC Principles**).

The Model Constitution has been designed for the national system under which sport operates, where the national sporting body can make rulings and set policy that will flow through the sport and affect those playing at local club level. The Model Constitution assumes that the Association will be directly affiliated with the relevant peak sporting organisation in the Northern Territory for the Association's sport (**Peak Sporting Organisation / PSO**), which will itself be directly affiliated with the national sporting organisation for the sport (**National Sporting Organisation / NSO**). The Association will in turn have local clubs (**Clubs**) affiliated with it (as "Affiliate Members").

The benefit of such a structure is that all levels of the sport (NSO, PSO, Association and Club) will share common objectives, common structures, common policies and procedures and will 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 market itself.

Finally with the increasing amount of legislation affecting sport, it enables the NSO to enact consistent and complementary policies and strategies that address areas of common risk and which can flow effectively through the structure and be adopted at the PSO, Association and Club levels.

This Drafting Guide contains notes on certain clauses of the Model Constitutions and highlights clauses that can be varied to suit your Association's situation. As you work through the Model Constitution and this Drafting Guide, you should consider not just your Association's current situation, but where you envisage the Association being in 5 or 10 years. While constitutions can be amended (and should be reviewed from time to time), it would be preferable to try to get it right now so that the Association can operate effectively and grow over time.

It is recommended that the Association check whether there are specific obligations under their affiliation with their PSO (or the PSO's affiliation with the NSO) that may need to be taken into consideration in the development of the Association's constitution (e.g. obligatory inclusions). It is also recommended that you refer to the ASC Principles as you work through the process of developing or updating your Association's constitution.

Following the development of your constitution, you should then develop a set of regulations that provide more detail on sections of the constitution. The Model Constitution is intended to deal with high level membership and governance issues and contemplates that a lot of the detail will be set out in regulations made by the Association's Board. The regulations (sometimes called rules or by-laws) can be more easily amended and will have a more operational tone to them. This is where you will include more detail on the policies and procedures that underpin the constitution.

As with any legal document, this Drafting Guide does not replace obtaining legal advice on your Association's specific requirements.

DISCLAIMER:
THE INFORMATION PROVIDED IN THIS DOCUMENT IS FOR YOUR INFORMATION ONLY. THE DEPARTMENT OF TOURISM AND CULTURE ACCEPTS NO RESPONSIBILITY FOR THE ACCURACY OF THE INFORMATION OR YOUR RELIANCE UPON IT.

| Clause Ref. | Clause | Notes |
|-------------|---------------------------------------|--|
| 1. | NAME OF ASSOCIATION | <p>The name of the Association can be varied according to what the Association requires, provided the name is not a prescribed unauthorised name (as specified in Schedule 1 of the <i>Associations Regulations</i>).</p> <p>Section 16 of the <i>Associations Act</i> (NT) (Act) sets out requirements for the Association's name to appear on documents.</p> |
| 2. | DEFINITIONS AND INTERPRETATION | <p>“Affiliate Member” - The membership structure in this template assumes that the Association's voting members are the Clubs who are each entitled to appoint a Delegate to represent it at General Meetings of the Association.</p> <p>“Constitution” - The Constitution must conform to the requirements of section 21 of the Act.</p> <p>“Delegate” - As the Affiliate Members (the Clubs) are associations rather than individual persons, each Affiliate Member is entitled to appoint a Delegate to represent it at General Meetings of the Association.</p> <p>The Individual Members and Life Members do not require Delegates as they are individual persons and can attend in person (although they are not permitted to vote – see clauses 5.5(d) and 5.7(d)).</p> <p>“Director” - This template refers to “Board” and “Directors” instead of committee and committee members. The reason for this is that an incorporated association is still a corporation and those who govern it (whatever their title) owe duties to the members and the association. The document seeks to use true corporate governance terminology.</p> <p>This template does not provide for 'offices' such as President, Vice-President or Treasurer. These terms, despite their cultural weight, are not of any constitutional relevance. The modern practice is to leave it to the Board to appoint its own chair (who is the nominal head of the association - see clause 14.6) and allocate roles to Board members as it thinks appropriate. The titles of director positions and job descriptions can be included in the accompanying Regulations, if more formality is desired.</p> <p>“Financial Year” - The Financial year can be varied to suit your organisation, for example a winter sport may choose to run its financial year from 1 January to 30 December.</p> <p>“Individual Member” - The document seeks to capture as Members of the Association all individual persons who are members of the Clubs, along with all Participants (ie. persons who participate in the Sport whether as players, coaches, umpires or other officials). It also permits persons with an interest in the Sport to become Individual Members. However, votes are</p> |

