Dear FFA Members

On Thursday 6 September I wrote to you to acknowledge the progress made by the Congress Review Working Group (CRWG) and other football stakeholders, in expanding and rebalancing FFA’s membership (Congress,) to adequately address the principles of representative democracy and greater equality as required under the FIFA Statutes. Sport Australia recognises and supports the need to reform the FFA Congress in the best interest of the whole of football in Australia.

I also advised that a number of recommendations in the CRWG report do not meet Sport Australia’s Sports Governance Principles, and that full implementation of all recommendations in the report would concern Sport Australia.

Sport Australia provides financial and other support to National Sporting Organisations (NSOs) to improve the capability, sustainability and effectiveness of sports. Sport Australia also measures the return on investment of public funds through the Annual Sports Performance Review (ASPR) process.

Through this approach, Sport Australia and FFA have been collaborating over recent years regarding the sport’s governance and providing assistance to move towards best practice governance standards in line with the Mandatory Sports Governance Principles. This work has highlighted a number of opportunities for improvement over recent years, including gender balance on the board, which has been consistently below the 40 per cent requirement and with a significantly lower percentage in 2017.

Sport Australia is committed to continuing the monitoring and assistance it provides to FFA for continued improvement in governance for football in Australia.

**FFA independence**

Sport Australia respects the independence of FFA, including FIFA Statute 15(c), and the need for FFA to be independent and avoid any form of political interference. These views made by Sport Australia are to be in no way taken as interference from the Federal Government.

However as a major investor in football in Australia and a range of Sport Australia documents being referenced as supporting documents tabled to the CRWG, including the Sports Governance Principles, it is appropriate for Sport Australia to express a view.

Upon reviewing the CRWG Report, and the subsequent calling of the General Meeting, it is appropriate in our view for Sport Australia to provide its views publicly.

Sport Australia has a responsibility to the Australian public to ensure that sporting organisations receiving taxpayer funding comply with contemporary best practice governance standards. Over the past five years FFA has received $17.6 million from Sport Australia.

**The CRWG mandate**

The Mandate of the CRWG was as follows:

> The main objective of the CRWG is to propose a new composition for the FFA congress which ensures a broader and more balanced representation of stakeholders in line with the requirements of the FIFA Statutes, in particular its art. 15 let. j). The CRWG’s proposal shall also consider and take into account the following issues:

- Alignment of the FFA statutes with the requirements of the FIFA Statutes, in particular Art. 15;
- The full participation of women at all levels of football governance;
- FFA Board composition and independence;
- Pathway for an alternative A-League governance model;
- Pathway for other stakeholders to become FFA members, including the possibility of an associate membership;
- Representation of NPL clubs in football governance structures.
The CRWG shall seek input from the Association of Australian Football Clubs (AAFC) and other relevant stakeholders, including by inviting them to its meetings as observers when necessary. In particular, the AAFC is to be systematically included whenever the representation of NPL clubs in football governance structures is discussed.

Furthermore, the CRWG shall seek input and regularly and systematically invite experts (such as Women Onside and female football officials and players) to provide input on how to best promote the full participation of women at all levels of football governance.

The primary concern that Sport Australia has with the CRWG recommendations are that they go beyond the original scope and intent of its remit. The main objective identified by FIFA was to ‘propose a new composition for the FFA Congress which ensures a broader and more balanced representation of stakeholders in line with the requirements of the FIFA Statutes, in particular its Article 15(j).’ Sport Australia was, and remains, supportive of such a review and rebalance. However the CRWG’s Report provides detailed recommendations beyond this, in ways that do not line up with Sport Australia’s view of best practice governance principles.

**Congress role in FFA**

The ultimate governance model proposed by the CRWG is, in the opinion of Sport Australia, flawed insofar as best practice governance principles. In short, the CRWG proposed model sees the FFA Congress not only elect the FFA board but also populate Standing Committees to advise the Board. This creates a governance system in which the Board (which ultimately has legal responsibility for the whole organisation) is subservient to advisory committees, the formation of which it is not involved in, and which are not accountable to the Board. This creates risk, compromises the independence of the Board, and restricts the ability of directors to fulfil their fiduciary duties.

