



Nine Steps to Effective Governance

Resources

Introduction

This volume of resources adds to the information released in the popular *Nine Steps to Effective Governance* publication.

SPARC is often approached for good practice examples of governance policies and for advice on contemporary structures for sport organisations.

This publication outlines sample policies for the governing process and the appropriate linkages between the board and the professional staff. As with all sample documents there is no one right answer and the application of these guidelines will necessarily vary by organisation. Simple drafting of policies will not in itself enhance governance. A good framework combined with a clear strategic plan is the fundamental base for functional governance. We encourage boards to engage outside expertise as necessary to guide them through the realities of working in a policy-driven environment.

Finding a structure that will ensure effective delivery of sport into the future is an issue that many codes are engaging with. We include discussion of the various constitutional models and samples of legal documents. As with governance policies, variations are often required for a given circumstance and specialist legal advice should be sought before formal use of any documents is considered.

Simply changing structure will not guarantee improvement. A clear and widely agreed understanding of what that structure is to deliver is a necessary prerequisite. When an organisation has a purpose that is clear and is driven by consensus, the choice of a suitable structure becomes significantly easier.

We hope that these guidelines are of use and assist in improving the governance of your organisation.



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The background of the image is a close-up, high-angle shot of artificial green turf. A prominent white diagonal line runs from the top-left corner towards the middle of the frame, creating a strong sense of perspective. The turf itself has a fine, fibrous texture and a vibrant green color. The lighting is even, highlighting the texture of the grass fibers.

Governance policies



Introduction

Alongside a well-crafted plan, a board needs a set of guiding principles within which to operate.

It needs to know what, in the normal course of events, belongs at the board table and what belongs with management.

It needs to understand what has been delegated to management and management needs to comprehend what decisions they can make without formal reference to the board.

Governance policies divide into three main areas. Governing processes outline how the board is to operate and what is expected of the board as a whole and members as individuals. Board-staff linkage policies outline the connection between the board and management and describe how that relationship is to work. Limitation policies outline the board's expectations of management in terms of behaviour and define the boundaries of their discretion.

These sample policies will provide any board with a good framework within which to work and will form an excellent general operating outline. Policies alone will not make an effective board. Good working relationships and a board's willingness to examine its own performance are also necessary precursors to sound governance. Policies are general principles. Ultimately the board is accountable for all things and in certain conditions has the right to inquire about any part of the organisation. However, the adoption of sound policies will definitely help the board and management understand their respective areas of focus in normal day-to-day operations.

Governing process

1.0 Board responsibilities

1.1 Criteria for becoming a director of the Raupo Sports Foundation

The board of the Raupo Sports Foundation consists of eight directors and is made up of the chair and deputy chair and six directors elected or appointed under the terms of the constitution.

Directors should demonstrate the following competencies:

LEADERSHIP

Directors must be able to demonstrate leadership skills, both in directing the organisation and to stakeholders.

STRATEGIC THINKING

Directors must have the ability to think strategically and consider the wider perspective of issues. They must be able to distinguish between governance and operational matters.

COMMITMENT TO EXCELLENCE

Directors must have a commitment to excellence, both personally and for the organisation as a whole.

COMMITMENT AND ADDING VALUE

Directors must be interested in sport in general and sport in the Raupo District in particular and be able to commit the time and effort required to carry out their role as a board member effectively. The board should strive to add value to the organisation in terms of strategic direction and through its decision-making process.

DECISION MAKING

Directors must have the ability to consider and make decisions which benefit the organisation. They must demonstrate good judgement, common sense and independence of thought, allowing for a wide perspective on issues.

HONESTY AND INTEGRITY

Directors must be able to demonstrate honesty and integrity at all times. This includes being non-negotiable in their personal values.

INTERPERSONAL AND COMMUNICATION SKILLS

Directors must have good interpersonal skills, including the ability to interact and communicate with people from a wide variety of backgrounds.

ORGANISATIONAL AWARENESS

Directors must have knowledge of the organisation, its structure and the issues which are important to members as a whole.

FINANCIAL UNDERSTANDING

Directors must understand financial matters and their implications for the organisation.

EXPERIENCE

Directors will desirably have had experience with a sport and be familiar with the organisation and operation of sport in the Raupo District.

1.2 Preparation of directors for their role

Individuals nominated for election, or being appointed, to the Raupo Sports Foundation board should both understand the obligations they will be taking on and be adequately prepared to take up the role of a Raupo Sports Foundation director. It is desirable that the individual should both complete due diligence with the chair prior to nomination and be adequately prepared for membership of the Raupo Sports Foundation through an appropriate induction and training programme.

DUE DILIGENCE

Individuals considering nomination as a Raupo Sports Foundation director should complete the following due diligence.

Prior to accepting nomination the individual should gain an understanding of:

- the personal accountabilities and obligations of being a Raupo Sports Foundation director;
- the constitution of the Raupo Sports Foundation;
- any legislative or regulatory framework applicable to the Raupo Sports Foundation;
- the responsibilities they are undertaking;
- the risks of being a Raupo Sports Foundation director;
- the organisation, what it does and its objectives;
- the last annual report;
- the current financial position;
- director remuneration and expenses reimbursement policy; and
- any potential conflicts of interest.

The individual should discuss with the chair the time commitment required, including the time outside board and committee meetings reading board papers and other material, and resolve any concerns they may have about the Raupo Sports Foundation.

Note: Some organisations use a formal commitment letter for new directors. A sample is included in the appendices at the end of this section.

1.3 Director induction

All directors are expected to contribute to board meetings to the best of their ability. To facilitate this the Raupo Sports Foundation will guarantee a thorough orientation into the affairs of both the board and the Raupo Sports Foundation as a whole, its issues, current concerns, staff, current financial position, etc.

1. All prospective directors will be provided with all relevant information.
2. Prior to attendance at their first board meeting, new directors will:
 - (i) receive a copy of the *Director's Policy Handbook*, which includes a copy of the previous year's accounts, an up-to-date copy of year-to-date financial statements, and the strategic and annual plans;
 - (ii) meet with the chair for a governance familiarisation. This meeting may be held as a group session or with individual new directors; and
 - (iii) meet with the CEO for an operational familiarisation.

1.4 The board's job description

The board is responsible for the long-term health and prosperity of the Raupo Sports Foundation.

The board charts the direction of the Raupo Sports Foundation and monitors management's performance on behalf of stakeholders.

The board fulfils its responsibilities by ensuring that:

- (i) its policies are relevant and the ways in which programmes and services are provided are appropriate;
- (ii) the Raupo Sports Foundation has the capacity to implement policy and to manage its affairs;
- (iii) risks regarding type, level and quality of programmes and services provided (or not provided) are understood and that means are in place to manage these risks; and
- (iv) members receive an adequate explanation of what the Raupo Sports Foundation set out to accomplish, what it accomplished, and the choices that were made and why.

1.5 Linkage to stakeholders

The board will at all times recognise the trust placed in it by the stakeholders and the requirements and expectations of the board of the Raupo Sports Foundation, demonstrating this:

- (i) through their attitude expressed as appropriate behaviour towards the stakeholders (and the community at large);
- (ii) by showing loyalty to the stakeholders;
- (iii) by gathering information from the stakeholders about their concerns, needs, demands and fears;
- (iv) by remaining up to date in matters concerning the stakeholders' interests; and
- (v) by reporting to the stakeholders on a regular basis on the performance of the organisation.

1.6 Policy making

Policies are designed to provide clear, unambiguous guidelines for the implementation of the various operational elements of the Raupo Sports Foundation. Policies provide continuity and a consistent point of accountability. Once a policy is adopted, the board will speak with one voice about that policy.

- (i) The board at a formally constituted Board meeting will approve all governance policies.
- (ii) Individual directors, the CEO, staff members and stakeholders of the Raupo Sports Foundation may notify the need for new policies or alterations to existing policies.
- (iii) All governance policies will be systematically reviewed by the board as a whole.
- (iv) All governance policies shall be available to all directors, to the CEO and to staff as appropriate via the CEO.

1.7 Code of ethics and proper practice

The Raupo Sports Foundation is committed to the adoption of ethical conduct in all areas of its responsibilities and authority.

DIRECTORS:

- (i) shall act honestly and in good faith at all times in the interests of the Raupo Sports Foundation and its stakeholders, ensuring that all stakeholders, particularly its members, are treated fairly according to their rights;
- (ii) shall carry out their duties in a lawful manner and ensure that the Raupo Sports Foundation carries out its business in accordance with the law and the terms of its own constitution;
- (iii) shall act in accordance with the principles of the Treaty of Waitangi;
- (iv) shall avoid conflicts of interest in so far as this is possible. Where such conflicts arise, the director/s concerned will act within the terms of the board's conflicts of interest policy;
- (v) shall be diligent, attend board meetings and devote sufficient time to preparation for board meetings to allow for full and appropriate participation in the board's decision making;
- (vi) shall observe the confidentiality of non-public information acquired by them in their role as directors and not disclose to any other person such information;
- (vii) shall act in accordance with their fiduciary duties, complying with the spirit as well as the letter of the law, recognising both the legal and moral duties of the role;
- (viii) shall interact with the board and the Raupo Sports Foundation in a positive and constructive manner;
- (ix) shall be loyal to and supportive of the board, abiding by board decisions once reached; and
- (x) shall not do anything that in any way denigrates the Raupo Sports Foundation or harms its public image.

THE BOARD:

- (i) shall meet regularly to monitor the performance of management and the Raupo Sports Foundation as a whole, and to do this the board will ensure that appropriate monitoring and reporting systems are in place and that these are maintained and utilised to provide accurate and timely information to the board;
- (ii) shall ensure that there is an appropriate separation of duties and responsibilities between itself and the CEO and that no one has unfettered powers of decision making;
- (iii) shall ensure that the independent views of directors are given due consideration and weight;
- (iv) shall ensure that stakeholders are provided with an accurate and balanced view of the Raupo Sports Foundation's performance including both financial and service provision;
- (v) shall regularly review its own performance as the basis for its own development and quality improvement; and
- (vi) shall carry out its meetings in such a manner as to ensure fair and full participation of all directors.

1.8 Governance philosophy

The board will govern with an emphasis on:

- (i) outward vision rather than inward concern;
- (ii) encouragement of diversity of opinions and views;
- (iii) strategic leadership rather than administrative detail;
- (iv) collective rather than individual decisions;
- (v) future rather than present focus;
- (vi) a clear distinction between board and CEO roles;
- (vii) pro-activity rather than reactivity; and
- (viii) modelling desired behaviours.

The board will:

- (i) cultivate a sense of group responsibility with close attention to achieving a high level of governance excellence;
- (ii) govern the Raupo Sports Foundation through careful design and review of written policies that reflect the board's values, focusing on the long-term effects of these;
- (iii) maintain a commitment to excellence in all matters coming before it. It will establish a code of ethics and proper practice that is binding on all directors; and
- (iv) not allow any officer, individual or committee of the board to hinder or be an excuse for not fulfilling board commitments.

1.9 Work planning and agenda setting

To achieve its governance outcomes in a manner consistent with its policies, the board will follow an annual work plan that: (1) focuses on issues in its Strategic Plan; and (2) continually improves board performance through education and evaluation of effectiveness. Accordingly:

- (i) the board's work plan cycle will commence at the March meeting so that the budget and planning can be based on a one-year segment of the board's focus on Strategic Plan results achievement;
- (ii) the cycle will start with the board's development of its work plan for the following year;
 - (a) consultations will include selected groups from stakeholders and any other input deemed valuable to the exploration of strategic planning issues; and
 - (b) governance education relating to the board's job, provided from both internal (staff) sources and external sources, will be arranged on a quarterly basis;
- (iii) CEO monitoring will be included in the work plan if monitoring reports show policy violations or if policy criteria are to be debated; and
- (iv) CEO remuneration will be decided after a review of monitoring reports and upon receipt of the annual audited financial statements, but not later than 31 July each year.

Note: *The Strategic Plan is a document that outlines planning for a three-to four year-period consistent with strategic ends policies. The Business Plan is a plan of the year's activities in relation to the implementation of the Strategic Plan.*

1.10 Conflicts of interest

The board places great importance on making clear any existing or potential conflicts of interest for its directors. All such conflicts of interest shall be declared by the director concerned and officially documented in a Conflicts of Interest Register. Accordingly:

- (i) any business or personal matter which is, or could be, a conflict of interest involving the individual and his/her role and relationship with the Raupo Sports Foundation must be declared and registered in the Conflicts of Interest Register;
- (ii) all such entries in the Register shall be presented to the board and minuted at the first board meeting following entry in the record;
- (iii) where a conflict of interest is identified and registered, the director concerned shall not vote on that issue. Only with the unanimous agreement of all other directors present may the director concerned participate in any board discussion on that topic. Failing such agreement being reached, the individual shall either refrain from participation or leave the room; and
- (iv) When the chair is aware of a real or potential conflict of interest involving one or more directors, the chair must take whatever steps are necessary to ensure that the conflict is managed in an appropriate manner according to this policy.
- (v) Individual directors, aware of a real or potential conflict of interest of another director, have a responsibility to bring this to the notice of the board.

Examples of conflicts of interest are:

- (i) when a director or his/her immediate family or business interests stand to gain financially from any business dealings, programmes or services of the Raupo Sports Foundation;
- (ii) when a director offers a professional service to the Raupo Sports Foundation; and
- (iii) when a director stands to gain personally or professionally from any insider knowledge if that knowledge is used for personal or professional advantage.

1.11 Confidentiality

The objective of meetings of the board is to bring together ideas of directors in free and open discussion. However, there will be times when an issue arises which may need to be treated with discretion. These are to be handled as outlined below.

'In committee' sessions:

When necessary, it is general business practice that 'in committee' sessions are held during meetings. This is used when issues which need to be discussed are sensitive, and directors need to be totally comfortable that what is said in the confines of the meeting room will not be repeated outside the meeting.

'In committee' sessions are held to:

- (i) discuss commercially sensitive matters;
- (ii) discuss personal and personnel issues; and
- (iii) enable an open and frank discussion.

1.12 Media policy

Only the chair and the CEO are authorised to comment publicly on the affairs and policies of the Raupo Sports Foundation.

Generally the chair may comment on matters that are the responsibility of the board and the CEO will comment on matters of operational significance. The chair and CEO may delegate comment to directors and staff on strategic and operational matters respectively.

The chair, CEO and representatives of the Raupo Sports Foundation shall not support any action or public statement that is derogatory or in any way damaging to the Raupo Sports Foundation.

1.13 Cost of governance

The board of directors recognises that poor governance is a cost to the organisation and therefore will invest in training and development to increase its governance capability and performance.

1. All new directors will receive a formal orientation programme (see Director induction, Section 1.3).
2. The board will provide training for all directors in order to enhance their capacity for governance excellence.
3. The board will carry out an annual review of its performance.
4. All costs associated with governance training will be prudently incurred, though designed to ensure the development of the highest standard of governance. Governance development costs are allocated for orientation of new directors; for attendance at workshops, seminars or conferences; for external audits/ performance reviews; and for meeting costs and other costs associated with effective governance (for example, focus groups).

1.14 Chair's role description

The chair assures the integrity of the board's processes and occasionally represents the Raupo Sports Foundation to outside parties. Accordingly:

- (i) the chair ensures that the board behaves consistently with its own rules and those legitimately imposed upon it from outside the Raupo Sports Foundation;
- (ii) meeting discussion content will be only those issues which, according to board policy, clearly belong to the board to decide, not the CEO;
- (iii) deliberation will be fair, open and thorough but also timely, orderly and kept to the point;
- (iv) the authority of the chair consists in making decisions that fall within topics covered by board policies on governance process, except where the board specifically delegates portions of this authority to others. The chair is authorised to use any reasonable interpretation of the provisions in these policies;
- (v) the chair is empowered to chair board meetings, with all the commonly accepted power of that position (for example, ruling, recognising);
- (vi) the chair has no authority to make decisions (such as creating, re-creating or varying) about policies created by the board;
- (vii) the chair acts as the conduit between the board and the CEO;

- (viii) the chair may represent the board to outside parties in announcing board-stated positions and in stating chair decisions and interpretations within the area delegated to her or him; and
- (ix) the chair may delegate this authority but remains accountable for its use.

1.15 Board evaluation

The board will carry out a formal evaluation of its activities annually. This will be done in two parts:

Internal evaluation:

- (i) This will look at how the board works together and will include the following assessments:
 - (a) assessment of chairperson by all other board members;
 - (b) assessment of each board member by all other board members; and
 - (c) self-assessment by each board member.

External evaluation:

- (i) assessment of board by CEO and management team; and
- (ii) The board may choose to have this carried out and collated by an outside consultant and the results will be confidential to the Raupo Sports Foundation board.

2.0 Board committees

The board has the authority to establish both standing and ad hoc committees to assist in its work. Standing committees will be limited to the following:

- (i) Audit/Finance and Risk Committee;
- (ii) CEO Management and Appointments Committee; and
- (iii) Governance Committee.

Committees shall develop their own terms of reference, endorsed by the board, clearly defining their role, procedures and functions, and the boundaries of their authority.

Committees may co-opt outside members from time to time in order to bring additional skills, experience or networks.

Committees cannot exercise authority over staff nor shall they delegate tasks to any staff unless the CEO has specifically agreed to such delegations.

All ad hoc committees are automatically disestablished once they have completed their work and have reported to the board.

All standing committees shall review their terms of reference annually, including their membership and the results of their work, and report to the board.

Unless explicitly empowered by the full board, committees cannot make binding board decisions. For the most part the function of committees is to solve problems for and/or make recommendations to the board on which the latter, and only the latter, has the power to make decisions or policy.

3.0 Board reimbursement

The Raupo Sports Foundation may reimburse directors and any others co-opted to assist in the governance process for actual and reasonable expenses incurred on activities authorised by the board.

Claims for expenses must be approved by the CEO and/or chair of the board, who are in a position to confirm the claims are valid in terms of the organisation's policies and procedures.

The chair cannot approve his or her own expenses.

Board-staff linkage

4.0 Board responsibilities

The board's sole official connection with the operations of the Raupo Sports Foundation and its achievement and conduct will be through the CEO.

Only decisions of the board acting as a body are binding on the CEO.

In the case of directors or committees requesting information or assistance without board authorisation, the CEO can refuse such requests that require, in the CEO's opinion, a material amount of staff time or funds, or are disruptive.

The board's resolutions describing the organisational results to be achieved will be the basis for the CEO to develop the organisational means to achieve the results.

The board will develop policies that limit the latitude the CEO may exercise in choosing the organisational means. These policies will be developed systematically from the broadest, most general level to more defined levels and they will be called 'chief executive limitations' policies (CEL).

As long as the CEO uses any reasonable interpretation of the board's results resolutions and chief executive limitations policies, the CEO is authorised to establish all further policies, make all decisions, take all actions, establish all practices and develop all activities.

The CEO is not restricted from using the expert knowledge of individual directors.

The board will view the CEO's performance as the same as organisational performance, so that achievement of the board's strategic results resolutions and non-violation of CEO limitations policies will be viewed as successful CEO performance.

5.0 Monitoring CEO performance

Systematic and rigorous monitoring of CEO job performance will be solely against the expected CEO job outputs:

- (i) organisational accomplishment of board policies on results; and
- (ii) organisational operation within the boundaries established in board policies on chief executive limitations.

