



# GOOD CORPORATE GOVERNANCE

Sporting governance principles of effective management of Associations / Clubs





# SPORTSLAWYER

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# SportsLawyer

SportsLawyer offers a range of services to assist sporting bodies to understand and implement good governance practices. These services include:

- Preparing and presenting tailored seminars to a board of directors about good governance, and implementing good governance practices;
- Providing general and specific advice on legal duties of board members, good governance and Director's duties;
- General and specific advice on the application of the *Associations Incorporations Act 1981* (Vic) and the *Corporations Act 2001* (Cth);
- Reviewing and updating sporting constitutions;
- Advising on risk management strategies including drafting appropriate policies and procedures;
- Providing general and specific advice on dispute resolution procedure;
- Advising leagues and clubs on employment law matters such as unfair dismissal and restraint of trade;
- Advising on the WADA Code and other doping policies such as athlete responsibilities, penalties and testing procedures;
- Disciplinary matters - Representing athletes, officials, clubs or spectators before all disciplinary tribunals. Preparing written submissions for clients where the rules do not allow for legal representation at a tribunal hearing;
- Representing athletes charged with criminal offences;
- Drafting and reviewing policies including Member Protection Policies;
- Providing defamation law advice;
- Representing elite athletes charged with doping infringements & sporting organisations in these matters, whether before the Court of Arbitration for Sport (Australia and Overseas) and before other tribunals;
- Advising and acting in discrimination matters; and
- Providing employment law advice, and drafting employment documents such as employment contracts.

If you are involved in the management or administration of a sports organisation and would like to speak to one of our sports lawyers please contact us on (03) 9642 0435 or email at [info@sportslawyer.com.au](mailto:info@sportslawyer.com.au)

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# Part 1 - INTRODUCTION TO GOVERNANCE

## What is Governance?

The term ‘governance’ refers to the system by which organisations are managed. It influences how the objectives of the organisations are set and achieved and sets out the rules and procedures for making organisational decisions.

Quality corporate governance is central to the development of future sporting opportunities and securing the longevity of any particular organisation. This booklet is designed to assist Leagues, Clubs and Associations (referred to below as the “organisation”) to prepare proper governance documentation from which solid management and financial structures and procedures can be formed.

A good governance model encompasses **5 key areas**:

1. Adhering to the set Constitution, laws and by-laws that apply to the sporting organisation;
2. Having risk averse financial management procedures in place;
3. Formulation of a strategic plan
  - This includes strategic and targeted goals, mission statements, future direction and vision for the organisation;
4. Monitoring the performance of the organisation and the board:
  - Successfully delegating roles to committee/ board/ tribunal members
5. Effective risk management

This booklet provides a detailed overview of what is expected of a sporting body and includes an assortment of templates, checklists and diagrams to assist organisations in complying with the law, having efficient financial accountability mechanisms in place and robust board and management structures.



## Part 2 - GOVERNANCE DOCUMENTS

All organisations need to have documented the rules for the conduct of the business of the organisation. This documentation can take several forms but the primary document is usually called the Constitution. Underneath that document sits the By-laws, regulations or rules that are subservient to the Constitution and address day-to-day operational matters of the organisation.

Most Sporting Leagues/Competitions require that all of their affiliated Association's / Clubs be incorporated, usually under the *Associations Incorporations Reform Act 2012* ("the Act"). Alternatively, a sporting organisation may be set up as a Limited Liability company. This makes the Association or Club a legal entity in their own right and generally gives the committee/board members as well as the members of the Association or Club, legal protection against being sued for the liabilities of the Association or Club in the same way that directors and shareholders of other companies are protected against personal liability.

**Incorporation has benefits such as:**

- limited personal liability of members and office bearers;
- the capacity to sue and be sued in the Association or Club's own right;
- hold separate financial assets;
- hold property;
- enter contracts; and
- be able to apply for grants.

To gain incorporation, an Unincorporated Association must have its members adopt the "Rules of Incorporation" as it is known in the Act, or a Constitution as it is more commonly known. There must be at least 5 members of an Association in order to be eligible to incorporate.

The Victorian Government has produced a document called the Model Rules, which is in essence a model Constitution. The simplest way to incorporate is just to adopt the Model Rules. However, there may be specific Rules that conflict with the interests of Board members or the vision of the organisations which is why a customised Constitution could be adopted that will take into account the individual needs of an organisation.

If you would like a Constitution drafted or reviewed, contact *SportsLawyer*. If you have a current constitution, this should be reviewed generally on a minimum five yearly basis.

## Part 3 - STRATEGIC PLANNING

'Strategic planning' is just 'management-speak' for long-term future planning. Strategic planning concerns anything that will bring results from 1 - 5 years or beyond. It is good management practice to raise your head above the sand every once in a while, and have a good look at what is going on around you.

Many large firms adopt a formalised top-down strategic planning model. Under this model, strategic planning becomes a deliberate process in which top executives periodically formulate the firm or organisation's strategy.

The basic development phase of a strategic plan looks like this:



In recent times, more and more sporting organisations have seen the need to treat their Associations/Clubs like businesses. Strategic planning is now not only a process for multi-million-dollar businesses, but small and medium sports also.

Any sporting organisation, whether it be a small club with 50-100 members right up to the dynamic realm of the AFL, should have some form of strategic plan.

The strategic planning process looks something like this - see over the page.

## Vision Statement

- **Vision:** Describes the desired or intended future state of a specific organisation or enterprise in terms of its fundamental objectives and/or strategic direction.
- **Mission:** Defines the fundamental purpose of the company or enterprise, basically describing why it exists.
- The Mission describes why it is important to achieve the Vision. A Mission Statement defines the purpose or broader goal for being in existence or in the business and can remain in existence for many years if it is crafted correctly. A Mission Statement is more definitive in its terms, especially in relation to the time frame and the future state of the business. The Vision Statement describes what the business will be like if it is successful.

