



WA FOOTBALL COMMISSION

REVIEW OF THE WEST AUSTRALIAN FOOTBALL COMMISSION INC.'S CONSTITUTION RELATING TO GOVERNANCE AND THE ELECTION OF COMMISSIONERS REPORT

Report and Recommendations developed by Jon Carson

27 May 2021

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A. EXECUTIVE SUMMARY

1. The West Australian Football Commission Inc. (**WAFC**) was not originally constituted as a sporting association, as such an entity is ordinarily understood. It was re-constituted in 1989 (out of the then West Australian Football League Incorporated) as a strong commission with considerable autonomy and independent of control by any particular interests in, or segments of, Football in WA. I consider that the overall interests of Football in this State are best served if it remains so.
2. There has been a number of changes in the way Football outcomes are delivered in WA, and the way in which the delivery of these Football outcomes is funded, over the last 3 decades. In summary, the role of the WAFC in providing funding and administrative support to Affiliated Associations, and the role of the Affiliated Associations in providing junior, youth, community, women's and country football development, talent pathways and competitions has increased significantly. The role of the WAFL Clubs in providing these things has decreased. Regardless of the differing views expressed as to whether this is a good thing or a bad thing and whether it will or should continue in the future, it is unarguably the case at present.
3. Increases in the number of participants in non WAFL competitions, particularly junior, women's and community Football, have also driven a need to ensure that these segments of Football are properly funded in the future. The Affiliated Associations presently have limited constitutional recognition or power, other than a small allocation of votes in the election of Commissioners, and this may jeopardise the future funding of "grass roots football". This limited constitutional recognition or power is also asymmetrical with the present delivery of Football outcomes in WA.
4. I recommend granting the Community Football Advisory Council, representing the Affiliated Associations, the right to nominate a Nominee Member to the WAFC with a 20% vote on ordinary and special resolutions.
5. I further recommend that the votes allocated to the Affiliated Associations in the postal vote for the election of Commissioners be increased from 10% to 20% and the vote of the Commissioners (Ordinary Members) be reduced from 20% to 10% so that the Affiliated Associations and the WAFL Clubs together have 50% of the votes, and the Fremantle Football Club, the West Coast Eagles and the Commissioners together have 50% of the votes. As submitted by the WAFL Council of Presidents in its further submission, I consider that this would reflect an appropriate balance between the most significant segments of the Football industry in WA in the important process of electing Commissioners.
6. A number of other amendments to the Constitution were suggested in either the written submissions or the LAPAC Report (which is identified later in this report), and I have recommended that several of them be implemented. A number of consequential amendments is required to the Constitution to accommodate the above amendments. I also take the opportunity to recommend some editorial type amendments to the Constitution to correct minor errors or inconsistencies which I noticed during my review.

B. BACKGROUND

7. The WAFC asked me to undertake a review of the WAFC's Constitution, in particular, in relation to governance and the election of Commissioners. The current Constitution, which was adopted in 2019, is referred to as the **Constitution**. This review is not a review required by Art 29.5 of the Constitution, which is not due until 2023, but has been undertaken in response to the matters identified in paragraph 1 of the Issues Paper. Terms which are defined in the Issues Paper or in the Constitution have the same meaning in this report unless another meaning is given to them.
8. On 1 December 2020, the WAFC provided an Issues Paper to all stakeholders involved in Football in Western Australia, including the two WA AFL Clubs, the WAFL Clubs, the Minister for Sport and Recreation, the Regional District Councils, the Affiliated Associations, and the Community Football Advisory Council.
9. The following stakeholders made written submissions responding to the Issues Paper:
 - (a) The then Minister for Sport and Recreation,
 - (b) Ian Taylor, who has served as the Returning Officer for the last 6 elections of Commissioners,
 - (c) The Regional District Councils (**RDC**),
 - (d) The Community Football Advisory Council (**CFAC**),
 - (e) The WAFL Council of Presidents (**COP**),
 - (f) The Fremantle Football Club (**FFC**),
 - (g) The West Australian Women's Football League (**WAWFL**), and
 - (h) The Perth Football League (**PFL**).
10. On 2 March 2021, the WAFC provided copies of the written submissions to all stakeholders which had made submissions and to the West Coast Eagles (**WCE**) (together **interested stakeholders**) and offered for Jon Carson to meet with any of those interested stakeholders to discuss their submissions or the submissions generally. Because the submissions have been made available to the interested stakeholders this report will not summarise those submissions except where a submission or submissions directly inform an element of this report or a recommendation. Copies of all submissions are set out in Appendix A to this report.
11. Mr Carson, together with Linda Hamersley and/or Mitchell Collins from the WAFC, met separately with the WCE, the COP, the FFC and the CFAC and representatives of their constituents, at their request.
12. On 21 April 2021, the WAFC provided a draft report and recommendations prepared by Mr Carson to all interested stakeholders. Those stakeholders were invited to make a further written submission on the draft report and recommendations and submissions were received from the RDCs, the CFAC, the COP and the PFL. Copies of the further submissions are also included in Appendix B to this report.
13. This report and the recommendations have regard to the written submissions and any further submissions on the draft report and recommendations made by, and the discussions with, the interested stakeholders. However, it would not be appropriate to, and I have not, treated the views of the interested stakeholders as a poll. A position expressed by a majority of the interested stakeholders on any of the issues outlined in the Issues Paper, or otherwise, is not necessarily adopted as a recommendation in this report. There are other matters which inform the conclusions reached in this report and the recommendations. The more important of these matters are the need for checks and balances in the governance of the Football industry in Western Australia, the Legislative Assembly Public Accounts Committee Report dated 12 November 2020 (**LAPAC Report**), the changing roles played by different segments of the WA Football industry in the delivery of Football outcomes, the funding of, and the financial contributions made by, those segments, and an understanding of how the governance role of the WAFC in the WA Football industry originated and has changed over the last 3 decades.

C. PRELIMINARY OBSERVATIONS

13. I have reviewed what I understand to be every version of the constitution governing the WAFC since the constitution adopted on 29 January 1984. I consider that there have been 3 fundamental changes to the constitution from then until now. I have also tried to understand the reasons for these 3 radical changes to the constitution. It is important to appreciate that the WAFC is not presently, and never has been, a sporting association in the usual sense representing the constituent segments of Football generally in WA. Historically, it was the association of the pre-eminent football league in WA, the West Australian Football League Incorporated. This is reflected in Art 11.2 of the Constitution. No other segment of Football has this historical position or entitlement.
14. The first fundamental change to the constitution occurred in 1989 when that league was radically restructured and reconstituted as a commission.
15. Until 16 June 1989, the WAFC was called the West Australian Football League Incorporated. The members of that league were the 8 WAFL Clubs that were members on the date the Rules (i.e., the constitution) were adopted; 29 February 1984. On 16 June 1989, that league adopted a new constitution under which it changed its name to the West Australian Football Commission Incorporated. All members of the league ceased to be members and 5 persons named in the new constitution, together with the Chairman of the Rural and Industries Bank and a seventh member to be elected by them, became the first members of the WAFC and the first Commissioners. As the WAFC continued to issue licences to participate in the WAFL competition and from that time would own the licence to participate in the AFL competition and would also own the entire share capital of the WCE, this restructure and reconstitution resulted in the WAFC controlling both the WCE and the WAFL Clubs and competition.
16. This radical upheaval to the structure and governance of Football in WA was a requirement of the then Minister for Sport and Recreation, Graham Edwards, before the government would continue to fund Football. It is recorded that, as at 31 October 1988, the WAFL Inc and the WAFL Clubs had a total debt of \$8,501,000 of which \$6,372,000 was owed to the R&I Bank. At that time, the R&I Bank was owned by the WA government, which had guaranteed Football's debt to the bank. The decision to undertake this upheaval and form an independent commission to administer football in WA was taken by the WAFL Clubs under the League's constitution. However, it is apparent that the prevailing sentiment was that if the government did not commit to increase the funding of Football the sport would self-destruct and so the WAFL Clubs really had no option but to take this radical step. It is not the role of this report to explore the reasons for Football in WA being in such a precarious predicament other than to say that the failure of the first WA club to compete in the VFL/AFL (i.e., the WCE) to generate the anticipated revenues for the benefit of the league, the WAFL Clubs and WA Football generally contributed to this position to a significant extent.¹
17. The conflict that was standing on the hose of Football development in WA and contributing to its deteriorating financial position at that time, and which was sought to be resolved by reconstituting the league as an independent commission, was not between the league and the other segments of Football in WA. It was between the WCE on the one hand and the league and its member WAFL Clubs on the other hand. It should be recognised that, rightly or wrongly, this was the objective of the establishment of the WAFC; it was not to create an association of all segments of Football. It is relevant to note that, at that time, the administration of junior and youth Football and the development of footballers through talent pathways in WA was largely undertaken under the auspices of the WAFL Clubs through their districts in both the metropolitan and country areas. By establishing a governance structure that was responsible for the WCE and the WAFL Clubs, the underlying philosophy was that the WAFC would ensure that all levels of Football from juniors through to the WCE would be strictly disciplined and developed under a united umbrella.

¹ I am indebted to the paper by Italiano G. (2002) *Government and Sport: The Case of the Western Australian Football Commission*. <https://ro.ecu.au/thesis> honours 919 for the historical information in this paragraph and paragraphs 17, 18 and 19 of this report.

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18. The second fundamental change in the WAFC's constitution occurred in 1994. The WAFC's constitution was amended in 2 fundamental ways. First, a new class of members was introduced in addition to the Commissioners. The holders of licences from the WAFC to participate in the AFL or the WAFL competitions became Special Members of the WAFC, while the Commissioners became Ordinary Members. Voting rights, other than in relation to the appointment of Commissioners, were allocated as to one half to the AFL Clubs shared equally and as to the other half to the WAFL Clubs shared equally. This remains the case today. Secondly, the method of electing Commissioners changed. Until 1994, the Board appointed Commissioners following the recommendations of the Presidents of 3 WAFL Clubs. A $\frac{3}{4}$ vote of the WAFL Clubs could veto any appointment. In 1994 this changed so that public expressions of interest in becoming a Commissioner were called for and the Board then notified the Special Members of whom they proposed to appoint from the expressions of interest. The Board was required to consult with the Special Members at a meeting and the proposed persons were appointed Commissioners if *all* Special Members confirmed the appointment. This structure and process is the forerunner of the present structure and process for the election of Commissioners.
 19. It appears that the reasons for the reintroduction of the AFL and WAFL Clubs as members of the WAFC in 1994 were the on field and financial success of the WCE in the early 1990s, which turned the financial position of WA Football around. Greater prosperity for WA Football was also promised in the future with the WAFC committing to an expansion of Subiaco Oval, and the related move for the WAFC to have another WA team in the AFL competition. It was no longer seen as necessary for the WAFC to be entirely independent of the AFL Clubs and the WAFL Clubs in the administration and development of Football in WA.
 20. A number of tinkering changes to the WAFC's constitution were made in the years between 1994 and 2019. For example, the Special Members ceased to directly be members and were given the right to nominate Nominee Members, no doubt to overcome the general legal principle that corporations cannot own themselves, and to prevent members "representing" any particular segment of Football.
 21. The third fundamental change to the WAFC's constitution occurred in 2019, although it had its origins some 18 years earlier in the Crawford Report of August 2001.² Relevantly, the main recommendations of the report were that the need for a strong, independent commission remained but that the process for the election of Commissioners should be reformed. The process should contain another stage at which a committee comprising representatives of the WAFC and the AFL Clubs and WAFL Clubs recommended to the WAFC (effectively to the Board) whom they considered to be suitable for election as Commissioners. Further, the voting rights for the election of Commissioners should be allocated more widely and include the Commissioners (as to 20%) and 2 other affiliated football leagues, the Metropolitan Football League, and the West Australian Country Football League (as to 5% each).
 22. For many years prior to 2019, a modified version of the Crawford recommendations was implemented without amending the WAFC's constitution by the ad hoc agreement of all the Nominee Members each year. In 2019, the WAFC's constitution was amended to introduce the current process, and the wider allocation of voting rights, for the election of Commissioners. That process and allocation is described in paragraph 9 of the Issues Paper and all interested parties are familiar with them and have made submissions on them.
 23. None of the fundamental changes to the WAFC's constitution identified above expanded the membership of the WAFC beyond the AFL Clubs and WAFL Clubs having the right to nominate Nominee Members, and the Commissioners being Ordinary Members. The 2019 changes granted a representative of the C F A C a position on the Nominations Committee and allocated a 10% vote in the postal vote for the election of Commissioners to Affiliated Associations. It is clear from, amongst other things, evidence given to the Legislative Assembly Public Accounts Committee enquiry in 2020 and the findings of that Committee as set

² D A Crawford. *Constitutional Review of the West Australian Football Commission August 2001*.

out in the LAPAC Report (Recommendations 17 and 18 in particular) and from the submissions made in response to the Issues Paper that significant segments of the Football industry in WA consider the current membership of the WAFC and the process for the election of Commissioners to be flawed because they are not representative of important segments of Football, namely junior, women's and community football. The importance contended for in the LAPAC Report and in the submissions from those segments seems to be largely based, firstly, on the numbers participating in the respective segments of Football and, secondly, on which segments are responsible for the delivery of Football outcomes in WA. This squarely raises the issue of the objectives and role of the WAFC and the governance structure that is necessary or appropriate to achieve those objectives and role at this time. Consideration must now be given to any changes in the way in which different segments of Football have grown or have shrunk` or have lost or gained relevance. Consideration must also be given to changes in the way in which Football in WA is administered, funded, and developed, and how Football competitions are conducted, over the period from 1989 to the present (**relevant period**). I address what I consider to be the more important changes below.

