

**FOOTBALL FEDERATION AUSTRALIA**  
**GENERAL MEETING TO BE HELD 2 OCTOBER 2018**  
**BOARD INFORMATION STATEMENT AND RECOMMENDATION TO MEMBERS**

### **Executive Summary**

The Directors of FFA:

- support constitutional change to expand the Congress of FFA in accordance with the FIFA Statutes;
- support many of the elements of the Congress model proposed by the Congress Review Working Group (**CRWG**) and reflected in Resolution 1;
- do not support some important aspects of the CRWG Congress model and certain other proposed constitutional amendments contained in Resolution 1;
- are therefore duty bound to recommend that Members vote against Resolution 1.

If the Members do vote against Resolution 1, the Directors of FFA:

- propose to immediately work with the Members and FIFA and AFC on a model that:
  - retains the core elements of the CRWG model;
  - complies with the FIFA Statutes; and
  - reflects the appropriate Congress balance for football in Australia.
- believe that this model can be finalised in a timely way so as to enable the expansion of Congress in time for the 2018 Annual General Meeting.

### **Background**

1. At the upcoming General Meeting Members will consider and vote upon two Resolutions.
2. The first Resolution is one to amend the Constitution of FFA to give effect to recommendations made by the CRWG.
3. The second Resolution is intended to set up a process to consider and propose a new A-League Governance Model.
4. The Directors of FFA, in compliance with their obligation to act in the best interests of the Company must inform the Members of FFA as to matters that the Directors regard as relevant to the consideration by Members of the Resolutions before them.

## Resolution 1

5. Article 15(j) of the FIFA Statutes provides that in the statutes of FIFA's member associations "legislative bodies must be constituted in accordance with the principles of representative democracy and taking into account the importance of gender equality in football".
6. The Board is supportive of the FIFA directed process to establish 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 article 15(j). This was the primary mandate of the CRWG.
7. Consistent with this, there are many aspects of Resolution 1 that the Directors support, including importantly a significant increase in the size of the FFA Congress and provisions to achieve gender equality in football's governance structures.
8. The Directors do not support provisions that the Directors consider are not in the best interests of the Company, as they would have the effect of:
  - (a) creating an imbalance within the FFA Congress between private commercial interests and the interests of the amateur and "grassroots" football community and men's and women's national programs;
  - (b) inhibiting the ability of the Board to make decisions in pursuit of the objects of and best interests of FFA, independent from the individual interests of the Members.
9. As the Resolution requires the amendments to be voted on as a whole, the Directors regrettably do not support Resolution 1 and recommend to the Members that they vote against it. The issues that are of principal concern to the Directors are set out later in this statement.
10. The Directors remain supportive of the constitution of the Company being amended to establish 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.
11. To this end, the Directors submitted three alternative Congress models to the CRWG process. These alternative models were in their basic composition the same as or substantially similar to the Congress model recommended by the CRWG.
12. There were some key elements of the FFA alternative models submitted to the CRWG that the Directors consider necessary to address the concerns that the Board has about:
  - (a) ensuring a balance between grassroots, national team programs and professional football that properly reflects their coverage, investment and participation;
  - (b) ensuring the continuation of principles of good corporate governance around the role and independence of Board decision making;

- (c) ensuring that ongoing there is proper distinction between the role of the Board and the roles of each of the Members.
13. If the Members vote against Resolution 1 as the Directors recommend, the Directors propose to immediately work closely with all Members with the assistance of FIFA and AFC to finalise an alternative proposal. This alternative proposal would adopt many core elements of the CRWG Congress model, whilst amending that model in some important respects that the Directors consider are necessary in the best interests of FFA, consistent with their submission to the CRWG.
14. Given the significant work already undertaken by the CRWG, the Directors believe that constructive discussions addressing the few but important points of difference could achieve an agreed outcome in a timely way and ensure the expansion of Congress in time for the 2018 Annual General Meeting. The Directors would reschedule the AGM to accommodate this process.

***The principal concerns that the Board has with Resolution 1***

15. Resolution 1 contains amendments to achieve the primary mandate of expanding the FFA Congress as well as containing other proposed constitutional amendments. In the commentary below we deal with the categories of amendments separately.

**Amendments contained in Resolution 1 to expand the FFA Congress**

*Allocation of votes*

16. The proposed new composition of Congress is one where the voting breakdown, at least initially, will be 58% for “amateur” football (Member Federations) and 41% for “professional” football (Clubs and PFA). This is recorded in the Congress Membership Table on page 94 of the CRWG report.
17. This is a breakdown which the Directors believe excessively favours individual commercial interests and is likely to lead to the making of decisions that are not in the best interests of the game overall.
18. Unlike the Directors, who are independent and have fiduciary obligations to act in the best interests of FFA, individual Members have no such obligations and are entitled to vote in the pursuit of their own specific interests, even where their interests may be in conflict with the best interests of FFA.
19. A thriving professional game is critical to the good of the game in Australia. Nonetheless, given that the decision-making inevitably involves questions of the allocation and distribution of limited financial resources generated by the football community, 41% is in the Board's view too large a share of Member votes to be held by representatives of professional footballer stakeholder groups, who reasonably can be expected to act in order to advance their own commercial interests.