## Situation Analysis

- The situational analysis of any organisation can generate a large amount of information, about half of which is not relevant to strategy formulation. To make the information more manageable, it is better to categorise the internal factors as strengths and weaknesses, and the external environmental factors as opportunities and threats. Such an analysis is referred to as a **SWOT Analysis**.
- **Strengths** need to be maintained, built upon or leveraged.
- **Weaknesses** need to be minimised, stopped or turned into strengths.
- **Opportunities** need to be prioritised and optimised.
- **Threats** need to be countered, minimised or turned into opportunities.

## Strategy Formation

- **People** – Strengthen capacity and encourage excellence at every level in the sport
- **Inclusion** – Ensure everyone is able to participate.
- **Growth** – More players, more people, community engagement and healthy outcomes.
- **Facilities** – More and better places to play – turn nobody away.
- **Awareness** – Promote recognition of the sport's popularity at all levels of government and throughout the community.
- **Leadership** – Build the business by providing a strategic focus, developing and strengthening partnerships and reinforcing a strong and united community.

## Implementation

- The final step in the strategic plan is the – **who** and **when** of the control. The two key strategic drivers in this plan are indicated through the identification of:
  - The **person** tasked with the responsibility of the strategy (Owner)
  - The **timeline** associated with the implementation of the strategy (Priority Status)
- Finally, it is of most importance that the members of your organisation are made aware of the strategic plan. A one or two-page summary is the best way to allow the members of your organisation to view the work that has gone into constructing the plan and for the greatest impact, should be displayed on the organisation website with a detailed explanation of the strategic planning process and the work that has gone into it.

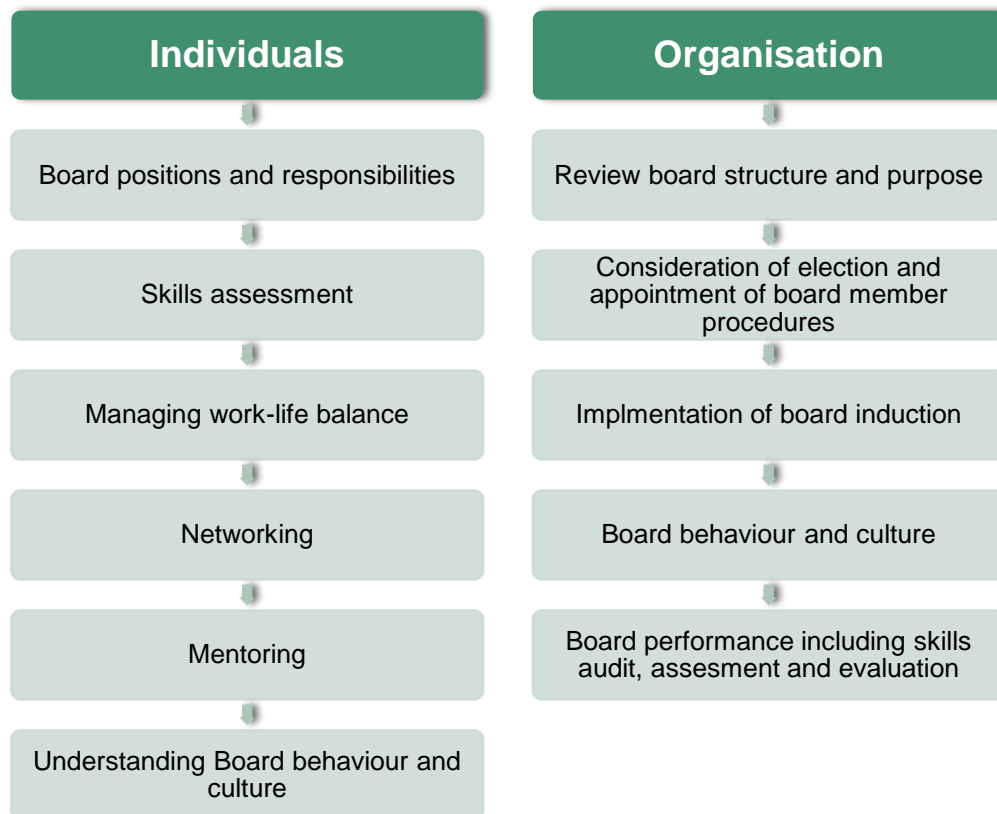
## Control

- The organisation's management should review the strategic plan on a quarterly basis by measuring the extent that the key performance indicators have been achieved. If the existing plan becomes unworkable in any significant way, a new plan should be formulated.
- Once implemented, the results of those strategies need to be measured, evaluated and reported on.
- The strategic plan needs to be addressed at every meeting and reported on. In time, the strategic plan will become the basis of the entire Board or Committee meeting.



## Part 4 - THE BOARD

The board's primary responsibility is one of trusteeship on behalf of members and stakeholders, ensuring that the legal entity remains viable and effective in the present and for the future. The board is ultimately accountable for all organisational matters.



### Key roles of the board include:

- Strategic planning
- Policy formulation (governance and operational)
- Organisational performance
- Reporting
- Management of financial resources
- Risk management
- Monitoring board effectiveness

## Legal Duties

Obligations and limitations are placed on the organisation and its board members by legislation and the common law which can vary depending on the Association's/ Club's legal standing.