D. SIGNIFICANT CHANGES IN THE WA FOOTBALL INDUSTRY SINCE 1989

24. The most obvious and important change over the relevant period is the degree to which the AFL competition has become not just the preeminent Football competition in Australia but has become the brand and financial lynchpin of the code. The Football industry in WA depends upon the success of the 2 AFL Clubs for a significant part of the revenue to fund its operations. In 2019, the last pre-Covid season, the royalties alone paid by the 2 AFL Clubs were \$5,100,000 out of total revenue of \$18,446,296 (excluding extraordinary items - \$37,374,619 including extraordinary items, such as the State government forgiveness of the Subiaco Oval loan and one-off AFL contributions and grants). The other main contributor to the WAFC's revenue (to the extent of over \$11,000,000) was the State government under the 2018 agreement funding the loss of football revenue from Subiaco Oval (**State Funding Agreement**). The future quantum of funding by the State government under the State Funding Agreement will depend on the revenue produced by AFL games at Optus Stadium. It is beyond any argument that WA Football needs 2 successful AFL Clubs to underwrite its financial future. In 2019 the AFL also directly contributed over \$3,000,000 to Football in WA, particularly to fund talent pathways. It seems clear that any changes to governance of Football in WA and the election of Commissioners must not have the potential to jeopardise the continuing independent development and success of the WCE and the FFC in their participation in the AFL competition, or the attendance at AFL games at Optus Oval. It should be noted that the WCE and the FFC are the direct licensees of Optus Oval rather than the WAFC or the AFL.
25. Another significant change in the relevant period is the degree to which the WAFC has come to be seen, and funded, as the entity responsible for controlling and administering the whole of Football in WA, not just the participation of the 2 AFL Clubs in the AFL competition and the conduct of the WAFL competition. The two most significant financial contributors to WA football, the AFL, and the State government, fund the WAFC on the understanding that the funds will be used by the WAFC in the administration and operation of all of Football in WA, including junior, youth, community, women's, country and WAFL football. Neither the State government or the AFL would regard the money provided by them to the WAFC as being dedicated to the WAFL Clubs or the WAFL competition. Concerns have been expressed by some segments of Football about the degree of funding the WAFL Clubs receive from the WAFC, both directly by annual grant (which could be characterised as an allocation of profits under Art 11.2 of the Constitution) and indirectly by meeting the costs of conducting the WAFL competition. For example, in 2019, out of total WAFC revenues of \$18,446,296 (excluding extraordinary items - \$37,374,619 including extraordinary items such as the government forgiveness of the Subiaco Oval loan and one-off AFL contributions and grants), \$4,970,120 was paid as direct contributions to the WAFL Clubs and \$5,352,706 was the portion of WAFC's operating expenses attributable to the WAFL Clubs and running the WAFL competition. These issues are really structural and funding allocation issues for the Football industry (and not within the scope of this report), but they unavoidably impinge on governance. The question must be addressed as to whether the Affiliated Associations, which now play a significant role in delivering Football outcomes in WA in the segments of Football which have significantly the highest participation numbers and which depend on the WAFC for a meaningful part of their funding and administrative support, should have a greater degree of say in how the decisions which affect Football, and in particular the allocation of Football funding, are made in the future. Providing some further constitutional recognition or power to assist in ensuring the continuation of this funding and administrative support need not be at the expense of any other segment of Football and, in particular, need not be at the expense of funding to the WAFL Clubs or competition. Appropriate funding of both the WAFL Clubs and competition and the Affiliated Associations should continue, and careful constitutional change can facilitate that, not hinder it.
26. A further significant change in the relevant period is closely linked to the change identified in paragraph 25 above; that is the extent to which the WAFC has assumed the role of delivering Football development and administrative outcomes in place of the WAFL Clubs, particularly for junior and youth football. It is not the

place of this report to comment on the causes or desirability of this change, but the fact of the change cannot be denied or ignored. Details of the responsibility for Club, School, Auskick and other Football participation, amongst other things, are set out in Appendix C to this report. The WAFL Clubs clearly have a significant continuing role in providing a strong state-based competition which is necessary for the two AFL Clubs to maintain their player lists at a “ready to play” competitive level, and to provide a talent pathway into the AFL for the more gifted junior players. However, their relevance in, and contributions to, the wider Football community have significantly diminished over the relevant period. Football development and administrative outcomes in the segments of junior, youth, community, women, and country football are now predominantly delivered by the Affiliated Associations with some of the funding and most of the administrative support coming from the WAFC. The WAFL Clubs and the WAFC are working towards the WAFL Clubs regaining relevance outside the WAFL competition and the recent decision to return control of the Colts competition and related talent pathways to the WAFL Clubs is a first structural step on that journey. However, that is not a reason to ignore the issue of constitutional recognition or power for the Affiliated Associations which presently deliver important Football outcomes and I consider that WA Football will be well served if they continue to do so.

27. Another significant change in the relevant period is the increasing participation in Football at the community level and, in particular, the rapid growth in the numbers of women participating in Football over the last decade. A separate league has been created to cater for this growth, the WAWFL, and the WAFC has established its own women’s competition (the WAFLW) although not all WAFL Clubs yet field teams in the top-level competition. The success of the AFL women’s competition in promoting the brand as a sport for women, with both the FFC and the WCE fielding teams in that competition, is likely to see the continued growth in women’s participation in Football in WA at the community level. This is another factor which should be taken into account in relation to the governance of Football in WA.
28. Any changes to the governance structure of the WAFC and/or to the process for the election of Commissioners must have regard to the historic reasons for the imposition of a commission, effectively sitting above and ultimately controlling the AFL Clubs and the WAFL Clubs. Any changes must retain those elements which have worked well and must be driven only by the need to remedy manifest defects. The interests of Football in WA have generally been served well by a strong commission not controlled by either the AFL Clubs or the WAFL Clubs (or any other segment of Football individually or in aggregate). This primary structural balance and independence must be paramount in considering any changes to the WAFC’s Constitution that may be necessary or appropriate to reflect changed circumstances over the relevant period.

E. THE ISSUES

29. Issue 1: *Should Commissioners be members of the WAFC? If not, why not? If so, should they have voting rights on ordinary and special resolutions? If so, what should those voting rights be?*

The Commissioners are designated Ordinary Members of the WAFC under the Constitution. They have no vote on ordinary and special resolutions, which votes are given only to the Nominee Members, being the nominees appointed by each of the AFL Clubs (as to 25% of the votes each) and the WAFL Clubs (as to 50% to be shared and exercised equally between them). However, they are entitled to notice of, and to attend, every general meeting of the WAFC and also the Football Forums held throughout the year, including the process for the election of Commissioners at the December Football Forum.

Following the radical restructure and reconstitution in 1989, the Commissioners were the only members of the WAFC, thus assuring the absolute independence then required by the government. Even though Commissioners no longer have a vote on ordinary or special resolutions, I think it is an important part of maintaining the notion of a strong, independent WAFC that the Commissioners remain as Ordinary Members of the WAFC. The Commissioners are members without being nominated by any AFL Club or WAFL Club. I cannot see any disadvantages in retaining this constitutional feature and I think it has the advantage of emphasising that the WAFC is in fact and should continue to be, a commission independent of any particular segment of Football.

I do not think it is necessary for the Commissioners to have any votes on ordinary or special resolutions for them to be able to conduct their role in managing the business of the WAFC, nor is it appropriate for them to do so. No interested stakeholder has suggested that this should occur. Commissioners have not had such a vote since 1994 and I see no good reason to reinstate Commissioner voting rights at this time.

A number of submissions suggested that the Commissioners should not continue to be members of the WAFC in any class. With respect to the interested stakeholders who made those submissions, I consider that this view does not give appropriate weight to the historic and present role of the Commissioners as members in continuing a strong and independent WAFC. This structural element is more than just window dressing in my opinion and should be retained. It is an inherent part of being a commissioner that he or she is a member of the relevant commission in some class of membership. If the person is not a member, he or she may be a member of the committee of management or a director but cannot properly be identified as a commissioner. As the WAFC will remain constituted as a commission I consider that the Commissioners must remain members and should do so as Ordinary Members.

30. Issue 2: *Should Affiliated Associations be a member of the WAFC? If so, should they have voting rights on ordinary and special resolutions? If so, what should those voting rights be?*

There is a significant disparity between the role the Affiliated Associations play in delivering football development and administrative outcomes in the areas of junior, youth, community, women, and country football (which I will for convenience only refer to as **grass roots football**), and the Affiliated Associations' constitutional recognition or power. That constitutional recognition or power is presently limited to a vote in the postal vote stage of the process for electing Commissioners. Submissions from the Affiliated Associations consistently highlighted the difference in participation numbers between the WAFL Clubs and grass roots football. The difference in participation numbers is stark but I think that this difference in participation numbers simply reflects the different segments of football in which the WAFL Clubs and the Affiliated Associations operate. They are not in themselves a reason for Affiliated Associations to have greater constitutional recognition or power. However, I consider that the importance of the Affiliated Associations continuing to deliver administrative and football development outcomes in grass roots football in conjunction with the WAFC's operational team, and being properly funded to do this, necessitates some form of greater constitutional recognition or power.

The decision-making power of the WAFC is predominantly held by the Commissioners and not the members. Very few decisions are required to be formally put to members or require consultation with members or a class of members. These are:

- (a) An extraordinary payment to a Commissioner under Art 4.2(c)(vi).
- (b) Confirmation of the appointment of a Commissioner under Art 7.17 – first vote.
- (c) Confirmation of the appointment of a Commissioner under Art 7.20 – second vote.
- (d) Discussion on the acquisition or disposal of an asset with a value over \$2 million under Art 8.1(h).
- (e) Approving the issue of a further licence to participate in the WAFL competition under Art 10.3(a).
- (f) Consultation on the issue of a further sub-licence to compete in the AFL competition under Art 10.4.
- (g) Widening the rights of access to books and documents of the WAFC under Art 14.3.
- (h) Appointment of the WAFC's auditors under Art 24.1.
- (i) A special resolution to amend the Constitution under Art 29.
- (j) Article 22.2 additionally provides that only Nominee Members may vote at general meetings.

The matters which are reserved for decision by the Nominee Members are few and are limited in their effect on the management of the business of the WAFC. In particular, they do not include decisions as to how the funding of, and provision of administrative support to, the different segments of Football are to be allocated. These decisions reside with the Commissioners. Constitutional recognition or power through the right to appoint a Nominee Member does not seem to me to be as important as such recognition or power through the right to participate in the election of Commissioners. However, there is no doubt that constitutional recognition or power for the Affiliated Associations through the right to nominate a Nominee Member is now regarded as critical by many segments of Football and by the public more generally.

The LAPAC Report concludes that it is time the Affiliated Associations were given the right to nominate a Nominee Member of the WAFC and this was supported by all of the written submissions other than the COP. Unsurprisingly, all of the Affiliated Associations supported this change. It was also supported by the WCE in consultation. I consider that there are several compelling reasons for this constitutional change. Firstly, it will assist in ensuring that the present level of WAFC funding and administrative support to grass roots football continues and, secondly, it will assist in preventing any membership entitlements that may come out of this review from being removed by subsequent amendment to the Constitution by giving the Affiliated Associations a “seat at the table” for special resolutions. I recommend that the Affiliated Associations should be granted the right to nominate a Nominee Member in the same way that the AFL and WAFL Clubs can nominate a Nominee Member.

It is not appropriate, for a number of reasons including that it would be practically unworkable, for each Affiliated Association or each member of an Affiliated Association to be a member of the WAFC or to be able to nominate a Nominee Member. It is sufficient that the Community Football Advisory Council, a body already recognised in the Constitution as representing the Affiliated Associations, be given the power to nominate a Nominee Member. The fact that the CFAC is not a legal entity does not matter because the Nominee Member nominated by it will be a natural person in exactly the same way as the AFL Clubs and WAFL Clubs nominate a natural person who is the member of the WAFC. Conferring the right to nominate a Nominee Member on the CFAC will also accommodate changes to the underlying composition of the CFAC from time to time without the need to make changes to the Constitution.

In its submission on the draft report, the PFL again submitted that that each Affiliated Association should be afforded the constitutional right to be represented by their own Nominee Member, each with a separate vote. Amongst other things, the PFL refers to Recommendation 17 of the LAPAC Report in support of this submission. It is clear that the LAPAC Report did recommend that “Affiliates become members of the WAFC.” However, having regard to the nominee membership structure of the Constitution (of which the Public Accounts Committee would have been aware), it is not clear that the LAPAC Report’s recommendation may not be met to that Committee’s satisfaction by the Affiliated Associations’ right to nominate a Nominee Member being implemented via the CFAC, which plainly represents the Affiliated

Associations. As I previously observed, the CFAC is already recognised in the Constitution. The CFAC itself made no submission on this issue. I remain of the opinion that it is appropriate for the CFAC be afforded the constitutional right to nominate a Nominee Member of the WAFC on behalf of the Affiliated Associations. I address the voting power to be given to that Nominee Member below.

However, I think that it will be necessary to also amend the Constitution to provide that if any Affiliated Association fails to comply with the Constitution or the Rules, the CFAC's nominated Nominee Member's voting rights will be suspended as is the case for the AFL Clubs and the WAFL Clubs. I originally suggested that the limitations on transactions in Art 12.1 should also apply to Affiliated Associations and that Affiliated Associations should also be subject to the same financial and other scrutiny by the WAFC as the AFL and WAFL Clubs are presently. In its further submission, the PFL objected to this suggestion largely, I understand, on the basis that the board of the PFL must act in the best interests of that league. The boards of the AFL Clubs and the WAFL Clubs must also act in the best interest of those companies and incorporated associations so this is not a point of distinction. However, if the CFAC is afforded the constitutional right to nominate a Nominee Member instead of each Affiliated Association, as I recommend, there is a point of distinction. The power of financial scrutiny given to the Board is clearly for the purpose of ensuring the AFL Clubs and the WAFL Clubs remain solvent and able to undertake their constitutional and wider Football roles. If an Affiliated Association became insolvent, it would no doubt cease to be represented on the CFAC but the CFAC would continue and would continue to undertake its constitutional role. On further consideration, I do not consider it to be appropriate for the provisions of Art 12.1 to apply to Affiliated Associations unless those associations are given the direct right to nominate a Nominee Member, which would put them in precisely the same constitutional position as the AFL Clubs and the WAFL Clubs. Other consequential amendments will be required, which are set out in the form of the proposed Constitution in Appendix C to this report.

The next issue is the number of voting rights which should be held by the CFAC nominated Nominee Member in relation to ordinary and special resolutions. I do not consider that it would be sensible to base the extent of the voting rights on the respective participation numbers of the AFL Clubs and the WAFL Clubs, and the Affiliated Association, or on the number of Affiliated Associations or underlying clubs.