| Clause Ref. | Clause | Notes |
|-------------|-----------------------------------|---|
| | | <p>reserved to the Affiliate Members.</p> <p>“NSO” - The Sport’s national sporting organisation needs to be included here.</p> <p>“Participants” - This is intended to capture persons who participate in the Sport whether as players, coaches, umpires or other officials.</p> <p>“PSO” - The Sport’s peak sporting organisation for the Northern Territory needs to be included here.</p> <p>“Region” - The name of the Association's regional area should be included here.</p> <p>“Special Resolution” - This is the definition of "special resolution" set out in clause 3 of the Act. For ease of reference, we have included the definition in the Constitution.</p> <p>“Sport” - The Sport needs to be described here.</p> |
| 2.3 | RESOLUTIONS | <p>This states that if the Constitution requires a decision to be made or a resolution to be passed by a General Meeting, the Board or a sub-committee of the Board, the decision may be made or the resolution may be passed by Ordinary Resolution unless either this Constitution or the Act requires otherwise.</p> <p>The Constitution requires a Special Resolution of Members for:</p> <ul style="list-style-type: none"> • the appointment of a Life Member – see clause 5.5(c); and • the repeal or alteration of, or addition of a new provision to, the Constitution (unless it is necessary to amend the Constitution for specific reasons set out in clause 31.1(b)) – see clause 31.1(a). <p>Note that the Act also specifically requires a Special Resolution of Members for:</p> <ul style="list-style-type: none"> • the Association to apply to become incorporated under the <i>Corporations Act 2001</i> or another Act; or • the distribution of the Association's surplus assets on winding up of the Association (where there is no valid constitution of the Association governing distribution, which is not the case here) – see section 76 of the Act. |
| 3. | OBJECTS OF THE ASSOCIATION | <p>The objects of the Association are important and must be carefully considered. The objects of the Association are its reasons for existence.</p> <p>If an association is formed or carried on for one of the purposes listed in the definition of "association" in section 4(a) of the Act and its activities are carried on in whole or in part in the Northern Territory, it may apply</p> |

| Clause Ref. | Clause | Notes |
|-------------|----------------------------------|--|
| | | <p>for incorporation under the Act. These purposes include "the purpose of recreation or amusement".</p> <p>The template sets out 4 core objects for the Association, being to:</p> <ol style="list-style-type: none"> 1. encourage, promote, advance and administer the Sport throughout the Region; 2. arrange, conduct and regulate competitions in the Sport; 3. affiliate with the PSO; and 4. maintain and enhance the reputation of the Sport and the standards of play and behaviour of Participants. <p>In addition, there is a fifth 'catch all' object, being to undertake and or do other things or activities which are necessary, incidental or conducive to the advancement of these objects.</p> <p>The objects must also recognise the relationship between the Association and its parent PSO and NSO. ASC 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. An Association should therefore consider the objects of its PSO and NSO when defining its objects.</p> |
| 4. | POWERS OF THE ASSOCIATION | The powers of an incorporated association are set out in section 11 and 13 of the Act. |
| 5. | MEMBERS | The Members of the Association and their rights and responsibilities are set out in clause 5. |
| 5.1 | MINIMUM NUMBER OF MEMBERS | Section 26 of the Act states that an incorporated association must not have less than 5 members. |
| 5.2 | CATEGORIES OF MEMBERS | <p>Section 21(1)(a) of the Act requires the Constitution to contain provisions dealing with the qualification of members of the association.</p> <p>Under this template the Clubs (the 'Affiliate Members') are the voting Members of the Association.</p> <p>The template also provides for the Association to have Life Members and Individual Members (being individuals who are Participants or who have an interest in the Sport) who are entitled to receive notice of, and be present at, but not to vote at, General Meetings of the Association. The Life Members are also entitled to debate at General Meetings.</p> <p>The membership categories and their respective rights and responsibilities may, of course, vary between associations and the template can be amended as required.</p> <p>The Board may create new categories of Members (such as corporate members) but any new category would effectively be a change in the Constitution and will therefore need to be submitted to a General Meeting</p> |