The legal duties of board members include:

- Exercising due skill and diligence
- Avoiding conflicts of interest
- Keeping proper books of account
- Acting for the benefit of the organisation as a whole and for a proper purpose
- Avoiding improper use of the board position or information obtained from that position
- Acting honestly and in good faith

## Board Charter

A Board Charter is a one-source document which clearly sets out how the board performs its role. Second to the organisation's Constitution, a Board Charter is a key governance policy document which defines the respective roles, responsibilities and authorities of the board and management in setting the direction, the management and control of the organisation.

The Australian Sports Commission states in *National Sporting Organisation Governance Principles of Best Practice* (2012, 12) that the board and each committee established by the board should have a term of reference or a charter. The Board Charter should include, at a minimum:

- Board's purpose
- Authority delegated
- Board composition, including the appointment of a Chair
- Reporting requirements
- Delineation of the role of the board and the role of management.

### HOT TIP:

*This document should be provided to any person wishing to join the board as part of an Induction pack. The induction pack should also include the Club's Constitution, any policies, by-laws; most recent financial report; copies of any member protection policy; copies of affiliation agreements with parent/ constituent bodies; director insurance policies.*

## Board Sub-Committees

Board Sub-Committees may act as a suitable pathway for board succession and also provides an opportunity for individuals to be involved in leadership and decision making at another level.

Board Sub-Committees allow directors to give closer attention to important issues facing the organisation than is possible for the full board. Board Sub-Committees are an effective way to distribute the work between the directors and allow more detailed consideration of specific matters. The number of board Sub-Committees, size and mix, will vary from organisation to organisation depending on its size, complexity and the challenges it faces. Similar to a Board Charter each Sub-Committee should also have a clear Terms of Reference outlining the purpose of the committee. Examples of common Sub-Committees include: finance, marketing, risk, operations, events or fundraising to name a few.

## Board Composition

Boards that are more diverse in gender and background will be better positioned to think differently and represent a broader selection of interests of members and the wider community. Undertaking a performance evaluation and skills audit may assist an organisation to improve its board composition and is an effective way for a board to:

- Identify gaps in skill and diversity,
- Inform board development,
- Assist with board recruitment selection and
- Identify a preferred mix of skills and attributes.

The individuals that make up a board have the ability to influence the direction, decision making and culture of an organisation and are equipped with the responsibility of setting and carrying out strategic priorities. It is therefore important that board members have a good understanding of their roles and responsibilities as it will have a direct influence on board performance. There can be different perceptions and expectations regarding the role of board members. For example, the time spent on operational discussion versus strategic matters presents as a common challenge for sporting organisations. The role of board members will vary depending on the size, resources and nature of the sport.

## BOARD ROLE DESCRIPTION TEMPLATE

The board's primary role is one of trusteeship on behalf of its members and stakeholders, ensuring that (*the organisation*) remains viable and effective in the present and for the future.

### *The board should:*

- Determine (*the organisation's*) strategic direction, core values and ethical framework.
- Appoint, dismiss, direct, support professional development for, evaluate the performance and determine the remuneration of, the Chief Executive Officer.
- Approve, monitor and review the financial and non-financial performance of the organisation.
- Ensure an effective system of internal control exists and is operating as expected, and that **policies** on key issues are in place and are appropriate and that these can be applied effectively and legally to those participants or persons for whom they are intended.
- Develop a clearly articulated and effective grievance procedure.
- Ensure financial and non-financial risks are appropriately identified and managed.
- Ensure the organisation, its members and its officers comply with all relevant laws, codes of conduct and appropriate standards of behaviour.
- Provide an avenue for key stakeholder input into the strategic direction of the organisation.
- Ensure director, board and chairman performance evaluation occurs regularly.
- Members of the board may have been nominated or elected to the role from affiliated clubs and leagues. Members of the board are expected to make decisions for the betterment of the organisation and sport as a whole and not necessarily to promote or advance the self-interest of individual clubs or leagues.
- Be appropriately prepared for and commit to attending board meetings that are held at (*frequency and location*) at (*time*). In addition, directors are expected to attend the AGM and sub-committee meetings.

*\*(include details of any other commitments here e.g. awards, social functions, travel requirements etc)*



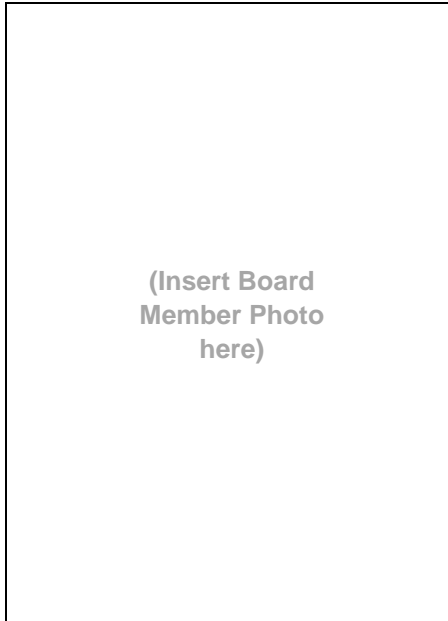
## BOARD CODE OF CONDUCT TEMPLATE

The board should ensure and actively promote ethical behaviour and decision making as set out in the Code of Conduct. Board members are expected to act with integrity to ensure that the reputation of (*organisation*) is managed, protected and enhanced.