The board will acquire monitoring data by one or more of three methods:

- (i) by internal report, in which the CEO discloses compliance information to the board;
- (ii) by external report, in which an external third party selected by the board assesses compliance with board policies; and
- (iii) by direct board inspection, in which a designated member or members of the board assess compliance with the appropriate policy criteria.

In every case, the standard for compliance 'shall be any reasonable CEO interpretation' of the board policy being monitored.

All policies that instruct the CEO will be monitored at a frequency and by a method chosen by the board. The board can monitor any policy at any time by any method, but will ordinarily depend on routine schedules as shown at the foot of each policy page.

There will be established an agreed-upon process when the CEO, chair and deputy chair meet annually to carry out a formal appraisal based on the criteria agreed to and set at the beginning of the monitoring period. The format and process for this meeting will be negotiated and agreed upon between the CEO and the chair and deputy chair. In the absence of one of these officers, another director will act for them.

CEO limitations

6.0 CEO responsibilities

The job of the CEO is to manage the Raupo Sports Foundation in accordance with commonly accepted business and professional practice and ethics.

Accordingly the CEO shall:

- (i) operate at all times within the constitution and regulations of the Raupo Sports Foundation;
- (ii) not cause or allow any practice, activity, decision or organisational circumstance that is in any way unethical, unlawful or imprudent, or which violates any board policy or expressed board values;
- (iii) not conduct any business activity which is clearly outside the Raupo Sports Foundation's competency areas;
- (iv) keep the board informed of the true and accurate position of the outcomes of programmes and services, financial position, significant management issues and all matters having real or potential legal/organisational risk considerations for the organisation;
- (v) submit data in a timely, accurate and understandable fashion, addressing the various issues to be monitored by the board;
- (vi) inform the board of significant trends, implications of board decisions, issues arising from policy matters, and changes in the basic assumptions upon which the board's strategic results policies are based;
- (vii) present information in a manner which enhances directors' understanding of the issues contained therein;
- (viii) keep directors informed when for any reason there is actual or anticipated non-compliance with a board policy;
- (ix) marshal for the board as many staff and external points of view, issues and opinions as are needed for fully informed board decisions;
- (x) inform the board of such occasions when it violates one of its own policies;
- (xi) seek board approval on all matters having real or potential legal considerations for the Raupo Sports Foundation, including all new contracts entered into over \$10,000;
- (xii) ensure that there are effective communication channels relevant to the board's task;
- (xiii) deal with the board as a whole except when responding to individual requests for information or requests from board committees or working parties;
- (xiv) have a complete manual of sound operational practices in line with industry norms and best practice;
- (xv) seek board approval for position descriptions of all new staff and/or changes to existing position descriptions of senior management; and
- (xvi) involve the board in the appointments process of senior management positions.

7.0 Management committees

The CEO has the authority to establish both standing and ad hoc advisory committees to assist in his/her work. Standing committees will be limited to the following:

- (i) Audit and Risk Committee;
- (ii) CEO Review Committee; and
- (iii) Board Succession Committee.

Committees shall develop their own terms of reference, endorsed by the board, clearly defining their role, procedures and functions, and the boundaries of their authority.

Committees may co-opt outside members from time to time in order to bring additional skills, experience or networks.

Committees cannot exercise authority over staff nor shall they delegate tasks to any staff unless the CEO has specifically agreed to such delegations.

All ad hoc committees are automatically disestablished once they have completed their work and have reported to the board.

All standing committees' terms of reference will be reviewed annually, including their membership and the results of their work.

Unless explicitly empowered by the CEO, committees cannot make binding management decisions. For the most part the function of committees is to solve problems for and/or make recommendations to the management team on which the latter, and only the latter, has the power to make decisions or policy.

8.0 Budgeting, business and financial planning

Financial planning for any financial year or the remaining part of any financial year must be materially consistent with the board's strategic results priorities.

Accordingly, the CEO shall ensure that the budget:

- (i) contains sufficient information to enable credible projection of revenues and expenses, separation of capital and operational items, cash flow and disclosure of planning assumptions;
- (ii) projects current assets at any time to be greater than current liabilities;
- (iii) provides for board expenditure in accordance with the cost of governance policy if applicable; and
- (iv) is adopted by the board in accordance with the board's strategic results policies if applicable.

The process for budget and Business Plan approval is as follows:

- (i) The board and CEO discuss the organisation's key strategic initiatives at the March meeting. These should be documented in the strategic results section of the governance policies.
- (ii) The CEO presents a 'draft' budget (including projected cash flow) along with a 'draft' Business Plan which incorporates the key strategic initiatives, and indicates priority projects conditional on funding at the May meeting.
- (iii) The board discusses and approves subject to any amendments.
- (iv) The CEO provides the board with a quarterly report against the Business Plan.

9.0 Financial condition

With respect to the actual ongoing financial conditions and activities, the CEO must protect against the development of fiscal jeopardy or a material deviation of actual expenditures from board priorities established in the strategic results policies.

Accordingly, the CEO shall report to the board:

- (i) any deviation from the projected Statement of Financial Performance (Budget) which is greater than 10% of total revenue and/or 10% of total expenditure and/or 5% of the surplus on a trend basis; and
- (ii) any deviation from the projected Cash Flow Statement which is greater than 5% of the projected bank balance on a trend basis.

The CEO shall also provide the board with a monthly bank certificate of the closing bank balance if so required.

To guard against any situation whereby the Raupo Sports Foundation is unable to function effectively and to provide essential services, the CEO shall maintain, as appropriate, assessments and evaluations of risk factors which could conceivably disrupt the Raupo Sports Foundation, and ensure there are current and operable plans and systems in place that, in the event of disruptive events, will allow continuity of the Raupo Sports Foundation's business.

A quarterly updated budget adjusted to accommodate any changes to expenditure and/or income will be produced.

10.0 Investments

The investments of the Raupo Sports Foundation are to be made in a manner that does not threaten the Raupo Sports Foundation's financial security. Therefore the CEO shall not undertake any investments other than term deposits at registered trading banks. The CEO shall also:

- (i) ensure that investments maximise long-term total returns consistent with prudent levels of risk, while maintaining sufficient liquidity to enable the Raupo Sports Foundation to meet its day-to-day financial commitments; and
- (ii) ensure that returns on investments enhance the real value of the assets after the funds have been released to meet the Raupo Sports Foundation's needs.

11.0 Protection of assets

The Raupo Sports Foundation's assets are to be protected, adequately maintained and not unnecessarily risked. Therefore the CEO shall:

- (i) ensure that only authorised persons handle cash;
- (ii) ensure that funds are deposited in institutions where they are not exposed to above-average risk;
- (iii) ensure that the assets are insured for what is considered necessary for prudent risk management;
- (iv) be limited in the purchase of goods or of services:
 - (a) to protect against conflict of interest;
 - (b) to \$2,000 without having obtained comparative prices and assessment of quality; and
 - (c) to \$2,000 without a stringent method of assuring the balance of long-term quality and cost;
- (v) prevent intellectual property, information or files being used for purposes other than in the Raupo Sports Foundation's best interests;
- (vi) not allow insurances to terminate without board notification;
- (vii) take all reasonable steps to protect the Raupo Sports Foundation, its board and staff from claims of liability; and
- (viii) not allow plant and equipment to deteriorate through improper wear and tear or insufficient maintenance.

12.0 Remuneration and benefits

With respect to employment, compensation and benefits to employees, consultants, contract workers and volunteers, the CEO must ensure that the Raupo Sports Foundation's financial integrity and good name in the community are maintained at all times.

Therefore the CEO shall:

- (i) only change his/her own remuneration or benefits with the approval of the board;
- (ii) establish remuneration or benefits which conform with industry averages in the sector, having regard to the employee's skills and experience and the market conditions for such skills and experience; and
- (iii) not cause unfunded liabilities to occur or in any way commit the organisation to benefits which incur unpredictable future costs.

13.0 Public affairs

The CEO shall not initiate, approve or in any way support any public affairs action or activity that in any way brings the Raupo Sports Foundation name into disrepute.

Therefore the CEO shall not:

- (i) make, or knowingly allow to be made, any statements to the public media or in any public situation that are derogatory or in any way damaging to the Raupo Sports Foundation;
- (ii) engage personally, or allow staff to engage, in any public role or activity that is inconsistent with the achievement of the Raupo Sports Foundation strategic results policies; and
- (iii) make, or knowingly allow to be made, any statements about the Raupo Sports Foundation which are reserved to the chair under the chair's role policies.

14.0 Treatment of members

With respect to interactions with members or those applying to be members, the CEO shall ensure that the conditions, procedures or decisions applying are safe, dignified and not unnecessarily intrusive, and provide appropriate confidentiality and privacy.

Accordingly, the CEO shall:

- (i) use application forms that require only information for which there is a clear necessity;
- (ii) use methods of collecting, reviewing, transmitting and storing stakeholder information that protect against improper access to the material elicited;
- (iii) maintain facilities that provide a reasonable level of privacy, both visual and aural;
- (iv) establish with members a clear understanding of what may be expected and what may not be expected of them; and
- (v) inform members of this policy and provide a grievance process to those who believe they have not been accorded a reasonable interpretation of their rights under this policy.

15.0 Treatment of staff

With respect to the employment and treatment of staff, the CEO shall provide an environment that is fair, safe (including culturally safe), dignified and not intrusive, and that provides appropriate confidentiality and privacy.

Accordingly, the CEO shall not:

- (i) deny to any employees their right to personal dignity, safety (including cultural safety), ethical, position-related dissent and an approved and fair internal grievance process;
- (ii) operate without written personnel policies that make clear rules for staff and protect against unfair practices such as preferential treatment for personal reasons;
- (iii) discriminate against any staff member expressing an ethical dissent;
- (iv) violate any part of relevant workplace employment legislation;
- (v) deny the right of any staff member to join a relevant professional association or union or to have access to the services of that union as these relate to the workplace and related conditions;
- (vi) fail to keep the board fully informed about impending disputes and grievances that may lead to termination of employment, or action against the board;
- (vii) prevent staff from bringing a grievance to the board (via the chair) when:
 - (a) a board policy has been violated to his/her detriment; or
 - (b) a board policy does not adequately protect his or her human rights; or
 - (c) a matter which the staff member(s) considers poses a serious threat to the viability and/or reputation of the organisation occurs, has occurred or is imminently to occur (such matters may relate but not be limited to, for example, financial wrongdoing, serious ethical breaches and conflicts of interest); and
- (viii) fail to ensure that all staff members are acquainted with their rights under this policy.

Appendix

Appendix 1: Board needs matrix

Instructions for using this template

This 'needs matrix' has been designed to assist in board succession planning to assess the overall strengths and weaknesses of the board's current membership. Because of the nature of the data collected, however, it may also be used as a starting point for a wider evaluation of board effectiveness.

Key steps:

1. The board should agree the desired skills, attributes and experience needed for the effective governance of the organisation. Appropriate weightings (if any) should also be agreed.
2. Each director should then complete the matrix, assessing themselves and every other board member against each of the desired characteristics on the five-point scale described on the matrix.
3. Ideally, someone who is independent of the board (for example, a governance consultant) should receive and collate the responses, to produce two separate reports:
 - (a) a board composite report that shows total scores for each (unnamed) board member and the total score for the board against each of the desired characteristics given the agreed weightings. This is for discussion by the board as a whole; and
 - (b) a report for each individual that reveals their own self-assessment compared to the average rating given by their colleagues. If agreed in advance it is worthwhile revealing individual scores to the chair for discussion with those individuals.
4. The board should discuss the implications of this analysis of the current board composition in the light of the challenges facing the board. It should develop a strategy for strengthening the board as seems indicated.

DESIRED CHARACTERISTICS	Weighting	Self	Name 2	Name 3	Name 4	Name 5	Name 6	Name 7	Unweighted Total	TOTAL
SKILLS										
Ability to think strategically	X 2.0									
Analytical, critical reasoning and problem solving skills										
Strong financial literacy and analytical ability	X 1.5									
Oral communication skills	X 1.5									
Ability to understand and relate to stakeholders										
ATTRIBUTES										
Ethical, open, honest, trustworthy, high levels of integrity										
Independence and inquisitiveness	X 1.5									
Ability to establish quality relationships										
Ability to work as a team player	X 2.0									
Preparedness to work hard and commit time and effort to do the job	X 1.5									
Has an outcomes focus										
Strong stewardship orientation/consumer focus										
EXPERIENCE										
Corporate governance experience										
Understanding of and experience in the sport	X 1.5									
Community/stakeholder influence and connections										
Broad business experience	X 1.5									
MEETING PERFORMANCE										
Well prepared for meetings										
Adds value to board dialogue	X 2.0									
Able to focus at the governance level of issues										
Able to disagree without being disagreeable										
TOTAL										

Appendix 2: Board service commitment letter

Often performance issues around the board table arise from a lack of clarity about expectations. Good recruitment, a clear position description, thorough induction and the use of a commitment letter similar to the one below will clarify expectations before board tenure commences.

These processes, together with sound governance in general, will give the new trustee the best chance of positive experience during their term.

The following template has been adapted from good practice in place within Soccer New Zealand

1. I, _____, recognising the important responsibility I have committed to as a member of the board, hereby pledge to carry out in a trustworthy and diligent manner the duties and obligations associated with that role.

2. **My role:** I acknowledge that my primary roles as a board member are:
 - (a) to contribute to defining the organisation's mission and governing the fulfilment of that mission; and
 - (b) to contribute to, and support, the work of the board and to carry out the functions of the office of board member as stated in the Constitution and other governance documents such as the Board Charter.

My role as a board member will focus on the development of policies that govern the implementation of the organisation's plans and purposes. This role is separate and distinct from the role of the chief executive officer, who determines the means of implementation.

3. **My commitment:** I will exercise the duties and responsibility of this office with honesty, integrity, collegiality and care.

4. **Pledge:** I pledge, to the best of my knowledge and ability, as follows:
 - To establish as a high priority my attendance at all meetings of the board.
 - To be prepared to discuss the issues and business addressed at scheduled meetings, having read the agenda and all background material relevant to the topics at hand.
 - To maintain the confidentiality of what is said or seen at board meetings.
 - To work with and respect the opinions of my peers who serve on this board.
 - To always act for the good of the organisation as a whole.
 - To represent the organisation in a positive and supportive manner at all times and in all places.
 - To observe meeting procedures and display courteous conduct in all board meetings.
 - To refrain from intruding on administrative issues that are the responsibility of management, except to monitor the results and prohibit methods that conflict with board policy.
 - To avoid conflicts of interest between my position as a board member and positions held with other organisations or my personal life. If such a conflict does arise, I will declare that conflict before the board and refrain from voting on matters in which I have conflict.
 - To support in a positive manner all actions taken by the board even when I am in a minority position on such actions.

- To participate openly and honestly in reviews of board performance and my performance as an individual director.
 - To participate in development opportunities that may be provided in order to augment my skills as a trustee and the efficacy of the board as a whole.
5. If, for any reason, I find myself unable to carry out the above duties to the best of my ability, I will first seek leave of the board to work to a different standard and, if I cannot achieve this, I will agree to resign my position as a board member.

Signed by:

in the presence of:

Signature of Witness:

Name of Witness:

Occupation:

Address:

Dated:200X



The background is a deep red color with a fine, woven texture, similar to a carpet or heavy fabric. Two thick, white diagonal lines cross the frame, one from the top-left towards the bottom-right, and another from the bottom-left towards the top-right, creating a central diamond-shaped area.

Legal structures



Introduction

Sport organisations in New Zealand typically work under one of two structures. National sport bodies and their constituent parts (regions, clubs) are normally incorporated societies and regional sport trusts are by definition, trusts.

Tax exempt status for incorporated societies may be obtained as an amateur sport body or as a charity, and for trusts, charitable status may be sought. In either case the granting of such status will be contingent on the stated purposes of the organisation.

Many organisations also use wholly or part owned limited liability companies for specific purposes. Entrepreneurial events (e.g. a world championship) will be run through a company to limit liability and protect the parent body. In certain cases such companies may have charitable status. Additionally, associated trusts can be used to manage and protect assets.

The following commentaries and sample documents discuss the benefits, in particular, of the various forms of incorporated society and provide some good practice legal documents.

In all cases, organisations should take expert legal advice when working with constitutions and structures.

Commentary on constitution types

This commentary and the following NSO sample constitutions have been prepared with the assistance of sports lawyer Maria Clarke. All care has been taken in the preparation of the legal documents. However they are provided as indicative samples only. SPARC advises that in all cases expert legal advice should be taken before the use of this information in any specific context.

1.0 Introduction

- 1.1 Historically national sport organisations in New Zealand have been structured in one of two ways, either as:
- a ‘mail box’ or conduit organisation for their provincial or regional member associations or other national organisations within the sport that are responsible for a discipline of the sport, for the purposes of meeting requirements of the relevant international sporting federation; or
 - an organisation for the sport which deals with, and manages, national matters such as selection and management of national teams, national events, and funding applications and meeting requirements of national governmental agencies. Its members generally comprise member associations in districts, provinces and/or other local entities. This type of organisation may be described as the ‘representative’ body for the sport.
- 1.2 In recent years the environment in which sport operates has changed remarkably and new challenges and issues have resulted in many national sport organisations choosing, or being required to, change the structures in which they operate, in order to keep up with competing demands or in some cases for their own survival. As the Graham Report¹ concluded:

“It is critical that all recreation and sport strategies and structures fully recognise best contemporary practice and adapt to the changing lifestyles of New Zealanders.”

- 1.3 The factors causing these changes are numerous²; however, they have included one or more of the following:
- the pressures on **funding** available, i.e. reduction or changes in funding criteria, reduction in commercial sponsorship available, and the changing landscape of gaming-derived funding;
 - the need for clearer **leadership** and direction of the **sport as a whole**, not just the management of the national organisation;

1 Part 5 of the report of the Sport, Fitness and Leisure Ministerial Taskforce, “Getting Set – For an Active Nation”, January 2001.

2 See “Lessons from the Sport and Recreation Sector” in *Good Governance* # 42, November 2004. See also Touch Football Australia Inc, “Information Memorandum for the Integration of Australian Touch Association and the Existing Regional and State Touch Associations into Touch Football Australia”, August 2005.

- the **duplication** of resources and facilities across the sport (e.g. administration, finances, facilities) due to the layers of legal entities within the sport;
- the need for **strategy** to be aligned across the sport to ensure efficient and effective delivery of programme and initiatives;
- the call from member associations and individual participants in the sport for improved **communication**;
- the **legislative** and compliance requirements required of all entities within sport, such as the Health and Safety in Employment Act, Privacy Act, Employment Relations Act;
- the desire to protect and safeguard **assets** within the sport for future generations coupled with aging **facilities**;
- the reducing **profile** of some sports due to decline in high performance results together with high costs of, and changes to, sports broadcasting rights;
- shrinking **membership** and participation numbers as participants become reluctant to join clubs and prefer casual, one-off, easy access participation;
- the growth in sports and events promoters and commercial operators creating **competition** in the market for participants, supporters and funds;
- confused **governance** as national sports organisation seek to gain greater control of the sport within existing structures which provide for governance at many levels;
- the reduction in availability of **volunteers** to assist with the sport due to changing work and society pressures;
- the introduction of **professionalism** both within, and of, sport; and
- the challenge from **new forms** of physical recreation and sport.