| Clause Ref. | Clause | Notes |
|-------------|-----------------------------|--|
| | | for approval by Special Resolution. |
| 5.3 | ADMISSION OF MEMBERS | <p>This sets out how candidates for membership may apply to the Board to become Members.</p> <p>The application must be in writing, in a form approved by the Board. This is intended to permit online application forms.</p> <p>The Board may establish Regulations providing greater detail of the process required for admission of Members.</p> |
| 5.6 | AFFILIATE MEMBERS | <p>The Affiliate Members are the Clubs.</p> <p>This clause sets out what are effectively the conditions of membership of Affiliate Members. Breach of any of the obligations will be grounds for expulsion under clause 6.3.</p> <p>To be, or remain, eligible for Affiliate Membership, a Club must be incorporated or be in the process of incorporation.</p> <p>An Affiliate Member must:</p> <ul style="list-style-type: none"> • recognise the Association and the PSO as the authorities for the Sport in South Australia and the NSO as the national authority for the Sport; • conscientiously attend General Meetings; and • maintain, in a form acceptable to the Association, a register of its members. <p>If requested by the Board, the Affiliate Members must also provide the Board with:</p> <ul style="list-style-type: none"> • a copy of the members register; and • an up-to-date copy of its constituent documents; and • copies of its audited statement of accounts, auditor's report and the report required under section 43 of the Act for the last financial year as soon as practicable following each annual general meeting of the Affiliate Member. <p>If an Affiliate Member is not incorporated at the time of applying for membership, the process of incorporation must be completed within one year of applying for membership. If it is not, its membership will lapse but it may reapply on becoming incorporated.</p> <p>Each Affiliate Member must have constituent documents which:</p> <ul style="list-style-type: none"> • clearly reflect the Objects; and • conform with the Association's Constitution and Regulations and the constitution and regulations of the PSO. <p>This is intended to align the Affiliate Members with the Association, PSO and NSO, which is consistent with ASC Principle 1.9.</p> |
| 5.7 | INDIVIDUAL MEMBERS | Individuals who: |

| Clause Ref. | Clause | Notes |
|-------------|-------------------------------|---|
| | | <ul style="list-style-type: none"> • are Participants (ie. persons who participate in the Sport whether as players, coaches, umpires or other officials); or • have an interest in the Sport, <p>may apply to be Individual Members of the Association.</p> <p>An Affiliate Member of the Association is also required to apply for each of its Participants who represent the Club in competition in any way to be an Individual Member and may apply for any of its other members to be an Individual Member. This application must be signed by both the applicant Participant and the Club.</p> <p>Having individuals as members of the Association means that the individuals will be bound by the Constitution, as well as any Regulations that the Board puts in place – see clause 32.</p> <p>It also assists the alignment of Clubs, Associations and PSOs with the NSO and therefore the enforcement of national policies.</p> <p>Individual Members will be entitled to receive notice of, and be present at, but not to debate or vote at, General Meetings of the Association.</p> |
| 5.8 | OBLIGATIONS OF MEMBERS | <p>Breach of any of these obligations by a Member will be grounds for expulsion of the Member under clause 6.3.</p> <p>Clause 5.8(d) is intended to make Affiliate Members accountable to monitor and discipline their members or Participants associated with them.</p> |
| 5.9 | REGISTER OF MEMBERS | <p>Section 34(1) of the Act requires an association to establish and maintain a register of its members and enter in the register:</p> <ul style="list-style-type: none"> (a) the date on which each member of the association became a member; and (b) if a person ceases to be a member of the association – the date of ceasing to be a member; and (c) the name and address of each member of the association. <p>Section 34(2) of the Act also requires an association to make the register of members available for inspection by members at reasonable times at:</p> <ul style="list-style-type: none"> (a) the address of the public officer of the association; or (b) the place, if any, at which the association is situated or located; or (c) another place in the Territory nominated by the committee. |
| 5.10 | EFFECT OF MEMBERSHIP | <p>This clause states that the Constitution is a contract between the Association and its Members.</p> <p>This clause also states that each Member is bound by the PSO's constitution and regulations.</p> <p>This assists the alignment of Clubs, Associations and</p> |