- The board recognises the importance and value of board diversity. The board and its members are expected to promote and encourage equity and inclusiveness throughout the organisation and consider age, gender, cultural background and people with a disability in decision making.
- Directors are expected to act honestly and in the best interests of the members as a whole and not to represent individual constituents.
- Directors are expected to contribute to positive board behaviour and culture by showing respect for other board members opinions and allowing each member a fair and equal opportunity to contribute to discussion / decision making.
- Directors are required to comply with the following legal duties including:
  - *act in good faith and for a proper purpose*
  - *exercise due care and diligence*
  - *ensure the organisation does not continue to carry on its business whilst insolvent*
  - *meet the requirement of various federal and state laws that directly impact on the organisation*
- Directors are expected to disclose actual/potential conflicts of interest.
- Directors are expected to behave responsibly particularly regarding confidential information.
- Directors are expected to review board papers before board meetings and acquaint themselves with the issues confronting the boards.
- Directors are expected to know the competition rules/ policies/ by-laws of the organisation and work within them.

## BOARD PROFILES TEMPLATE

Including a board profile of each board member on your organisation's web site assists to inform members and potential board candidates of the current board composition including skills and diversity, improves board transparency and gives "a face" to your board members. The Good Governance Research also suggests that profiling female board members and women in leadership positions is an important strategy to create role models for other women in sport.



**Board Member's Name:**

**Board Position:** *(President, Vice President, General Member, Appointed Director)*

**Date Elected:**

**Description of Background / Expertise:**

**Interest and/or Involvement in the Sport:**

**Sub-Committee Involvement:**

## Part 5 - KEY PRINCIPLES OF RISK MANAGEMENT FOR BOARDS

### Why implement risk management or good governance practices?

- Reduces the chance of legal action against the Association or Club;
- Leads to more appropriate handling of many delicate issues and the sport functions a lot more smoothly, greater harmony;
- Reduces the risk of personal liability of directors/executive.

### Does the board carry insurance?

- Public liability or property damage;
- Director's liability insurance.

### No magic to risk management - common sense and thinking ahead

### Financial Affairs

- Each board member is responsible to ensure that the annual financial statement submitted to Consumer Affairs Victoria or the Australian Securities Investment Commission (ASIC) is an accurate account of the books of the organisation and its annual transactions;
- Even if you are not an accountant, and a person with accounting qualifications sits on your board, you still have obligations to consider and satisfy yourself as to the accuracy of the annual financial report;
- If the annual report is hiding losses, or an organisation (such as financial institution) relies on an incorrect annual report and suffers a loss as a result, board members could be held personally liable for any loss.

### The Australian Sports Commission best board governance paper notes the following in relation to risk:

*Risk is an inevitable and unavoidable component in organisational growth and development, providing both opportunities and potential threats to the health of an organization.*

*Risk management involves not only taking protective measures but also evaluating opportunities and, where appropriate, taking considered risks designed to facilitate the growth and development of the organisation.<sup>1</sup>*

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<sup>1</sup> Above n 1, 'Governing Sport' (2005), 13-14. Generally, a director will not be held liable for any decisions made or risks taken if done in good faith in the interests of the company and made for a proper purpose: *Harlowe's Nominees Pty Ltd v Woodside (Lakes Entrance) Oil Co NL* (1968) 121 CLR 483 at 493.

## Two common law duties: Care and diligence; and the duty of loyalty and good faith

These are also requirements under legislation:

- **Act in accordance with the articles of association/constitution** - familiarise yourself with that document, or you may unintentionally act outside of the powers it confers on you;
- **Act to the best of your skill and ability** - you are not expected to have the business acumen of James Packer, but you can't neglect your responsibilities either. You will be judged by the standard of a committee member seeking properly to perform their role.
- **Avoid conflicts of interest** - if the board is voting on/discussing an issue in which you have personal knowledge of the parties, or a vested interest, declare that interest, and if in doubt, go out of the room until the matter has been fully discussed and voted on.
- **Act for the benefit of the organisation as a whole, and act for a proper purpose** (e.g.; don't promote the interests of one interest group only - such as a club you were previously a member of - and don't act out of what may avoid bad publicity?)
- **Do not improperly use your board position or information gained as a board member;**
- **Act honestly and in good faith.**

Ensure that the organisation meets all requirements in law: this includes obligations at common law, such as obligations under employment, trading, taxation, discrimination and occupational health and safety laws.

## Good Demarcation of roles between the board and CEO/Administration

- No micromanagement
- Mutual trust and respect between CEO and board
- Be concerned with broader strategic, compliance, budgetary and policy issues, leaving day-to-day matters to the CEO or administrative staff
- Choose board members for their competence rather than who they represent

## Sound Constitution

- Sets out broad purposes/powers under which the board can act without unnecessarily seeking the organisation's approval for their decisions
- Properly gives the sports tribunal or discipline body its powers
- Reduces the change of legal action if a member is ejected from the organisation

## General Advice

- Listen to and be responsive to the needs and comments of the members
- Review rules or the constitution every one or two years in light of feedback from members, referees, coaches
- Educate coaches and referees on their legal responsibilities



## Strategic Plan & Regular Reviews

- Organisations should have a plan for the future carefully mapped out in the form of a three to five-year plan. The progress and adherence to the plan needs to be assessed at least annually. The plan should be adjusted or updated if circumstances change (e.g. economic downturn).
- Similarly, the CEO and board members' performances need to be reviewed every six (6) to twelve (12) months.
- All new board members should receive a formal induction into the board and the organisation. Such an induction should include receiving a full set of governance documentation, such as the strategic plan, the constitution or rules, all governance policies, up-to-date financial position, and prior to the first board meeting, a meeting with the chairperson and the chief executive officer to become familiar with both board and operational processes and issues. 2005 ASC Paper, 20, 2007, 18-19

See Annexure 1 (page 29 of this booklet) for a 1-page guide on “How to Implement a Risk Management Program” for your organisation.