However, if the Affiliated Associations are to have the right of membership at all, via a Nominee Member, it is sensible to make the voting rights a strategic stake. I originally considered that the voting rights allocated to the Nominee Member nominated by the CFAC should be the same as each WAFL Club, without changing the percentage of votes held by the AFL Clubs. This was slightly different to what was submitted by the FFC in that a consequential decrease in votes is shared among the WAFL Clubs but not the 2 AFL Clubs. All of the RDCs, the CFAC and the PFL further submitted, strongly, that the voting power I recommended be given to the Affiliated Association's Nominee Member was significantly less than what was required to reflect their role and contribution to the Football industry. The COP submitted that the Affiliated Associations should not be given the right to nominate a Nominee Member at all. After further consideration and taking into account the further submissions of the Affiliated Associations, I consider that the Nominee Member nominated by the CFAC should be given greater voting power than a vote equal to each of the WAFL Clubs. The CFAC submitted that the voting power of the CFAC should be the same for ordinary and special resolutions as it is for the election of Commissioners (although they also submitted that that voting power should be increased above the 20%, I recommend). I agree with this further submission and recommend that the Nominee Member nominated by the CFAC have voting rights equal to 20% of the votes available on each resolution. The WAFL Clubs, between them, would have voting rights equal to 30% of the votes available on each resolution or 3.33% each. Because of the importance to WA Football of the 2 AFL Clubs I consider their voting power should remain intact and I consider that this achieves the right balance. Accordingly, I do not see the need to increase the overall number of votes. The WAFL Clubs and the CFAC between them would have 50% of the votes that can be cast, and the 2 AFL Clubs would retain 25% each. This means that the 2 AFL Clubs together with any of the WAFL Clubs or the CFAC can pass an ordinary resolution. The 2 AFL Clubs together with any 2 out of the WAFL Clubs and the CFAC can pass a special resolution, and one AFL Club and all of the WAFL Clubs and the CFAC can also pass a special resolution. This increases the strategic power of the Affiliated Associations and I think this voting

power is appropriate to reflect the significance of the AFL Clubs (50%) and the WAFL Clubs (30%) to Football in WA but also gives grass roots football a strategic stake (20%) in matters that require a decision from the Nominee Members of the WAFC. I think this will promote a degree of consultation, and where necessary, negotiation in relation to the passing of ordinary and special resolutions and will help ensure that the voices of all segments of Football are heard on matters requiring a vote of the Nominee Members. Ultimately, of course, the AFL Clubs and any 1 of the WAFL Clubs can pass an ordinary resolution and the 2 AFL Clubs and 8 of the WAFL Clubs can pass a special resolution but the 20% vote of the CFAC nominated Nominee Member gives him or her the opportunity to seek to convert one or other of the AFL Clubs or any 2 of the WAFL Clubs to his or her point of view. With 20% of the voting power, this is all it would take to defeat a proposed constitutional change which disadvantaged the Affiliated Associations. I consider that this balance of voting power may trigger a dialogue between the WAFL Clubs and the Affiliated Associations on critical issues in the future. This would be a good thing.

31. Issue 3: *Should anyone else be a member of the WAFC; e.g. the government? If so, should they have voting rights on ordinary and special resolutions? If so, what should those voting rights be?*

I see no reason for anyone else, including the government, to be a member of the WAFC. There were no submissions for this to occur, and notably the Minister did not submit that this should occur. The WAFC and the State of Western Australia are parties to the State Funding Agreement and the State has rights under that agreement to detailed financial and other information about the WAFC's operations, revenues, costs, and expenditures. There is no need, and it would not be appropriate, for the government to be a member of the WAFC considering the importance of the arm's length State Funding Agreement to the future funding of football in WA.

32. Issue 4: *Generally, what should be the criteria for membership of the WAFC? Financial contribution to the game in WA? Participation contribution? Competition contribution? Talent pathway contribution? Community involvement?*

The response to this issue has largely been traversed in the response to Issue 2 above. The Affiliated Associations consistently submitted that the criteria for membership of the WAFC should be an involvement in the delivery of Football outcomes in WA and by this I take them to mean an involvement in delivering administrative and/or Football participation and development outcomes, including conducting Football competitions other than the AFL and the WAFL. I think these submissions are correct. This is particularly the case because the continued delivery of those outcomes depends on a reasonable degree of continued financial and administrative support from the WAFC as a result of the WAFC having become the centralised funding body for Football in WA. The two AFL Clubs obviously meet these criteria. The WAFL Clubs also meet these criteria. I think it is clear that the Affiliated Associations now also meet these criteria.

The COP submitted that Affiliated Associations could become members of the WAFC for the purposes of ordinary and special resolutions only if they, firstly, dissolved their constitutions and, secondly, allowed their competitions to be run by the WAFC. There is no need for the Affiliated Associations to dissolve their constitutions and it would be most undesirable for them to do so as they would lose the benefits of incorporation; the two AFL Clubs and the WAFL Clubs are all legal entities separate from the WAFC, being themselves incorporated under either the *Corporations Act 2001* (Cth) or the *Associations Incorporation Act 2015* (WA).

I see no advantage in the WAFC running the competitions presently run by the Affiliated Associations and licensing clubs to participate in those competitions. The delivery of these Football outcomes by the Affiliated Associations with some funding and administrative support from the WAFC is a very economical and efficient way of doing this. Details supporting this proposition are set out in Appendix B. It would be considerably more expensive and less efficient if the WAFC assumed the direct and full responsibility for controlling the programs and competitions presently run by the Affiliated Associations. The important thing is to seek to ensure that the Affiliated Associations have the necessary financial and administrative support

from the WAFC in the future to be able to continue to deliver the important Football outcomes they presently deliver.

In consultation with the COP, it was apparent that one of the concerns of the WAFL Clubs with any change to the Constitution was that it might jeopardise the funding of the WAFL competition and the clubs themselves. There is no reason for this concern; the Constitution still has as one of its objectives that the WAFL competition is the pre-eminent competition in WA. This carries with it the requirement that the WAFC funds the WAFL competition and the WAFL Clubs to the extent necessary to achieve this objective subject, of course, to the availability of funds to the WAFC to permit it to do so in any year. To the extent that submissions from the PFL were inconsistent with this constitutional objective, and the implicit requirement for appropriate funding, I reject those submissions.

33. Issue 5: *Is the process for electing Commissioners too complicated? If so, which decisions should be removed from the process, which decisions should remain in the process or should other decisions be substituted for all or any of the decisions. If the latter, who should make the decisions? For example, would a process involving only two decisions, the Nominations, and the Postal Vote, provide the appropriate representative voting and checks and balances? Would a process involving only members and Affiliated Associations to appoint an appointments committee, then a decision by the appointments committee to appoint Commissioners provide the appropriate voting representation and checks and balance.*

The Affiliated Associations consistently submitted that the election process was too complicated and suggested some alternative processes, including a member nomination and vote at the AGM, and a two staged process being a nomination by the Nomination Committee and a postal vote by members. The PFL recommended an alternative simplified model, similar to that suggested by other Affiliated Associations but requiring nominations to be endorsed by a club and the vote to be by secret ballot at a general meeting.

Ian Taylor, who has been appointed the Returning Officer for the last 6 election processes, does not consider the process to be too complicated and considers that it has been followed without difficulty and without invalidities occurring. He recognises, however, that the process would also work if several steps were omitted.

The FFC does not consider there are significant issues with the election process. The written submission indicated that they would support a change removing the step of an ordinary resolution to confirm the results of the postal vote. In consultation they advised they were happy for this step to remain.

I also do not consider that there are significant issues with the election process. Because the Constitution largely leaves the conduct of the WAFC's business in the hands of the Commissioners, the election of Commissioners is the most important matter governed by the Constitution. I think that there are two important objectives that the election process should pursue. Firstly, each important segment of Football should have a vote in the pivotal decision, i.e., the postal vote for the election of Commissioners, and this is a feature of the current Constitution. Secondly, the Board should have a reasonable degree of input into the process, so as to ensure appropriate board succession planning for diversity, balance and indirect representation of different Football interests. I think this objective is also a feature of the current Constitution through the WAFC's chairing of, and representation on, the Nominations Committee, and through the Board endorsing the candidates that are to be put forward for the postal vote. I do not see any reason to change the process for electing Commissioners, but with one qualification. If Affiliated Associations through the CFAC are not given the right to appoint a Nominee Member with voting rights that amount to a strategic stake, I think the confirmatory vote by ordinary resolution of Nominee Member should be omitted and the candidates elected by the postal vote should become Commissioners without more; in other words, the right of veto held by the AFL Clubs and WAFL Clubs should be removed. The present composition of the Nominations Committee also assists in each relevant segment of Football participating, and having a voice, in the approval of Recommended Candidates.

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34. Issue 6: *Generally, what should be the criteria for the process of electing Commissioners? Should it be simplicity, perhaps at the expense of appropriate checks and balances? Should it involve each of the different stakeholders in football in WA being involved or “represented” in some or all of the stages/decisions of the process? What weight should be given to the different stakeholders and on what basis? Again, financial contribution? Participation contribution? Competition contribution? Talent pathway contribution? Community involvement?*

As previously identified, the election of Commissioners is the single most important issue governed by the Constitution because of the power vested in the Board to manage the business of the WAFC without undue interference from the members. The present process for electing Commissioners is complicated and involves a number of stages. However, I think that each of these stages is a necessary element of, and adds value to, the overall process. The Nominations Committee reflects the views of each relevant segment of Football through its composition. The Board approval step allows the Board to consider succession planning over the longer term, which should assist in maintaining diversity and balance in the composition of the Board. The postal vote is the pivotal decision in the process and the voting in this reflects, or should reflect, the relevance and importance of the relevant segments of Football in WA.

The confirmatory vote operates as a “safety valve” so that a majority of the Nominee Members are not subject to one or more Commissioners who are fundamentally unacceptable to them. This last step is the most dispensable and I recommend its omission if the Affiliated Associations are not given the right to nominate a Nominee Member with a 20% vote on ordinary and special resolutions. The present 4 staged process was complied with in 2020 without difficulty or invalidity and I see no reason why it should not be complied with in the future. I see no advantages in changing the process and for the reasons expressed in this and the previous paragraph I think there are significant advantages in keeping the existing checks and balances in the process in their present form.

35. Issue 7: *Are the current voting rights for the Election Decision appropriate? If not, which voter should be given more votes and why? Which voter should be given less votes and why? Should Commissioners have voting rights for the Election Decision?*

As previously indicated, I think it is necessary and appropriate for the Board to play a proactive role in succession planning so as to assist in achieving diversity and balance in future Board compositions. I think that it is important that the Commissioners’ role on the Nominations Committee be maintained for this purpose and that it retains a level of voting power in the election itself.

Currently, voting rights for the Election Decision are allocated as to 20% to each of the Commissioners, the WCE and the FFC, as to 30% to the WAFL Clubs and as to 10% to the Affiliated Associations. I was originally of the view that this seemed to over allocate voting rights to the WAFL Clubs and under allocate those rights to the Affiliated Associations. The increased role of the Affiliated Associations in delivering grass roots football administrative, participation and development outcomes and in conducting Football competitions causes me to remain of the view that the voting rights are under allocated to the Affiliated Associations. However, after considering the further submissions, particularly that of the COP, and also having regard to the significant input the Commissioners have and will continue to have into the election of Commissioners through the Nominations Committee and the endorsement of Endorsed Candidates (which are the candidates actually put up for the pivotal postal vote) I do not consider that the voting power of the WAFL Clubs is over allocated. The 20% vote of the Commissioners should be reduced to 10% as submitted by the COP and as also submitted by the COP, this would return the balance between the AFL Clubs and the Commissioners, and the WAFL Clubs and the CFAC to 50%/50% from the present balance of 60%/40% which proportion was to be retained under my draft report. This will mean that the AFL Clubs and the Commissioners will between them not be able to vote to elect a Commissioner between them. They will need the vote of a WAFL Club or an Affiliated Association to ensure the highest number of votes for a particular candidate. The Commissioners will continue to have a degree of influence on the election of Commissioners through their role on the Nominations Committee and because the Board is required to

endorse the Endorsed Candidates that are put up for the election by the postal vote. The need to ensure that grass roots football continues to be appropriately supported and funded via the WAFC so as to be able to continue to deliver those Football outcomes requires that the Affiliated Associations also have a 20% vote between them in the Election Decision. The WAFL Clubs should continue to have 30% of the vote between them and the Commissioners' vote should be reduced to 10%.

36. Issue 8: *Should the Election Decision be a first past the post vote or should Nominee Members and Affiliated Associations be entitled to directly appoint one or more individual Commissioners?*

There was no support for introducing rights to directly appoint Commissioners, apart from some of the Affiliated Associations adopting this as a possible fall-back position if they were not given voting rights. The FFC in its written submission, and the WCE in consultation, were strongly opposed to granting rights to directly appoint Commissioners. I consider that the present first past the post system should be retained.

One principle underlying the Constitution at present is that Nominee Members and Commissioners should act in the interests of football generally and not pursue the interests of any particular segment which may have initiated and contributed to the Commissioners' appointment. I consider that it is critical to retain this principle by resisting the introduction of any form of direct appointment.

37. Issue 9: *If Nominee Members and Affiliated Associations are entitled to directly appoint one or more individual Commissioners, should the maximum number of Commissioners be increased above 8? Should the number of Commissioners increase in any event?*

The first issue is no longer live so those submissions which suggested that the number of Commissioners should increase if direct appointments were introduced are not pertinent. The PFL suggested that the number of Commissioners be increased by 2 and that the Board be entitled to appoint those 2 Commissioners direct. However, this suggestion is really coupled to PFL's suggestions which would see the Commissioners having no voting rights in the Election Decision. I think that it is important for the Commissioners to play a proactive role in the election process itself (albeit with a reduced voting power of 10%) together with the other Football stakeholders, rather than have separate rights to appoint 2 further Commissioners direct. I do not see the benefit in increasing the number of Commissioners so as to accommodate the direct appointment of Commissioners by the Board.