The CRWG recommends that certain committees (Compliance Committee, Nominations Committee and Ethics Committee) report to the Congress rather than the Board.

**Sports Governance Principle 1.1** states:

*That management powers be formalised, disclosed and placed in a board which has the power to exercise all the powers of the organisation, except those powers that the Act or Constitution requires to be exercised in general meeting.*

**Commentary and guidance**

The ASC does not endorse a governance structure featuring both a board and another body, whereby this other body (usually called a council) assumes some board functions. The nature of matters reserved to the board and delegated to management will necessarily depend on the size and complexity of the organisation, and be influenced by its tradition and culture and the skills of directors and managers.

In our view, it is contrary to the principles of good governance that such committees report to the membership rather than the Board. In particular **Sports Governance Principles 2.6** states:

*That the board and each committee established by the board should have terms of reference or a charter. The terms of reference or charter should include, at a minimum:*

- board/committee purpose
- authority delegated to the board/committee
- board/committee composition, including the appointment of a chair
- reporting requirements
- delineation of the role of the board/committee and the role of management.
Commentary and guidance

Board committees allow directors to give closer attention to important issues facing the organisation than is possible for the full board. Board committees are an effective way to distribute the work between the directors and allow more detailed consideration of specific matters.

The number of board committees, size and mix, will vary from organisation to organisation depending on its size, complexity and the challenges it faces. Sporting organisations should consider the need to have board committees. Examples of board committees are audit and risk, nomination and remuneration, selection, and technical. The function and importance of the audit committee are considered later in these guidelines.

Not all committees need to report directly to the board; some committees such as selection and technical committees can report through senior management and the chief executive officer.

Committees should exist for a specific purpose and not merely because they always have.

Stakeholder and member engagement is quite possible without compromising the integrity and oversight of board committees.

Additionally the ASX Corporate Governance Principles and Recommendations also state that ‘the role of the nomination committee is usually to review and make recommendations to the board’.¹

The Australian Institute of Company Directors takes a similar position by stating ‘Committees make recommendations for action to the full board, which retains collective responsibility for decision making.’²

Sport Australia also notes that the CRWG recommends the creation of 17 such Standing Committees. In our view this is an exceptionally high number of committees for a sport creating a significant administrative burden on resources. We are not aware of any other sport in Australia having such a large number of advisory bodies; particularly in circumstances where committees report to the membership and not the Board. Currently no football State Federation has more than nine Standing Committees, with most having between three to five (some having one or none). Additionally we are not aware of any state member having a similar structure of an oversight committee reporting directly to the states membership.

Sport Australia discourages a governance system in which there is both a board and some other body that is able to influence or direct the board. The creation of a system in which a board may be constrained from acting for reasons other than being accountable to the Membership only, is to set the organisation up for failure. This behaviour is further reinforced in the second resolution of the upcoming General Meeting, where the members are directing the company to act by undertaking a review of the pathway to an alternate A League Governance model. Whilst this may be a good initiative, this is an example of the blurred lines between members’ interests, and enabling the FFA Board to act independently.

To clarify members’ rights and responsibilities, Sport Australia undertook extensive consultation with industry throughout 2015/16. Sport Australia’s position on this issue is:

The ASC’s position on this is therefore: To broaden the current governance principles to address rights of members, including: — concentrating members’ voting rights on key issues and decisions such as Board positions; changes to the constitution; significant changes to the core business of the NSO; and ‘usual business’ conducted at the AGM;³

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Sport Australia Position:

**Sports operate most efficiently when an empowered membership elects a Board, and then the Board operates as it deems fit, and not when a series of sub-committees and advisory bodies are formed that ultimately dilute the decision making ability of both the membership and the Board.**

**Sports should adopt processes that empower national Boards to provide strategic leadership and which allow management to get on with the job of running day to day operations and implement Board directed strategy, but which also respect and preserve the fundamental legal rights of the organisation’s members/owners.**

Ownership of football’s future

Sport Australia notes the proposed expanded Congress (membership) to include A League Clubs, a Women’s Council and the Professional Footballers Australia (PFA). Sport Australia has always advocated for greater diversity, especially women, at all levels of sport. It is encouraging that football is providing women with a greater voice in the game.