For further information on best governance practice we recommend: ‘Australian Sports Commission: Sports Governance Principles (March 2012)

<http://www.sportslawyer.com.au/wp-content/uploads/2013/11/Australian-Sports-Commission-Sports-Governance-Principles-2012.pdf>

For further reading on Best Governance Practices in non-professional Sport Leagues, see ‘Organisational Structure, Economics and Best Governance Practice in Non-Professional Sporting Leagues’.

[http://www.sportslawyer.com.au/wp-content/uploads/2013/11/SportsLawyer-Paul-Horvath\\_article.pdf](http://www.sportslawyer.com.au/wp-content/uploads/2013/11/SportsLawyer-Paul-Horvath_article.pdf)

## PART 6 - FINANCIAL MANAGEMENT

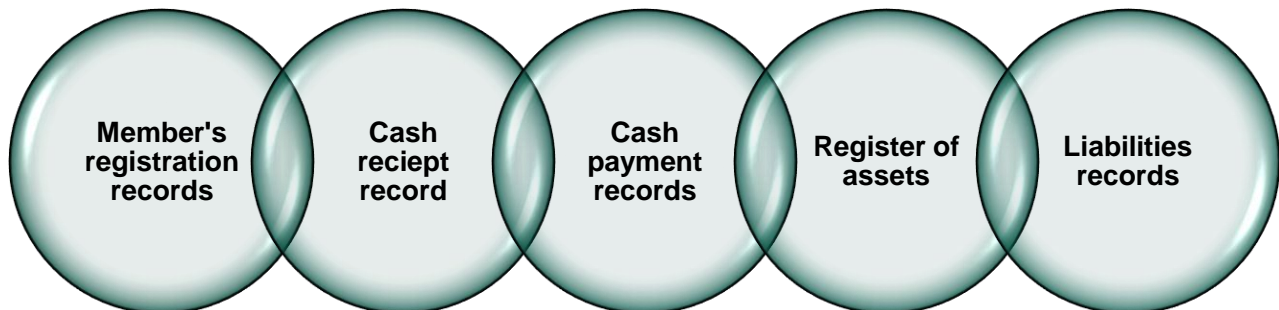
Sport and recreation organisations achieve their strategic goals and deliver their programs and services through the efficient and effective application of human resources (volunteers and staff), physical resources (facilities and equipment) and financial resources (efficient use of available funds). Responsible management of financial resources is perhaps the most common factor that separates sport and recreational organisations that are successful and those that are either less successful or those that decline or cease to exist.

Organisations should start by completing the checklist below against your organisation. This is a list that can assist in safeguarding your organisation's future.

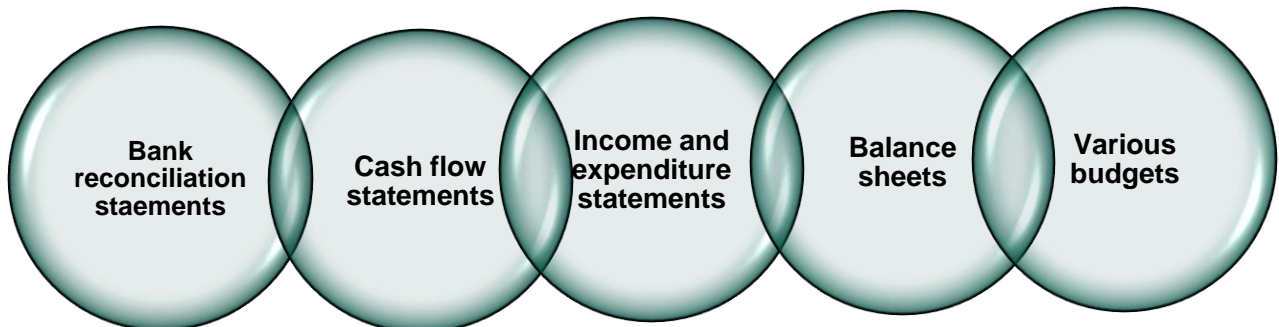
Many small sporting organisations do not employ staff, so the Treasurer has to do the banking, depositing of cash and cheques, paying the bills and tracking income and expenditure throughout the year. The treasurer needs to be on top of the finances so the organisation knows how well it is tracking against the budget and how to respond if unexpected problems arise.

In larger organisations, full-time or part-time professional staff manage the daily transactions and record-keeping and the Treasurer maintains a watching brief on the monthly accounts. Often, the Treasurer can share this responsibility with a Finance Committee, thus providing a link between staff and the board.

### *Role of treasurer:*



### *Treasurer must prepare:*



## FINANCIAL MANAGEMENT CHECKLIST

### Essential Financial Management

- Has the organisation recently reviewed its cash handling procedures?
- Does the organisation ensure that all cash coming in is collected, receipted and subsequently banked?
- Is the concept of 'separation of duties' implemented as much as possible within the limitations of the size of the organisation?
- Does the organisation have written policies and procedures for fiscal operations and are they reviewed regularly?
- Are the organisation's cheque signatories current, correct and approved by the board?
- Does the organisation's constitution refer to who and how cheques are signed?

### Role of the Treasurer

- Does the organisation have a position description for the Treasurer?

### Cash Flow Management and Budgeting

- Does the organisation have an annual budget that has been formally approved by the board or members?
- Does the Treasurer regularly report on the Budget at board meetings?
- Does the board regularly compare budgeted income and expenditure with actual income and expenditure, and take action where necessary? <sup>[L]</sup><sub>[SEP]</sub>

### Financial Reporting

- Does the Treasurer produce a financial report at all board meetings?
- Does the Treasurer produce bank statements at board meetings?
- Are the organisation's financial records backed up electronically off-site?
- Does the Treasurer highlight unusual items and identify potential problems in notes to the financial statements?