| Clause Ref. | Clause | Notes |
|-------------|---------------------------------|---|
| | | PSOs with the NSO and therefore the enforcement of national policies. |
| 6. | CESSATION OF MEMBERSHIP | This sets out a list of events that will cause a Member's membership to automatically cease. |
| 7. | DISCIPLINE | <p>This clause does not prescribe procedures for the discipline of Members but instead provides for these procedures to be established by Regulation of the Board.</p> <p>Section 39 of the Act provides that where the Board exercises any power of adjudication in relation to a dispute between the Members, or a dispute between the Board and members of the Association, the rules of natural justice must be observed. This is reflected in clause 7(d) and also in clause 6.3(c).</p> |
| 8. | SUBSCRIPTIONS AND FEES | <p>This provides for membership fees to be set by the Board, not the Members.</p> <p>However, in some associations, the fees may be set by the General Meeting on recommendation of the Board.</p> <p>Clause 8(b) states that 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. This means that the Board can, for example, set one fee for Clubs, another for Individual Members and no fee for Life Members.</p> |
| 9. | POWERS OF THE BOARD | <p>Section 21(1) of the Act states that the Constitution must contain provisions that deal with, among other things, the constitution of the committee of the association and the powers of that committee and the manner in which the funds of the association are to be managed.</p> <p>The ASC Principles state that: "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.</p> <p>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."</p> |
| 10. | COMPOSITION OF THE BOARD | <p>The numbers on the Board will vary.</p> <p>This template provides for up to 7 Elected Directors and up to 2 "external" Appointed Directors who may be appointed by the Elected Directors.</p> <p>The Association needs to ensure it has a board size and composition that meets its needs.</p> |

| Clause Ref. | Clause | Notes |
|-------------|----------------------------|--|
| | | <p>Section 30 of the Act prohibits certain persons from being on the Board of the Association.</p> <p>The template Constitution does not entrench portfolios (eg. secretary, treasurer). If the Association wishes to allocate portfolios to Directors, the Board has discretion to allocate portfolios under clause 10.2.</p> |
| 11. | ELECTED DIRECTORS | <p>This clause sets out the following suggested process for electing the Elected Directors.</p> <p>If the number of nominations received for the Board exceeds the number of vacancies to be filled, an election must be conducted at the AGM.</p> <p>However, if the number of nominations received for the Board:</p> <ul style="list-style-type: none"> • <i>does <u>not</u> exceed the number of vacancies to be filled</i> - then the nominees will be declared elected at the AGM; and • <i>is insufficient to fill all vacancies on the Board</i> - nominations for the remaining Elected Director positions may be made from the floor of the AGM and if the number of nominations received from the floor does not exceed the number of vacancies to be filled, then those nominated will be declared elected at the AGM, <p>unless an Affiliate Member demands a confirmatory vote in respect of such an election, in which case the appointment of the nominees must be approved by Ordinary Resolution of the General Meeting.</p> <p>If at the close of the AGM, vacancies on the Board remain unfilled, the vacant positions will be casual vacancies under clause 13.1 which may be filled by the Elected Directors.</p> <p>To ensure that any Directors nominated from the floor of the AGM and elected meet any legal requirements for the position (e.g. under the liquor licensing laws), clause 11.4(b) states that the Director's term will not commence until the requirement is met.</p> <p>Under this template:</p> <ul style="list-style-type: none"> • an Elected Director's term is for two years; and • an Elected Director can only serve four, two year terms. |
| 12. | APPOINTED DIRECTORS | <p>The template contemplates both Elected Directors (elected by the Members) and Appointed Directors (appointed by the Elected Directors). The principle behind the Appointed Directors is to provide the Elected Directors with additional skills that may facilitate or assist the Board with a particular issue from time to time.</p> <p>For example, an association may require marketing or lobbying skills and may therefore decide to approach and invite an appropriately skilled person to join the Board as an Appointed Director.</p> |