2.0 Traditional structure

2.1 The traditional structure of national sport organisations in New Zealand is generally characterised by the following features:

- The organisation is an **incorporated society** under the Incorporated Societies Act 1908.
- It is headed by a 'management' or 'executive' committee **elected** annually by the member associations at a general meeting of the organisation (although in recent years some of these have been renamed as 'boards' and some have become governance boards with independent appointed directors with longer terms of office).
- The organisation has a **President** as governing and titular head of the organisation.
- There is a **secretary** (who may be paid or unpaid) and/or staff person or persons such as an executive director or **administration** person(s) with varying responsibilities, from administration to operations. (In recent years some organisations have appointed chief executives although the scope and nature of their authority and role are variable.)
- The **members** of the national sport organisation are usually local **associations** (ranging up to 100 or more in some organisations).
- The members of the local associations are member **clubs**.
- The participants in the sport (players/athletes and game officials) are not direct members of the national sport organisation or the member

associations, but members of clubs, which are in turn members of the regional associations.

- There are often several organisations which have a connection with the organisation but which are not legally connected to it, such as national Māori sport organisations, national coach and umpire organisations, and national organisations in the sport for people with a disability.
- The objects and powers of the national sport organisation are traditionally limited to national matters such as national teams and funding.
- The local associations and clubs are separately incorporated legal entities with their own constitutions/rules and often independent strategic plans.

2.2 The typical traditional structure is set out diagrammatically in Appendix 1.

2.3 Some of the advantages of the traditional structure³ are that:

- the sport can service a number of different groups or interests at the same time due to varying numbers of organisations within the sport;
- it enables representative groups to be present at a greater level throughout the sport, reflecting the numbers of layers and levels within the sport;
- it provides a well-established, well-known structure creating career-paths for volunteer administrators based largely on service;
- it can invoke a widespread sense of ownership; and
- it allows for differences in local and regional communities.

2.4 In general terms the traditional structure requires the national sport organisation, member regional/provincial associations and member clubs to operate as separate autonomous entities in accordance with their rules. This can result in large numbers of strategic and operational plans, accounts, annual reports, human resource systems, membership databases, and websites. The national sport organisation also has limited ability to lead, influence or require change across the sport as a whole. The connection between the national body and the individual participant is tenuous at best and often non-existent.

2.5 The traditional structure remains a viable and sustainable structure for some sports, especially those where only one or two of the factors mentioned in paragraph 1.3 are present. However, for many national sport organisations, the ability to tackle these issues will be frustrated by a traditional structure.

2.6 As part of any national sport organisation's strategic thinking and planning, consideration should be given to the appropriate legal structure to suit its needs. This may result in national sport organisations remaining with a traditional structure, or a 'sport as a whole' structure or a combination of both, or other structures.

3.0 Unitary model

3.1 In recent years several national sport organisations have restructured in an effort to address some or many of the factors mentioned above. For many of these organisations, the structure reflects a desire for the national organisation to work with its members and participants to have the power to create and implement plans, policies and programmes which benefit the sport as a whole.

3 Some of these advantages are suggested by Solakovski, J, in "Governance – Structures for Success or Working against Us?", a paper presented to 'Our Sporting Future 2003' conference, March 2003, Australia. See also Shillbury, Prof D and Kellet, P, "The Australian Touch Association Management Review and Audit" and Kilmister, Terry, "Governance Review of Equestrian Federation of Australia", 2003, for discussion of the differences, advantages and disadvantages of the federal/traditional structure and the unitary structure.

This is sometimes referred to as a 'unitary' model, as all the members are united under the one organisation.

- 3.2 The 'sport as a whole' approach or unitary model can be identified by the following principles:
- **one single legal entity** with one governing body responsible for the whole of the sport;
 - **regional** committees or groups existing as delegated bodies of the board, and not separate autonomous legal entities;
 - a **national membership system** so that every participant and every club is a member of the national body. This can be affected by every participant being deemed to be a member of the national organisation upon joining a member club, or entering an event or competition at club or local level. It is referred to as 'cascading membership', as joining at one level results in that person's membership cascading into the membership of the national body;
 - **objects** which expressly state that the organisation exists to promote the sport as a whole in New Zealand and that the members and member clubs act collectively for the mutual benefit of the sport as a whole;
 - wide **powers** which enable it to run a business properly and efficiently, including protecting its property (including intellectual property), and the powers to set up additional separate corporate entities (which might, for example, own and run national events) and engage in other business transactions and investments for the good of the sport;
 - a **governance board** which is empowered with the responsibility for leading the sport as a whole, headed by a chair. The make-up of a board may be determined by election or appointment (for example via an electoral college or appointments panel) or a mixture of both, as long as the appointments are made on the basis of merit⁴. To retain the 'voice' of the people, some organisations may choose to have directors elected by the regional committees⁵; and
 - strong **management structures** which may include employment of staff at national, regional and local levels by the national body.
- 3.3 The cascading membership ensures that every individual who participates in the sport is a member of the sport. This includes players, umpires/referees, committee members, game officials and other officials. Whether they participate or are involved on a regular and indefinite basis (the traditional club member) or as a casual one-off participant, they are considered as part of the 'family'. Also in the 'family' are the legal entities which support the sport. These include the national body, regional/provincial bodies, clubs, and other groups within the sport, such as other organisations with whom the sport has a connection or affiliation e.g. coaches associations.
- 3.4 The pure unitary model is set out diagrammatically in Appendix 2.
- 3.5 The benefits of the national membership structure include the ability for the sport through its national sports organisation, to:
- know the precise number and nature of participants, giving national sport organisations the ability to understand and tap into the make-up of their sports;

4 See part 8 of SPARC's *Nine Steps to Effective Governance*, 2004.

5 See, for example, the Confederation of Australian Motorsport which adopted a unitary model.

- possess the necessary information to give support for seeking commercial sponsorship and support;
 - know the names and contact details of the members to enable accurate and effective communication with them;
 - determine different fees within the sport (whether as subscriptions, membership, capitation, participation or licence fees) as a distinct and separate issue from the types of membership;
 - seek and deliver benefits for all members at all levels of the sport to enable the membership to 'be and feel' supported; and
 - be able to implement an integrated discipline structure across the whole sport to ensure uniformity in process and sanctions on all participants in the sport via the various levels within the sport, for example doping matters.
- 3.6 The most efficient mechanism to administer a national membership system is to have a standard national membership form which all members must complete and sign. Technology makes this process far more efficient than it would have been 5–10 years ago. This form would need to set out the fact that membership is for the national organisation and their club(s). This layered membership should not alter the fees payable by members. This may result in increased income to the organisation only because all people participating in the sport/game (such as casual participants) are properly accounted for, which may not have been the case in the past.
- 3.7 Another alternative or variation to the unitary model is a 'regional' model⁶, in which entities exist at regional level but the traditional associations (or levels between regional and clubs) are removed. The other elements of the unitary model can be adopted, including the national cascading membership which would result in participants becoming members of a club, their regional associations and the national body.
- 3.8 The advantages of the unitary model⁷ are that it:
- enables a vision for the whole of the sport to be led and implemented by one entity;
 - permits uniform goals, practices and outcomes;
 - enables tighter financial controls and accountability;
 - reduces the duplication of effort and systems;
 - gives opportunity for greater income potential through a national approach and branding;
 - provides greater 'buying' power when assets are pooled together;
 - enables whole of sport programmes and initiatives such as athlete pathways; and
 - gives greater control over systems and structures.
- 3.9 The disadvantages to this structure⁸ can be that:
- it can be difficult to implement due to the fears mentioned below (paragraph 4.4);
 - clubs, associations and volunteers may feel further disenfranchised and leave the sport;

6 Examples of national sport organisations which have adopted a regional model include Bowls New Zealand and Netball New Zealand.

7 See footnote 3.

8 See footnote 3.

- there can be significant costs in money, time and effort to consult, plan and implement this type of structure;
- the centralised 'power' can be used in a destructive way; and
- there may be complex legal and political impediments to implementing this type of structure.

4.0 The process of change

- 4.1 For most national sport organisations, or indeed any organisation, making structural changes may result in resistance from the membership (and staff) and it is usually the members through their delegates who vote on such change.
- 4.2 While some changes may be able to be implemented without alteration to a national sport organisation's constitution (such as appointment of regional staff), effecting wholesale change will usually require the constitution or rules to be changed or replaced.
- 4.3 To effect such change, careful and detailed planning, consultation and communication are required with all members, stakeholders, staff and other interested individuals and groups. Professional advice and support are essential.
- 4.4 The experience of change by national sport organisations reveals that the following factors are often hurdles facing a national sport organisation seeking to change its structure:
 - fear of loss of control of the cheque book and finances/assets (facilities) by members;
 - fear of losing autonomy and control of day-to-day activities (e.g. tournaments/events) by members;
 - fear of losing position and power within the sport by individuals;
 - failing to understand the need for considering the interests of the sport as a whole when there is a perception that members' own club/association is fine;
 - loss of a role or position by individual office bearers creating a sense of loss/grief as to their place in the sport;
 - understanding how the changes will 'affect me', particularly at club and local level;
 - ensuring that communication regarding the change process and proposed outcomes are appropriate (for example they must be sensitive to the fears and concerns), timely, informative and consistent;
 - ensuring that the process and outcome have 'buy-in' from the majority of people involved in the sport;
 - finding other roles for the volunteers who lose their position as a result of the restructure; and
 - finding mechanisms, other than appointment to positions within the sport, for recognition by volunteers for service to the sport.
- 4.5 Seeking to implement the unitary structure requires expert legal advice to facilitate the drafting of constitutions, regulations and associated documents, including the proposed motions for the relevant general meetings of the organisation. In addition there may be other documentation and processes (such as winding-up of existing associations), to ensure that the transition from the existing structure to the new structure is properly effected and implemented.

- 4.6 The process may take some time, including holding one or more general meetings of the organisation to adopt the changes and then to implement them by a specified date.
- 4.7 Ultimately structural change by itself will not change behaviour. That will only come from a long-term commitment by people within the organisation to work to mutually agreed goals.

5.0 For more information

For further reading see the following:

Kilmister, T, "Governance Review of Equestrian Federation of Australia", 2003 – available at www.equestrian.org.au

"Renewing and Reviewing Sports Governance Structures", *Sports Connect*, March 2004, Australian Sports Commission – www.ausport.gov.au

Solakovski, J, in "Governance – Structures for Success or Working against Us?", a paper presented to 'Our Sporting Future 2003' conference, March 2003, Australia – available at www.ausport.gov.au

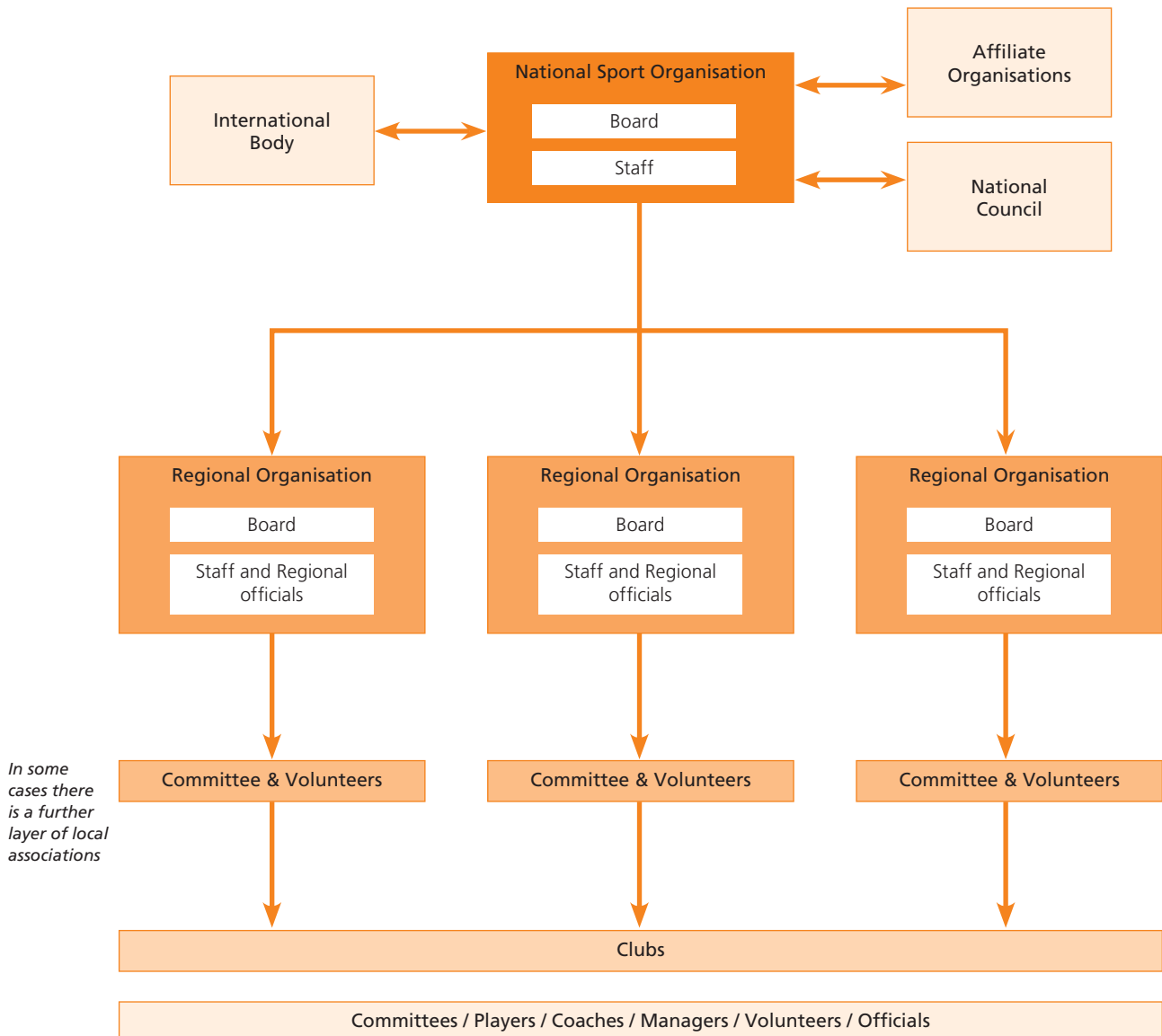
Shillbury, Prof D and Kellett, P, "The Australian Touch Association Management Review and Audit – available at www.austouch.com.au

Touch Football Australia Inc, "Information Memorandum for the Integration of Australian Touch Association and the Existing Regional and State Touch Associations into Touch Football Australia", August 2005 – available at www.austouch.com.au

Appendix

Appendix 1: Traditional Structure

This structure has many variations. The diagram below indicates one of the more complex forms.



Appendix 2: Unitary structure



Appendix 3: Comparative chart

This chart shows the differences between an incorporated society, a charitable trust and a limited liability company.

	Incorporated society	Charitable trust	Limited liability company
SUITED TO	Not-for-profit organisations where members have a common interest (e.g. sport, hobby or community interest)	Not-for-profit organisations with a charitable purpose (e.g. education, religion, relief of poverty or other purposes that benefit the community)	Trading organisations
CHARITABLE PURPOSE	Can have a charitable purpose	Must have a charitable purpose	Generally does not have a charitable purpose*
SIZE	Minimum of 15 members	Minimum of two trustees	A minimum of one director, one shareholder and one share, unless the constitution states otherwise
DECISION MAKING	By members at general meeting and by the committee in accordance with the rules	By the trustees in accordance with the trust deed	By the directors in accordance with the constitution and the Companies Act 1993. By management in accordance with board decisions
MEMBERS	Membership requirements determined by the rules	No members – the trustees run the trust to benefit the beneficiaries	Shareholders as determined by the constitution
ACCOUNTABILITY	Committee accountable to the members	Trustees are accountable to the beneficiaries and must comply with the trust deed and the Trustee Act 1956	The directors are accountable to the shareholders and must comply with the Companies Act 1993
PROFITS	Must be used to run the society to achieve its purpose. Profits cannot be distributed to members	Must be used to run the charitable trust to achieve its purpose	Profits can be distributed to the shareholders
HOW TO INCORPORATE	Send applications to the Registrar: <ul style="list-style-type: none"> - an application form - two copies of the rules - statutory declaration - \$100 	Send applications to the Registrar: <ul style="list-style-type: none"> - an application form - a copy of the trust deed or rules - statutory declaration 	Obtain approval for company name. Send application to the Companies Office: <ul style="list-style-type: none"> - an application form - a copy of the constitution

	Incorporated society	Charitable trust	Limited liability company
<i>MAINTAINING REGISTRATION AFTER INCORPORATION</i>	Send this information to the Registrar: <ul style="list-style-type: none"> - annual financial statements - rule changes (including names) - change of contact details 	Send this information to the Registrar: <ul style="list-style-type: none"> - rule changes (including names) - change of contact details 	Send this information to the Companies Office: <ul style="list-style-type: none"> - annual return - change of contact details - constitution changes
<i>WINDING UP</i>	According to the rules – surplus assets can be distributed amongst members	According to the trust deed – surplus assets must be distributed to other charitable organisations	According to the constitution – surplus assets can be distributed amongst the shareholders

* It is possible for a limited liability company to have charitable status in specific instances

Sample constitutions

6.0 Traditional structure

Preface

1. This is a sample constitution (also called 'Rules') suitable for a national sport organisation with a traditional or federal structure. The rules for a regional sports organisation or a local club might follow a similar structure but will differ in respect of membership and other areas to suit the requirements of those organisations.
2. A traditional or federal structure is typified by a number of independent and separate entities (commonly known as regional, provincial, district or local 'associations'), which work together to form a combined entity. Each entity generally acts autonomously within its specified area and for the benefit of its members.

See comments on the traditional structure in the Commentary on constitution types.

3. The constitution should set out the principles by which the organisation will operate. Details for the day-to-day management of an organisation or the procedures by which the principles are to be implemented can be included in by-laws, regulations or policies.
4. In addition to the constitution an organisation will need to develop appropriate policies, rules and regulations. These will include, without limitation:
 - disciplinary procedures and rules;
 - governance policies;
 - HR policies;
 - anti-doping policy; and
 - selection policy.
5. This example is a starting point. There is always a danger in applying a general example to situations where circumstances may require different rules. You should always seek legal advice to ensure your rules are suitable for your particular requirements.

EXAMPLE OF A CONSTITUTION FOR A TRADITIONAL NATIONAL SPORT ORGANISATION STRUCTURE

[insert name of organisation]

1. DEFINITIONS

AGM means Annual General Meeting.

Chief Executive means the Chief Executive Officer of [name of organisation].

Board means the Board of Directors of [name of organisation].

Board Member means a member of the Board including Elected Board Members and co-opted Board Members.

Elected Board Member means a Board Member elected under Rule 13.3, including an alternate Elected Board Member.

General Meeting means an AGM or SGM.

Member means and includes all classes of members of [name of organisation].

Ordinary Resolution means a resolution passed by a majority of votes cast.

Patron means the person appointed as the patron of [name of organisation].

President means the President of [name of organisation].