### Financial Returns

- Does the organisation know of its obligations toward financial returns?
- Does the organisation make arrangements for financial returns to be lodged - where appropriate? <sup>[L]</sup><sub>[SEP]</sub>

### The Audit

- Has the organisation arranged for an annual audit of the financial statements?
- Does the organisation select an independent auditor to conduct the annual audit or review?
- Does the board review the annual audit?

### ***Some Handy Tips:***

Whether you are using an Excel spreadsheet, software such as MYOB or Quicken, or a simple paper-based book system, you will need to keep track of the money. You will need to compare actual financial performance against predicted financial performance so the board understands the state of its finances (important as part of the duties of board members).

The formation of a very basic cash handling policy can be as simple as six steps:

**1. *Set-Up One Cash Point***

It is best to only have the one point of cash contact for the whole organisation. For example, game fees are paid at the same place as door entry and registration fees.

**2. *Create a Paper Trail***

Receipts are vital for cash transactions, especially when creating a budget. You may make an exception for things such as a door fee, where you are taking in a small amount of money many times over. But keeping a tally of the number of people coming through the door is also useful.

**3. *Make Deposits Immediately***

Cash should be deposited as soon as it's counted, certified, and turned over to the Treasurer.

**4. *Cover Yourself***

Although it is not a nice thought, all organisations should conduct their due diligence when recruiting or acquiring a new member onto their board, especially when that person will be undertaking financial management responsibilities. Police Checks and reference checks should be undertaken and it is well worth the cost. Whether you see it this way or not, your group is a small business and the money that people handle belongs to the organisation's members.

**5. *Rotate the staff***

To ensure that the staff does not get complacent in their positions, it is always good business practice to rotate staff through a variety of positions if you can. This way, if there is a drop-in receipt when a particular person is working, alarm bells should ring.

**6. *Compare receipts and payments with expectations***

Organisations conducting competitions need to compare such revenue streams as team sheet fees with actual receipts and expenditure items such as referees' payments with rosters. Cash summaries must be prepared and scrutinised for all sessions conducted.



## *Cash Flow Management and Budgeting*

Whether you are just starting a non-profit organisation or have been in existence for many years, your organisation will need a budget. The larger your organisation, the more complex the process may be, including creating multiple project or department budgets with the help of several staff.

Budgets are the organisation's financial operating plan for the fiscal period. They express, in monetary terms, the board/committee of management's decisions regarding how the organisation will fulfill its stated purpose. The board/committee of management decides which programs will be undertaken for the upcoming fiscal year. They then allocate appropriate resources to ensure that those programs are delivered. The budget charts a direction for allocating and maximising the use of resources. Ideally, it should also identify any financial problems that could arise in the coming year. In addition, the budget should provide indicators for gauging staff performance and detail staff goals and steps to achieve them.

Program priorities should be balanced in an effective budget. The board must allocate its capabilities and resources for maximum benefit to the maximum number of the intended audience or members.

Good budget preparation should include documentation of all your key assumptions. This way, you will remember what you anticipated, and when reviewing your forecast against actual, it will help to see what has changed if the actuals turn out differently. When listing your assumptions, if you believe that there is some risk that the event may not occur (such as a sponsorship not materializing), include this information with the assumption and any actions that you may have thought of in the event that a particular assumption turns out to be correct. That way, you will already have an action plan in place.

Budgeting and forecasting are the future financial plans of the organisation. They are where the strategic plans are translated into financial numbers to ensure that the strategic plans are financially viable.

## *Advising the board on financial strategy*

Preparation of reports for members, management and sponsors outlining the current financial situation is essential in looking at possibilities for the future and drawing people's attention to tax implications and potential risks or opportunities.

Financial accountability includes planning and budgeting. The budget will fall out of the strategic plan, so ideally a Treasurer would work with the board/committee of management to develop strategy and help set goals. On the basis of the Treasurer's reports, the board/committee of management may have to modify the budget.

If you have made an unexpected profit, you may wish to put it aside as a reserve to protect yourself against potential cash flow problems or use the money to strengthen your current operations or programs.

Boards need to be fully aware of the financial position of the organisation and must ask questions where it appears to them that the accounts contain errors or unexplained deficits. Board members cannot simply rely on the Treasurer or any accountant on the board to consider the financial viability and status of the organisation. If they do, they may risk being held liable for failing to meet the standard of a board member seeking to properly perform their duties for that organisation. This standard varies with the size of the organisation, the board composition, and the nature of the organisation.

### ***Backing up Financial Records***

A backup file is a copy of a data file. Data backups are usually done in financial software through a backup utility in the software itself, but there are backup software and services that accomplish the task of backing up as well.

Backup files are restored in the event the original data file becomes unusable due to file corruption or a system failure such as a hard drive crash. Financial data should be backed up to removable media, and data backups should not be stored on the hard drive. Data backup can be stored on a CD, DVD, USB drive, zip drive, floppy disk or to a remote backup site over the Internet.

For convenience, you can keep backup copies near your computer. However, copies of essential data backup files should be stored away from your home or office on a regular basis such as weekly or monthly, or even daily in a larger organisation. Storing data backups off-site is necessary so that in the event of a catastrophe such as a fire or flood, your financial data will be intact.

Store data backups in a safe deposit box or at the house of a trusted relative, or use an online backup service to store your data off-site.

### ***Financial Returns***

Lodging returns with authorities such as the Australian Taxation Office (ATO) or Consumer Affairs Victoria may be required.

Be aware of which returns you are required to lodge and when they are due. Keeping abreast of GST requirements, payroll tax and fringe benefits tax (if any), is also good practice. Not-for-profit Clubs or Associations, which is most sporting clubs, generally receive favourable tax treatment.