20. This is not a criticism of the professional footballer stakeholder groups. Each stakeholder group has its own constituency and its own interests to represent. The representatives of the professional stakeholder groups in making decisions as to how to vote on matters before Congress, such as the appointment and removal of directors and the making of constitutional amendments, are entitled to act in pursuit of their individual financial interests, as they are either for-profit commercial enterprises such as the A-League Clubs or representatives of specific interest groups.
21. Their position can be contrasted with that of each of the Member Federations, which are required to act in accordance with their public benefit not-for-profit objects of administering and promoting football within their relevant state or territory. Their representatives in matters before Congress are required to exercise their votes in pursuit of the objects of the Federation that they represent.
22. Consideration of the proposed re-allocation of Member votes in this resolution is a good example of this point. The representatives of each of the Member Federations should only vote in favour of the professional footballer stakeholder groups being allocated 41% of the Member votes if they consider that is in the best interests of the pursuit of their Federation's objects.
23. The Directors support the re-allocation of Member votes to the professional game. However, they consider that the level of the proposed allocation is not in the best interests of FFA and will pose an obstacle to the pursuit of FFA's constitutional objects regarding the promotion of football in Australia. Further, bearing in mind that these votes would be allocated to the professional game at the expense of State Member Federations, it is not apparent how a vote in favour of the professional game having 41% of Member votes could be in the interests of any Member Federation.
24. This is particularly so given that 7 of the A-League Clubs are owned or controlled by non-Australian interests, meaning that nearly 20% of the Member votes allocated will be exercised by entities that are foreign owned.
25. The concern that the Directors have as to the allocation of Member votes to the professional game is shared by Sport Australia, which has expressed the opinion that the effect of allocating 41% of Member votes to the professional game, together with other proposed amendments to the Constitution, will present a risk to the good governance of the sport.
26. The concern that Sport Australia has is one that should be carefully considered by each Member in deciding whether to support the proposed Congress model.

*The veto right granted to A-League Clubs*

27. The proposed Congress model directly allocates 28% of the Member votes to the A-League Clubs. This allows that one group of professional clubs to veto any special resolution that comes before Congress. FFA's Constitution cannot be changed other than by way of special resolution.

28. The Directors consider that this veto position in relation to further constitutional change is not in the best interests of FFA and will be an impediment to the development and advancement of the game in Australia in accordance with FFA's objects.
29. It is not apparent how the granting of this right to the A-League Clubs could be in the interests of any Member Federation.
30. The report of the CRWG<sup>1</sup> shared the same concern and recommended that the Congress membership model to be adopted should include a provision that had the effect that the A-League Club Members could not use their collective vote to veto a special resolution. However, a provision to this effect has not been included in the amendments to the Constitution in Resolution 1.
31. The Directors do not support any new Congress model that does not include this provision.

*The make-up of the Women's Football Council*

32. The Directors do not support the make-up of the Women's Football Council because it is intended by Resolution 1 that 6 of its 10 Members are to be elected by the professional game. The interests in women's football in Australia extends widely across the community, including families, children, youths, amateurs, coaches, referees, volunteers, administrators and national teams. The professional side of the game is an important part of women's football but it is not the dominant one.
33. The Directors also regard a process whereby individual groups of existing Members each appoint, after internal elections, additional persons as Members of Congress will necessarily inhibit the election of persons who are independent of stakeholder groups. The Directors consider that in order to ensure that there is proper representation of women's football on the Women's Football Council there should be a number of Members who are elected independently of the stakeholder groups that themselves already hold Member positions in the Congress.
34. Thus, although the Directors wholly support the establishment of the Women's Football Council, they do not support it in the structure proposed.
35. This is another of the key points of difference that the Directors consider should be addressed in developing an alternative Congress model. If the Members vote against Resolution 1, the Directors would propose to discuss a range of alternative methods for appointing the 10 members of the Women's Football Council (such as direct election by the football community) to meet the principles of representative democracy and independence.