F. OTHER ISSUES RAISED BY INTERESTED STAKEHOLDERS

38. I now deal with issues raised by interested stakeholders which have not been directly or indirectly addressed in the preceding parts of this report. Each of the RDCs, the CFAC and the PFL suggested that the WAFL Clubs should cease to have the right to each appoint a Nominee Member and that they associate and together appoint a Nominee Member, similarly to the right I recommend be granted to the CFAC. I do not see that such a radical change is required to the membership of the WAFC. While I think it is important that the Affiliated Associations or grass roots football is given meaningful constitutional recognition and power, this can be achieved by granting the CFAC the right to nominate a Nominee Member with the same voting power as the Affiliated Associations should have in the election of Commissioners; i.e. I recommend 20% in both cases. There is no need to change the WAFL Clubs' rights under the Constitution in a more radical way than forsaking 20% of their present aggregate voting power (i.e., 2.22% each) in favour of grass roots football.
39. The RDCs and the CFAC also suggested that the process for the election of Commissioners could follow the traditional method for the election of committee members in associations generally, sporting or otherwise. A minimum number of members are required to sign a nomination form and the valid candidates are then voted on at a general meeting of members. However, the WAFC is not a sporting association in the ordinary sense and I do not consider Football would benefit from it becoming one. The WAFC has been an independent commission governed by Commissioners in the best interests of Football generally since 1989, not controlled by any segment of Football or any interest group. I would be concerned that if the structure and process for the election of Commissioners changed to align with that of an ordinary association, it could quickly become controlled by the AFL Clubs, whose financial contributions hugely outweigh those of any other segment other than the State government. I think that Football is best served by maintaining the present process and by a small adjustment to the allocation of votes.
40. The COP recommended that the clause in the Constitution regarding the COP and the WAFL Management Committee (**WAFL MC**) be reviewed to provide an expanded purpose and increased role of both entities to manage the WAFL competition and its broader business. I have reviewed Art 15 of the Constitution and I consider that this article provides the necessary and appropriate foundation and framework for the WAFL MC to administer the WAFL competition and for the COP to play a significant role in managing the WAFL's business by providing strategic advice to the WAFC on all things related to the WAFL. If the outcomes in this respect are not satisfactory to the WAFL Clubs, the answer lies in them pursuing the objectives already intended by Art 15. The WAFL Clubs can instigate this by proposing a memorandum of understanding governing the rules and procedures for the WAFL MC to the WAFC. The WAFL Clubs can approve the final memorandum of understanding by a 75% vote. It is also up to the COP to continue to pursue the interests of the WAFL generally as assiduously as it sees fit as it has successfully done in the past, subject only to the final discretion of the WAFC.
41. The COP also recommended an amendment to Art 7.9(g) of the Constitution relating to the Nominations Committee. With respect to the COP's recommendation, the only difference between the existing provision and its recommended provision is that the Board would be required to approve protocols, policies, and timelines under the amended provision whereas this is implicit in the existing provision. Both provisions require the Nominations Committee to comply with any protocols, policies, and timelines for determining the Recommended Candidates approved by the Board from time to time. I have previously spoken of the need for succession planning by the Board in the election of Commissioners. I think that the Nominations Committee should also have a function of planning for the future of the Board composition. It would be sensible to include in Art 7.9(g) some guiding principles with which any protocols and policies approved by the Board must be consistent. The guiding principles would be to seek to ensure so far as is possible that the Board from time to time includes Commissioners reflecting diversity in gender, age,

race, Football background and present involvement in Football so that all segments of Football have a voice on the WAFC.

42. The PFL submitted that the voting rights of Nominee Members should be contingent on that member (strictly, the AFL or WAFL Club appointing him or her) being financial at that time. This seems to me to be already covered by Art 26 of the Constitution. I have already suggested that if the CFAC is granted the right to nominate a Nominee Member on behalf of Affiliated Associations or grass roots football, this provision should be extended to those Affiliated Associations. Generally, I consider that the prohibition in Art 26 should extend to any material non-compliance with the Constitution or Rules by any AFL Club, WAFL Club or Affiliated Association.
43. The LAPAC Report, in Recommendation 18, suggested that *“Employees of WAFC, the two AFL Clubs and the WAFL Clubs and Affiliates should not be able to be appointed as Commissioners”*. I am not aware of any Commissioner holding that position while he or she was such an employee and I suspect that the rigours of the process mandated by Art 7 of the Constitution (and the suspicions of other stakeholders) would, in reality, prevent this from occurring. However, I consider such a prohibition would be consistent with good governance and I recommend an amendment to the Constitution to include this prohibition.

G. RECOMMENDATIONS

43. I make the following recommendations for amendments to the Constitution:

- (a) The CFAC be granted the right to nominate a Nominee Member of the WAFC with 20 % of the voting rights on each ordinary and special resolution. This is best achieved by allocating the CFAC Nominee Member 900 votes in Annexure B to the Constitution and by changing the votes of the other voters in the manner set out in (b) below.
- (b) The number of votes allocated in Annexure B be changed to 4500 allocated to: the WAFL Clubs 1350 (30% - 150 each), WCE 1125 (25%) and FFC 1125 (25%).
- (c) The Returning Officer be permitted to conduct a confidential pre-count of the postal votes between the time of the receipt of the postal votes and the Football Forum, as suggested by Ian Taylor.
- (d) If any AFL Club or WAFL Club or Affiliated Association is in default of any payment obligation to the WAFC or in breach of the Constitution or Rules, the rights of the Nominee Member appointed by it, including all voting rights, are suspended.
- (e) The voting rights allocated to Affiliated Associations in Annexure A to the Constitution for the postal vote for the election of Commissioners be increased from 450 to 900 and the votes allocated to the Commissioners (Ordinary Members) in that Annexure be reduced from 900 to 450.
- (f) Guiding principles for the protocols and policies determined by the Board for the determination of Recommended Candidates be included in the Constitution, so as to seek to achieve a diversity in gender, race, age and Football background and involvement in the Board composition from time to time.
- (g) A prohibition on employees of the WAFC, the AFL Clubs, the WAFL Clubs and the Affiliated Associations being appointed or continuing as Commissioners.
- (h) **Alternative recommendation** - If Affiliated Associations are not given the right to nominate a Nominee Member with a 20% vote on ordinary and special resolutions, then the confirmatory votes of Nominee Members under Art 7.17 and Art 7.20 be removed from the Constitution.
- (i) Any amendments consequential on the above amendments be made.

44. A copy of the proposed Constitution with the recommended and consequential amendments tracked is set out in Appendix D to this report.

APPENDIX A

1. The WAFC, together with the RDCs, administer the Junior and Youth Clubs and in 2019 there were respectively 31,175 and 16,950 participants in those levels of Football. Affiliated Associations, with support from the WAFC, administer the Senior and Veterans Clubs and in 2019 there were respectively 16,925 and 2,115 participants in those levels of Football. The WAFC administers the Schools Football programs and competitions and in 2019 there were 206,300 participants. The WAFC, together with the RDCs, administer Club, Community and School Auskick programs and in 2019 there were 42,720 participants. The WAFC administers other Football programs and events, such as the AFL 9s competitions and school holiday programs and in 2019 there were 30,544 participants in those programs and events.
2. In the 2019 season the WAFC provided the following grants to the WAFL/WAFLW Clubs and the following Affiliated Associations. Where an Affiliated Association has generated stand alone revenue, the stand alone revenue generated by that Affiliated Association is also set out. This reflects money applied to delivering Football outcomes by that Affiliated Association which would otherwise need to be funded by the WAFC. Also set out below is the percentage of WAFC internal time and WAFC expenses allocated to the various segments in the 2021 Budget.
 - WAFL/WAFLW: 2019 WAFC grants \$4,454,248 (2021 Budget allocation 33%).
 - PFL: 2019 WAFC grants \$307,078 (stand alone PFL revenue \$1,490,287) (2021 Budget allocation 4%).
 - WACFL: 2019 WAFC grants \$55,000 (stand alone WACFL revenue \$1,239,506) (2021 Budget allocation 3%).
 - Masters: 2019 WAFC grants \$21,000 (stand alone Masters' revenue \$240,033) (2021 Budget allocation 1%).
 - MFL: 2019 WAFC grants \$17,000 (stand alone MFL revenue \$65,190) (2021 Budget allocation <1%).
 - Metro RDCs: 2019 WAFC grants \$125,168 (2021 Budget allocation 4%).
 - Regional FDCs: 2019 WAFC grants \$164,518 (2021 Budget allocation 3%).
 - WAWFL: 2019 WAFC grants \$10,000.
3. In 2017 the WAFC undertook an analysis of its investment per participant in relevant segments of WA Football. The results of this analysis showing overall participant numbers and WAFC net investment per participant are:
 - Junior Club Participants: 30,050 @ \$13.90.
 - Youth Club Participants: 15,480 @ \$22.27.
 - Senior Club Participants: 16,157 @ \$33.27
 - Veteran Club Participants: 3,630 @ \$17.28.
 - Auskick: 22,175 @ \$12.29.
 - WAFL: 1080 @ \$6,254.47.
4. The important message to take out of these statistics is that the present funding of, and the provision of administrative support to, the Affiliated Associations by the WAFC is a very economical and efficient way of delivering Football outcomes in WA. This model should be retained. It should be ensured that this funding and provision of administrative support is continued. This need not and should not be at the expense of the continued funding of the WAFL Clubs and the WAFL competition, which is necessary and appropriate to ensure that WA Football continues to benefit from the strongest second tier competition in Australia.

APPENDIX B

CONSTITUTION

West Australian Football Commission Inc ABN 51 167 923 136

Preamble

The Commission's purpose is to ensure current and future generations of Western Australians engage with, participate in, and enjoy the benefits of Football in an inclusive environment through the promotion, encouragement and oversight of the growth and development of Football in Western Australia.

The Commission is committed to:

- increasing and maintaining high levels of engagement in Football in Western Australia;
- connecting the pathways of Football in Western Australia from grass roots to the WAFL-Clubs;
- identifying and encouraging Football talent both on and off the field;
- ensuring the sustainability of Football in Western Australia through good governance and financial oversight; and
- ensuring Football is played and enjoyed in the spirit of fairness, decency and honesty.

The Commission acknowledges the Aboriginal peoples of Western Australia as the traditional custodians of this land, and we pay our respects to their Elders both past, present and future. We acknowledge and look to foster the contribution that Aboriginal people have made and will make to our great game.

Name

Article 1

1.1 This association shall be called the "West Australian Football Commission Inc"

Interpretation

Article 2

2.1 In this Constitution:

Act means the *Associations Incorporation Act 2015* (WA) as amended from time to time, and includes any re-enactment of or replacement of that Act, and any associated regulations.

Affiliated Association means a club, body, association or the like that becomes affiliated with the Commission as provided for in Article 13.

AFL means the Australian Football League ACN 004 155 211, a company limited by guarantee, incorporated in Victoria with its office at 140 Harbour Esplanade, Docklands, Victoria.

AFL Club means a club, body, association or the like which is the holder of a WA-based licence or sub-licence to play in a competition organised by the AFL or any national Football Association.

Approved Candidate has the meaning given in Article 7.15.

Board means the Board of Commissioners referred to in Article 6.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Perth, Western Australia.

Chair means the person appointed as chair by the Board.

Chief Executive means the person appointed as chief executive by the Board.

Club means any AFL Club, WAFL Club or Other Club.

Commission means the West Australian Football Commission Inc.

Commissioner means a person appointed pursuant to Article 7.

Committee means a committee, board, council or tribunal appointed by the Board pursuant to this Constitution.

Community Football Advisory Council, or CFAC means the council of that name established by the Commission to represent Football competitions in Western Australia (other than the AFL and the WAFL Competition) or any council or body hereafter established from time to time by or with the support of the Commission of whatever name which has substantially the same role.

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Constitution means this constitution.

Delegate, in relation to a Nominee Member, means a person appointed as delegate by that Nominee Member in accordance with Article 5.4.

FFC means Fremantle Football Club Limited ACN 066 055 249.

Endorsed Candidate has the meaning given in Article 7.10.

FF Chair has the meaning given in Article 7.15.

Football means the game known as Australian Rules football.

Football Association means any association or body within Australia with aims and objectives similar to those of the Commission.

Football Forum has the meaning given in Article 7.12.

IPL means Indian Pacific Limited ACN 009 178 894.

Instantaneous Communication Device includes telephone, television or any other audio or visual device which permits instantaneous communication.

Laws means the laws of Football as adopted and amended from time to time by the AFL or any body which may have responsibility for determination of such laws from time to time, as amended by variations made in respect of any league, association or body responsible for the organisation and conduct of Football in accordance with the laws of Football.

Licensee means a body licensed by the Commission from time to time pursuant to Article 10.

Life Membership is an honorary award which entitles recipients to the privileges from time to time determined by the Board but does not confer any of the rights of a Member.

Member means any Ordinary Member or Nominee Member.

~~Minister means the Minister for Sport and Recreation in the Government of the State of Western Australia or such other Minister who may be charged with similar responsibilities from time to time.~~

Nomination Committee has the meaning given in Article 7.8.

Nominee Member means a person appointed in accordance with Article 5.4 and, where a Delegate attends a meeting, includes the Delegate.

Official means any office bearer, employee or representative of a Club in any capacity and includes without limitation any director, coach, trainer or runner of the relevant Club.

Ordinary Member means a person who is a Commissioner pursuant to Article 5.2.

Ordinary Resolution means a resolution that has been passed by more than 50% of the votes cast either personally, by post or by proxy, by Nominee Members entitled to vote on the resolution.

Other Club means a club, body, association or the like, other than an AFL Club or WAFL Club, that participates in any Football competition conducted by or under the auspices of the Commission or an Affiliated Association, or is otherwise affiliated with the Commission.

Recommended Candidate has the meaning given in Article 7.8.

Retiring Commissioner has the meaning given in Article 7.9(b).

Returning Officer has the meaning given in Article 7.6.

Rules means all rules, by-laws, regulations or determinations made by the Board pursuant to this Constitution.

Second Resolution has the meaning given in Article 7.20.

Secretary means the person appointed as secretary by the Board.

Special Resolution has the meaning given to the term “special resolution” in the Act.

Sub-Licensee means any body holding a sub-licence from the Commission from time to time pursuant to Article 10.

Vice-Chair means the person elected as vice-chair by the Board.

WAFL means the organizational structure for the playing of competitive Football at senior State league and other levels in Western Australia at the highest standard of competition below the AFL, conducted through the Commission.

WAFL Club means a club, body, association or the like which is licensed to participate in the WAFL Competition, but does not include any AFL Clubs irrespective of whether the AFL Club has been granted a licence to participate in the WAFL Competition.

WAFL Competition means the Football competition known as the West Australian Football League conducted by the Commission in accordance with this Constitution.

WAFL Council of Presidents means the council referred to in Article 15.7.

WAFL Management Committee means the committee referred to in Article 15.2.

Year means calendar year.

2.2 Except where the contrary intention appears words defined in the *Interpretation Act 1984* (WA) as from time to time amended shall have the same meanings herein.

Office and Place of Business

Article 3

3.1 The office and principal place of business of the Commission shall be at a place determined by the Board from time to time.