| Clause Ref. | Clause | Notes |
|-------------|-------------------------------|--|
| | | <p>If an association does not want to have Appointed Directors just:</p> <ul style="list-style-type: none"> delete clauses 10.1(b), 12 and 13.2(i), the last sentence of clause 13.2 and the definitions of 'Appointed Director' and 'Elected Director' in clause 1; amend the definition of 'Director' in clause 1 by deleting the reference to 'Elected Directors' and 'Appointed Directors'; and delete the word 'Elected' from the remaining references throughout the document to Elected Directors. |
| 13. | VACANCIES ON THE BOARD | <p>This clause deals with:</p> <ul style="list-style-type: none"> casual vacancies; and grounds for termination of Directors. <p>Section 30 of the Act states that certain persons are not to be directors. If an Elected or Appointed Director is disqualified from office under that Section 30, their appointment as Director will immediately terminate.</p> |
| 14. | MEETINGS OF THE BOARD | <p>Section 21(1)(e) of the Act requires the Constitution to provide for the procedure for the conduct of Board meetings.</p> <p>The provisions in this clause are intended to provide the Board with flexibility in terms of how it meets.</p> <p>The ASC Principles recommend that a board meet no less than six times per year and often as regularly as monthly.</p> <p>Sections 31 and 32 of the Act deal with disclosure of interests and voting on a contract in which a Director has an interest.</p> |
| 14.3 | DECISIONS OF THE BOARD | <p>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 vote on the issue should be lost.</p> |
| 14.5 | QUORUM | <p>The quorum for a Board meeting can be varied.</p> <p>It should be at least half of the Directors plus one. For example, if there are six Directors, the quorum should be four.</p> |
| 14.6 | CHAIRPERSON | <p>The chairperson can be any Director that the Board regards as sufficiently skilled to undertake the role.</p> <p>The template provides that the chairperson will be the nominal head of the Association, unless the Board decides otherwise.</p> <p>While some Associations may decide to refer to their chairperson as their "president", the role should remain the same. The chairperson is the chairperson of the Board, not the chairperson of the Association. It is the</p> |

| Clause Ref. | Clause | Notes |
|-------------|--|---|
| | | Board that governs the Association (not the chairperson) and the Board must act collectively in the best interests of the Association as a whole to govern on behalf of the Association's members. Some sporting associations have retained a member-elected president despite introducing a board-elected chairperson. The Australian Sports Commission and Department of Sport and Recreation do not support this situation as it creates an unnecessary duplication of powers. |
| 15. | EXECUTIVE | This clause permits the Board to employ a chief executive and other personnel it considers necessary or appropriate, in each case for such period and on such conditions as the Board determines. |
| 16. | DELEGATIONS | This clause recognises that the Board may delegate functions and tasks to special committees. In sport, such committees are common. For example, an association may have rules and technical committees, selection committees and judicial committees. |
| 17. | SEAL | Sections 20 and 113(1)(d) of the Act deal with use of the common seal. The Association may like to consider establishing a Register for the use of the Seal in addition to the inclusion of a recording in the Board Minutes of the seal use. |
| 18. | ANNUAL GENERAL MEETING | Section 36 of the Act requires an association to hold an annual general meeting within five months after the end of the association's financial year. |
| 19. | SPECIAL GENERAL MEETINGS | The number or percentage of Members who can requisition a Special General Meeting can be varied. In some cases a lesser or greater percent may be appropriate or it may be on requisition of a specific number of Members. |
| 20. | ATTENDANCE AT GENERAL MEETINGS AND APPOINTMENT OF DELEGATES | This states that Members, the auditor and the Directors are entitled to attend General Meetings, but only Affiliate Members are entitled to vote (via their appointed Delegate). |
| 21. | NOTICE OF GENERAL MEETING | This provides that at least 21 days' notice of a General Meeting must be given to Members, the auditor and the Directors, together with: (i) the agenda for the meeting; and (ii) any notice of motion received from Members entitled to vote. Proxy voting has not been provided for in this template. It is optional and does not need to be provided for under the Act. |
| 22. | BUSINESS | Section 43(1) requires the Board to present at each AGM the following documents for consideration of the meeting: |