There may also be a requirement of your 'landlord', namely that you request and then submit regular financial statements. For example, if your organisation has the management rights to your stadium, the owner (in most cases either Local Council or the Department of Education) may require that you forward regular financial reports.

## Part 7 - FINANCIAL RISK

### THE BOARD IS RESPONSIBLE FOR THE ACCOUNTS AND FINANCIAL STABILITY OF THE ORGANISATION

- Each board member must ensure that the finances of the organisation are able to balance, and that the debts can be paid.
- It is not enough to say that the accountant on the board is responsible for the accounts or the organisation's accountant should be balancing the books.
- Board members of a not-for-profit organisation in Victoria have been held personally responsible by the Courts for losses even though they were hidden by a fraudulent CEO who had manipulated the accounts over a number of years: *National Safety Council v Freidrich*
- Board members have a duty not to trade insolvent. You must not incur a debt when you ought to reasonably know or would have been aware that there are reasonable grounds for suspecting the organisation cannot pay its debts. This may be both a civil and criminal offence, depending on the circumstances.

### MINIMISE - Opportunities for fraud and theft appear through lack of Policies and Procedures.

- Ensure that you regularly update your policies and procedures
- Not trusting is not a sign of weakness, but a sign of thoroughness
- Reduce instances of theft/fraud by education, risk management and awareness
- Trusted and consistent audit processes. The money belongs to members, so putting checks and procedures in place to minimise the risk of fraud is acting in the best interests of members, which is a primary duty of a board member.

### DISCOVERY - No one has the right to steal monies from anyone else.

- The initial response is to get rid of the person responsible and cover it up.
- Stay calm - you aren't the first and you won't be the last.
- All thefts should be documented and reported to Police.
- Members should generally also be informed as soon as possible once the theft is clearly established.

### EVALUATE - Has a crime been committed through inappropriateness?

- The first evaluation: **Honest Mistake, Bad Management, Negligence or Theft**
- Do you need to pass this onto a higher authority to investigate? - e.g. Police
- How does this affect your organisation's cash flow and ability to continue trading?

### RESPOND - The correct response can prevent this from happening again to you and/or others.

Consider whether it was:

- **Honest Mistake** - further education and tightening of policies
- **Bad Management** - re-assess the organisation's position
- **Negligence** - consider role changes or in serious cases a removal from office
- **Theft** - referring the matter to police to investigate/charge.



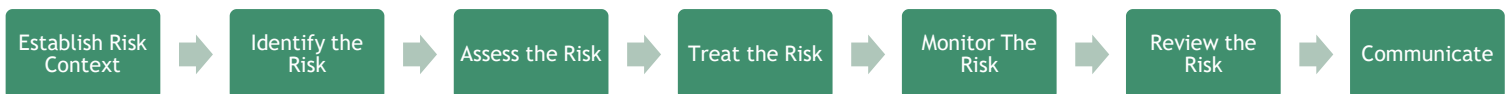
## PART 8 - INJURY RISK MANAGEMENT

- Club and race officials will owe a duty of care to participants in activities where there is a reasonably foreseeable risk of harm or injury to participants as a result of their actions
- The law requires organisations to take reasonable steps to reduce the likelihood of injury to participants as a result of those risks which are foreseeable

### *Risk Management Process*

- Adapted from the Australian Standard and National Risk Management Guideline, the following steps can assist in managing risks associated with any given sporting activity:
  - Establishing the Risk Context
  - Risk Identification
    - Age and experience of participants
    - Type of activities conducted (e.g. high v low risk)
    - Injury history, previous problems
    - Operational procedures
  - Risk Assessment
    - Environment and personnel involved
  - Risk Treatment (action plan)
    - Each identified risk must be rated according to:
      - the likelihood of the risk occurring (likelihood)
      - the loss or damage impact if the risk occurred (severity)
      - the priority, or degree of urgency required to address the risk (priority)
  - Monitoring and Review
    - review plan at end of season, activity or event
    - keep records of accidents and effectiveness of strategies
    - update the plan in line with developments in rules, technology, safety and the law
  - Communication
    - all club members and participants must be aware of the plan and their obligations
    - include in induction programs and briefings

Risk Management is a key responsibility of your organisation which can result in improved safety for participants, officials, spectators and members enhance compliance with the law, regulations and other formal requirements and promote better sporting outcomes.



## Part 9 - INTEGRITY

Our recent work in the area of integrity has revealed a number of important steps, safeguards and procedures that your organisation should be mindful of when developing integrity policies and conducting integrity-related investigations:

1. **Increase promotion of integrity** within your sport to both staff and participants to draw more focus and consideration of integrity-related matters, for both staff and participants. This aims to minimise activities which would lead to investigations or misconduct and promotes a positive culture which in turn discourages cheats from the sport. This can be done through information sessions and distributing material about how to identify and report suspicious behaviour.
2. **Create an Investigation Procedures and Policies Document**
  - Ensure your organisation has a robust Investigation Procedures Policy to guide the investigative process. This includes creating a Tribunal Hearing and Appeals Policy.
  - Ensure your policy contains a mechanism for members to report misconduct or make complaints.
  - The policy should set out minimum standards for investigations, such as prescribing mandatory file management systems; a requirement for mandatory investigation plans and interview plans; requiring 'corroborators' to be present for interviews and inspections; setting out notice guidelines for investigators, such as requiring a minimum of one week's notice to be given to a witness before they are interviewed or evidence is collected from them; guidelines for property and evidence inspection, including phone evidence, e-mail evidence, etc.
3. **Set out what matters to investigate.** Trends show that there is a tendency to investigate more minor or routine breaches, which inflates 'conviction' rates, but alienates some industry participants. Careful consideration should be applied as to what matters to investigate, with a focus on the more serious matters, or investigations into those who are involved in the industry full-time, or elite level athletes, as opposed to casual participants, if a choice must be made based on limited resources.
4. **Before Commencing an Investigation**
  - Ensure that investigators are appropriately trained, including that they understand their powers and obligations under any Investigation Procedures Policy.