Objects or Purposes

Article 4

4.1 The objects or purposes for which the Commission is established are to promote, develop, control, manage and encourage Football in accordance with the guidelines specified in the preamble, and in particular but without limiting the generality of the foregoing:

- (a) to promote, encourage and oversee the growth and development of Football;
- (b) to provide guidance, planning and leadership to all levels of the Football industry;
- (c) to promote, develop, and ensure the effective management of Football matches at all levels of the Football industry and recognise the WAFL as the pre-eminent Football league in the State of Western Australia;
- (d) as owners, to oversee and ensure the effective management of the AFL Clubs and to promote, develop and encourage the AFL Clubs and Football matches and competitions conducted by the AFL; and
- (e) to ensure the adequate development and management of grounds, other sporting stadiums and Football facilities and provide guidance and planning for the efficient use of other Football facilities.

4.2

- (a) The property and income of the Commission shall be applied solely towards the promotion of the objects or purposes of the Commission and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to Members, except in good faith in the promotion of those objects or purposes.
- (b) A payment may be made to a Member out of such property or income only if it is authorised under Article 4.2(c).
- (c) A payment to a Member out of such property or income is authorised if it is:
 - (i) a payment in good faith to the Member as reasonable remuneration for any services provided to the Commission, or for goods supplied to the Commission, in the ordinary course of business;
 - (ii) a payment of interest, on money borrowed by the Commission from the Member, at a rate not greater than the cash rate published from time to time by the Reserve Bank of Australia;
 - (iii) a payment of reasonable rent to the Member for premises leased by the Member to the Commission;

- (iv) a reimbursement of reasonable expenses properly incurred by the Member on behalf of the Commission;
- (v) a payment of, or a reimbursement for reasonable expenses properly incurred by a Commissioner for travel and accommodation in connection with the performance of the Commissioner's functions and duties, including, without limitation, attendance at Country Sport Enrichment Scheme football games and Football games outside of Perth; or
- (vi) any other payment to, or reimbursement of, a Commissioner only if it is authorised by an Ordinary Resolution.

4.3 The Commission shall have all of the powers conferred on an incorporated association by the Act, and in particular shall have the following powers:

- (a) to grant to Clubs licences or sub-licences, pursuant to which such Clubs are authorised to participate in such competitions as from time to time may be organised by or under the auspices of the Commission and to implement and control such licensing system for any team playing in any national competition conducted by the AFL or any other national competition as the Commission considers appropriate;
- (b) to specify the terms and conditions upon which licences and sub-licences shall be issued to Clubs;
- (c) to define and determine the territories allocated to Clubs and the league or competition in which any Club may participate and from time to time alter such territories and leagues or competition;
- (d) to determine the terms and conditions upon which persons may play Football and for which Clubs such persons may play and such other terms and conditions upon which Clubs may take part in matches or leagues;
- (e) to arrange matches with other leagues or competitions and to select and control all teams under the control of the Commission (which does not include the power to select teams representing a WAFL Club);
- (f) to establish and/or oversee the conduct and administration of new Football competitions within Western Australia, including (but not limited to) women's Football competitions;
- (g) to frame and administer laws relating to Football and to take such action as may be necessary to achieve uniformity in competitions conducted by or under the auspices of, or which are otherwise under the control of, the Commission, provided such laws do not conflict with the Laws;
- (h) to raise money by subscription or otherwise from Clubs or the members thereof;
- (i) to maintain, encourage and implement principles and practices of sound financial management within the Football industry and to lay down financial guidelines for Clubs;
- (j) to render pecuniary or other assistance to Clubs;
- (k) to recognise the services of or render pecuniary or other assistance to present or past players and officials of Football, including by conferring Life Memberships;

- (l) to hear and determine and settle all questions and disputes on any matter relating to Football or between Clubs;
- (m) to enter into arrangements or agreements relating to the management or administration of any of the WAFL Clubs in circumstances where any of the WAFL Clubs are experiencing financial or other distress, or where the WAFL Club is in breach of its licence to participate in the WAFL Competition or a funding agreement with the Commission;
- (n) to hear and enquire into any allegation, complaint or charge which may be made or laid against any Club or member, player or Official of a Club or umpire or official of the Commission involving a breach of this Constitution, the Rules or the Laws;
- (o) to inflict fines or other penalties (by way of suspension, expulsion or otherwise) for any breach of this Constitution, the Rules or the Laws on any Club or member, Official or player of any Club or any umpire, Member or official of the Commission;
- (p) to grant, suspend, exclude or forfeit the rights of Members and Licensees of the Commission subject to this Constitution;
- (q) to oversee the activities of players, coaches and umpires in any activity associated with Football, and in particular activities connected with television broadcasting, advertising, the writing of articles for newspapers and contributions to other publications;
- (r) to invest and deal with the money of the Commission not immediately required for any of its objects or purposes in any investment thought appropriate by the Commission and from time to time to vary or realise such investments;
- (s) to subscribe to become a member of and amalgamate with any organisation whether incorporated or not whose objects are altogether or in part similar to those of the Commission;
- (t) to purchase or otherwise acquire and assimilate all or any part of the property, assets, liabilities and engagements of any one or more organisations with which the Commission is authorised to amalgamate;
- (u) to transfer all or any part of the property, assets, liabilities and engagements of the Commission to any one or more organisations with which the Commission is authorised to amalgamate;
- (v) to buy sell and deal in real property (including but not limited to any buildings, structures, fixtures and improvements) and all kinds of liquid and solid provisions, including, but not limited to, catering provisions, liquor, souvenirs and other goods in the furtherance of the objects of the Commission;
- (w) to enter into any arrangement with any government or authority whether supreme, municipal, local or otherwise that may seem conducive to any of the Commission's objects or purposes and to apply for and obtain from any such government or authority any rights, privileges or concessions which the Commission may think it desirable to obtain and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;
- (x) to enter into any arrangement or agreement relating to the development, management and/or operation of sporting grounds, facilities or stadiums;

- (y) to appoint, employ, remove or suspend such consultants, secretaries, managers, clerks, servants and other persons as may be necessary or convenient for the purposes of the Commission;
- (z) to establish and support or aid in the establishment or support of associations and institutions, funds, trusts and conveniences calculated to benefit employees or past employees of the Commission or Football players, coaches, officials or umpires or dependents of any such persons and to grant pensions and allowances to any such persons or dependents and to make payments towards insurances to provide any benefits as aforesaid;
- (aa) to draw, accept, endorse, discount, execute and issue bills of exchange, promissory notes, bills of lading, warrants, debentures and other negotiable or transferable instruments;
- (bb) to operate, lay out, construct, maintain and alter any grounds for Football or other sports or activities necessary or convenient for the purpose of the Commission;
- (cc) to operate, construct, improve, erect, maintain and alter any buildings, houses or works necessary or desirable for the purposes of the Commission and to furnish and equip the same in such manner as may be necessary or convenient for such purposes;
- (dd) to acquire by purchase, lease, license, exchange or otherwise land, buildings and hereditaments of any tenure or description wherever situated and any estate or interest therein and any rights over or connected therewith;
- (ee) to guarantee or give guarantees or indemnities for the payment of money or the performance of contracts or obligations by any Club, person or company associated with the Commission and to secure or undertake in any way the repayment of money lent or advanced to or the liabilities incurred by any Club, or associated person or company;
- (ff) to borrow or raise money in such manner as the Board shall think fit and in particular by the issue of debentures (perpetual or otherwise) and to secure the repayment of any money borrowed, raised or owing or the payment of any other money by mortgage, charge or lien upon the whole or any part of the Commission's property or assets (whether present or future) and also by a similar mortgage, charge or lien to secure and guarantee the performance by the Commission of any obligation or liability it may undertake and to purchase, redeem or pay off any such securities;
- (gg) to remunerate any person or company for services rendered or to be rendered in placing or assisting to place or guaranteeing the placing of any debentures or other securities of the Commission or in or about the organisation or the promotion of the Commission or the conduct of its business;
- (hh) to sell, improve, manage, let, dispose of or relinquish or turn to account all or any part of the real or personal property of the Commission, including any interest in stadiums or grounds, or enter into arrangements for the use of stadiums or grounds;
- (ii) to take or hold mortgages, liens and charges to secure payment of the purchase price or any unpaid balance of the purchase price of any part of the Commission's property of whatsoever kind sold by the Commission or any money due to the Commission from purchasers or others;
- (jj) to take any gift of property, whether subject to any special trust or not, for any one or more of the objects or purposes of the Commission;

- (kk) to take such steps by personal or written appeals, public meetings or otherwise as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Commission by way of donations, annual subscriptions or otherwise;
- (ll) to make donations for patriotic or charitable purposes;
- (mm) to render pecuniary or other assistance to any organisation promoting the interests of any form of sport;
- (nn) to acquire, establish, print and publish, electronically or otherwise, newspapers, periodicals, books, leaflets or other literary works that the Commission may consider desirable and to advertise any material relating to Football;
- (oo) to delegate all or any of its powers (other than this power of delegation) to any committee or committees or to any board, council or tribunal appointed by the Commission;
- (pp) to grant or approve leases or licences, including without limitation in respect of liquor and other rights, at properties under the control of the Commission;
- (qq) to enter into hedging or derivative funding facilities or any other transaction in connection with financial exposure to interest rates or any other financial risk or exposure and to undertake, execute and otherwise enter into any derivative financial markets or capital markets transaction of any kind or nature;
- (rr) to do all such acts and things as are incidental or subsidiary to all or any of the above objects and purposes; and
- (ss) to do all things necessary and convenient for carrying out the above objects and purposes.

Membership of the Commission

Article 5

- 5.1 There shall be two classes of membership of the Commission known as Ordinary Members and Nominee Members.
- 5.2 The Ordinary Members of the Commission shall be those persons who are Commissioners from time to time. An Ordinary Member will cease to be a Member if that person ceases to hold office as a Commissioner for whatever reason.
- 5.3 The Nominee Members of the Commission shall be those persons who are appointed in accordance with Article 5.4. A Nominee Member will cease to be a Member if their appointment is revoked under Article 5.4(d).
- 5.4 Nominee Members:
 - (a) Each of the IPL, the FFC, ~~and~~ each WAFL Club and the CFAC must appoint a person to be a Nominee Member of the Commission who must be either the chair, president or an elected member for the time being of the board of directors or committee of management or other committee which has the power to manage and control the affairs of each body appointing him or her or, in the case of the CFAC, must be either the chair, president or an elected member for the time being of the board of directors or committee of management or other committee which has the power to manage and control the affairs of one of the Affiliated Associations represented by the CFAC and

whom has been appointed in writing by all the Affiliated Associations represented by the CFAC at the time of his or her appointment. A change in the Affiliated Associations represented by the CFAC does not terminate the appointment of the Nominee Member.

- (b) A Nominee Member may appoint a delegate to attend and vote in his or her stead at any meeting or meetings attended by Nominee Members, on the following conditions:
 - (i) the Delegate must be either the chair, president, chief executive officer or an elected member for the time being of the board of directors or the committee of management or other committee which has the power to manage and control the affairs of the Club that appointed the Nominee Member or, in the case of the CFAC, must be either the chair, president, chief executive officer or an elected member for the time being of the board of directors or the committee of management or other committee which has the power to manage and control the affairs of an Affiliated Association represented by the CFAC;
 - (ii) the Nominee Member must notify the Commission in writing before the meeting of the attendance and name of the Delegate; and
 - (iii) the Nominee Member may take the place of the Delegate at any meeting by notifying the chair of the replacement.
 - (c) A Nominee Member and Delegate must not act as and will not be or be deemed to be a trustee for or agent of the body which appoints the Nominee Member, but must act for the encouragement and promotion of Football in accordance with the objects and purposes of the Commission set out in this Constitution.
 - (d) The IPL, the FFC, ~~or~~ any WAFL Club or the CFAC may terminate the appointment of its Nominee Member by giving notice in writing of such termination to the Commission, and such termination also terminates the appointment of any Delegate. Upon such termination or appointment, the appointor~~Club~~ concerned must appoint another nominee in accordance with Article 5.4 to replace the nominee whose appointment has been terminated.
- 5.5 The Board may from time to time determine whether any entrance fees, subscription or other amount is to be paid by any Member or any class of Members.
- 5.6 The Board (or any other person authorized by the Board) must arrange for a register of Members to be kept and maintained in accordance with the Act (**Register**), containing:
- (a) the name and residential, postal or email address of each Member;
 - (b) the class of membership of each Member;
 - (c) the date on which each Member's name was entered into the register; and
 - (d) the name and date of appointment of each Delegate (if applicable).
- 5.7 The following provisions will apply in respect of inspecting and taking copies of the Register.
- (a) The Register is available for inspection free of charge by any current Member upon written request to the Secretary.
 - (b) A Member may make a copy of entries in the Register.

- (c) A Member may apply in writing to the Board for a copy of the Register. The Board may in its discretion require the Member to provide a statutory declaration setting out the purpose of the request and declaring that the purpose is connected with the affairs of the ~~Commission Association~~.
- (d) The Board may charge a reasonable fee for providing a copy of the Register.
- (e) A Member must not use or disclose any information in the Register for any purpose other than a purpose that:
 - (i) is directly connected with the affairs of the Commission; or
 - (ii) relates to the administration of the Act.

5.8 A Member whose subscription is not paid within 3 months after the relevant date fixed for payment by the Board ceases on the expiry of that period to be a Member, unless the Board decides otherwise.

Commissioners

Article 6

- 6.1 The business of the Commission shall be managed by a Board of Commissioners which shall consist of the persons from time to time appointed pursuant to Article 7.
- 6.2 The total number of Commissioners must be at least 4 and must not exceed 8.
- 6.3 The Board shall by resolution elect a Chair and a Vice-Chair from one of its own who shall hold office until the Board resolves otherwise or that person retires from office or ceases to be a Commissioner. Any candidate for election as Chair and Vice-Chair is not entitled to vote in respect of himself or herself or any other candidate for that position.

Appointment Retirement and Removal of Commissioners

Article 7

- 7.1 A person who is aged 18 years or over is eligible to be elected to the Board and to serve in the office of a Commissioner unless that person is an employee of the Commission, an AFL Club, a WAFL Club or an Affiliated Association or is convicted of:
 - (a) an indictable offence; or
 - (b) an offence involving fraud or dishonesty punishable by imprisonment for a period of not less than three months; or
 - (c) an offence under Part 4 Division 3 or section 127 of the Act,
 provided that paragraphs (a), (b) and (c) of this Article 7.1 shall only apply for a period of 5 years from the date of conviction or (where the conviction has resulted in imprisonment) 5 years from the date of his or her release.
- 7.2 A casual vacancy occurs in the office of a Commissioner if the Commissioner:
 - (a) dies;
 - (b) is, or becomes ineligible to act as a Commissioner by reason of Article 7.1;

- (c) is, according to section 13D of the *Interpretation Act 1984* (WA), a bankrupt or a person whose affairs are under insolvency laws;
- (d) becomes physically or mentally incapable of performing the Commissioner's duties and the Commission resolves that his or her office be vacated for that reason;
- (e) resigns from office under Article 7.3;
- (f) is removed from office under Article 7.25;
- (g) is absent from more than:
 - (i) three consecutive Board meetings without a good reason; or
 - (ii) 50% of the Board meetings held in the same financial year of the Commission without tendering an apology to the person presiding at each of those Board meetings,

where the Commissioner received notice of the meetings, and the Board has resolved to declare the office vacant; or
- (h) a Second Resolution under Article 7.20 is not passed.