| Clause Ref. | Clause | Notes |
|-------------|--|--|
| | | <ul style="list-style-type: none"> • audited statement of the Association's accounts for the last financial year; • a copy of the auditor's report for the last financial year; and • a report signed by 2 Directors stating: <ul style="list-style-type: none"> ○ the name of each Director during the last financial year and at the date of the report; ○ the principal activities of the Association during the last financial year and any significant change in the nature of those activities that occurred during the financial year; and ○ the net profit or loss of the Association for the last financial year. |
| 23. | PROCEEDINGS AT GENERAL MEETINGS | This clause sets out provisions governing the procedure at General Meetings. |
| 23.1 | QUORUM | 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. |
| 24. | VOTING AT GENERAL MEETINGS | <p>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 vote on the issue should be lost.</p> <p>Therefore, this template does not give the chairperson a casting vote.</p> |
| 25. | DISPUTE RESOLUTION PROCEDURE | <p>This clause sets out a dispute resolution procedure, which may involve the referral of a dispute to the Community Justice Centre. This is not a requirement of the Act.</p> <p>The Community Justice Centre is a Northern Territory Government service that offers free community mediation at local venues across the Territory.</p> <p>Note that:</p> <ul style="list-style-type: none"> • Section 39 of the Act provides that where the Board exercises any power of adjudication in relation to a dispute between the members, or a dispute between itself and members of the association, the rules of natural justice must be observed. • Section 109 of the Act provides that a member or former member of an incorporated association may apply to the Supreme Court or the Local Court for an order under this section on the grounds that: <ul style="list-style-type: none"> ○ the affairs of the association are being conducted in a way that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or in a way that is contrary to the interests of the members as a whole; or ○ an act or omission, or a proposed act or omission, of the association was or would be oppressive or unfairly prejudicial to, or unfairly |