Rules means these rules and 'Rule' shall have a corresponding meaning.

SGM means Special General Meeting.

Special Resolution means a resolution passed by two-thirds of votes cast.

[short name of organisation] means [full legal name of organisation] Incorporated.

2. NAME

2.1 The name of the organisation is [] Incorporated ([name of organisation]).

2.2 [name of organisation]'s registered office shall be in [] or such other place as determined by the Board.

Commentary: Select whichever name best fits your organisation. It is a legal requirement that the word 'Incorporated' must be included in the name.

In Rule 2.2 you may leave out reference to a specific place for the registered office and leave this to the board to determine from time to time. This means that changing the registered office would not require a general meeting of the members. Please note that the place of the 'registered office' does not need to be the physical address of the headquarters or office of the organisation, although it usually is.

3. OBJECTS

3.1 The objects of [name of organisation] are:

- a. To promote, develop and foster the sport of [] as an amateur sport for the recreation and entertainment of the general public in New Zealand;
- b. To promote opportunities and facilities to enable, assist and enhance the participation, enjoyment and performance of members in [name of organisation]'s activities;
- c. To represent the interests of [name of organisation] at [];
- d. To promote, develop and co-ordinate competitions for all sport-related activities of [name of organisation];
- e. To affiliate and co-operate with kindred and other organisations, including the international body of [].

Commentary: The objects must be expressed sufficiently widely to cover the purposes for which [name of organisation] is established. An incorporated society can only undertake activities in pursuit of its stated objects or in pursuit of activities which are reasonably incidental to those objects. Object 'a' is required if the organisation wishes to have or retain its tax exempt status as a body promoting amateur sport under the Income Tax Act 2004. An incorporated society can only undertake activities in pursuit of its stated objects or in pursuit of activities that are reasonably incidental to those objects.

4. POWERS

4.1 The Association has the power to:

- a. Make, alter, rescind, enforce by-laws, regulations, policies and procedures for the governance, management and operation of [name of organisation];
- b. Determine, implement and enforce disciplinary disputes and appeal procedures (including drug testing and other policies), conduct hearings and impose sanctions and penalties;
- c. Consider and settle disputes between Members;
- d. Determine who are its Members;
- e. Withdraw, suspend or terminate membership;
- f. Purchase, lease, hire or otherwise acquire, hold, manage, maintain, insure, sell or otherwise deal with property and other rights, privileges and licences;
- g. Control and raise money including borrow, invest, loan or advance monies and secure the payment of such money by way of mortgage or charge over all or part of any of its property and enter into guarantees;
- h. Sell, lease, mortgage, charge or otherwise dispose of any property of [name of organisation] and grant such rights and privileges over such property as it considers appropriate;
- i. Determine, raise and receive money by subscriptions, donations, fees, levies, entry or usage charges, sponsorship, government funding, community funding or otherwise;
- j. Produce, develop, create, license and otherwise exploit, use and protect the intellectual property of [name of organisation];
- k. Enter into, manage and terminate contracts or other arrangements with employees, sponsors, Members and other persons and organisations;
- l. Make, alter, rescind and enforce rules of competition;
- m. Organise and control competitions, events and programmes;
- n. Assign functions to and/or enter into agreements with organisations such as SPARC, the New Zealand Sports Disputes Tribunal and the New Zealand Sports Drug Agency;
- o. Delegate powers of [name of organisation] to any person, Board, committee or sub-committee;
- p. Do any other acts or things which are incidental or conducive to the attainment of the objects of [name of organisation].

Commentary: The powers of the organisation must be comprehensive. If the powers are not sufficiently comprehensive then an action of the organisation, or the board on its behalf, can be challenged as being 'ultra vires' (outside its powers). Even if you do not think your association might need some of the powers set out above, it is usually better to include them just in case

circumstances change or situations arise that require such powers. There is no problem if the powers are not used but there is a major problem if the organisation does not have a power to do something that its members might reasonably want it to do.

5. MEMBERS

- 5.1 The members of [name of organisation] shall be:
- a. District Associations as detailed in Rule 6;
 - b. Life members as detailed in Rule 7;
 - c. Any other category or categories of membership of [name of organisation] determined by the Board from time to time.

6. DISTRICT ASSOCIATIONS

- 6.1 There shall be such numbers of District Associations as determined by the Board. The Board's determination under this Rule may be amended or revoked if a two-thirds majority of those entitled to vote at a special general meeting called for this purpose vote in favour of such amendment or revocation.
- 6.2 Each District may have only one (1) District Association.
- 6.3 Each District Association shall, on request, provide to [name of organisation] a copy of its constitution and any proposed amendments to it. The Board may require a District Association to amend its constitution if it, or any proposed rule within it, is inconsistent or in conflict with the Constitution or regulations, by-laws or policies of [name of organisation].
- 6.4 Each District Association shall maintain a register of its members in the format determined by the Board. Each District Association shall provide its register of members, and all details contained within it, to [name of organisation] as requested from time to time.

Commentary: The above structure is suitable for a national sport organisation (NSO) that has district associations which are members of the NSO. Under this structure local clubs would be members of a district association and not the NSO. It is important to bear in mind that this is not the only structure that is available. Alternative structures such as that described in the unitary model may be appropriate. Each organisation must consider carefully its membership structure and ensure that its rules meet the particular requirements of the organisation. It is likely that each organisation will require its own unique membership categories and rules and the above should be regarded as a guide and example only.

There are a number of different classes of membership, which include:

- (a) ordinary or individual members: most societies will only have one ordinary class of membership;*
- (b) life members: these are generally members of a society that give exceptional service to the society and the members decide by special resolution that life membership should be granted to such a member;*
- (c) honorary members: these are persons who are not members or have possibly been past members who have made a contribution to [name of organisation]; and*
- (d) specific classifications of membership: members may be categorised according to their status, abilities or involvement. For example, a member may be a competitive or non-competitive member.*

Before determining the membership structure you wish to put in place it would be prudent to take some professional advice to ensure that your organisation is structured in the most appropriate and effective manner.

7. LIFE MEMBER

7.1 Life membership may be granted in recognition and appreciation of outstanding service by a person for the benefit of [name of organisation]. Any person may be nominated for life membership of [name of organisation] but must be nominated by a District Association. Such nomination must be made to the Board in writing, setting out the grounds for the nomination. The Board must then determine, in its discretion whether the nomination should be forwarded to a General Meeting for determination by the members. Life membership of such nominee is only obtained by Special Resolution passed at the General Meeting.

8. MEMBER APPLICATIONS, ENTITLEMENTS AND REQUIREMENTS

8.1 An application for membership must be in writing and in such format as may be required by the Board from time to time. All applications for membership will be determined by the Board.

8.2 Members are bound by these Rules and by the regulations, by-laws, policies and procedures of [name of organisation].

8.3 In order to receive or continue to receive membership entitlements, members must meet all requirements of membership set out in these Rules or as otherwise set by the Board, including payment of any membership or other fees within a required time period.

8.4 The failure by a member to comply with Rule 8.3 may result in withdrawal of membership entitlements but shall not excuse such member from being bound by these Rules.

Commentary: Once you have defined the different categories of membership, it is important to set out the general rights and obligations of the categories of membership.

8.5 District Association Members are entitled to:

- a. Participate in [name of organisation]’s activities, subject at all times to complying with any additional requirements that are specified;
- b. Receive notices and papers and be able to attend, speak and exercise [number] vote(s) at [name of organisation]’s General Meetings;
- c. Nominate any person for election as an officer of [name of organisation].

8.6 Life Members are not required to pay any membership fee and they are also entitled to such other benefits (if any) as determined by the Board. Life Members have no voting rights.

8.7 For District Associations the right to attend, speak and vote at General Meetings must be exercised by [number] delegated representatives of the District Association.

8.8 Notification of the identity of the delegates of the District Association must be given to the Board within 10 days prior to the General Meeting.

Commentary: The number of votes the district association has will need to be considered carefully to ensure a democratic and fair representation. In some circumstances a district association may be given a number of votes dependent on the number of individuals who are registered or members of clubs within the District. Alternatively each district association might get one vote only.

The preferred number of votes will depend on the desired representation and system that an organisation wants to have in place. The number of delegates and votes will also need to be matched in the above examples.

9. DURATION OF MEMBERSHIP

- 9.1 A member may resign by notice in writing to the board. Membership may also be withdrawn, suspended or terminated by the board if a member fails to comply with these Rules including any codes of conduct or requirements set out in regulations, by-laws, policies or procedures of [name of organisation] or if a member acts in a manner which is considered by the board to be harmful to [name of organisation] or inconsistent with the standards of behaviour expected of a member.
- 9.2 A member whose membership is withdrawn, suspended or terminated by the Board may apply for the matter to be reviewed by such process as may be specified in any regulations, by-laws, policies or procedures of [name of organisation] or in the absence of any relevant provisions then by a General Meeting of [name of organisation]. If the issue goes to a General Meeting then the decision of the Board shall stand except to the extent it is varied by or overturned by a Special Resolution passed at such a General Meeting.
- 9.3 The Board shall keep a register of members.

Commentary: It is undesirable that there be a right of appeal to a general meeting on termination or suspension of membership. As contemplated above, a separate regulation or by-law should be developed to provide an appeal process for members suspended or terminated under the above rule. This would form part of the general disciplinary and judicial regulations.

10. MEMBERSHIP FEES

- 10.1 The Board shall annually determine:
- a. Any membership or other fees payable by District Associations and any other categories of members;
 - b. The due date for such fees; and
 - c. The manner for payment of such fees.
- 10.2 District Associations shall annually determine membership and other fees for their members. The Board may investigate and, if it considers appropriate, request the District Association to alter the nature and/or amount of any fees.

Commentary: Depending on the structure of the organisation, fees may be set not by district associations but by the national organisation. They may also be paid direct to the national association. Again, this will be dependent on the structure that is most suitable in any given circumstance.

11. OFFICERS OF THE ASSOCIATION

- 11.1 The officers of [name of organisation] shall be:
- a. the Patron;
 - b. the President.
- 11.2 The Patron shall be invited by the Board to be the Patron. The Patron shall be entitled to attend and speak at General Meetings but shall have no right to vote.
- 11.3 The President shall be elected annually at the General Meeting in accordance with Rule 13.3. The President shall hold office for one (1) year until the conclusion of each AGM. The President may be re-elected for further subsequent and consecutive terms of office.

- 11.4 Nominations for the President shall be made in the same manner and at the same time as nominations for Elected Board Members under Rule 13.3b.
- 11.5 The President may attend board meetings if requested by the Board and shall be entitled to speak at such meetings, but shall have no right to vote. The President shall be entitled to attend, speak and vote at General Meetings.

Commentary: The role of the president, the patron and any other officers of your organisation you may wish to appoint can be set out in more detail. The association should decide whether the President will also be a member of the Board with the full rights of a board member as well as having an additional role as president. You will see in this example the president may be invited to attend board meetings but does not have a role on the board or the right to vote. The association can decide whether they want a president at all and, if so, the extent of the President's role.

There are also many other roles that your organisation may wish to fill, such as secretary, treasurer, auditor, etc but these positions are commonly not elected at AGMs. The obligations related to these normally fall on the board. The board can deal with these matters itself, delegate to a committee or appoint other suitable persons.

12. GENERAL MEETINGS

- 12.1 The Association must hold an Annual General Meeting (AGM) once every year at such time, date and place as the Board determines but not more than 15 months after the last AGM.
- 12.2 The Board must give members at least 30 days' written notice of General Meetings. The notice can be given by such methods as the Board may determine.
- 12.3 Full minutes shall be kept of all General Meetings and made available upon request by members.
- 12.4 Any irregularity, error or omission in notices, agendas and relevant papers of General Meetings or the omission to give notice within the required time frame or the omission to give notice to all Members and any other error in the organisation of the meeting shall not invalidate the meeting nor prevent the meeting from considering the business of the meeting provided that:
- The chairperson in his or her discretion determines that it is still appropriate for the meeting to proceed despite the irregularity, error or omission;
 - A motion to proceed is put to the meeting and a majority of two-thirds of votes cast is obtained in favour of the motion to proceed.

Purpose of AGM

- 12.5 The AGM shall be called for the following purposes:
- To receive from the Board a report and audited statement of financial position and statement of financial performance for the proceeding year;
 - To elect the officers of [name of organisation] for the ensuing year;
 - To decide on any motion which has been properly submitted to the Board for consideration at the AGM.

Special General Meetings

- 12.6 The Board must call a Special General Meeting (SGM) upon a written request from:
- a. The Board itself; or
 - b. Such members as are entitled to exercise one-third or more of the voting rights of [name of organisation]; or
 - c. A Member or former Member who, in the absence of other available procedures, is seeking a review of a decision of the Board in relation to withdrawal, termination or suspension of such Member or former Member.
- 12.7 The written request for an SGM must state the purpose for which the SGM is requested.
- 12.8 The SGM must only deal with the business for which the SGM is requested.
- 12.9 The notice requirements for the SGM are the same as for General Meetings unless the Board in its discretion determines that the nature of the SGM business is of such urgency that a shorter period of notice is to be given to Members.

Commentary: You should consider carefully who may call and how many members are required to call for an SGM.

Quorum

- 12.10 A quorum for a General Meeting is obtained by the presence of those persons who are entitled to exercise half of the voting rights in [name of organisation].
- 12.11 If a quorum is not obtained within half an hour of the intended commencement time of the General Meeting, then the General Meeting shall be adjourned to such other day, time and place as determined by the Board and if no quorum is obtained at the stage of such further General Meeting, then the Members present at that further General Meeting are deemed to constitute a valid quorum.

Control of General Meetings and Voting

- 12.12 The President of [name of organisation] shall preside at the General Meeting. If the President is unavailable then the chairperson of the Board shall preside and in the absence of both of those persons, then the Members present shall elect a person present to be the chairperson of the General Meeting.

Commentary: A president who is not a member of the board (but who is able to attend board meetings) is often a good person to chair a general meeting because some members may have searching questions of the board and, in such cases, a president who is not a board member may be in a better position to ensure good control of the meeting. It depends entirely upon the extent of the role of your president.

- 12.13 Unless otherwise required by these rules:
- a. An Ordinary Resolution shall be sufficient to pass a resolution;
 - b. Individual Members shall have one vote;
 - c. District Associations shall have the number of votes conferred upon them by Rule 8.5b;
 - d. Voting shall generally be conducted by voices or by show of hands as determined by the chairperson of the meeting unless a secret ballot is called for and approved by Ordinary Resolution;

- e. Elections of officers at an AGM must be undertaken by secret ballot except where:
 - i. There are the same number of nominations as positions available; or
 - ii. There are insufficient nominations for officers and after calling for further nominations at the AGM there are still insufficient or the same number of nominations for positions available. Then those persons who have been nominated shall be declared elected.
- f. Proxy votes and postal votes are not permitted;
- g. In the event of inequality of votes, the chairperson shall have an additional or casting vote;
- h. In the event that a secret ballot is called, two scrutineers must be appointed at the General Meeting to count the votes.

13. BOARD

Role of the Board

- 13.1 The governance and management of [name of organisation] shall be vested in the Board, which may exercise all the powers of [name of organisation] and do all things which are not expressly required to be undertaken by [name of organisation] at a General Meeting.

Membership of the Board

- 13.2 Members of the Board shall be:
- a. [x number] persons elected by the AGM under Rule 13.3a (Elected Board Members);
 - b. In addition, the Elected Board Members may co-opt up to [number] members to the Board under Rule 13.3c.

Election/Appointment of the Board

- 13.3 Members of the Board shall be elected or appointed as follows:
- a. The Elected Board Members and the President shall be elected by a majority of members entitled to vote at an AGM following nomination by at least one District Association or the Board.
 - b. Nominations for Elected Board Members and the President may be made by the District Associations and the board and shall be in the approved form and received at the registered office of [name of organisation] not less than 10 days before the date set for the AGM.
 - c. Co-opted Board Members may be appointed at any time by the Board.
 - d. In appointing any co-opted Board Member the Board shall call for written applications. The Board may advertise publicly or invite applications for the positions of co-opted Board Members. Applications must be received at the registered office of [name of organisation] by the date specified in the advertisement or notice calling for applications. The Chief Executive Officer shall forward all applications for co-opted Board Members to the Board for their consideration.

Commentary: Rule 13 will need to be carefully reviewed to ensure that it is consistent with the exact extent of the role that you specify for your President and that it is consistent with whatever you say in Rules 11 and 12. Be very careful and seek legal advice to avoid problems which might occur through inconsistent wording.

Term of Office of Board Members

- 13.4 Subject to Rule 13.8 the term of office for all Elected Board Members shall be two years, expiring on conclusion of the relevant AGM. An Elected Board Member may be re-elected to the Board for a maximum of two subsequent and consecutive terms of office. The election of Elected Board Members shall be rotated so that three Board Members are elected in one year and two the next to ensure continuity of some Elected Board Members on the Board.
- 13.5 The term of office for co-opted Board Members shall be the period from their appointment until the conclusion of the first AGM following such appointment. A co-opted Board Member may be reappointed to the Board for further terms of office.

Commentary: It will be necessary to include a provision that deals with the initial make-up of the board upon adoption of the constitution. You may also like to include a rule that deals with the rotation of board members contemplated by Rule 13.4 so that the process is clear. Rotation ensures not all board members are up for re-election at once, thereby preserving some continuity.

Vacancies on the Board

- 13.6 In the event that there is a vacancy on the Board, the remaining Board Members may appoint a person of their choice to fill the vacancy or the Board may leave the vacancy unfilled until the next AGM.
- 13.7 The term of office for a person appointed as a Board Member to fill a vacancy under Rule 13.6 shall expire at the conclusion of the AGM following their appointment. Thereafter the vacancy shall be determined in accordance with this Constitution.

Removal of Board Member

- 13.8 The members in an SGM called for this purpose may, by Special Resolution, remove any Board Member before the expiration of their term of office.
- 13.9 Where the removed Board Member in Rule 13.8 was a co-opted Board Member, the Board shall appoint another person in their place to hold office until the expiration of the term of the Board Member which he or she is replacing. Where that removed Board Member was an Elected Board Member the vacancy shall be filled in accordance with Rule 13.6.
- 13.10 Upon the Chief Executive Officer receiving a request for an SGM for the purpose of removing a Board Member, the Chief Executive shall send the notice to the Board Member concerned in addition to the Members in accordance with Rule 12.2.
- 13.11 Following notification under Rule 12.2 and before voting on the resolution to remove a Board Member, the Board Member affected by the proposed resolution shall be given the opportunity prior to and at the SGM to make submissions in writing and/or verbally to the Board and the Members about the proposed resolution.

Board Meetings and Duties of the Board

- 13.12 At its first meeting following the AGM, the Board must elect a chairperson and deputy chairperson.
- 13.13 The role of a chairperson is to chair meetings of the Board and to represent the Board. In the event of the unavailability of a chairperson for any reason, then the deputy chairperson shall undertake the chairperson's role during the period of unavailability.