7.3 A Commissioner may resign from office by giving written notice of resignation to the Chair or, if the Commissioner resigning is the Chair, to another Commissioner, and the resignation takes effect:

- (a) at the time the notice is received by the Chair or the other Commissioner; or
- (b) if a later time is stated in the notice, at the later time.

7.4 Except when making an appointment under Article 7.5, the Board shall:

- (a) not less than 4 months prior to the end of a term of any current Commissioner (which includes a Commissioner appointed under Article 7.5); or
- (b) as soon as practicable after the Board resolves to appoint additional Commissioners (provided the number shall not exceed the maximum number specified in Article 6.2),

invite expressions of interest (which must include such information as required by the Board) from persons seeking appointment as a Commissioner by advertisement in a public newspaper circulating in Western Australia and in such other ways as the Board considers appropriate (**EOIs**).

7.5 If the number of Commissioners falls below the minimum number of Commissioners specified in Article 6.2, or a casual vacancy in the Board arises under Article 7.2, the Board shall make appointments to meet the minimum number or to fill such vacancy (as the case may be). Such persons appointed under this Article 7.5 shall serve in office until 1 January in the following year (immediately prior to when the next appointments of Commissioners are made in accordance with this Article 7), at which time that person retires. For the avoidance of doubt, any person appointed under this Article 7.5 is eligible for re-appointment in accordance with this Article 7.

7.6 As soon as is reasonably practicable after seeking EOIs under Article 7.4, the Board must appoint an independent returning officer to oversee the process for the appointment of Commissioners under this Article 7 (**Returning Officer**). The Returning Officer must not

be a Commissioner currently in office or another office bearer or employee of the Commission, or a person seeking appointment as a Commissioner under this Article 7.

7.7 The Board shall distribute the EOIs received to the:

- (a) Nominee Members;
- (b) Ordinary Members;
- (c) current chair or president (as applicable) of each of the Affiliated Associations; and
- (d) Nomination Committee;

within 7 days of the last day specified by the Board in the EOIs for the submission of such EOIs.

7.8 A committee of review (governed by the provisions of Article 7.9) (**Nomination Committee**) must convene as soon as is reasonably practicable after receipt of the EOIs to consider and review the EOIs for the purpose of making recommendations to the Board for candidates to be considered for appointment as Commissioners to fill each vacancy on the Board (**Recommended Candidates**).

7.9 The proceedings of the Nomination Committee are subject to the provisions in this Article 7.9:

- (a) The Nomination Committee comprises the following 6 persons (each a **Representative**):
 - (i) subject to Article 7.9(b), the Chair and one other Commissioner nominated by the Board;
 - (ii) the current chair or president (as the case may be) of IPL;
 - (iii) the current chair or president (as the case may be) of FFC;
 - (iv) the current president of the WAFL Council of Presidents; and
 - (v) the current chair or president of the Community Football Advisory Council.
- (b) A Commissioner whose position on the Board is the subject of the process in this Article 7 (a **Retiring Commissioner**) is not eligible to be a Representative under Article 7.9(a). If the Chair is a Retiring Commissioner, the Board must nominate another Commissioner (who must also not be a Retiring Commissioner) to serve on the Nomination Committee in the Chair's place.
- (c) Meetings of the Nomination Committee will be convened by the Chair (or the Commissioner nominated in his or her place under Article 7.9(b)) on not less than 5 Business Days' notice to the other Representatives. Any Representative who is unable to attend a meeting of the Nominations Committee may nominate in writing a delegate to attend and vote at the meeting in his or her stead.
- (d) The Chair (or the Commissioner appointed in his or her place under Article 7.9(b)) will chair all meetings of the Nomination Committee.
- (e) Each Representative shall have one vote on all resolutions of the Nomination Committee.

- (f) The quorum for a meeting of the Nomination Committee will be 4 Representatives. Where a quorum is not met within 30 minutes of the time scheduled for a meeting of the Nomination Committee, the Chair (or the Commissioner appointed in his or her place under Article 7.9(b)) must schedule an alternative time for the meeting to be held as soon as practicable.
 - (g) The Nomination Committee must comply with any protocols, policies and timelines for determining the Recommended Candidates as approved by the Board from time to time. The Board may not approve any protocols or policies for the purposes of this Article 7.9(g) unless those protocols or policies seek to ensure, so far as is possible in the circumstances then prevailing, a diversity of gender, race, age and Football background and involvement in the composition of the Board from time to time.
 - (h) Each Recommended Candidate must be approved by a separate resolution of the Nomination Committee.
 - (i) A resolution under Article 7.9(h) must be passed by a majority of the Representatives present and eligible to vote on the resolution. In the case of equality of votes on any resolution under Article 7.9(h), the Chair (or the Commissioner appointed in his or her place under Article 7.9(b)) has a casting vote in addition to any vote he or she may otherwise be entitled.
 - (j) A resolution signed in writing by all Representatives will be valid and effectual as if it had been passed at a meeting of the Nomination Committee duly held and convened. Any such resolution may consist of several counterparts, each signed by one or more Representatives and will be effective from the date the last Representative signs the written resolution.
 - (k) The Nomination Committee may hold a meeting at 2 or more venues using any Instantaneous Communication Device that gives the Representatives a reasonable opportunity to participate, provided that arrangements are made at each venue for the recording of all votes cast. Any such meeting will be taken to be held where the chair of the relevant Nomination Committee meeting is located. All proceedings conducted under this Article 7.9(k) are valid as if conducted at a single gathering.
- 7.10 Within 5 Business Days after receipt of the names of the Recommended Candidates from the Nomination Committee, the Board must convene for the purpose of determining which of the Recommended Candidates will be put forward to be considered for appointment as Commissioners by the Members and the Affiliated Associations in a postal vote or other secure voting method in the Board's discretion (**Endorsed Candidates**).
- 7.11 Within 2 Business Days of the Board meeting referred to in Article 7.10, the Board must:
- (a) distribute ballot papers for a postal vote (conducted in accordance with Article 7.13) to the Members and the Affiliated Associations containing the names of the Endorsed Candidates; or
 - (b) notify the Members and the Affiliated Associations of the other secure voting method that will be used to determine the appointment of Commissioners to fill each vacancy on the Board, and the procedures that will be implemented by the Board to facilitate that other secure voting method.
- 7.12 When distributing the ballot papers under Article 7.11(a), or notifying the Members and the Affiliated Associations of the other secure voting method under Article 7.11(b) (as applicable), the Board must also send a notice of meeting to the Members and the Affiliated Associations for a football forum to be held not less than 14 days after the date on which

such notice is given (**Football Forum**). The Football Forum is to be treated as a general meeting of the Commission under Article 23.1, notwithstanding notice of the Football Forum is given to the Affiliated Associations.

7.13 The following provisions will apply to the conduct of a postal vote referred to in Article 7.11(a).

- (a) The Board must provide for appropriate measures to be implemented to maintain the security and anonymity of the postal vote.
- (b) Any determination made by the Returning Officer in respect of the validity of a postal vote received will be final.
- (c) All postal votes must be received by the Returning Officer no later than 48 hours before the time for the Football Forum outlined in the notice given under Article 7.12). Any postal votes received after that time will not be considered by the Returning Officer.

~~(d)~~ The Board may from time to time set any other necessary procedures for the conduct of the postal vote.

~~(d)~~(e) The Returning Officer may conduct a confidential pre-count of the votes received between the time the votes are received and the commencement of the Football Forum.

7.14 At the Football Forum, the Returning Officer must count the votes received and allocate the votes by reference to Annexure A.

7.15 The Returning Officer must provide a signed declaration of the results of the vote to the person presiding as chair of the Football Forum (**FF Chair**). The signed declaration must contain the names of the Endorsed Candidates who have received the highest number of votes calculated in accordance with Article 7.14 in descending order by reference to the number of votes received (**Approved Candidates**), with the number of Approved Candidates being equal to the number of vacancies on the Board. A signed declaration by the Returning Officer will be conclusive evidence of the results of the vote.

7.16 If, after the Returning Officer has calculated the votes in accordance with Article 7.14, two or more Endorsed Candidates have received the same number of votes, the Returning Officer must draw by lot to determine the Endorsed Candidate that is the Approved Candidate.

7.17 Following receipt of the signed declaration under Article 7.15, the FF Chair must propose separate resolutions in respect of each Approved Candidate to be considered by the Nominee Members to fill each vacancy on the Board. An Approved Candidate will be appointed as a Commissioner where a resolution confirming his or her appointment is passed as an Ordinary Resolution through a secret ballot conducted at the Football Forum.

7.18 At the conclusion of the ballot conducted under Article 7.17, the Returning Officer must count the votes (which must be allocated in accordance with Article 22.1) and provide a signed declaration of the results of the vote to the FF Chair and the name of any Approved Candidate who has been appointed as a Commissioner. A signed declaration from the Returning Officer will be conclusive evidence of the results of the vote.

7.19 If any resolution referred to in Article 7.17 is not passed as an Ordinary Resolution, the FF Chair must call an adjournment of the Football Forum for a reasonable period of time in the FF Chair's discretion.

- 7.20 At the resumed Football Forum after the adjournment referred to in Article 7.19, the FF Chair must propose any resolution under Article 7.17 that was not passed as an Ordinary Resolution, to be considered again by the Nominee Members (**Second Resolution**). An Approved Candidate the subject of a Second Resolution will be appointed as a Commissioner where a resolution confirming his or her appointment is passed as an Ordinary Resolution through a second secret ballot conducted at the Football Forum.
- 7.21 At the conclusion of the second ballot conducted under Article 7.20, the Returning Officer must count the votes (which must be allocated in accordance with Article 22.1) and provide a signed declaration of the results of the vote to the FF Chair and confirm whether any Approved Candidate the subject of a Second Resolution has been appointed as a Commissioner. A signed declaration by the Returning Officer will be conclusive evidence of the results of the vote.
- 7.22 If a Second Resolution is not passed as an Ordinary Resolution, any Approved Candidate the subject of the Second Resolution will not be appointed as a Commissioner, and the Board may appoint a person to fill that vacancy in the Board in accordance with Article 7.5.
- 7.23 Subject to Article 7.24, any Commissioner appointed at a Football Forum (other than as a casual vacancy under Article 7.22) shall be appointed for a term not exceeding 3 years, commencing on 1 January of the following year, and retires on 1 January at the end of his or her 3 year term and shall be eligible for re-appointment in accordance with this Article 7.
- 7.24 No Commissioner shall be eligible to be considered for re-appointment under this Article 7 where that Commissioner has been in office for more than 9 consecutive years unless otherwise decided by an Ordinary Resolution.
- 7.25 The appointment of a Commissioner may be terminated by vote of not less than three-quarters of the Commissioners in office. A Commissioner the subject of a motion to remove is entitled to vote.
- 7.26 The Nominee Members may by a resolution in accordance with Article 22.1 of not less than 75% of the votes of all the Nominee Members remove all the Board from office as Commissioners if it is established that the Board has caused the Commission to act illegally or unconstitutionally in a material matter.

Duties and Powers of the Board of Commissioners

Article 8

- 8.1 The management and control of the affairs of the Commission are vested in the Board which, without limiting the generality of the foregoing, shall be solely responsible for exercising the powers not required to be exercised by the Members in general meeting and shall have the following powers and duties:
- (a) subject to Article 10.3(a) to grant licences and sub-licences to compete in Football competitions conducted by Commission, the WAFL and Affiliated Associations and the AFL subject to the Constitution and the Rules upon such terms and conditions as the Board decides and to impose such requirements upon or attach such conditions to the licences and sub-licences as it considers desirable and without limiting the generality of the foregoing to give directions to a Licensee relating to the financial management and affairs of such Licensee;
 - (b) to appoint, dismiss and fix the salary and terms and conditions of employment of such employees as the Board may from time to time determine and to delegate to any person so appointed any of its powers or duties other than this power of delegation;

- (c) to appoint Committees composed of such persons as the Board may think fit to investigate any matter in any way relating to the affairs of the Commission or to perform such duties as the Board may determine and the Board may regulate the proceedings of all such Committees;
- (d) to ensure that minutes are kept of all meetings of the Board and Committees;
- (e) to keep a correct account of all moneys and other assets belonging to the Commission; to ensure that all moneys received by the Commission are banked in a bank approved by the Board; and to authorise persons to sign cheques on any such bank account and endorse cheques and other documents on behalf of the Commission;
- (f) to maintain proper books of account for the Commission and balance them for the purposes of annual audit and otherwise as decided by the Board and to prepare and submit annual accounts to auditors, that have been appointed by the Nominee Members at the Annual General Meeting in accordance with Article 24.1;
- (g) to invest moneys of the Commission not immediately required for the purposes thereof in any form of investment thought appropriate by the Board and from time to time to vary or realise such investments;
- (h) to sell any real or personal property of the Commission whether for cash or on terms and by auction or by private contract; to relinquish any rights to occupy any stadium or grounds; to enter into any arrangement to occupy, lease or licence any stadium or grounds; to exchange any real or personal property of the Commission for any other property and to buy or take on exchange or otherwise acquire any real or personal property for the Commission and do any such thing on such terms and conditions as the Board thinks fit provided that the Board shall not acquire or dispose of an asset having a value in excess of \$2,000,000 in 2019 subject to adjustment in accordance with the Consumer Price Index (All Groups) for the Metropolitan area of Perth from time to time (or if such Index shall not be continued, the nearest equivalent index as determined by the Board) without convening a meeting of all Nominee Members to discuss the proposed acquisitions or disposal;
- (i) to alter, amend, renovate, demolish, rebuild or otherwise deal with any real or personal property of the Commission on such terms and conditions as the Board thinks fit;
- (j) to borrow money for the Commission and give security therefore by mortgage or charge over any property of the Commission;
- (k) to make and give receipts, releases and other discharges for money payable to the Commission or any other claims or demands of the Commission;
- (l) to institute, conduct, defend, compound or abandon any legal proceedings by or against the Commission or against any other person, to refer any claims or demands by or against the Commission to arbitration and to observe and perform the awards;
- (m) to enter into all such negotiations and contracts and rescind and vary all such contracts and execute and do all such acts, deeds and things as the Board may consider desirable for the proper performance of its duties;
- (n) to convene meetings of the Board when thought fit;
- (o) to appoint a representative or representatives of the Commission (who may be a Commissioner) to represent the Commission in discussions with the AFL each year. The representative shall represent the Commission at all meetings of the AFL that the

Commission is entitled to attend and at all times shall seek to advance the objects or purposes for which the Commission is established, as provided in Article 4.1, at such meetings;

- (p) to make decisions and do all such things as the Board in its judgment thinks necessary or desirable for the fulfilment of the objects stated in Article 4.1;
- (q) to exercise its own judgement, which judgement will be final, as to how best to achieve the objects or purposes of the Commission;

Proceedings of the Board

Article 9

9.1 The Board shall meet at such times and places as it shall from time to time determine but it shall meet at least once in every two calendar months' period and whenever a meeting shall be specially convened in accordance with this Constitution and it may adjourn and otherwise regulate its meetings as it thinks fit.