---

<sup>1</sup> See the notes on page 94

### **Additional Amendments contained in Resolution 1**

#### *Election of Directors*

36. Resolution 1 proposes a number of amendments to the process by which Directors are elected at general meetings.
37. The amendments, which are in article 15.11, are vague, ambiguous and capable of opposite constructions, and thus are likely to lead to uncertainty and dispute in their operation. In particular it is unclear:
  - (a) whether there is a separate ballot for each Director vacancy or there is a single ballot in which all positions are filled;
  - (b) whether Members cast their vote in favour of a single candidate for each vacancy or they vote for multiple candidates;
  - (c) whether Members can vote for the same candidate for more than one vacancy;
  - (d) whether Members are required to vote in respect of vacancies or whether they can abstain; and
  - (e) given it is contemplated that more candidates can receive a Prescribed Majority than the number of vacancies, how this reconciles with the definition of Prescribed Majority, being 60% of the votes entitled to be cast.
38. Given the importance of the electoral process the Directors cannot support amendments that create such uncertainty and are likely to lead to disputes in their operation.
39. Further, the proposed amendments appear, under one possible interpretation, to produce a scenario where a candidate that has the support of every vote cast, other than those held by representatives of the professional game, (i.e. 59% support) will be eliminated in the first round of voting.
40. The Directors do not support amendments that would permit this outcome.

#### *Standing Committees Generally*

41. The amendments in the Resolution propose the establishment in the near term of 14 Standing Committees.
42. The Members of these Committees are largely appointed by Members of Congress and function, with three exceptions, as advisory groups to the Board.
43. The function of each Standing Committee is only described broadly in the proposed amendments and does not clearly identify:
  - (a) the authority that has been delegated to the Committee;

- (b) the manner in which the meetings of the Committee are to be conducted, including who is to chair the Committee;
  - (c) the nature and extent of reporting requirements to the Board;
  - (d) the role of the Committee in relation to both the Board and management; and
  - (e) to whom the Committee is answerable.
44. Further, contrary to the provisions of the FIFA Standard Statutes<sup>2</sup>, the amendments do not provide that:
- (a) both the Chairman and Deputy Chairman of each Standing Committee (other than an internal audit committee with the limited role to review the external auditor's report) are to be members of the Board;
  - (b) the conduct of the business of the Committees is to be in accordance with regulations drawn up by the Board;
  - (c) the members of the Committee are to be appointed by Board, on the proposal of Members or the Chairman.
45. The proposed Compliance Committee raises particular problems. This a Committee comprised solely of Member representatives whose role replicates many of the functions of FFA's Board and will inevitably impact on the ability of the Directors to perform their functions and discharge their responsibilities.
46. The FIFA Standard Statutes propose no such Standing Committee and the only Committee that is not a Board Committee is the Internal Audit Committee, which has an extremely limited remit. While FIFA itself now has a Compliance Committee, it is an entirely different organisation with no external oversight from a governing body and no capacity for a Director to be removed by a member resolution.
47. Sport Australia has raised serious concerns about the number and scope of the proposed Standing Committees. It considers that governance arrangements of this kind constrain the ability of the Board to act independently.
48. Sport Australia in particular notes - in the view of the Directors, correctly – that:
- (a) the sheer number of the Committees and the potential breadth of their remit would impose a significant administrative burden on FFA management and resources, which will inevitably impact on their capacity to perform their management functions;

---

<sup>2</sup> Article 41

- (b) the Board would be receiving advice from a large number of Member Committees with uncertain powers and duties, which will seek to influence management decisions that are made by the Board. This will inevitably impact on the capacity of the Board to manage FFA independently in the Company's best interests.
49. Given that Sport Australia consider such arrangements set a sporting organisation up for failure, their concerns need to be carefully considered by all Members.
50. The Directors agree that there is merit in expanding the number of Standing Committees and having stakeholder representation on them. If Resolution 1 is not passed, this would be included as a matter for the discussions with the Members. These Committees should, however, all be Committees set up by the Board, plainly contemplated by the FIFA Standard Statutes, with a clear charter, and be subject to and report to the Board. This is plainly what is contemplated by the FIFA Standard Statutes. The Directors do not support the amendments in Resolution 1 because they do meet these criteria.

#### *Judicial Bodies*

51. Resolution 1 proposes the establishment by 31 January 2019 of three Judicial Bodies.
52. Judicial Bodies, with accompanying procedural regulations and by-laws, which perform these functions have however already been established by FFA in a system that was approved by FIFA and adopted by Members in 2015. Further, the eminent legal persons that have been appointed to these Judicial Bodies have been approved by the Members in general meeting and remain subject to their control through the Congress's removal power.
53. The establishment of replacement Judicial Bodies in these circumstances is unnecessary. Further, there are a number of practical problems with their proposed establishment in that:
- (a) the amendments do not properly identify the role and jurisdiction of each body, a matter which is comprehensively dealt with in relation to the existing Judicial Bodies of FFA under existing regulations and by-laws. To the contrary, the amendments seek to define those roles by reference to what is set out in the FIFA Standard Statutes, but those statutes expressly provide that the function of these Judicial Bodies shall be governed by the Judicial Code of FFA<sup>3</sup>. It is therefore an entirely circular reference and given that none of the current by-laws and regulations that govern the existing Judicial Bodies is described as the FFA Judicial Code, it is unclear what is the precise role of these proposed bodies;
- (b) the amendments do not seek to dissolve the existing Judicial Bodies and so their status is uncertain;
- (c) there are no transitional provisions, so if the previous appointments are no longer valid there will be no Judicial Bodies to deal with disciplinary issues arising from