- 13.14 The duty of each Board Member is to pursue the objects of [name of organisation] and to exercise the powers of [name of organisation] for fulfilment of the objects and in so doing a Board Member must:
- a. Regularly attend Board meetings and General Meetings of [name of organisation];
 - b. Provide good governance for [name of organisation];
 - c. Regularly monitor and review the performance for [name of organisation];
 - d. Act in the best interests of [name of organisation] at all times;
 - e. Formulate such by-laws, regulations, policies and procedures as are appropriate for [name of organisation];
 - f. Where appropriate, engage in activities to promote, market, represent and fundraise for [name of organisation];
 - g. Do such other things within these rules as the Board agrees to promote the objects of [name of organisation].
- 13.15 Board meetings may be called at any time by the chairperson but generally the Board shall meet at regular intervals agreed by the Board.
- 13.16 Except to the extent specified in these rules, the Board shall regulate its own procedure.
- 13.17 The quorum for a Board meeting shall be two-thirds of the Members of the Board.
- 13.18 Each Board Member shall have one vote. In the event of a deadlock, the chairperson shall have an additional casting vote. Voting shall be by voices or upon request of any Board Member by a show of hands or by a ballot. Proxy and postal voting are not permitted.
- 13.19 A resolution in writing, signed or consented to by e-mail, facsimile or other forms of visible or other electronic communication by a majority of the Board shall be valid as if it had been passed at a meeting of the Board. Any such resolution may consist of several documents in the same form each signed by one or more Members of the Board.
- 13.20 Any Board Member may participate in any meeting of the Board and vote on any proposed resolution at a meeting of the Board without being physically present. This may only occur at meetings by telephone, through video conferencing facilities or by other means of electronic communication provided that prior notice of the meeting is given to all Board Members and all persons participating in the meeting are able to hear each other effectively and simultaneously. Participation by a Board Member in this manner at a meeting shall constitute the presence of that Board Member at that meeting.

Commentary: These clauses allow a board to deal with urgent business by written resolution and allow people who cannot physically be at the meeting to still participate.

- 13.21 The Board may, by majority vote, reimburse its Board Members for their actual and reasonable expenses incurred in the conduct of [name of organisation]'s business. Prior to doing so the Board must establish a policy to be applied to any question of reimbursement.
- 13.22 If any situation arises which, in the opinion of the Board, is not provided for in the Rules, regulations, by-laws or policies of [name of organisation], the matter will be determined by the Board.

14. CHIEF EXECUTIVE

- 14.1 There shall be a Chief Executive of [name of organisation] who shall be employed for such term and on such conditions as the Board may determine.
- 14.2 The Chief Executive shall be under the direction of the Board and shall be responsible for the day-to-day management of the affairs of [name of organisation] in accordance with the Rules, regulations, by-laws, policies and procedures of [name of organisation] and within such constraints as may be imposed by the Board.
- 14.3 The Chief Executive may attend Board meetings on and when required by the Board but will have no voting rights.

Commentary: If you do not have a CEO, or do not wish to be required to always have a CEO, then amend this clause as appropriate.

15. FINANCES

- 15.1 Unless otherwise determined by the Board the financial year of [name of organisation] shall end on the [] day of [] each year.
- 15.2 Statements of financial position and financial performance shall be audited each year and the audited accounts shall be submitted to the AGM. The auditors shall be appointed at each AGM.
- 15.3 The Board is responsible for the receipt and banking of all monies received by [name of organisation]. All funds of [name of organisation] shall be paid to a bank account in the name of [name of organisation] and the bank account must be operated in accordance with the policy determined by the Board.
- 15.4 The Board must ensure correct accounting records are kept. The accounting records of [name of organisation] must be kept at the office of [name of organisation] or at such place as the Board may determine and must be open to inspection by members at such reasonable times as agreed by the Board.

16. COMMON SEAL

- 16.1 The common seal of [name of organisation] shall be kept in the control of the Board any may be affixed to any document only by resolution of the Board and in the presence of and with the accompanying signatures of the chairperson and the deputy chairperson, and in the absence of either of those then by another Board Member.

Commentary: The common seal is only required by the Incorporated Societies Act to be affixed to a deed. Deeds are generally legal documents which confer a benefit on a party to the deed without requiring payment from the other party. The common seal is not required in respect of agreements as they can be properly signed by authorised representatives of the organisation.

The three following rules are required by IRD as a pre-condition to approving any application by an association for exemption from income tax. The income of any association established mainly to promote any amateur game or sport for the recreation or entertainment of the general public is exempt from income tax. This is a valuable status for an association to achieve and accordingly your rules should cover the required aspects from the start because if they do not then IRD will not give a letter of confirmation of tax exempt status until the rules have changed. To avoid the burden of holding a general meeting to change the rules, it is important to include these rules from the outset.

17. ALTERATIONS OF RULES

- 17.1 These Rules may only be altered, added to or rescinded by a special resolution passed at a General Meeting.
- 17.2 No alteration, addition to or revision of the rules shall be approved if it affects the not-for-profit objects, personal benefit prohibition or the winding-up rules of [name of organisation]. This Rule 17.2 must not be removed from these Rules and must be included in any alteration of, addition to or revision of these Rules.

18. PROHIBITION ON PERSONAL BENEFITS

- 18.1 No member or person associated with a member may participate in or materially influence any decisions by [name of organisation] in respect of payment to or on behalf of that member or associated person of any income, benefit or advantage.
- 18.2 Any such income paid or benefit or advantage conferred must be reasonable and relative to that which would be received in an arm's length transaction (being the open market value). This provision and its effect must not be removed from these Rules and must be included in any alteration of, addition to or revision of these Rules.

19. WINDING UP

- 19.1 The Association must be wound up if [name of organisation], at a General Meeting of its members, passes a Special Resolution requiring [name of organisation] to be wound up and the resolution is confirmed by similar majority at a subsequent General Meeting called for that purpose and held not earlier than 60 days after the date on which the resolution so to be confirmed is passed.
- 19.2 If upon the winding-up or dissolution of [name of organisation] there remains after the satisfaction of all its debts and liabilities any property whatsoever, the property shall not be paid to or distributed among the members of [name of organisation] but shall be given or transferred to some other Association, organisation or body having objects similar to the objects of [name of organisation], or to some other charitable organisation or purpose within New Zealand.

20. INDEMNITY

- 20.1 The Association shall indemnify every member of the Board, the Chief Executive and other officers and employees of [name of organisation] in respect of all liability arising from the proper performance of their functions connected with [name of organisation].

Commentary: The board may wish to consider the use of specific indemnity insurance for its trustees. Specialist advice on the suitability and extent of particular forms of cover is advised. Any form of insurance can be breached by behaviour that is contrary to prevailing legislation. The legal obligations of trustees should be made clear in the induction process and through subsequent training for inexperienced trustees.

7.0 Unitary structure

Preface

1. This is a sample constitution (also called 'Rules') suitable for a national sport organisation wishing to have a structure based on a unitary model.
2. A unitary structure, in its purest form, has one body responsible for the sport as a whole. Generally this means that the national body has responsibility for the sport at all levels of the game including nationally, regionally and locally. Clubs and players are the members of the national body and there are no traditional provincial and association level bodies. The sport is managed at regional and local level by regional and local committees and/or staff employed by the national body. These regional and/or local committees report to and are delegated responsibility by the board. This allows for one strategic plan, clear pathways within the sport, programmes across the sport, uniform and consistent planning, communication and processes, and the effective use of resources and systems. For further discussion see Commentary on constitution types for national sport organisations.
3. Adoption of the unitary structure will require fundamental change for a sport which currently has a traditional structure. Such change may not come easily for some sports, due to the existing voting entitlements, and political and other factors associated with the change. Some sports elect to retain a regional and/or association level within the sport. This may result in existing association/local level bodies being removed but a regional or provincial layer, being inserted. This variation is sometimes described as a 'regional model'. The national membership features and other features of the unitary model can be retained in a regional model. This sample constitution would need to be adapted substantially to reflect a regional model, and legal advice should be sought for this purpose.
4. As with a constitution for a traditional structure, the constitution should set out the principles on which the organisation will operate. Details for the day-to-day management of an organisation or the procedures by which the principles are to be implemented can be included in by-laws, regulations or policies.
5. In addition to the constitution, an organisation will need to develop appropriate policies, rules and regulations. These will include, without limitation:
 - disciplinary procedures and rules;
 - governance policies;
 - HR policies;
 - anti-doping policy;
 - member protection policy; and
 - selection policy.
6. This example is a starting point. There is always a danger in applying a general example to situations where circumstances may require different rules. You should always seek legal advice to ensure your rules are suitable for your particular requirements.

EXAMPLE OF A CONSTITUTION FOR A UNITARY STRUCTURE

[insert name of organisation]

1. DEFINITIONS

AGM means Annual General Meeting.

Appointed Board Member means a director appointed under Rule 15.3.

Chief Executive means the Chief Executive Officer of [name of organisation].

Board means the Board of Directors of [name of organisation].

Board Member means a member of the Board including Elected Board Members and Appointed Board Members.

Elected Board Member means a Board Member elected under Rule 15.3, including an alternate Elected Board Member.

General Meeting means an AGM or SGM.

Member means and includes all classes of members of [name of organisation] as specified in Rule 6.

Ordinary Resolution means a resolution passed by a majority of votes cast.

Patron means the person appointed as the patron of [name of organisation].

President means the President of [name of organisation].

Region means a geographical area of New Zealand as determined by the Board in which a Regional Committee has certain powers and authority as specified in these Rules, and 'Regions' has the same meaning.

Regional Committee means a committee established by [name of organisation] and to which certain powers and functions of [name of organisation] are delegated under Rule 5.

Rules means these rules and 'Rule' shall have a corresponding meaning.

SGM means Special General Meeting.

Special Resolution means a resolution passed by two-thirds of votes cast.

[short name of organisation] means [full legal name of organisation] Incorporated.

2. NAME

2.1 The name of the incorporated society is [] Incorporated ([name of organisation]).

2.2 [name of organisation]'s registered office shall be in [] or such other place as determined by the Board.

Commentary: Select whichever name best fits your organisation. If you adopt a unitary model, you may wish to rename your organisation to better fit the role the organisation will play across the whole of the sport in New Zealand. It is a legal requirement that the word "Incorporated" must be included in the name.

In Rule 2.2 you may leave out reference to a specific place for the registered office and leave this to the board to determine from time to time. This means changing the registered office would not require a general meeting of the members. Please note that the place of the 'registered office' does not need to be the physical address of the headquarters or office of the organisation, although it usually is.

3. OBJECTS

3.1 The objects of [name of organisation] are to:

- a. Be the national body in New Zealand to promote, develop, enhance and protect the sport of [sport] as an amateur sport for the recreation and entertainment of the general public in New Zealand;
- b. Develop opportunities, programmes and facilities to enable, encourage and enhance the participation, enjoyment and performance of members in the [sport] in New Zealand and in the [name of organisation]'s activities;
- c. Establish, promote and stage international, national, regional and other [sport] competitions and events in New Zealand including determining the rules for such competitions and events;
- d. Seek and promote the membership of [name of organisation] and its members;
- e. Determine, publish and enforce the rules of [sport];
- f. Be the member representing New Zealand on [name of international federation] and to liaise with national organisations for [sport] internationally;
- g. Encourage and promote [sport] as an activity which promotes the health and safety of all participants, including one which respects the principles of fair play and is free from performance-enhancing drugs;
- h. Give and seek recognition for members to obtain awards or public recognition for their services to [sport];
- i. Act in good faith and loyalty with its Members to ensure the maintenance and enhancement of [sport] in New Zealand including its standards, quality and its reputation for the collective and mutual benefit of [name of organisation] and its Members;
- j. Seek, maintain and enhance the reputation of [sport] through the development of rules, standards and practices which fulfil these objects;
- k. Promote mutual trust and confidence between [name of organisation] and its Members and at all times to act on behalf, and in the interests, of the Members and [sport] in New Zealand.

Commentary: The objects set out why the organisation exists and its purposes. They must be expressed sufficiently widely to cover the purposes for which the organisation is established. Object 'a' is required if the organisation wishes to have or retain its tax exempt status as a body promoting amateur sport under the Income Tax Act 2004. An incorporated society can only undertake activities in pursuit of its stated objects or in pursuit of activities that are reasonably incidental to those objects. There may be additional objects that need to be added to reflect the particular nature of your sport/game.

4. POWERS

4.1 [name of organisation] has the power to:

- a. Make, alter, rescind, enforce these Rules, by-laws, regulations, policies and procedures for the governance, management and operation of [name of organisation];
- b. Determine, implement and enforce disciplinary, disputes and appeal rules, policies and procedures including sanctions and penalties and anti-doping, conduct and other rules, policies and procedures applicable to its Members;
- c. Determine who are its Members including withdrawing, suspending or terminating membership;

- d. Purchase, lease, hire or otherwise acquire, hold, manage, maintain, insure, sell or otherwise deal with property and other rights, privileges and licences;
- e. Control and raise money including borrow, invest, loan or advance monies and secure the payment of such money by way of mortgage or charge over all or part of any of its property and enter into guarantees;
- f. Sell, lease, mortgage, charge or otherwise dispose of any property of [name of organisation] and grant such rights and privileges over such property as it considers appropriate;
- g. Determine, raise and receive money by subscriptions, donations, fees, levies, entry or usage charges, sponsorship, government funding, community funding or otherwise;
- h. Produce, develop, create, license and otherwise exploit, use and protect the intellectual property of [name of organisation];
- i. Enter into, manage and terminate contracts or other arrangements with employees, sponsors, members and other persons and organisations;
- j. Make, alter, rescind and enforce rules of competition;
- k. Organise and control competitions, events and programmes;
- l. Select national and other representative [sport] [athletes/squads, teams];
- m. Assign functions to and/or enter into agreements with organisations such as SPARC, the New Zealand Sports Disputes Tribunal and the New Zealand Sports Drug Agency;
- n. Delegate powers of [name of organisation] to any person, Board, committee or sub-committee;
- o. Establish, maintain and have an interest in corporate or other entities to carry on and conduct all or any part of the affairs of [name of organisation] and for that purpose to utilise any of the assets of or held on behalf of [name of organisation];
- p. Purchase or otherwise acquire all or any part of the property, assets and liabilities of any one or more companies, institutions, incorporated societies or organisations whose activities or objects are similar to those of [name of organisation] or with which [name of organisation] is authorised to amalgamate or generally for any purpose designed to benefit the [sport] in New Zealand;
- q. Do any other acts or things which are incidental or conducive to the attainment of the objects of [name of organisation].

Commentary: The powers of the organisation must be comprehensive. If the powers are not sufficiently comprehensive then an action of the organisation, or the Board on its behalf, can be challenged as being 'ultra vires' (outside its powers). Even if you do not think the organisation might need some of the powers set out above, it is usually better to include them just in case circumstances change or situations arise that require such powers. There is no problem if the powers are not used but there is a major problem if the organisation does not have a power to do something that its members might reasonably want it to do.

5. REGIONAL COMMITTEES

- 5.1 There shall be a Regional Committee established by the Board in each Region.
- 5.2 Each Regional Committee is delegated the responsibility by the Board for ensuring the efficient administration of [sport] in the Regional Committee's Region strictly in accordance with these Rules and any directives from the Board. Such delegation shall not be deemed to derogate or diminish or lessen in anyway the absolute authority of [name of organisation] in respect of [sport] in New Zealand, which authority shall be subject only to [name of international sports federation]. Such delegation may be revoked or varied at any time by written notice from the Board.
- 5.3 The composition, operation, duties and functions of each Regional Committee shall be in accordance with these Rules and as determined by the Board from time to time in consultation with Regional Committees and as prescribed in the regulations.
- 5.4 Each Regional Committee must:
- a. At all times act for and on behalf of the interests of [name of organisation], the Members and [sport];
 - b. Elect an Elected Board Member and an alternate Elected Board Member;
 - c. Comply with all reasonable directions of the Board;
 - d. Do all that is reasonably necessary to enable the objects to be achieved;
 - e. Act in good faith and loyalty to ensure the maintenance and enhancement of [name of organisation] and [sport], its standards, quality and reputation for the collective and mutual benefit of the Members and [sport];
 - f. Make full and proper disclosure to the Board of all matters of importance to the Regional Committee, [name of organisation] and [sport];
 - g. Not acquire a private advantage at the expense of any of [name of organisation] or other Regional Committee or [sport];
 - h. Operate with mutual trust and confidence in pursuit of the objects.

6. MEMBERS

- 6.1 The Members of [name of organisation] shall be:
- a. Member Clubs as detailed in Rule 7;
 - b. Individual Members as detailed in Rule 8;
 - c. Life Members as detailed in Rule 9;
 - d. Any other category or categories of membership of [name of organisation] determined by the Board from time to time.

7. MEMBER CLUBS

- 7.1 Each club which is a member of [insert name of existing member] as at the date these Rules come into force shall be deemed to be a Member Club, provided that it complies with Rule 10.
- 7.2 A group of Individual Members who wish to form a Member Club shall apply to the Board with the support of the Board of the Regional Committee of that Region. Such application shall be determined by the Board in accordance with the regulations.
- 7.3 Each Member Club shall, on request, provide to [name of organisation] a copy of its Constitution and any proposed amendments to it. The Board may require a Member Club to amend its Constitution if it, or any proposed rule within it, is inconsistent or in conflict with the Constitution or regulations, by-laws or policies of [name of organisation].

- 7.4 Each Member Club shall maintain a register of its members in the format determined by the Board. Each Member Club shall provide its register of members and all details contained within it, to [name of organisation] as requested from time to time.
- 7.5 In addition to the obligations as a Member (Rule 10), each Member Club must:
- a. Administer, promote and develop the [sport] in the Club in accordance with the objects of [name of organisation];
 - b. Be an incorporated society under the Incorporated Societies Act 1908;
 - c. Have as its members Individual Members and any other members it considers appropriate provided that such membership is consistent with these Rules;
 - d. Appoint a delegate to represent the Member Club at Regional Committee meetings;
 - e. Have rules which are consistent with these Rules;
 - f. Act in good faith and loyalty with [name of organisation], its Regional Committee and its members to ensure the maintenance and enhancement of [sport] for the collective and mutual benefit of [name of organisation], its Regional Committee, the Member Club and their respective members;
 - g. Promote mutual trust and confidence between [name of organisation], the Regional Committee and the Member Club and their respective Members and at all times act on behalf of, and in the interests of, its members.

Commentary: The above is designed for a unitary structure as described in the commentary. It should not be used for a traditional structure. It does not have a local or district level, commonly known as 'associations' and instead suggests a layer at club level only. This needs to be considered carefully and adapted to suit your sport. Before determining the structure you wish to put in place it would be prudent to take some professional advice to ensure that your organisation is structured in the most appropriate and effective manner. Additional rules may also need to be inserted if the organisation has existing organisations at regional, provincial, local and/or club level which need to be reconstituted and/or which may not be recognised after a period of time of transition to the unitary type of structure.