9.2

- (a) Except as otherwise provided in this Constitution questions arising at any meeting shall be decided by a majority of votes and a determination by a majority of the Board shall for all purposes be deemed a determination of the Board.
- (b) In the case of an equality of votes on a resolution at a Board meeting, the Chair of that meeting has a casting vote on that resolution in addition to any vote the Chair has in his or her capacity as a Commissioner in respect of that resolution.

9.3 A Commissioner who has any direct or indirect pecuniary interest in a contract made or proposed to be made by the Commission must, to the extent required by the Act, disclose the nature and extent of that interest to the Board as soon as he or she becomes aware of the interest.

9.4 A Commissioner may not vote in respect of any contract made or proposed to be made by the Commission in which he or she has an interest required to be disclosed under Article 9.3, or on any matter arising therefrom, and if he or she does so vote his or her vote shall not be counted, and that Commissioner must not be present at a Board meeting while the matter in which he or she has an interest is being discussed. Provided that this Article does not apply in respect of a material personal interest that exists only because the Commissioner:

- (a) is an employee of the Commission; or
- (b) is a member of a class of persons for whose benefit the Commission is established; or
- (c) that the Commissioner has in common with all, or a substantial proportion of, the other Commissioners.

9.5 A quorum for a meeting of Commissioners shall be not less than half of the number of Commissioners for the time being, either personally present at a meeting, or participating in the meeting by Instantaneous Communication Device in accordance with Article 9.12.

9.6

- (a) If at any time the number of Commissioners falls below 4, the remaining Commissioners may continue to act, but only for the purpose of taking such steps as

- may be necessary to fill the vacancy or vacancies, to bring the numbers up to, or above (as they see fit) the minimum of 4.
- (b) If at any time the number of Commissioners falls to 2, the remaining Commissioners may continue to act in accordance with Article 9.6(a), but must act unanimously. If they cannot agree on the appointment of additional Commissioners, the Chairman, or their representative, of IPL, FFC and WAFL Council of Presidents shall by simple majority appoint new Commissioners to bring the numbers up to, or beyond, the minimum of 4.
- 9.7 A resolution in writing signed by all Commissioners shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more Commissioners. Any resolution shall be effective from the date the last of the Commissioners has signed the resolution. Every resolution so signed shall be as soon as practicable entered into the books provided for the purpose of recording, inter alia, resolutions of the Board.
- 9.8 A resolution shall also be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held if:
- (a) each Commissioner has previously notified the Commission of the electronic mail address to which electronic mail addressed to that Commissioner should be delivered; and
- (b) all of the Commissioners send an electronic mail message to every other Commissioner (to those Commissioners' relevant electronic mail addresses) and the Chief Executive confirming that the Commissioner sending the electronic mail message votes in favour of the resolution.
- 9.9 A resolution passed under Article 9.8 shall be effective from the date the last electronic mail message referred to in Article 9.8(b) has been delivered to the Chief Executive. A copy of all electronic mail messages sent by the Commissioners in respect of a resolution referred to in Article 9.8, ~~and~~ **and/or alternatively** a copy of all signed statements referred to in Article 9.7, shall be as soon as practicable entered into the books provided for the purpose of recording, inter alia, resolutions of the Board.
- 9.10 The Board may from time to time determine the rules and procedures (including but not limited to any security and verification measures and the circumstances under which an electronic resolution is valid or invalid) which will apply to the passing of any resolution under Article 9.8.
- 9.11 A facsimile, email or such similar means of communication addressed to or received by the Commission and purporting to be signed by a Commissioner is for the purpose of Articles 9.7, 9.8 and 9.9 deemed to be in writing signed by such Commissioner.
- 9.12 For the purposes of this Constitution, the contemporaneous linking together by Instantaneous Communication Device of a number of consenting Commissioners not less than the quorum, whether or not any one or more of the Commissioners is out of Australia, is deemed to constitute a Board meeting and all the provisions of the Constitution as to Board meetings shall apply to such meetings held by Instantaneous Communication Device so long as the following conditions are met:
- (a) all the Commissioners receive notice of the Board meeting and are able to be linked by Instantaneous Communication Device and for the purposes of such meeting. Notice of any such meeting may be given on the Instantaneous Communication Device or in any other manner permitted by the Constitution;

- (b) at the commencement of the meeting each of the Commissioners taking part in the meeting by Instantaneous Communication Device is able to hear each of the other Commissioners taking part; and
- (c) at the commencement of the meeting each Commissioner acknowledge his or her presence for the purpose of a Board meeting to all the other Commissioners taking part.

9.13 A Commissioner shall not leave a meeting held in accordance with Article 9.12 by disconnecting that Commissioner's Instantaneous Communication Device unless that Commissioner has previously obtained the express consent of the Chair. A Commissioner is conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by Instantaneous Communication Device unless that Commissioner has previously obtained the express consent of the Chair to leave the meeting.

Licences

Article 10

10.1 Subject to Article 10.2 and 10.3 the Board may grant licences to compete in the WAFL Competition or any other Football competition conducted by the Commission, upon such terms and subject to such provisions and conditions as the Board thinks fit, to any body, association or the like, which is incorporated pursuant to, the *Corporations Act 2001* (Cth), the Act or other appropriate statute and which makes application to the Commission. If an applicant is granted a licence, the Licensee shall be bound by and conform to the licence, this Constitution and the Rules, and to such other directions or requirements as the Board or its delegate may give or determine.

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10.2 The Board shall in accordance with Article 10.1:

- (a) grant a licence to compete in the WAFL Competition to the nine clubs which competed in the WAFL Competition during 2009; and
- (b) upon the expiration of any licence granted in accordance with Article 10.2(a) grant a new licence to compete in the WAFL Competition, upon such terms and subject to such provisions and conditions as the Board thinks fit, provided that the Board shall not be obliged to grant a new licence pursuant to this Article to any Club which has had a licence issued under this Article lawfully terminated.

10.3 All licences granted to participate in the WAFL Competition, other than a licence issued pursuant to Article 10.2, and all extensions or renewals of such further licences shall inter alia:

- (a) only be issued or granted by the Commission if more than 50% of the Nominee Members appointed by holders of licences granted pursuant to Article 10.2 vote in favour of the issue of such further licence or the granting of any extension or renewal of such further licence at a meeting of those Nominee Members held to consider the proposed issue, extension or renewal of such a licence and the terms and conditions of such licence; and
- (b) specify the policies to be followed by the Commission in providing funds to the Licensees from moneys received by the Commission from time to time.

10.4 The Board in its absolute discretion may issue or grant a sub-licence, to any body association or the like which is incorporated pursuant to the *Corporations Act 2001* (Cth), the Act or other appropriate statute, of any licence held by the Commission to compete in

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Football competitions conducted by the AFL on such terms and conditions as the Board sees fit, provided that the Board will, prior to granting any such sub-licence, consult with the Nominee Members.

Assets of the Commission

Article 11

- 11.1 The assets of the Commission include the assets held by the Commission under its former names, West Australian Football League Inc and the Commission acknowledges the contributions made by the Clubs which were members of that league to the Commission and to Football.
- 11.2 In recognition of the matters referred to in Article 11.1 and the importance of the WAFL Competition in the development and promotion of Football in Western Australia, the Commission shall in each year distribute to the WAFL Clubs from such of the income received by it in that year as remains after taking into account all amounts required by the Commission to properly carry out its duties and functions (including, without limiting the generality, allowances for depreciation of existing assets, acquisition of further assets, the possibility of fluctuation of yearly income and future and contingent liabilities and obligations) such amount as the Board determines in good faith in promotion of the objects or for services rendered. The Board shall make a determination of the amount to be paid and the terms and conditions upon which the amount will be paid once every 3 years with a view to determining the amount and terms and conditions for the following 3 years, although nothing in this clause will prevent the Board from making its determination more or less frequently or from setting the amount and terms and conditions for a period other than 3 years.
- 11.3 Nothing contained in this Constitution shall limit or restrict the provisions of Article 30.

Assets of Licensees

Article 12

- 12.1 No Licensee, without the written authority of the Board first having been obtained, shall sell, borrow, mortgage, lease, charge or otherwise deal with its assets or otherwise acquire assets having a value in excess of 25% of the then assets of the Licensee provided that such authority shall not be unreasonably withheld and provided further that it shall not be unreasonable to withhold authority where the Board is of the opinion that such sale, borrowing, mortgage, lease, charge, dealing or acquisition may prejudice the financial viability of the Licensee. For the purposes of this Article, and without in any way limiting the application of such Rules with respect to the transfer of players as may exist from time to time, the assets of a Licensee shall not include players.
- 12.2 If the Board resolves that a Licensee should move from the ground it occupies as its administrative or playing base then it shall give notice in writing to that effect to the Licensee.
- 12.3 If the Licensee the subject of a resolution pursuant to Article 12.2 objects to such resolution within 30 days of receipt of such notice the Board shall convene a meeting of the Nominee Members nominated by the WAFL Clubs within a further period of 30 days and unless seventy five per centum of those Nominee Members confirm the Board's resolution, the notice shall have no force or effect.
- 12.4 Subject as aforesaid the Licensee shall move from the ground within 24 months (or such longer period as may be determined by the Board) of receipt of such notice by the Licensee.

Affiliated and Other Associations

Article 13

- 13.1 Any Football Association wishing to affiliate with the Commission shall make application to the Commission through the Chief Executive, and shall pay such fee as the Board may prescribe from time to time. If required by the Commission a fresh application must be made and a fee paid each year.
- 13.2 All applications made pursuant to Article 13.1 shall be in writing signed by a duly authorised person on behalf of the applicant and shall contain the following particulars:
- (a) the name of the applicant;
 - (b) the names of the clubs associated with and or the members of the applicant; and
 - (c) such other information as the Board may require.
- 13.3 Any applicant for affiliation under this Constitution must satisfy the Board that the applicant is regularly constituted and is composed of at least three clubs or members.
- 13.4 Any application made pursuant to this Article shall be considered at the next meeting of the Board and if the Board so resolves the applicant shall become an Affiliated Association. Each Affiliated Association and all clubs and/or members controlled by each Affiliated Association shall be bound by and comply with this Constitution and the Rules so far as they are applicable thereto provided that an Affiliated Association may have its own constitution and by-laws if the same do not conflict with this Constitution and the Rules and are first approved by the Board.
- 13.5 The Board may from time to time by resolution enter into any contract or other arrangement with any Affiliated Association or other league or association formed for the purpose of playing or encouraging Football and may by resolution cancel or determine any such contract agreement or other arrangement.
- 13.6 Notwithstanding that the Board may have approved the constitution and by-laws of an Affiliated Association, in the event of a conflict between any terms of such constitution or by-laws and the terms of this Constitution or the Rules, this Constitution and the Rules will prevail.
- 13.7 The Board may from time to time make Rules under Article 31 in respect of the minimum requirements that an Affiliated Association must maintain, including but not limited to insurance and governance (without limitation to the Board's general power to make Rules under Article 31 applicable to some or all Members).
- ~~13.8~~ If an Affiliated Association or any of the clubs and/or members controlled by an Affiliated Association fails to comply with this Constitution or any of the Rules:
- ~~(a) the Nominee Member appointed by the CFAC shall not be entitled to exercise any rights under this Constitution or the Rules including, without limitation voting rights, unless the Board resolves otherwise, and~~
- ~~13.8~~ ~~(b)~~ the Board may revoke the Affiliated Association's status as an Affiliated Association, and impose any sanctions which the Commission is lawfully entitled to impose.
- 13.9 The Affiliated Associations are not Members of the Commission and are not permitted to vote on any resolution of the Commission, other than as specified in Article 7.

Records

Article 14

- 14.1 Every Licensee and Sub-Licensee and Affiliated Association shall deposit with the Chief Executive a copy of its constitution and rules certified as correct and shall also deposit with the Chief Executive a copy of every amendment thereof certified as aforesaid within 14 days after such amendment shall have been made.
- 14.2 The records, books, documents and securities of the Commission shall be kept in a location determined by the Board from time to time.
- 14.3 Subject to the Act and this Constitution, the Board may determine whether and to what extent and at what times and places and under what conditions the accounting records and other documents and records of the Commission or any of them are open to the inspection of the Members not being Commissioners, and no Member other than a Commissioner has any right of inspecting any account or book or document of the Commission except as provided by law or authorised by the Board or by an Ordinary Resolution.

West Australian Football League Competitions

Article 15

- 15.1 The operation of the WAFL Competition shall be known as the West Australian Football League or other such name approved by the Board and shall be administered by a Committee comprised of the Director of Football employed by the Commission (or an equivalent employee) and the Chief Executive Officer of each of the WAFL Clubs.
- 15.2 The Committee referred to in Article 15.1 shall be known as the West Australian Football League Management Committee (**WAFL Management Committee**) and its rules and procedures shall be governed by a memorandum of understanding approved by the Board and confirmed by the resolution of not less than seventy five per centum of the Nominee Members appointed by the WAFL Clubs at a meeting convened for that purpose.
- 15.3 The WAFL Management Committee shall conduct its affairs in accordance with this Constitution and the memorandum of understanding and the Rules and the budgets and guidelines approved by the Board from time to time.
- 15.4 The Chief Executive or his or her nominees shall be entitled to attend all meetings of the WAFL Management Committee and to participate in discussions but shall not be entitled to vote.
- 15.5 The WAFL Management Committee shall give the Commission adequate notice in writing of all meetings of the WAFL Management Committee.
- 15.6 The Board shall have power in its absolute discretion to make decisions in relation to the West Australian Football League or to revoke or vary any action or decision of the WAFL Management Committee.
- 15.7 There shall be a WAFL Council of Presidents comprising the Presidents of the WAFL Clubs who will be responsible for advising the Commission on the strategic direction of the WAFL, overseeing the conduct of the WAFL Management Committee, and providing a forum for Football issues and consideration of policy for the WAFL.