There are various membership models within Australian sporting bodies. To lead and guide the sector, Sport Australia’s position on this topic is:

> As for voting systems, the ASC considers in general that ‘one-member, one-vote’ is the fairest and simplest system, but this may not reflect the membership in some cases. The system adopted by Rowing in 2013 is an example of how a sport can balance the contribution of members with an equitable recognition of voting rights. The structure, although proportional, does not allow a small minority of members to hold the voting power for the entire sport and so creates a fairer whole-of-sport decision making process. The ASC understands that there will need to be some flexibility in how each sport finalises their voting rights based on issues such as their unique culture, membership distribution, business dynamic, growth potential, international structure, scale and sophistication. However, all sports would be expected to maximise the fairness of their voting systems and ensure members’ voting rights are concentrated on strategic governance, not management issues.

> The ASC’s position on this is therefore: To broaden the current governance principles to address voting structures whereby a minority of members are unable to vote together to create a majority of votes in a poll4.

Organisational structures and governance processes can enhance or diminish trust. Processes that give ‘smaller members’ comfort that they cannot be marginalised in a national entity by ‘larger members’ using the absolute power of a majority. Processes that give all parties comfort that the reasonable will of the majority and the collective organisation cannot be frustrated by one or two members exercising minority veto powers unreasonably and/or excessively.

The CRWG’s revised Congress model is of concern to Sport Australia due to the substantially increased allocation of votes placed in favour of the professional game at the expense of grassroots football.

The current proposal provides that 41% of member votes be allocated to the professional game (which includes for-profit clubs) enabling a veto position on key issues for football in Australia such as FFA director elections and future changes to its constitution. Furthermore, some of these for-profit clubs are internationally owned. Therefore, the strong proposed influence of the professional game within the Congress of FFA, and the offshore ownership base of many of those clubs, should be considered by the current FFA members in deciding on these proposals.

This model of expanded Congress, combined with the proposed influence of the Congress members in the various committees, is a risk for the sport. As football receives such a significant portion of its annual revenue through participation fees from players (“bottom-up funding”), it is critically important that an independent board is empowered to act for the good of the game as a whole, and is not subjected to the vagaries or influences of conflicted parties such as advisory group members or Congress members that may have a pecuniary interest in decision making.

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Sport Australia Position:

The current FFA members need to carefully consider how an expanded Congress may be in a position to veto key issues for football in Australia such as FFA director elections and future changes to its constitution.

Summary

Sport Australia provides significant annual funding to football under the terms of the FFA Sports Investment Agreement. Sport Australia seeks return on our investment in football in both high performance and participation outcomes. Sport Australia places significant importance on NSOs in Australia adopting and operating within a governance structure that enables the sport to be governed appropriately, independently, in the interests of the whole of the game not one part of it, and in accordance with good corporate governance standards and principles.

Sport Australia has no issue with robust debate and consideration being applied to the governance for sports in Australia. In this instance, we are confident that FIFA’s overall goals can be satisfied without compromising the fundamentals of good corporate governance.

In our experience, sports operate best when there exists a combination of an informed membership and an empowered board. Such sports are typically decisive and agile in decision making. Sports that blur the boundary between board and member roles, and those that are overly laden with advisory bodies, are ill-equipped to function efficiently in the changing landscape of sport.

Sport Australia continues to be supportive of progressing governance reform in Australian football that serves the long term interests of the game. However, we do only support changes that will strengthen the governance structure of such an important sport to the Australian community.

Yours sincerely

Kate Palmer
Chief Executive Officer
Sport Australia

14 September 2018