| Clause Ref. | Clause | Notes | | | | | | | | | | | | |
|-------------|---|---|------|---------------------|--------------------|---|--|---|---|---|---|---|---|--|
| | | <p>discriminatory against, a member (also the oppressed member) or was or would be contrary to the interests of the members as a whole; or</p> <ul style="list-style-type: none"> ○ the constitution of the association contains provisions that are oppressive or unreasonable; or ○ the expulsion of the member was oppressive or unreasonable. | | | | | | | | | | | | |
| 26. | FUNDS, ACCOUNTS, AUDITS AND MINUTES | <p>Section 21(1)(f) of the Act requires the constitution of an incorporated association to provide for the manner in which the funds of the association are to be managed.</p> <p>The Act also sets out requirements for:</p> <ul style="list-style-type: none"> • Sections 41 to 52 – Accounts and audits • Section 38 – Minutes | | | | | | | | | | | | |
| 27. | AUDITOR | <p>The audit requirements under the Act divide incorporated associations into the following three tiers:</p> <table border="1" data-bbox="730 925 1415 2098"> <thead> <tr> <th data-bbox="730 925 815 987">Tier</th> <th data-bbox="815 925 1099 987">Type of Association</th> <th data-bbox="1099 925 1415 987">Audit requirements</th> </tr> </thead> <tbody> <tr> <td data-bbox="730 987 815 1397">1</td> <td data-bbox="815 987 1099 1397"> <ul style="list-style-type: none"> • Gross receipts < \$25,000; or • Gross assets < \$50,000 </td> <td data-bbox="1099 987 1415 1397"> <p>Section 46 requires that the Association's accounts are audited by a person who is not:</p> <ul style="list-style-type: none"> • a member of the association; • the spouse, de facto, business partner, employer or employee of a member; or • the spouse, de facto, business partner of a member's employee. </td> </tr> <tr> <td data-bbox="730 1397 815 1962">2</td> <td data-bbox="815 1397 1099 1962"> <ul style="list-style-type: none"> • Gross receipts > \$25,000 (but < \$250,000); or • Gross assets > \$50,000 (but < \$500,000); or • Association holds a license under the Gaming Machine Act. </td> <td data-bbox="1099 1397 1415 1962"> <p>Section 47 requires that the Association's accounts are audited by a person who:</p> <ul style="list-style-type: none"> • is a member of an accountants body; or • holds qualifications in a prescribed class of qualifications; or • is, or is a member of a class of persons, approved by the Commissioner. <p>The audit must be conducted in accordance with the applicable Australian Auditing Standards.</p> </td> </tr> <tr> <td data-bbox="730 1962 815 2098">3</td> <td data-bbox="815 1962 1099 2098"> <ul style="list-style-type: none"> • Incorporated trading association; or • Gross receipts > </td> <td data-bbox="1099 1962 1415 2098"> <p>Section 48 requires that the Association's accounts are audited by a person</p> </td> </tr> </tbody> </table> | Tier | Type of Association | Audit requirements | 1 | <ul style="list-style-type: none"> • Gross receipts < \$25,000; or • Gross assets < \$50,000 | <p>Section 46 requires that the Association's accounts are audited by a person who is not:</p> <ul style="list-style-type: none"> • a member of the association; • the spouse, de facto, business partner, employer or employee of a member; or • the spouse, de facto, business partner of a member's employee. | 2 | <ul style="list-style-type: none"> • Gross receipts > \$25,000 (but < \$250,000); or • Gross assets > \$50,000 (but < \$500,000); or • Association holds a license under the Gaming Machine Act. | <p>Section 47 requires that the Association's accounts are audited by a person who:</p> <ul style="list-style-type: none"> • is a member of an accountants body; or • holds qualifications in a prescribed class of qualifications; or • is, or is a member of a class of persons, approved by the Commissioner. <p>The audit must be conducted in accordance with the applicable Australian Auditing Standards.</p> | 3 | <ul style="list-style-type: none"> • Incorporated trading association; or • Gross receipts > | <p>Section 48 requires that the Association's accounts are audited by a person</p> |
| Tier | Type of Association | Audit requirements | | | | | | | | | | | | |
| 1 | <ul style="list-style-type: none"> • Gross receipts < \$25,000; or • Gross assets < \$50,000 | <p>Section 46 requires that the Association's accounts are audited by a person who is not:</p> <ul style="list-style-type: none"> • a member of the association; • the spouse, de facto, business partner, employer or employee of a member; or • the spouse, de facto, business partner of a member's employee. | | | | | | | | | | | | |
| 2 | <ul style="list-style-type: none"> • Gross receipts > \$25,000 (but < \$250,000); or • Gross assets > \$50,000 (but < \$500,000); or • Association holds a license under the Gaming Machine Act. | <p>Section 47 requires that the Association's accounts are audited by a person who:</p> <ul style="list-style-type: none"> • is a member of an accountants body; or • holds qualifications in a prescribed class of qualifications; or • is, or is a member of a class of persons, approved by the Commissioner. <p>The audit must be conducted in accordance with the applicable Australian Auditing Standards.</p> | | | | | | | | | | | | |
| 3 | <ul style="list-style-type: none"> • Incorporated trading association; or • Gross receipts > | <p>Section 48 requires that the Association's accounts are audited by a person</p> | | | | | | | | | | | | |

| Clause Ref. | Clause | Notes | |
|-------------|---|--|---|
| | | | <p>\$250,000; or</p> <ul style="list-style-type: none"> Gross assets > \$500,000 <p>who:</p> <ul style="list-style-type: none"> holds a public practice certificate issued by an accountants body; or is, or is a member of a class of persons, approved by the Commissioner. <p>The audit must be conducted in accordance with the applicable Australian Auditing Standards.</p> |
| 28. | APPLICATION OF INCOME | <p>Section 13A of the Act prohibits an association from disbursing profits or assets to its members, former members or associates of members or former members.</p> <p>Gambling Control Act requirements</p> <p>Under the <i>Gaming Control (Community Gaming) Regulations</i>, an Association must be an "approved association" to conduct lotteries, raffles and games.</p> <p>To become an "approved association", the Association will have to submit an application in an approved form, together with a certified copy of its Constitution.</p> <p>The approved form on the Licensing NT website states that when assessing an application to become an approved association, the Director-General of Licensing requires 'suitable clauses relating to finance and dissolution (disposal of assets)'.</p> <p>The Director-General will therefore review this clause 28 to ensure it is a suitable finance clause.</p> | |
| 29. | WINDING UP | <p>Sections 72 to 77 of the Act deals with the winding up of an association.</p> <p>Section 14 of the Act states that except as provided in the constitution, a member of an association is not liable to contribute towards the payment of the debts and liabilities of the association.</p> | |
| 30. | DISTRIBUTION OF ASSETS ON WINDING UP | <p>Section 76 of the Act deals with the distribution of assets upon winding up.</p> <p>Gambling Control Act requirements</p> <p>Under the <i>Gaming Control (Community Gaming) Regulations</i>, an Association must be an "approved association" to conduct lotteries, raffles and games.</p> <p>To become an "approved association", the Association will have to submit an application in an approved form, together with a certified copy of its Constitution.</p> <p>The approved form on the Licensing NT website states that when assessing an application to become an approved association, the Director-General of Licensing requires 'suitable clauses relating to finance and dissolution (disposal of assets)'.</p> | |