Committees

Article 16

- 16.1 Subject to this Constitution and the Rules a Committee may determine its own procedure and may elect a chair of its meetings. If no such chair is elected or if at any meeting the chair is not present within 10 minutes after the time appointed for holding the meeting, the members of the Committee present may choose one of their number to be chair of the meeting.
- 16.2 A Committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members of the Committee present and in the case of an equality of votes the motion shall fail.
- 16.3 A Committee will keep minutes of its meetings and forward those minutes to the Board within a reasonable time of each meeting.

Validation

Article 17

- 17.1 All acts done by a meeting of the Board or of a Committee or by any person acting on behalf of the Board shall notwithstanding any defect in the constitution of the meeting or the appointment of any person acting as aforesaid be valid if ratified by the Board.

Chief Executive

Article 18

- 18.1 The Board may appoint a Chief Executive of the Commission for such period and on such terms as it thinks fit and subject to the terms of any agreement entered into in any particular case the Board may revoke any such appointment.
- 18.2 The Chief Executive shall be entitled to notice of and to attend and subject as hereinafter excepted to take part in all meetings of the Board and of Committees, unless otherwise determined by the Board.
- 18.3 The duties of the Chief Executive shall be to attend at all meetings of the Board and at all other meetings at which the Chief Executive's attendance is by this Constitution required or at which the Chief Executive's attendance is required by the Board and to generally supervise the day to day running of the Commission and of Football in Western Australia on behalf of the Board and to comply with all directives from time to time given to him or her by the Board. In addition the Chief Executive shall be responsible to the Board for the proper performance of their duties by all employees of the Commission and for advice to the Board as to the best means of administering and promoting the affairs of the Commission.
- 18.4 The Chief Executive shall not be a Commissioner while that person holds the office of Chief Executive.

Secretary and other Officers

Article 19

- 19.1 The Board may appoint a Secretary and other officers of the Commission who shall carry out such duties as are specified by this Constitution or determined by the Board or the Chief

Executive. In the performance of their duties such persons shall be under the control of and shall comply with the directions of the Chief Executive.

General Meetings

Article 20

- 20.1 The Board shall convene three combined meetings in each calendar year of the Members.
- 20.2 The purpose of each meeting shall be to present to the attendees a review of the operations of Football in Western Australia and to provide them with the opportunity to discuss matters of interest relating to the administration and development of Football.
- 20.3 Notice of every general meeting must be given to every Member and Commissioner in accordance with Article 27. No other person is entitled to receive notice of meeting except any person authorised by the Commission.
- 20.4 The procedures of the meetings of Members (including but not limited to any meeting referred to in Article 20.1) shall be as follows.
- (a) The meeting shall be held at the time and place set out in the notice of meeting given in accordance with Articles 21.1 and 27.2.
 - (b) Subject to Article 20.4(c), the Chair shall chair the meeting.
 - (c) If the Chair is not present within 15 minutes after the time fixed for the meeting or is unwilling or unable to act, the Ordinary Members present shall select one of their number to chair the meeting.
 - (d) Formal minutes of general meetings must be kept and signed by the relevant chairperson of the general meeting.
 - (e) The Board may determine additional procedures for general meetings or a particular general meeting.
 - (f) The chair of a general meeting must conduct the meeting in a proper and orderly way.
- 20.5 The quorum for general meetings of Members shall be 50% of the Members by number entitled to vote at a general meeting.
- 20.6 If after 15 minutes from the time fixed for a general meeting a quorum is not present, the meeting is to stand adjourned until the same day and time in the following week at the same place.
- 20.7 If after 15 minutes from the time fixed for a meeting adjourned under Article 20.6 a quorum is not present, the Members present (being at least 3) will constitute a quorum.
- 20.8 One of the meetings referred to in Article 20.1 must be held in December each year if practicable after the election of Commissioners in accordance with Article 7 has been completed. This meeting may be a continuation, or resumption, of the Football Forum held under Article 7 following confirmation of the appointment of Commissioners to fill all vacancies for that position.

Annual General Meetings

Article 21

- 21.1 One of the meetings held in accordance with Article 20.1 shall be a meeting held not later than 28 February in each year of which at least 30 days' notice in writing shall be given and shall be called the Annual General Meeting.
- 21.2 The Board shall arrange for minutes to be kept of the proceedings of each Annual General Meeting and each meeting held in accordance with Article 23.1.
- 21.3 An item of business at the Annual General Meeting shall be to confirm the minutes of the last preceding Annual General Meeting and of any meeting held in accordance with Article 23.1 since that meeting.
- 21.4 The Commission shall present to the Annual General Meeting its report for the financial year of the Commission ending on the previous 31 October incorporating the audited accounts and balance sheet of the Commission copies of which shall be provided at least 7 days prior to the meeting.

Voting of Nominee Members

Article 22

- 22.1 Votes cast on all resolutions of the Commission (which, for the avoidance of doubt, does not include any vote that is expressed to be calculated by reference to Annexure A), must be allocated in accordance with Annexure B.
- 22.2 Only the Nominee Members (and not the Ordinary Members) present in person or by proxy are entitled to vote on resolutions at general meetings (which includes the Annual General Meeting) of the Commission.

Other Meetings

Article 23

- 23.1 The Board may at any time convene a meeting of Nominee Members and Ordinary Members, upon such terms and conditions as it determines desirable.
- 23.2 At any time, 20% of Members by number may require that a meeting of Nominee Members and Ordinary Members be convened and upon receipt of such request the Board must convene such a meeting.
- 23.3 The Board must give notice of any meeting convened under this Article 23 in accordance with Article 27.2 and the meeting must be held within 30 days of receipt of that notice.

Auditors

Article 24

- 24.1 At each Annual General Meeting an auditor or auditors shall be appointed by an Ordinary Resolution of Nominee Members present at that meeting in person or by proxy. The auditors shall examine the books, accounts, receipts and other financial records of the Commission and may examine the books, accounts, receipts and other financial records of each Licensee or Sub-Licensee for the year in which they are appointed and compare the same with the annual accounts submitted by the Board. The auditors shall not later than 31

January in the year following that in which they were appointed, prepare and send to the Board a report as to the accuracy of the accounts and the financial position of the Commission. The auditors shall upon finding any deficiency in money or goods report the same immediately to the Board.

Finance

Article 25

- 25.1 All fines or other penalties imposed under or pursuant to this Constitution or the Rules shall be paid into the funds of the Commission.
- 25.2 The financial year of the Commission shall commence on the 1st November and end on the 31st October.
- 25.3 All revenue received by the Commission shall be paid into the funds of the Commission and shall be allocated in the manner determined by the Board. Financial assistance paid or given to Licensees participating in a competition conducted by the Commission shall be equal for all such Licensees unless the Board resolves that in the case of a particular Licensee or Licensees it is appropriate that additional financial assistance should be provided.

Default

Article 26

- 26.1 While any moneys payable by any WAFL Club or AFL Club to the Commission are overdue and at default for a period greater than 60 days or any WAFL Club or AFL Club is in breach of this Constitution or the Rules, the Nominee Member appointed by that WAFL Club or AFL Club shall not be entitled to exercise any rights granted under this Constitution or the Rules, including but not limited to voting rights, unless the Board resolves otherwise.

Notices

Article 27

- 27.1 Any notice to be given for the purposes of this Constitution or the Rules may be given by post, facsimile or email and if so given will be deemed to have been received by the addressees:
- (a) if given by post, in the ordinary course of post;
 - (b) if given by facsimile, on the day following its transmission; and
 - (c) if given by email, subject to the sender not receiving a notification of non-delivery, at the time that the sender sends the email.

Notices to members, players and Officials of Licensees and Sub-Licensees may be addressed to them care of the Licensee or Sub-Licensee.

- 27.2 Unless a longer period is required by this Constitution, at least 7 days' notice (exclusive of the day on which the notice is given or deemed to be given but inclusive of the day for which the meeting is convened) of any meeting of Members (including but not limited to any meeting referred to in Article 20.1) shall be given in writing to all the Members entitled to receive notices of meetings of members in the manner determined by the Board from time to time save and except where a Special Resolution is proposed in which case at least 21

days' notice must be given. All such notices must also specify any resolution proposed for the meeting.

Seal

Article 28

- 28.1 The Board shall provide for the safe custody of the seal, which shall only be used by authority of the Board, or of a committee of the Board authorised by the Board in that regard, and every instrument to which the seal is affixed shall be signed by a Commissioner and shall be countersigned by the Chief Executive or by a second Commissioner or by some other person appointed by the Board for the purpose.

Review and Amendment of this Constitution

Article 29

- 29.1 The Commission may amend this Constitution by alteration, addition or rescission in accordance with the Act and this Article 29 but not otherwise.
- 29.2 Only the Nominee Members are entitled to vote on a proposed resolution to amend this Constitution.
- 29.3 The Board must ensure that:
- (a) notice of a general meeting, at which a resolution to amend this Constitution is to be proposed as a Special Resolution, is given in accordance with the Act and this Constitution; and
 - (b) all documents relating to the passing of a Special Resolution to amend this Constitution are lodged in accordance with the requirements of the Act.
- 29.4 This Constitution and the Rules bind every Member, Licensee, Sub-Licensee and Affiliated Association and the Commission to the same extent as if they had signed and sealed this Constitution and the Rules and agreed to be bound by all the provisions thereof.
- 29.5 The Board shall, every 7 years after 2016, institute an independent review of the provisions of this Constitution and propose any amendments it considers appropriate for the better operation of the Commission and promotion and development of Football.

Distribution of surplus property on winding up of Commission

Article 30

- 30.1 If, on the winding up of the Commission, any property of the Commission remains after satisfaction of the debts and liabilities of the Commission and the costs, charges, and expenses of that winding up, that property in the discretion of the Board, shall be distributed:
- (a) to another incorporated association having objects similar to those of the Commission; or
 - (b) for charitable purposes.

Rules

Article 31

- 31.1 The Board may from time to time make the Rules and amend or vary such Rules as it thinks fit and all such Rules shall bind Members and Licensees, Affiliated Associations and their respective Officials, committee members, players, members and umpires provided that in the event of inconsistency between such Rules and this Constitution the provisions of this Constitution shall prevail.

Disputes and Mediation

Article 32

- 32.1 The grievance procedure set out in this Article applies to disputes under these Articles between:
- (a) a Member and another Member; or
 - (b) a Member and the Commission; or
 - (c) if the Commission provides services to non-members, those non-members who receive services from the Commission, and the Commission.
- 32.2 The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all of the parties.
- 32.3 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 10 days, hold a meeting in the presence of a mediator.
- 32.4 The mediator must be:
- (a) a person chosen by agreement between the parties; or
 - (b) in the absence of agreement:
 - (i) in the case of a dispute between a Member and another Member, a person appointed by the Board;
 - (ii) in the case of a dispute between a Member or relevant non-member (as defined by sub-rule (1)(c)) and the Commission, a person who is a mediator appointed to, or employed with, a not for profit organization.
- 32.5 A Member, who is not a party to the dispute, can be a mediator.
- 32.6 The mediator cannot be:
- (a) a Member who is a party to the dispute; or
 - (b) where the Commission is a party to the dispute, a Commissioner.
- 32.7 The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- 32.8 The mediator, in conducting the mediation, must:
- (a) give the parties to the mediation process every opportunity to be heard;

- (b) allow due consideration by all parties of any written statement submitted by any party; and
 - (c) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- 32.9 The mediator must not determine the dispute.
- 32.10 The mediation must be confidential and without prejudice.
- 32.11 If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

Indemnity

Article 33

Every person who is or has been a Commissioner, Chief Executive, or other officer or employee of the Commission shall be entitled to be indemnified out of the property of the Commission against any liability incurred by that person while acting in good faith in that capacity (including any legal costs incurred in defending any civil or criminal proceedings, in which that person becomes involved by reason of his or her acting in that capacity) unless the Commission is prevented by law from giving that indemnity in a particular case, or the proceedings have been brought against that person by or on the complaint of the Commission.

Annexure A: Allocation of Votes under Article 7.14

Voter	Percentage of Votes	Total No. of Votes (1)
Ordinary Members	12 0%	459 00
IPL	20%	900
FFC	20%	900
WAFL Clubs	30%	1350 (2)
Affiliated Associations	20 10%	900450 (3)

	100%	4500
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Notes to Annexure A:

- (1) The total number of votes for each voter must be allocated equally for each vacancy on the Board. For example, if there are 3 vacancies to be filled, the Commission receives ~~150300~~ votes for each vacancy (calculated as ~~45900~~ divided by 3).
- (2) Each WAFL Club will receive an equal number of votes. For example, as at the date of adoption of this Constitution there are 9 WAFL Clubs and therefore each WAFL Club will receive 150 votes (calculated as 1350 divided by 9). Those 150 votes must be allocated equally by the relevant WAFL Club for each vacancy to be filled on the Board. For example, if there are 3 vacancies to be filled, each WAFL Club receives 50 votes for each vacancy (calculated as 150 divided by 3).
- (3) Each Affiliated Association will receive the total number of votes set out below allocated equally for each vacancy on the Board. For example, if there are 3 vacancies to be filled, each Affiliated Association receive the number of votes per candidate set out below:

(2)	Total No of Votes	Per Candidate
PFL	300	100
WACFL	300	100
WAWFL	60	20
Masters	60	20
Metro	60	20
DFDC	60	20
RFDC	60	20

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Annexure B: Allocation of Votes for all Resolutions

Voter	Percentage of Votes	Total No. of Votes
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WAFL Clubs	35 0%	135090 (1)
IPL	25%	112545
FFC	25%	112545
	100%	4500180

New row to be added to table:

~~CFAC~~ ~~20%~~ ~~900~~

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Notes to Annexure B:

(1) Each WAFL Club will receive an equal number of votes. For example, as at the date of adoption of this Constitution there are 9 WAFL Clubs and therefore, each WAFL Club receives ~~15040~~ votes (being ~~135090~~ divided by 9).