---

<sup>3</sup> Articles 62 & 63

national competitions that are, or are soon to be, in progress, including the A-League, W-League and FFA Cup;

- (d) the amendments provide that each of the three Judicial Bodies only have four members. This is a grossly inadequate number of members to enable the practical functioning of an effective and responsive judicial system<sup>4</sup>;
- (e) the amendments provide that the members of each of the three Judicial Bodies must retire after 3 years. This would be a waste of the expertise and knowledge of jurisprudence that is developed by members of Judicial Bodies. There is no requirement in the FIFA Standard Statutes for compulsory retirement after three years and the members of FIFA's own Judicial Bodies can have terms of up to 12 years;
- (f) while the FIFA Standard Statutes have a separate Disciplinary Committee and Ethics Committee, FIFA accepts that these functions may be combined in the one body and approved this system for FFA in 2015. The structure that FFA has, namely a single Judicial Body that does both – the Disciplinary and Ethics Committee – is in line with the model that the AFC uses. No justification has been advanced for this to be changed.

## Resolution 2

54. Resolution 2 proposes the establishment of a New Leagues Working Group (**NLWG**) with specified nominees to:

- (a) consider and propose an Alternate A-League Governance Model for the Professional Australian Leagues having regard to a number of designated objectives;
- (b) consider, evaluate and negotiate terms and make recommendations to the FFA Board in relation to the legal and commercial aspects of the new governance model,

with a number of consequential provisions, including that to implement the NLWG recommendations they must be approved by both the FFA Board and the Members by special resolution.

55. The Resolution is detailed in relation to both the manner in which the NLWG is to operate and the matters that it is to take into account in providing its recommendations.

56. The Directors consider that it is important that the Members, in considering whether to vote in favour of this Resolution, understand the effect of the Resolution if it is passed, given the respective powers that the Constitution grants to the Congress and to the Board.

---

<sup>4</sup> FFA's current Disciplinary and Ethics Committee has 19 members, FIFA's Disciplinary Committee has 19 members and the AFC's Disciplinary Committee has 12 members.

57. The Constitution provides that the Board is responsible for decisions about the management of FFA's business, which includes decisions about the structure of the A-League Competition. This means that the Board is required to exercise its independent judgment about the form that a new A-League Governance Model might take, including its commercial and legal aspects.
58. The Board will give detailed and careful consideration to the recommendations as to a new A-League Governance Model that are made to the Board by the NLWG pursuant to the process established by Resolution 2. The Directors to fulfil their fiduciary obligations are required as a group to exercise their own independent judgment to consider it carefully to determine whether its implementation in that form would be in the best interests of FFA. The Directors intend to then submit its approved model to the Congress (absent the A-League Club Members and PFA) for the endorsement of Members.
59. There are a number of steps that the Board will have to take to make their determination regarding a new A-League Governance Model.
60. It will need to:
- (a) undertake a detailed analysis of the financial impact of the recommended model to ensure that it does not involve the re-allocation of the resources of the FFA in a manner that is not in the best interests of FFA and its objects, including effective promotion of the game in Australia;
  - (b) obtain detailed legal advice to ensure that the recommended model does not breach the prohibition in article 3.2 of the Constitution on the payment or transfer, either directly or indirectly, of the profits, income or property of the Company to its Members;
  - (c) obtain detailed legal and commercial advice as to the most effective structure for a new A-League Governance Model, including taxation and stamp duty advice as to the consequences of that model.
61. It will also be necessary for FFA to have had discussions with relevant third party rights holders to determine whether they would be willing to vary their existing contractual arrangements, including by the potential novation of contracts by their parties, and if so, how, and what legal risks this may create for FFA.
62. Each of these matters will be important considerations for the Directors to have regard to in determining whether the recommended model is in the best interests of FFA.
63. It is only after the relevant advice has been obtained and considered by FFA that the establishment of the legal and commercial structure of a new A-League Governance Model, in the best interests of FFA and the game, can be determined. As such, detailed negotiations and agreements prior to this point may not ultimately be useful.

64. The Members, in considering Resolution 2, should do so having regard to the Board's position on the effect of the Resolution as set out above. The Board is supportive of a consultative process between stakeholders as to a potential new A-League Governance Model and if the Members by special resolution vote in favour of the process set out in Resolution 2, it will of course participate in that process by providing nominees of the Board and management to participate in the NLWG process as contemplated.
65. As noted above the Board will submit its approved model to Congress (absent the A-League Club Members and PFA) for endorsement.

**28 September 2018**