8. INDIVIDUAL MEMBERS

- 8.1 Every person who is one of the following shall be an Individual Member of [name of the organisation] upon satisfying any requirements applicable to them in Rule 8.2:
- a. **Club Member:** a person who is a Member of a Member Club;
 - b. **Participant:** a person who is registered or entered to play, umpire, officiate, coach, or manage a team in a competition or event held by or under the auspices of [name of organisation], a Regional Committee or a Member Club provided that such membership is limited to the period of the competition or event, unless specified otherwise in the registration or entry requirements;
 - c. **Board Member:** a person who is a member of the Board of [name of organisation] or a member of a Regional Committee or the executive committee or equivalent of a Member Club;
 - d. **Official:** any person who is appointed or elected to any position of responsibility within [name of organisation], a Regional Committee or a Member Club but who is not an employee (for example selectors, examiners, competition manager, technical personnel);

- e. **Other:** any other person who agrees in writing to be a Member of [name of organisation].
- 8.2 An individual in Rule 8.1 will become an Individual Member upon satisfaction of the following:
- a. **Club Member:** upon completion of the prescribed [name of organisation's] membership form and payment of any club fees due to the Club by the date specified by the Club;
 - b. **Participant:** upon completion of any entry requirements or acceptance, in writing, of any terms of the competition or event and payment of any fees to [name of organisation], a Regional Committee or a Member Club or any person or entity authorised by them;
 - c. **Board Members:** upon appointment to the Board or the Regional Committee or to the Board or equivalent committee of a Member Club;
 - d. **Officials:** upon appointment to such position by [name of organisation], a Regional Committee or a Member Club;
 - e. **Other:** upon satisfaction of any terms of the agreement to become a Member.

Commentary: The above categories are designed for a unitary structure as described in the commentary. Individual members are, in effect, deemed to be members of both the club they choose to join as well as the national body by virtue of either joining the club or participating in the sport/game. The participant category is intended to capture the 'casual' participant as well as volunteers and officials, who traditionally are not usually captured in any member category. It is suggested that these participants should not be required to complete a membership form, but simply be required to agree to the terms of the competition (which should refer to the fact that the entry deems the person to be a member of the club and national body for the period of the competition).

9. LIFE MEMBER

- 9.1 Life membership may be granted in recognition and appreciation of outstanding service by a person for the benefit of [name of organisation]. Any person may be nominated for life membership of [name of organisation] but must be nominated by a Regional Committee. Such nomination must be made to the Board in writing setting out the grounds for the nomination. The Board must then determine in its discretion as to whether the nomination should be forwarded to a General Meeting for determination by the Members. Life membership of such nominee is only obtained by Special Resolution passed at the General Meeting.

10. MEMBER APPLICATIONS, ENTITLEMENTS AND REQUIREMENTS

- 10.1 All Members are bound by these Rules, the regulations, by-laws, policies and procedures of [name of organisation].
- 10.2 In order to receive or continue to receive membership entitlements, Members must meet all requirements of membership set out in these Rules or as otherwise set by the Board including payment of any membership or other fees within a required time period.
- 10.3 The failure by a Member to comply with Rule 10.2 may result in withdrawal of membership entitlements as determined by the Board but shall not excuse such Member from being bound by these Rules.

- 10.4 Member Clubs are entitled to:
- a. Participate in [name of organisation]'s and their Regional Committee's activities subject at all times to being eligible for, and complying with, the terms and conditions of such activities;
 - b. Receive notices and papers and be able to attend (at their cost), speak and vote at Regional Committee meetings via a delegated representative and in accordance with the regulations. Member Clubs have no right to attend, speak or vote at General Meetings of [name of organisation].
- 10.5 Life Members are not required to pay any membership fee and they are also entitled to such other benefits (if any) as determined by the Board. Life Members may attend and speak at General Meetings but shall have no voting rights.

Commentary: Under a unitary structure only the board directors, some of which are elected by the regional committees, have the right to vote at general meetings. Member clubs' delegates are entitled to be given notice of, attend and vote at meetings of their regional committee.

This 'de-powering' of the traditional AGM can present a significant challenge to the membership. The change will need to be communicated carefully.

11. DURATION OF MEMBERSHIP

- 11.1 A Member may resign by notice in writing to the Board.
- 11.2 Membership may also be withdrawn, suspended or terminated by the Board if a Member fails to comply with these Rules including any codes of conduct or requirements set out in regulations, by-laws, policies or procedures of [name of organisation] or if a Member acts in manner which is considered by the Board to be harmful to [name of organisation] or inconsistent with the standards of behaviour expected of a Member.
- 11.3 A Member whose membership is withdrawn, suspended or terminated by the Board shall not be entitled to any right or privilege of a Member, but shall not excuse the Member from being bound by these Rules. Any such Member may apply for the matter to be reviewed by such process as may be specified in any regulations, by-laws, policies or procedures of [name of organisation] or in the absence of any relevant provisions then by a General Meeting of [name of organisation]. If the issue goes to a General Meeting then the decision of the Board shall stand except to the extent it is varied by or overturned by a Special Resolution passed at such a General Meeting.
- 11.4 If an Individual Member resigns from their Member Club or has their membership withdrawn, suspended or terminated by their Member Club, then provided that such withdrawal, suspension or termination occurred in accordance with the relevant rules, regulations, by-laws, policies or procedures of the Member Club, the Individual member shall also be deemed to have their membership of the [name of organisation], withdrawn, suspended or terminated with effect from the same date.
- 11.5 The Board shall keep a register of its Members.

Commentary: It is undesirable that there be a right of appeal to a general meeting on termination or suspension of membership. As contemplated above a separate regulation or by-law should be developed to provide an appeal process for members suspended or terminated under the above rule. This would form part of the general disciplinary and judicial regulations.

12. MEMBERSHIP FEES

- 12.1 The Board shall annually determine:
- a. Any membership or other fees payable by Member Clubs;
 - b. Any membership or other fees payable by Members at competitions, events and activities held by or under the auspices of [name of organisation];
 - c. The due date for such fees;
 - d. The manner for payment of such fees.
- 12.2 Member Clubs shall annually determine membership and other fees for their members including any fees payable for competitions, events and activities held by or under their auspices. The Board may investigate, and if it considers appropriate, request a Member Club to alter the nature and/or amount of any such fees.

Commentary: Under a unitary structure the nature and amount of fees is determined by the national organisation for national events only. This includes both membership fees and other fees for entry to events, etc. The board also determines the fees for member clubs but member clubs may continue to determine their fees for their members. However it is suggested that the board retain the right to require a member club to alter their fees if they are unreasonable and contrary to the interest of the sport/game.

13. OFFICERS OF THE ASSOCIATION

- 13.1 The officers of [name of organisation] shall be:
- a. The Patron;
 - b. The President.
- 13.2 The Patron shall be invited by the Board to be the Patron. The Patron shall be entitled to attend and speak at General Meetings but shall have no right to vote.
- 13.3 The President shall be elected annually at the General Meeting in accordance with Rule 15.3. The President shall hold office for one (1) year until the conclusion of each AGM. The President may be re-elected for further subsequent and consecutive terms of office.
- 13.4 Nominations for the President shall be made in the same manner and at the same time as nominations for Elected Board Members under Rule 15.3b.
- 13.5 The President may attend Board Meetings if requested by the Board and shall be entitled to speak at such meetings, but shall have no right to vote. The President shall be entitled to attend, speak and vote at General Meetings.

Commentary: The role of the president, the patron and any other officers can be set out in more detail in the rules or in supporting regulations. Under the unitary model it is suggested that if a president is to be retained, it be should a figurehead or titular role. You will see in this example that the president may be invited to attend board meetings but does not have a role on the board or the right to vote. The organisation can decide whether they want a president at all and, if so, the extent of the president's role.

14. GENERAL MEETINGS

- 14.1 [name of organisation] must hold an Annual General Meeting (AGM) once every year at such time, date and place as the Board determines but not more than 15 months after the last AGM.
- 14.2 The Chief Executive must give all Directors and the President at least 30 days' written notice of General Meetings. The notice can be given by such methods

as the Board may determine including by email, facsimile, post or other written communication. In addition the chairpersons and secretaries of each Regional Committee shall be given a copy of such notices.

- 14.3 Full minutes shall be kept of all General Meetings and made available upon request by Members.
- 14.4 Any irregularity, error or omission in notices, agendas and relevant papers of General Meetings or the omission to give notice within the required time frame or the omission to give notice as specified in Rule 14.2 and any other error in the organisation of the meeting shall not invalidate the meeting nor prevent the meeting from considering the business of the meeting provided that:
- a. The chairperson in his or her discretion determines that it is still appropriate for the meeting to proceed despite the irregularity, error or omission;
 - b. A motion to proceed is put to the meeting and a majority of two-thirds of votes cast is obtained in favour of the motion to proceed.

Purpose of AGM

- 14.5 The AGM shall be called for the following purposes:
- a. To receive from the Board a report and audited statement of financial position and statement of financial performance for the proceeding year;
 - b. To elect the Elected Board Members of [name of organisation] for the ensuing year;
 - c. To decide on any motion which has been properly submitted to the Board for consideration at the AGM.

Special General Meetings

- 14.6 The Board must call a Special General Meeting (SGM) upon a written request from:
- a. The Board itself; or
 - b. A Board Member;
 - c. [number] or more Member Clubs;
 - d. A Member or former Member of [name of organisation] who, in the absence of other available procedures, is seeking a review of a decision of the Board in relation to withdrawal, termination or suspension of such Member or former Member.
- 14.7 The written request for an SGM must state the purpose for which the SGM is requested.
- 14.8 The SGM must only deal with the business for which the SGM is requested.
- 14.9 The notice requirements for the SGM are the same as for General Meetings unless the Board in its discretion determines that the nature of the SGM business is of such urgency that a shorter period of notice may be given.

Quorum

- 14.10 A quorum for a General Meeting is [number e.g. 6] Board Members.
- 14.11 If a quorum is not obtained within half an hour of the intended commencement time of the General Meeting, then the General Meeting shall be adjourned to such other day, time and place as determined by the Board and if no quorum is obtained at the stage of such further General Meeting, then the persons present at that further General Meeting are deemed to constitute a valid quorum.

Control of General Meetings and Voting

14.12 The President shall preside at the General Meeting. If the President is unavailable then the chairperson of the Board shall preside and in the absence of both of those persons, then the persons entitled to be present shall elect a person present to be the chairperson of the General Meeting.

Commentary: A president who is not a member of the board (but who is able to attend board meetings) is often a good person to chair a general meeting because some members may have searching questions of the board and, in such cases, a president who is not a board member may be in a better position to ensure good control of the meeting. It depends entirely upon the extent of the role of your president.

14.13 Unless otherwise required by these rules:

- a. An Ordinary Resolution shall be sufficient to pass a resolution;
- b. The Board Members shall have one vote each;
- c. The President shall have one vote;
- d. Voting shall generally be conducted by voices or by show of hands as determined by the chairperson of the meeting unless a secret ballot is called for and approved by Ordinary Resolution;
- e. Elections of Elected Board Members at an AGM must be undertaken by secret ballot except where:
 - i. There is the same number of nominations as positions available; or
 - ii. There are insufficient nominations for officers and after calling for further nominations at the AGM there are still insufficient nominations or the same number of nominations for positions available. Then those persons who have been nominated shall be declared elected.
- f. Proxy votes are not permitted;
- g. If an urgent matter or matters arise (as determined by the Board), or where the Members have agreed at a previous General Meeting to do so for a specific purpose, a General Meeting may be held by telephone, through video conferencing facilities or by other means of electronic communication provided that prior notice of the meeting is given to all persons entitled to vote at an SGM, and that all persons participating in the meeting are able to hear each other effectively and simultaneously. Participation by persons entitled to vote at an SGM in this manner at a meeting shall constitute the presence of that person at that meeting;
- h. In the event of equality of votes, the President shall have an additional or casting vote;
- i. In the event that a secret ballot is called, two scrutineers must be appointed at the General Meeting to count the votes.

Commentary: Under a unitary structure general meetings are, in effect, another board meeting in terms of those entitled to attend and vote. However, in addition, consideration may be given to permitting the member clubs through delegates to have a vote on specific matters such as election of the president (if the president holds a figure-head, non-governing role) and receipt and approval of the annual report and accounts.

An AGM has historically served as the annual gathering of the core volunteers of the sport. There is value in such a gathering beyond the technical matters of the meeting. Ensuring involvement is maintained presents a major challenge under this model. The use of the AGM as a forum, training opportunity or social gathering will all assist in keeping those valuable connections.

15. BOARD

Role of the Board

15.1 The governance and management of [name of organisation] shall be vested in the Board which may exercise all the powers of [name of organisation] and do all things which are not expressly required to be undertaken by [name of organisation] at a General Meeting.

Membership of the Board

15.2 Members of the Board shall be:

- a. [x number] persons elected by the AGM under Rule 15.3a (Elected Board Members);
- b. [x number] persons appointed under Rule 15.3e (Appointed Board Members);
- c. In addition, the Board Members may co-opt up to [number] members to the Board under Rule 15.3c.

Election/Appointment of the Board

15.3 Members of the Board shall be elected or appointed as follows:

- a. The Elected Board Members and their alternate Elected Board Members and the President shall be elected by a majority of persons entitled to vote at an AGM following nomination by at least one Regional Committee or the Board;
- b. Nominations for Elected Board Members, their alternates, and the President may be made by the Regional Committees and the Board and shall be in the approved form and received at the registered office of [name of organisation] not less than 10 days before the date set for the AGM;
- c. Co-opted Board Members may be appointed at any time by the Board;
- d. In appointing any co-opted Board Member the Board shall call for written applications. The Board may advertise publicly or invite applications for the positions of co-opted Board Members. Applications must be received at the registered office of [name of organisation] by the date specified in the advertisement or notice calling for applications. The Chief Executive shall forward all applications for co-opted Board Members to the Board for their consideration
- e. The Appointed Board Members shall be appointed by [the Board or an independent selection panel]. The remainder of this rule needs to specify the process for such appointment depending on whether the Board or a panel appoints the Appointed Board Members.

Commentary: This rule may be varied according to whether the board is elected, appointed, co-opted or a combination of them. Whatever the process, the procedure adopted should be clearly set out in this rule and seek to secure persons who have the necessary skills, knowledge, experience and expertise for the position. This is even more important under a unitary model given the wider 'whole of sport' responsibilities these board members have, in contrast to their counterparts under a traditional structure.

Term of Office of Board Members

15.4 Subject to Rule 15.8 the term of office for all Board Members shall be two years, expiring on conclusion of the relevant AGM. A Board Member may be re-elected or reappointed to the Board for a maximum of two subsequent and consecutive terms of office. The election and appointment of Board Members shall be rotated so that [number] Board Members are elected or appointed in one year and [number] the next to ensure continuity of some Board Members on the Board.

- 15.5 The term of office for co-opted Board Members shall be the period from their appointment until the conclusion of the first AGM following such appointment. A co-opted Board Member may be reappointed to the Board for further terms of office.

Commentary: It will be necessary to include a provision that deals with the initial make up of the board upon adoption of the constitution. You may also like to include a rule that deals with the rotation of board members contemplated by Rule 15.4 so that the process is clear. Rotation ensures not all board members are up for re-election at once, thereby preserving some continuity.

Vacancies on the Board

- 15.6 In the event that there is a vacancy in the Board, the remaining Board Members may appoint a person of their choice to fill the vacancy or the Board may leave the vacancy unfilled until the next AGM.
- 15.7 The term of office for a person appointed as a Board Member to fill a vacancy under Rule 15.6 shall expire at the conclusion of the AGM following their appointment. Thereafter the vacancy shall be determined in accordance with these Rules.

Removal of Board Member

- 15.8 The Members in an SGM called for this purpose may, by Special Resolution, remove any Board Member before the expiration of their term of office.
- 15.9 Where the removed Board Member in Rule 15.8 was a co-opted Board Member, the Board shall appoint another person in their place to hold office until the expiration of the term of the Board Member which he or she is replacing. Where that removed Board Member was an Elected Board Member the vacancy shall be filled in accordance with Rule 15.6. Where that removed Board Member was an Appointed Board member the vacancy shall be filled in accordance with Rule 15.3e.
- 15.10 Upon the Chief Executive receiving a request for an SGM for the purpose of removing a Board Member, the Chief Executive shall send the notice to the Board Member concerned in addition to the persons specified in Rule 14.2.
- 15.11 Following notification under Rule 14.2 and before voting on the resolution to remove a Board Member, the Board Member affected by the proposed resolution shall be given the opportunity prior to and at the SGM to make submissions in writing and/or verbally to the Board and the persons entitled to be present at the General Meeting about the proposed resolution.

Board Meetings and Duties of the Board

- 15.12 At its first meeting following the AGM, the Board must elect a chairperson and deputy chairperson.
- 15.13 The role of a chairperson is to lead [name of organisation], to chair meetings of the Board and to represent the Board. In the event of the unavailability of a chairperson for any reason, then the deputy chairperson shall undertake the chairperson's role during the period of unavailability.
- 15.14 The duty of each Board Member is to pursue the objects of [name of organisation] and to exercise the powers of [name of organisation] for fulfilment of the objects and in so doing a Board Member must:
- a. Regularly attend Board meetings and General Meetings of [name of organisation];
 - b. Provide good governance for [name of organisation];

- c. Regularly monitor and review the performance of [name of organisation];
- d. Act in the best interests of [name of organisation] at all times;
- e. Formulate such by-laws, regulations, policies and procedures as are appropriate for [name of organisation];
- f. Where appropriate, engage in activities to promote, market, represent and fundraise for [name of organisation];
- g. Do such other things within these Rules as the Board agrees, to promote the objects of [name of organisation].

- 15.15 Board meetings may be called at any time by the chairperson but generally the Board shall meet at regular intervals agreed by the Board.
- 15.16 Except to the extent specified in these Rules the Board shall regulate its own procedure.
- 15.17 The quorum for a Board meeting shall be two-thirds of the Members of the Board.
- 15.18 Each Board Member shall have one vote at Board meetings. In the event of a deadlock, the chairperson shall have an additional casting vote. Voting shall be by voices or upon request of any Board Member by a show of hands or by a ballot. Proxy and postal voting is not permitted.
- 15.19 A resolution in writing signed or consented to by email, facsimile or other forms of visible or other electronic communication by a majority of the Board shall be valid as if it had been passed at a meeting of the Board. Any such resolution may consist of several documents in the same form each signed by one or more of the Board.
- 15.20 Any Board Member may participate in any meeting of the Board and vote on any proposed resolution at a meeting of the Board without being physically present. This may only occur at meetings by telephone, through video conferencing facilities or by other means of electronic communication provided that prior notice of the meeting is given to all Board Members and all persons participating in the meeting are able to hear each other effectively and simultaneously. Participation by a Board Member in this manner at a meeting shall constitute the presence of that Board Member at that meeting.

Commentary: These clauses allow a board to deal with urgent business by written resolution and allow people who cannot physically be at the meeting to still participate.

- 15.21 The Board may, by majority vote, reimburse its Board Members for their actual and reasonable expenses incurred in the conduct of [name of organisation]'s business. Prior to doing so the Board must establish a policy to be applied to any question of reimbursement.
- 15.22 If any situation arises which, in the opinion of the Board, is not provided for in the Rules, regulations, by-laws or policies of [name of organisation], the matter will be determined by the Board.

16. CHIEF EXECUTIVE

- 16.1 There shall be a Chief Executive of [name of organisation] who shall be employed for such term and on such conditions as the Board may determine.
- 16.2 The Chief Executive shall be under the direction of the Board and shall be responsible for the day-to-day management of the affairs of [name of organisation] in accordance with the Rules, regulations, by-laws, policies and procedures of [name of organisation] and within such constraints as may be imposed by the Board.