| Clause Ref. | Clause | Notes |
|-------------|---------------------|---|
| | | The Director-General will therefore review this clause 28 to ensure it is a suitable dissolution (disposal of assets) clause. |
| 31. | CONSTITUTION | <p>The template Constitution provides that the repeal or alteration of, or addition of a new provision to, the Constitution requires a Special Resolution passed at a duly convened General Meeting – unless the Board considers it necessary to amend the Constitution to:</p> <ul style="list-style-type: none"> (i) to achieve or maintain affiliation of the Association with the PSO; (ii) to comply with the PSO's constitution and regulations; or (iii) to achieve or maintain a particular tax status, <p>in which case the Board may, by Ordinary Resolution, make the amendments that it considers necessary for that purpose.</p> <p>This gives the Board the flexibility to change the amendment on short notice where required for the above reasons, without having to call a General Meeting.</p> |
| 32. | REGULATIONS | <p>Clause 18 permits the Board to make and amend Regulations (sometimes referred to as By-Laws, Policies or Practices) which are binding on the Association and its Members.</p> <p>The Board is able to make and amend such Regulations for the proper advancement, management and administration of the Association and the advancement of the purposes of the Association and the Sport in the Northern Territory as it thinks necessary or desirable, provided the Regulations are consistent with the Constitution (and the PSO's constitution and regulations).</p> <p>The Regulations can address a whole range of issues for the Association. These include</p> <ul style="list-style-type: none"> • the conduct of competitions (including but not limited to the rules of competition and codes of conduct); • the conduct of meetings; • the resolution of disputes; and • discipline of Members and Participants for breaches of this Constitution or the Regulations. <p>The Association should also adopt:</p> <ul style="list-style-type: none"> • work health and safety policies and procedures, such as a Work Health and Safety Policy, emergency plan and first aid plan; and • child protection policies and procedures, such as a Member Protection Policy, Working With Children Guidelines and recruitment and selection procedures for paid and voluntary positions, <p>as Regulations, to assist the Association to comply with its legislative requirements.</p> |

| Clause Ref. | Clause | Notes |
|-------------|---|--|
| | | Dealing with these areas in the Regulations, rather than the Constitution itself, means that the Board can have flexibility in making and amending these rules, without having to obtain a Special Resolution of Members as it would have to do with an amendment to the Constitution. |
| 35. | INDEMNITY | <p>Section 105 of the Act states that any provision (whether contained in the constitution or in a contract with the association or otherwise) exempting an officer or auditor of the association from, or indemnifying him or her against, a liability to the association that by law would otherwise attach to him or her in relation to negligence, default, breach of duty or breach of trust of which he or she may be guilty in relation to the association, is void.</p> <p>However, an association may, in accordance with to its constitution or otherwise, indemnify an officer or auditor against any liability incurred by him or her in defending proceedings, whether civil or criminal, in which judgment is given in his or her favour or in which he or she is acquitted.</p> |
| 36. | TRANSITIONAL PROVISIONS | These provisions are relevant for existing Associations who are adopting this constitution in substitution for an old one. it is not necessary for a new association for whom this is the first constitution. |
| N/A | ADDITIONAL CLAUSES IF ASSOCIATION IS TO APPLY FOR LIQUOR LICENCE | <p>If an Association wishes to apply for a class of liquor licence known as a club licence, it may be required to submit to the Director-General of Licensing a copy of its constitution containing the following additional clauses:</p> <ul style="list-style-type: none"> • a visitor to the Association must not be supplied with liquor in the Association premises unless the visitor is a guest in the company of a member • the keeping of records of guests • the appointment of a secretary |