- 16.3 The Chief Executive may attend Board meetings as and when required by the Board but will have no voting rights.

17. FINANCES

- 17.1 Unless otherwise determined by the Board the financial year of [name of organisation] shall end on the [] day of [] each year.
- 17.2 Statements of financial position and financial performance shall be audited each year and the audited accounts shall be submitted to the AGM. The auditors shall be appointed at each AGM.
- 17.3 The Board is responsible for the receipt and banking of all monies received by [name of organisation]. All funds of [name of organisation] shall be paid to a bank account in the name of [name of organisation] and the bank account must be operated in accordance with the policy determined by the Board.
- 17.4 The Board must ensure correct accounting records are kept. The accounting records of [name of organisation] must be kept at the office of [name of organisation] or at such place as the Board may determine and must be open to inspection by Members at such reasonable times as agreed by the Board.

18. COMMON SEAL

- 18.1 The common seal of [name of organisation] shall be kept in the control of the Board and may be affixed to any document only by resolution of the Board and in the presence of and with the accompanying signatures of the chairperson and the deputy chairperson, and in the absence of either of those then by another Board Member.

Commentary: The common seal is only required by the Incorporated Societies Act to be affixed to a deed. Deeds are generally legal documents which confer a benefit on a party to the deed without requiring payment from the other party. The common seal is not required in respect of agreements as they can be properly signed by authorised representatives of the organisation.

Commentary: The three following rules are required by IRD as a pre-condition to approving any application by an organisation for exemption from income tax. The income of any organisation established mainly to promote any amateur game or sport for the recreation or entertainment of the general public is exempt from income tax. This is a valuable status for an association to achieve and accordingly your rules should cover the required aspects from the start because if they do not then IRD will not give a letter of confirmation of tax exempt status until the rules have changed. To avoid the burden of holding a general meeting to change the rules it is important to include these rules from the outset.

19. ALTERATIONS OF RULES

- 19.1 These Rules may only be altered, added to or rescinded by a Special Resolution passed at a General Meeting.
- 19.2 No alteration, addition to or revision of the rules shall be approved if it affects the not-for-profit objects, personal benefit prohibition or the winding-up rules of [name of organisation]. This Rule 19.2 must not be removed from these Rules and must be included in any alteration of, addition to or revision of these Rules.

20. PROHIBITION ON PERSONAL BENEFITS

- 20.1 No Member or person associated with a Member may participate in or materially influence any decisions by [name of organisation] in respect of payment to or on behalf of that Member or associated person of any income, benefit or advantage.

20.2 Any such income paid or benefit or advantage conferred must be reasonable and relative to that which would be received in an arm's length transaction (being the open market value). This provision and its effect must not be removed from these Rules and must be included in any alteration of, addition to or revision to these Rules.

21. WINDING UP

21.1 [name of organisation] must be wound up if [name of organisation], at a General Meeting of its Members, passes a Special Resolution requiring [name of organisation] to be wound up and the resolution is confirmed by Special Resolution at a subsequent General Meeting called for that purpose and held not earlier than 60 days after the date on which the resolution so to be confirmed is passed.

21.2 If upon the winding-up or dissolution of [name of organisation] there remains after the satisfaction of all its debts and liabilities any property whatsoever, the property shall not be paid to or distributed among the Members of [name of organisation] but shall be given or transferred to some other organisation, organisation or body having objects similar to the objects of [name of organisation], or to some other charitable organisation or purpose within New Zealand.

22. INDEMNITY

22.1 [name of organisation] shall indemnify every Member of the Board, the Chief Executive and other officers and employees of [name of organisation] in respect of all liability arising from the proper performance of their functions connected with [name of organisation].

Commentary: The board may wish to consider the use of specific indemnity insurance for its trustees. Specialist advice on the suitability and extent of particular forms of cover is advised. In some cases insurance can be breached by behaviour that is contrary to prevailing legislation. The legal obligations of trustees should be made clear in the induction process and through subsequent training for inexperienced trustees.

8.0 Charitable trust deed

Preface

1. There are essentially two distinct classes of not-for-profit organisations:
 - (a) organisations with members and an executive or board;
 - (b) trusts with trustees or a trust board.

The key difference between the two types of organisation is that member organisations are structured and governed in accordance with democratic principals and have a governing board or committee, which is answerable to the members of the organisation. A trust however is not governed on democratic principles. Trustees will always be legally accountable to comply with their obligations at law and to apply the trust funds to the charitable objects of the trust. Trustees however are not accountable to a membership and this is a fundamental difference from an organisation that may have charitable status but is an organisation with members.

2. A trust is most commonly established by a trust deed. This sample trust deed is suitable for a charitable trust that wants to register as a trust board and also wishes to obtain tax exempt status.

In addition to the Charitable Trusts Act 1957, the Charities Act 2005 now contains legislative requirements in this sector. Part of the Charities Act 2005 came into effect on 1 July 2005 with the remaining parts to come into effect on a date which, at the time of writing, had yet to be confirmed or determined. The part of the Charities Act 2005 that came into effect from 1 July 2005 is the creation of the Charities Commission. Once the remaining parts of the Charities Act 2005 come into effect all new and existing charities will need to register with the Charities Commission if they wish to be exempt from income tax. However, registration with the Charities Commission will not guarantee that the trust will be tax exempt. Charities will still need to ensure that they satisfy Inland Revenue's exemption requirements. Under this new process new charities will be required to:

- (a) register as a qualifying charitable entity with the Charities Commission; and
- (b) ensure that they have confirmation of their tax exempt status from the Commissioner of Inland Revenue.

In order to qualify for registration under the Charities Act 2005 any income derived by the trust must be for charitable purposes.

In order to obtain tax exempt status a charitable trust must:

- (a) apply its funds wholly or principally to the charitable purpose;
- (b) not be established for the private pecuniary benefit or gain of any individual;
- (c) on winding-up or dissolution ensure no individual can benefit or gain from the trust property; and
- (d) ensure that the above matters are entrenched and cannot be changed in the trust deed.

Until all parts of the Charities Act 2005 are effective, charitable organisations will need to deal with the provisions of the Charitable Trusts Act 1957.

There are also a number of other legislative references in this sample trust deed that may change over time. It is important that legal advice is sought at the time a charitable trust is being set up to ensure that the applicable legislation is complied with and the provisions of this sample trust deed are still applicable and relevant.

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TRUST DEED dated**2005****PARTIES**

1. [] (the Settlor)
2. [] (the First Trustee)
3. [] (the Second Trustee)

BACKGROUND

- A. The Settlor has determined to establish a trust for charitable purposes to be known as [name of Trust] for the purpose of pursuing the objects listed in this Trust Deed.
- B. The Trustees have agreed to act as the Trustees of the Trust.
- C. The Settlor has paid to the Trustees the sum of \$[] to constitute the initial funds of the Trust.
- D. The Trustees wish to declare the trusts on which they hold the initial funds and all other funds or property vested in or controlled by the Trustees for the benefit of the Trust (all being referred to in this Deed as the Trust Fund).
- E. The Trustees wish to apply for incorporation under [the Charities Act 2005] and to establish the Trust as a trust board.

Commentary: Part of the Charities Act 2005 came into force on 1 July 2005. That part creates the Charities Commission. The rest of the Act is to come into force at a future date not yet determined. Therefore, depending on the timing of registration you may need to follow the requirements of the Charities Act 2005 or the Charitable Trusts Act 1957.

THIS DEED RECORDS

1. **TRUST FUND**
The Trustees declare that they hold all money and other property settled upon trust for those charitable purposes referred to in clause 4 of this Deed together with all other money and property which may be added to it by way of capital or income ('Trust Fund').
2. **NAME OF THE TRUST**
The Trust shall be known as '[name of Trust]' or such other name as the Trustees may, by amendment to this Deed, determine from time to time.

Commentary: No trust may be incorporated as a charitable trust board under a name which is identical or almost identical to the name of another board, company or body corporate. The Registrar of Incorporated Societies must also be satisfied that the name chosen will not be contrary to public interest.

3. **OFFICE OF THE TRUST**
The registered office of the Trust shall be situated at such place as determined by the Trustees from time to time.

4. CHARITABLE OBJECTS OF THE TRUST

- 4.1 The charitable objects of the Trust ('the Objects') are:
- a. To provide support to community sport and recreational groups and organisations in the [] District ('District') by the provision of advice, training, guidance and funding to assist in the improvement of, and access to, governance, management and administration of the said groups and organisations in the District.
 - b. To provide guidance and support to schools, and educational institutions by assisting in the co-ordination of, and upskilling of teachers, trainers and coaches in the delivery of, sport and physical recreation programmes and activities in the District.
 - c. The promotion and co-ordination of physically active and healthy lifestyle programmes and activities in the District.
 - d. To undertake such other activities and provide such other assistance, whether by way of financial assistance/support or otherwise as the Trustees see fit, of a charitable nature for the benefit of the District.
- 4.2 **District:** For the purposes of this Deed, the [] District means the geographical area defined by the boundaries of the [] District Council, or such other geographical area as determined by the Trustees.
- 4.3 **No Limitation:** The objects of this Trust may not extend to any matter or thing which is not charitable in the meaning of the Income Tax Act 2004 or not carried out within New Zealand.
- 4.4 **Objects Independent:** The Trustees shall be empowered to carry out any one or more of the objects of the Trust independently of any other object of the Trust.
- 4.5 **Carried out within New Zealand:** All the objects of the Trust are to be carried out exclusively within New Zealand except where a Trust beneficiary is provided with funds in New Zealand for study outside of New Zealand.

Commentary: It is essential that the trust deed clearly evidences the charitable purposes of the trust. Without a clear charitable purpose or purposes the trust will not obtain charitable status both in terms of registration or tax purposes. Running a sporting or recreation club is not itself a charitable purpose but it is a charitable purpose to establish facilities for recreation and other leisure time activities if those facilities are provided in the interests of social welfare and for the public benefit.

5. POWERS OF TRUSTEES

- 5.1 **General:** The Trustees shall act on the Trust's behalf. In addition to all other powers conferred by law, the Trustees shall have the same powers as a natural person acting as a beneficial owner of the Trust Fund. Such powers shall not be limited or restricted by any principle of construction or rule of law or statutory power or provision, except to the extent set out in this Deed. The Trustees shall exercise their powers either alone or jointly with another person or persons.
- 5.2 **Promotion of Objects:** The Trustees shall promote the objects of the Trust described in clause 4 of this Deed. The Trustees shall act on behalf of and in the interests of the Trust.
- 5.3 **Advertise and Inform:** The Trustees shall have the power to make known and further the objects of the Trust by advertising the manner in which the Trust Fund, or any part of it, has been, is being or will be applied, through established media and by advertising in any medium. The Trustees may also disseminate information of any nature relating to the Trust by written publication or otherwise.

- 5.4 **Collect Funds:** The Trustees shall have the power to collect funds and raise money by all lawful means (including by gaming machines) and receive, accept, encourage and enlist financial and other contributions, subscriptions, sponsorships, donations, legacies, endowments or bequests from any source. The Trustees may also conduct fund raising campaigns in order to further the exclusively charitable objects of the Trust.
- 5.5 **Receive Grants and Subsidies:** The Trustees shall have the power to receive from the New Zealand Government or any council, board, territorial authority, or body under the jurisdiction of such governmental authority or from any national or international organisation, any grant, subsidy or payment of any kind in order to further the objects of the Trust.
- 5.6 **Specified Trust:** The Trustees shall have the power to carry out any specified trust attaching or relating to any contribution, subscription, sponsorship, donation, legacy, endowment, bequest, grant, subsidy or payment received, to the extent such specified trust conforms with the objects of the Trust.
- 5.7 **Apply Funds:** The Trustees shall have the power to apply any money forming part of the Trust Fund to the promotion and advancement and development of the objects of the Trust.
- 5.8 **Invest Funds:** The Trustees shall have the power to invest any money forming part of the Trust Fund in any of the ways authorised by law for the investment of trust funds including (if the Trustees think fit) on mortgage of land either by the Trustees alone or together with any person or persons as a contributory mortgagee.
- 5.9 **Acquire Property:** The Trustees shall have the power to acquire any real or personal property or interest in such property (whether in New Zealand or elsewhere) whether by purchase, lease, hire, exchange or otherwise and on such terms and conditions as the Trustees think fit.
- 5.10 **Sell and Reinvest:** The Trustees shall have the power to sell, join in, call in or convert all or any part of any real or personal property forming part of the Trust Fund in such manner and subject to such terms and conditions as the Trustees think fit. The Trustees may also reinvest the proceeds of such sale, calling in or conversion in such manner as they think fit.
- 5.11 **Postpone Sale:** The Trustees shall have the power to postpone the sale of any real or personal property forming part of the Trust Fund for so long as the Trustees think fit, even if such property is wasting, speculative or declining in nature.
- 5.12 **Lease:** The Trustees shall have the power to let, lease or bail to any person or persons any freehold or leasehold property or any plant or chattels or interest in any such property forming part of the Trust Fund, either from year to year or for any term or period, and for such rental, and subject to such covenants and conditions, as the Trustees think fit. The Trustees may also accept surrenders of lease and tenancies and generally manage any lease or bailment as the Trustees think fit.
- 5.13 **Pay Debts:** The Trustees shall have the power to apply any income or capital of the Trust Fund in, for, or towards payment of any fees, costs, disbursements, debts or other liabilities or any part of such liabilities, owing by or in respect of the Trust Fund or incurred in connection with the trusts of this Deed. Such power shall apply whether or not the liabilities are charged upon the Trust Fund or on any part of it, and whether or not the Trustees are contractually or otherwise legally liable for the payment of the fees, costs, disbursements, debts or other liabilities.

- 5.14 **Acquire or Carry on Business:** The Trustees shall have the power to establish, acquire, carry on, or join in carrying on, or franchise any business or venture of any nature or any interest in such business or venture, from any person, or to commence, enter into, or to form any entity whether incorporated or not to enter into, or carry on or be engaged or concerned in any business or venture. This power applies whether or not such business or venture was carrying on at the time of execution of this Deed and may be applied for such period or periods, and in such manner as the Trustees think fit, either alone or in partnership or otherwise with any other person or persons. This power includes the power to do or join in doing all things which the Trustees consider necessary, expedient or desirable in connection with such business or venture including without limitation:
- a. Employing or contracting such managers, employees, contractors, agents and others as the Trustees think fit, on terms and conditions as they think fit;
 - b. Using and employing the whole, or any part of the capital or income of both, of the Trust Fund;
 - c. Advancing to or employing any additional capital or income of the Trust Fund which the Trustees consider advisable to effectively carry on the business;
 - d. Managing or joining in the management;
 - e. Withdrawing money from such business or venture.
- 5.15 **Establish Reserve Fund:** The Trustees shall have the power to establish and subscribe to any depreciation or reserve fund for any purpose the Trustees deem advisable and to determine in their discretion whether that fund is income or capital.
- 5.16 **Join in Partition:** The Trustees shall have the power to consent to and join in the partition of any assets in which the Trust Fund is interested and to take a transfer of a divided or undivided share or interest in any such assets.
- 5.17 **Maintain Property:** The Trustees shall have the power generally to maintain, manage, repair, improve or develop any real or personal property, or any interest, which forms part of the Trust Fund in such manner as the Trustees think fit.
- 5.18 **Companies:** The Trustees shall have the power in respect of any company or companies in which the Trustees hold or are entitled to or propose to hold shares or debentures:
- a. To pay calls on shares;
 - b. To act as an officer or officers, employee or employees of the company, either alone or in conjunction with others;
 - c. To appoint any person to act as a director of any company and if necessary to transfer to such person a sufficient number of shares to be held by them in trust for the Trustees to qualify such person as a director;
 - d. To provide, out of the Trust Fund, capital or further capital for the company whether by advances or loans (with or without security) by deposit on current account or otherwise, by guarantees (with or without security) or by taking shares or further shares or in such other manner and on such terms as the Trustees think fit;
 - e. In any liquidation, reconstruction, or amalgamation of the company to:
 - i. Concur on such terms as the Trustees think fit or on the terms of any surrender of rights attaching to all or any shares;

- ii. Exercise in such manner as the Trustees think fit any powers which the rules of the company vest in the Trustees as directors or members of the company;
 - iii. Accept fully paid or partly paid up shares or debentures or other interests in or securities of any company as the consideration (or partial consideration);
 - iv. Generally act in relation to the company in such manner as the Trustees think fit.
- 5.19 **Borrow:** The Trustees shall have the power to borrow or raise any monies on mortgage or overdraft or otherwise, with or without security, from any person or person at such rate of interest and on such terms and conditions as the Trustees think fit. The Trustees shall also have the power to sign any mortgage, deed, charge, arrangement or other document in connection with such borrowing.
- 5.20 **Guarantee:** The Trustees shall have the power to enter, or join in entering into, any guarantee by the Trustees alone or together with any person or persons, the giving of which the Trustees consider is in the interests (direct or indirect) of the Trust Fund or the promotion of the exclusively charitable objects of the Trust. The Trustees also have the power to authorise any company in which the Trustees hold shares to enter into such a guarantee or to enter into any other arrangement which the Trustees consider is in the interests of the Trust Fund or the promotion of the exclusively charitable objects of the Trust Fund.
- 5.21 **Give Security:** The Trustees shall have the power to give security, whether alone or together with any other person or persons, the giving of which the Trustees shall consider to be in the interests (direct or indirect) of the Trust Fund or of the promotion of the objects or the exclusively charitable objects of the Trust. The Trustees also have the power to authorise any company in which the Trustees hold shares to give such security.
- 5.22 **Settle Accounts:** The Trustees shall have the power to agree and settle accounts with all persons liable to account to the Trustees and to compromise questions relating to the Trust Fund and to grant receipts, discharges and releases from such accounts.
- 5.23 **Appoint Agents:** The Trustees shall have the power to instruct and pay any person to transact all or any business or do any act required to be transacted or done in the execution of the trusts of this Deed including the receipt and payment of money. The Trustees shall not be responsible for any default of any such person appointed in good faith or for any loss occasioned by such person's instruction.
- 5.24 **Delegate:** The Trustees shall have the power to delegate any of its powers to any Trustee or Trustees, or person or persons (including a committee or an employee), provided that such delegation shall be recorded in writing by the Trustees.
- 5.25 **Make Policies, Rules etc:** The Trustees shall have the power to make policies, rules, guidelines and other determinations in governing the Trust.
- 5.26 **Bank Accounts:** The Trustees shall have the power to open or maintain such current or other accounts at such banks or other institutions and in such manner as the Trustees from time to time determine.
- 5.27 **Amalgamate or Merge:** The Trustees shall have the power to amalgamate or merge the Trust with any other exclusively charitable trust or organisation and to transfer all or part of the Trust Fund to such amalgamated or merged trust.

- 5.28 **Insure:** The Trustees shall have the power to insure against loss or damage by any cause of any insurable property forming part of the Trust Fund, and to insure against any risk or liability against which it would be prudent for a person to insure if they were acting for themselves, for such amounts and on such terms as the Trustees may from time to time think fit.
- 5.29 **Contributions:** The Trustees shall have the power to make payment and contribute to any charitable or other trust having substantially similar objects as the objects of this Trust.
- 5.30 **Statutory Authorisation:** The Trustees shall have the power to do all or any of the things which they are authorised to by the Trustees Act 1956.
- 5.31 **General:** The Trustees shall have the power to do all such other things as in the opinion of the Trustees are incidental or conducive to the attainment of the objects of the Trust.
- 5.32 **Exercise Powers Independently:** None of the powers conferred on the Trustees by clause 5 or otherwise shall be deemed subsidiary or ancillary to any other power and the Trustees shall be entitled to exercise all or any of them independently of each other.

Commentary: The powers of the trustees must be comprehensive. If the powers are not sufficiently comprehensive then an action taken by the trustees may be challenged as 'ultra vires' (outside its powers). Having said that, it is also important that you consider the powers carefully to ensure that the trustees are not given excessive powers depending upon your particular circumstances and requirements. It is important, however, that the trustees have sufficiently broad and comprehensive powers to manage the Trust Fund and pursue the charitable objects of the trust.

6. PUBLIC DONATIONS

- 6.1 Any donations or gifts of money within the meaning of the Income Tax Act 2004 made to the Trustees for the objects of the Trust shall be placed in a fund established and maintained by the Trustees exclusively for those objects carried out within New Zealand.

7. ADMINISTRATION OF THE TRUST

- 7.1 The Trust shall be governed by a Board of Trustees comprising the Trustees for the time being of the Trust.
- 7.2 No person shall be appointed or remain in office as a Trustee who is a paid employee of the Trust or a paid employee of any council, trust or other organisation which provides funds to the Trust.

8. COMPOSITION OF BOARD OF TRUSTEES

- 8.1 **Board of Trustees:** The Board of Trustees shall comprise no less than five (5) and no greater than seven (7) trustees.
- 8.2 Appointment of Trustees:
- a. With the exception of the Inaugural Trustees under this Deed (clause 8.3), the Trustees shall be appointed by an Electoral College. Subject to clauses 8.2b and 8.2c, the Electoral College shall comprise:
 - i. a representative of XXXXXXXX
 - ii. a representative of XXXXXXXX or such other similar organisation as determined by the Trustees;
 - iii. the Chairperson or other Trustee of the Trust, as determined by the Trustees, from time to time;

- iv. two other persons, appointed by the persons referred to in (i) to (iii) above, who have experience and skills in the recruitment and appointment of Trustees, Directors or other governance positions.
 - b. Each of the organisations listed in clause 8.2a.i and 8.2a.ii shall be invited in writing by the Chairperson of the Trust to notify the Chairperson of its representative on the Electoral College. The request by the Chairperson shall specify a date by which the organisation's appointed representative must be notified. No person who is, or has in the previous six years been, a Trustee of the Trust may be appointed as the representative of any of such organisation;
 - c. If either of the organisations listed in clause 8.2a.i and 8.2a.ii fail to notify the Chairperson of its representative for the Electoral College by the specified date, or such other agreed date, the remaining members of the Electoral College shall appoint such number of persons, with the experience and skills described in clause 8.2a.iv, as are necessary to ensure there are five persons comprising the Electoral College in respect of any appointment of any Trustee made under clause 8.2d of this Deed;
 - d. The functions of the Electoral College are to:
 - i. Liaise with the Chairperson regarding any vacancies in any Trustee's office which arise, whether by the expiry of office, resignation or otherwise;
 - ii. Develop criteria to enable it to make any appointments which detail the skills, knowledge, capabilities and any other attributes it considers are required in considering appointments to any vacant Trustee's position;
 - iii. In consultation with the Chairperson, advertise, invite or otherwise call for or accept applications for any vacant Trustee's position;
 - iv. Determine the persons to be appointed to fill any vacant Trustee's position either prior to or as soon as possible after such vacancy arises;
 - v. Monitor the performance of the Trustees.
 - e. Upon the Electoral College determining the person to be appointed to fill a vacancy in the office of a Trustee, it shall notify the Chairperson of such appointment. The appointment shall be minuted at the next meeting of the Trustees. The Chairperson shall also record such appointment in a memorandum which shall be executed by the Chairperson either in the presence of that meeting or at any time after that meeting and witnessed by two or more witnesses, in accordance with section 4 of the Charitable Trusts Act 1957.
- 8.3 **Inaugural Trustees:** Each of the settling Trustees of the Trust shall be deemed to be the Trustees of the Trust from the date this Deed is executed.
- 8.4 **Term of Office:**
- a. Subject to clause 8.4c, the term of office of every Trustee shall be three years, unless they resign or are removed in accordance with this Deed. Trustees may be reappointed by the Electoral College for a further one term of office;
 - b. The terms of office of the Trustees shall be rotated so that at least one of the Trustees' term of office expires each year;
 - c. The inaugural Trustees shall determine by agreement or, failing such agreement, by lot, which Trustees shall cease to hold office prior to the term of office which they would otherwise have been entitled to, in order that the rotation of Trustees in clause 8.4b be effected.

- 8.5 **Chairperson:** The Trustees shall annually determine from amongst their number who shall be the chairperson of the Board of Trustees. The chairperson shall hold office for a period of one (1) year from their appointment, or such other period as determined by the Trustees.
- 8.6 **Eligibility to be a Trustee:** The following persons shall not be eligible for appointment, or to remain in office, as a Trustee:
- a. **Bankrupt:** a person who has been adjudged bankrupt who has not obtained a final order of discharge or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled, or to any order under section 111 of the Insolvency Act 1967;
 - b. **Conviction:** a person who has been convicted of any offence punishable by a term of imprisonment of two or more years unless that person has obtained a pardon or has served the sentence or otherwise suffered the sentence imposed on them;
 - c. **Imprisonment:** a person who has been sentenced to imprisonment for any offence unless that person has obtained a pardon or has served the sentence or otherwise suffered the sentence imposed on them;
 - d. **Disqualified Director:** a person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under section 382 or section 383 or section 385 of the Companies Act 1993;
 - e. **Property Order:** a person who is subject to a property order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1988; and if any of the above events occur to an existing Trustee, they shall be deemed to have vacated their office upon such event.
- 8.7 **Vacancies of Trustees:** Where a Trustee ceases to hold office under this Deed, the remaining Trustees may fill that vacancy with any eligible person.
- 8.8 **Resignation:** Any Trustee may resign from the Trust by giving no less than 30 days' written notice to the remaining Trustees and such notice shall take effect from the date specified in the notice or, if there is no date specified, upon the expiry of 30 days from the date the letter was sent.
- 8.9 **Removal from Office:** The Trustees shall remove any one or more of their number if any of the circumstances in clauses 8.6 occur or if they resolve to do so by unanimous vote of the Trustees other than the Trustee being removed.
- 8.10 **Ceasing to Hold Office:** In addition to the power to remove Trustees (under clause 8.9), the vacation of office on certain events occurring (clause 8.6) and the right of a Trustee to resign from office (under clause 8.8), the following circumstances shall also result in a vacancy in a Trustee's term of office:
- a. **Failure to Attend:** A Trustee who fails to attend two consecutive meetings of the Board of Trustees without prior written notice and reasonable explanation (as determined by the other Trustees) shall be deemed to have vacated their office;
 - b. **Death:** Upon the death of a Trustee their position shall be deemed to be vacant.
- 8.11 **Recording:** Upon every appointment, reappointment, removal or cessation of office of any Trustee, the Trustees shall record such fact in the minute book of the Trust.

Commentary: The trustees are in control of and manage the Trust Fund. While they have powers of delegation they are always legally liable for the Trust Fund and its administration. It is essential therefore that careful consideration is given to who the trustees will be, who has the power of appointment of trustees, and how trustees are appointed and removed. The above is one example of how trustees might be selected, appointed and removed. Each and every case should be considered based on the particular requirements at that time. The above should only be regarded as a guide. It may or may not be suitable depending upon the circumstances of any given trust. In terms of trustee numbers; beyond nine can mean the trust becomes unwieldy.

9. MEETINGS OF THE TRUSTEES

- 9.1 **Time and Place for Meetings:** The Trustees shall meet at such places and times, and in such manner, as they determine. The chairperson shall chair Trustee meetings, or in his/her absence any other Trustee as determined by the Trustees.
- 9.2 **Facsimile/Email Resolutions:** A resolution in writing, signed or assented to by facsimile, or other form of visible or other electronic communication by the Trustees shall be as valid and effectual as if it had been passed at a meeting of the Trustees. Any such resolution may consist of several documents in like form each signed by one or more Trustees.
- 9.3 **Meetings by Tele-Conference etc:** A meeting of the Trustees may be held where one or more of the Trustees is not physically present at the meeting, provided that:
- a. All persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously whether by means of telephone or other form of communication;
 - b. Notice of the meeting is given to all the Trustees in accordance with the procedures agreed from time to time by the Trustees and such notice specifies that Trustees are not required to be present in person at the meeting;
 - c. If a failure in communications prevents clause 9.3a from being satisfied and such failure results in the quorum not being met, the meeting shall be suspended until condition (a) is satisfied again. If such condition is not satisfied within 15 minutes from the interruption the meeting shall be deemed to have terminated or adjourned.
- 9.4 Any meeting held where one or more of the Trustees is not physically present shall be deemed to be held at the place specified in the notice of meeting provided a Trustee is present at such place. If no Trustee is present at such place the meeting shall be deemed to be held at the place where the chairperson of the meeting is located.

10. ADMINISTRATION

- 10.1 **Quorum:** A quorum of four (4) Trustees is required for all meetings of the Trustees.
- 10.2 **Voting:** Each Trustee present at a meeting shall be entitled to one (1) vote.
- 10.3 **Majority Decisions:** Except as otherwise provided in this Deed, all resolutions passed at a meeting of the Trustees shall be by a majority of Trustees present at the meeting and any such resolution shall be binding on all Trustees. The chairperson shall have a deliberative (or original) vote as well as a casting vote in the event of a tie or equality of votes.

- 10.4 **Conflicts of Interest:** If any Trustee has or may have a conflict of interest (as determined by the Trustees), the Trustee shall declare their interest in the Minute Book and may participate in the deliberations affecting the matter but s/he shall not vote on such matter and shall leave the meeting for any such vote, unless stated otherwise in this Deed.
- 10.5 **Minutes:** A minute book shall be provided and kept by the Trustees. Minutes of the proceedings of all meetings of the Trustees shall be prepared and entered in the minute book, and if confirmed at a subsequent meeting of the Trustees, shall be signed by the chairperson as a true and correct record.
- 10.6 **Bank Accounts:** The Trustees shall keep an account or accounts at such bank or banks or financial institutions as they shall from time to time determine. Cheques and other debits from the account or accounts shall be signed by such person or persons as the Trustees shall from time to time authorise in writing.
- 10.7 **Accounts and Audit:** The Trustees shall keep full and correct records and accounts of all of their receipts, credits, payments, assets, liabilities and transactions and all other matters necessary for showing the true state and condition of the Trust. As soon as practicable after the end of each financial year (being the year or any other accounting period ending on 30 June or any other date adopted from time to time by the Trustees as the end of the Trust's financial year) ('Financial Year'), the Trustees shall ensure that financial statements are prepared including a statement of position, a statement of financial performance and notes to those statements giving a true and fair view of the financial position of the Trust for that Financial Year. Such financial statements may be audited by a chartered accountant appointed for that purpose by the Trustees, as the Trustees determine.
- 10.8 **Execution of Documents:**
- a. If the Trustees are not incorporated as a Board under the Charitable Trusts Act 1957 (*please note this Act is soon to be replaced by the Charities Act 2005. Accordingly it will need to be amended depending on timing of the Charities Act 2005 coming into force in relation to registration*) documents to be executed by or for the Trust shall be signed by any two of the Trustees, one signatory to be the chairperson;
 - b. When the Board is incorporated under the Charitable Trusts Act 1957, (same comment as above) documents to be executed by the Board shall be executed under its common seal and attested by any two of the Trustees, one of whom shall be the chairperson.
- 10.9 **Tax Returns:** The Trustees shall ensure that all necessary tax accounts, returns, reports, declarations, notices, certificates, reconciliations and other information required by the Inland Revenue Department are prepared and filed so as to allow the Trust to retain its agreed status for taxation purposes.
- 10.10 **Notices:** Any notice to be given to the Trustees under this Deed shall be in writing signed by the person or persons giving the notice and served at the registered office of the Trust. Any such notice or document shall be deemed to be duly given:
- a. **By hand:** if delivered by hand, when so delivered;
 - b. **By facsimile:** if delivered by facsimile, when receipt is confirmed;
 - c. **By email:** if delivered by email, when receipt is confirmed;
 - d. **By post:** if delivered by post, on the third working day after posting.

11. STAFF

- 11.1 **Appointment:** The Trustees may employ such staff as they consider appropriate to work for the Trust on such terms as they consider appropriate.
- 11.2 **Attendance at Trustees' Meetings:** Staff employed under clause 11.1 may be required to attend meetings of the Trustees but shall not be entitled to vote.

12. TRUSTEES' LIABILITY

- 12.1 **Liability for Loss:** No Trustee shall be liable for any loss to the Trust Fund arising:
- a. **Investment:** by reason of any improper or imprudent investment made by any Trustee in good faith;
 - b. **Agent:** from the negligence or fraud or delay of any agent instructed by any Trustee in good faith;
 - c. **Mistake:** by reason of any mistake or omission made by any Trustee in good faith;
 - d. **Delay:** by reason of any delay caused by any Trustee;
 - e. **Deposit of Funds:** by reason of all or part of the Trust Fund being lawfully deposited in the hands of any banker or solicitor;
 - f. **Security:** by reason of the insufficiency or deficiency of any security upon which all or part of the Trust Fund may be invested;
 - g. **General:** by any other act of any Trustee;

unless attributable to that Trustee's own dishonesty or to the wilful commission or omission of any act known by that Trustee to be in breach of trust.

- 12.2 **Trustee Act 1956:** Subject to clause 12.1, the care, diligence and skill to be exercised by the Trustees shall not be that required by sections 13B or 13C of the Trustee Act 1956 but shall at all times be the care, diligence and skill required that a prudent person of business would exercise in managing the affairs of others, even though the Trustees may from time to time include persons whose profession, employment or business is or includes acting as a trustee or investing money of behalf of others.
- 12.3 **Proceedings:** No Trustee shall be bound to take, or be liable for their failure to take, any proceedings against another Trustee or Trustees for any breach or alleged breach of trust committed by such other Trustee or Trustees.
- 12.4 **Receipt of Monies:** Subject to clauses 12.1 and 12.2, a Trustee shall be chargeable only for such monies as shall actually have been received by that Trustee. For the purpose of this subclause, a Trustee shall be deemed to have received monies even if not actually paid to that Trustee if those monies have been credited in any account, reinvested, accumulated, capitalised, carried to any reserve, sinking or insurance fund, or otherwise dealt with on that Trustee's behalf.
- ## 13. RESTRICTIONS ON BENEFIT FROM THE TRUST
- 13.1 **No Determination of Income:** Where the Trustees carry on or engage in any business by, or on behalf of, or for the benefit of, the Trustees upon the trusts of this Deed, no person as defined in section CW 35(b) of the Income Tax Act 2004 shall by virtue of that capacity and within the ambit and scope of that section in any way (whether directly or indirectly) determine, or materially influence the determination of, the nature or the amount of any benefit or advantage (whether or not convertible into money).

14. TRUSTEES' REMUNERATION AND EXPENSES

- 14.1 **Professional Remuneration:** Subject to clause 12.4, any Trustee being a lawyer, accountant or other person engaged in any profession, business or trade shall be entitled to be paid all usual professional, business and trade charges for business transacted, time expended and all acts done by him or her or any of their employees or partners in connection with the trusts of this Deed, including acts which a Trustee not being in any profession, business or trade could have done personally.
- 14.2 **General Remuneration:** Subject to clause 14.4, each Trustee other than a Trustee remunerated under clause 14.1 (to the extent that such remuneration covers the services to which that clause applies) may be entitled to such remuneration for their services as a Trustee, as determined by the Trustees, as may be reasonable having regard to their duties and responsibilities as Trustees.
- 14.3 **Expenses:** Subject to clause 14.4, each Trustee shall be entitled to be indemnified against, and reimbursed for, all travelling, accommodation and other expenses properly incurred by them in attending to and returning from meetings or in connection with the trusts of this Deed as determined by the Trustees.
- 14.4 **Proviso:** No Trustee receiving any remuneration referred to in clauses 14.1 to 14.3 shall take part in any deliberations or proceedings relating to the payment or otherwise of that remuneration nor shall that Trustee in any way determine or materially influence (directly or indirectly) the nature or amount of that payment or circumstance in which it is to be paid. Such remuneration must be determined by the remaining Trustees on the basis of the current market rate for that type of work.

15. RESETTLEMENT OF TRUST

- 15.1 The Trustees have the power to declare by way of resettlement such trusts (together with any conditions, limitations, and provisions to be carried out at the discretion of the Trustees or any person or persons) for the advancement or benefit of any charitable objects or the objects and in respect of the whole or any part or parts of the income or capital of the Trust Fund that have not been irrevocably paid or applied under the provision of this Deed in favour of any charitable object in New Zealand as the Trustees in their discretion think fit.

16. INDEMNITY

Each Trustee shall be indemnified out of the Trust Fund for and in respect of any loss or liability which such Trustee may sustain or incur by reason of the carrying out or omission of any function, duty or power of the Trustees under this Deed, unless such loss or liability is attributable to such Trustee's dishonesty or to the wilful commission or omission by such Trustee of an act known by such Trustee to be a breach of trust.

17. NO PRIVATE PECUNIARY PROFIT

Nothing expressed or implied in this Deed shall permit the activities of the Trustees, or any business carried on by or on behalf of or for the benefit of the Trustees upon the trusts of this Deed, to be carried on for the private pecuniary profit of any individual.

18. INCORPORATION

The Trustees shall ensure the Trust remains registered as an incorporated Trust under and in compliance with the Charitable Trusts Act 1957 (refer previous comments about Charities Act 2005).

19. **ALTERATIONS TO THIS DEED**

The Trustees may, from time to time, by resolution carried by a two-thirds majority of the Trustees alter, revoke or amend any or all of the terms of this Deed, provided that no such alteration, revocation or amendment shall be made which detracts from the objects of the Trust, or which may affect the charitable nature of the Trust.

20. **LIQUIDATION/DISSOLUTION**

20.1 **Resolution:** The Trust may be wound up or dissolved upon a unanimous resolution of all the Trustees at a meeting of the Trustees called for that purpose. There shall be no less than thirty (30) days' notice given of such meeting to the Trustees.

20.2 **Surplus Property:** On the winding-up of the Trust or its dissolution by the Registrar of the High Court under the Charitable Trusts Act 1957, all surplus assets after the payment of costs, debts and liabilities shall be given to such exclusively charitable organisation within New Zealand as the Trustees decide, or, if the Trustees are unable to make such decision, shall be disposed of in accordance with the directions of the High Court under section 27 of the Charitable Trusts Act.

Commentary: Please note the previous comments about the Charities Act 2005. Care should be taken to ensure the above references are still applicable depending on when the Charities Act 2005 comes into force in full.

21. **GOVERNING LAW**

The Trust shall be governed by and construed in accordance with the laws of New Zealand.



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