- Ensure that there are no conflicts of interest present, and that nobody with a perceived conflict of interest is appointed as an investigator or to a tribunal hearing, or that a person is excused from a particular case if there is a conflict.
- Prepare an investigation plan to be authorised by the highest level of management. It should set out the appropriate authorisation to conduct an investigation, terms of reference which establish a focus and set limits on the investigation, such as the allegation or conduct in question, issues for inquiry, how the alleged conduct breaches the organisation's rules or policies, any possible conflicts of interest, what evidence will be obtained and how the investigator will obtain that evidence.

## 5. During an Investigation

- Make sure that procedural fairness is afforded to all participants at all times, including allowing accused persons and witnesses to have support persons present during interviews, making it clear that they are a witness/notetaker and not an advocate.
- Ensure that an adequate standard of proof is applied. For instance, in disciplinary investigations, allegations are proved 'on the balance of probabilities', meaning that it must be more probable than not that the allegations are substantiated. The standard of proof must rise with the seriousness of the allegation.
- Where evidence is gathered, the use of a corroborator where possible is recommended, especially when conducting interviews with witnesses. Evidence should only be gathered in line with any Investigation Procedures Policy.
- Protect information and evidence from unauthorised access. This confidentiality is paramount at all stages of an investigation.
- Ensure that witnesses do not discuss the case or allegations with others in the sport, or witnesses may be influenced and reputations damaged.<sup>2</sup>
- Child safety investigations, especially where sexual abuse is alleged, must be reported within three days to the Commission for Children and Young People (CCYP) and the police. Serious penalties may apply, including jail for a failure to report.

## 6. After an Investigation

- Determine the outcome of the investigation and ensure that the appropriate disciplinary action is followed.
- Prepare an investigation report and a brief of evidence which outlines the result of the investigation, the steps taken to achieve the outcome, and how the investigative process

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<sup>2</sup> This is a requirement of many Member Protection Policies: see Netball Australia, *Member Protection Policy 2017*, cl 15.1.9; and Swimming Australia, *Safe Sport Framework 2018*, clause 3.5, 'General Code of Conduct', cl 3.5(m) and 4.3.

assisted in achieving the result. This may assist your organisation to anticipate and prevent similar integrity issues in the future. This could also be used if the investigation were to be referred to an external agency such as Victoria Police, ASADA, or the CCYP (for child abuse matters).

- Making referrals to external agencies requires a level of understanding of the types of matters to refer, and your organisation should ensure that (where resources allow) at least one staff member has an understanding of key bodies to refer matters to and what sort of activity ought to be reported to each.
  - Record all steps taken to gather information and evidence, e.g., why some witnesses were spoken to and others were not, why some witnesses were called to give evidence and others were not. This information, and all evidence gathered, should be stored in a secure central repository, such as a locked filing cabinet or electronic folder that is not available to the public.
  - Ensure that all relevant parties are informed of the outcome of the investigation. It may help to keep a list of those involved to know whom to inform of the outcome.
7. **Strive for greater transparency** towards all sector employees, participants, and members of the general public. This could be done through the periodic publication of an ‘Integrity Report’ or newsletter on your organisation’s webpage or social media outlets. It can offer insight into the number of integrity matters investigated, the outcomes of such investigations, and steps and developments taken by your organisation to promote and strengthen integrity within the sport.

## PART 10 - CHILD SAFETY IN SPORT

Clubs should be aware that there are now increased obligations to ensure that children and young persons in their clubs are safe from abuse of any kind.

A Child or Young Person is defined as being under 18 years of age.

Your actions to protect children in your club should be based on available resources and the size and structure of your club. However, keep in mind that the protecting children in your club will require careful monitoring, reviewing and education.

You can build on the policies that you already have, or you may find it more useful to draft new policies with the help of an expert. SportsLawyer has experience in drafting a range of high-level child safety policies and are well placed to assist you with this.

The Victorian Government has introduced seven Child Safe Standards which all sports clubs in Victoria who provide services to children should implement to ensure that they are keeping children safe and meeting their legal obligations.

### CHILD SAFE STANDARDS:

1. Strategies to embed an organizational **culture of child safety**, including through effective leadership arrangements;
2. A **child safe policy** or statement of commitment to child safety;
3. A **code of conduct** that establishes clear expectations for appropriate behaviour with children;
4. Screening, supervision, training and other **human resources practices** that reduce the risk of child abuse by new and existing personnel;
5. Processes for **responding to and reporting** suspected child abuse;
6. Strategies to **identify and reduce or remove risks** of child abuse;
7. Strategies to promote the **participation and empowerment of children**.

### What policies should your club have in place?

Your club should have, at minimum, the following policies and procedures in place to ensure the safety and wellbeing of children:

1. A Statement of Commitment to Child Safety;
2. A Code of Conduct which outlines appropriate conduct and behaviour towards children;
3. A policy which outlines robust staff screening processes, including considerations such as Working with Children Checks, Police Checks, and provides for staff and member development, supervision and performance monitoring. This will ensure your staff are receiving regular training and/or information about how to identify and respond to risks or disclosures of abuse.

4. A policy which outlines what to do in the event that staff becomes aware of or suspects that a child has suffered abuse. This should

Again, it's important to remember that the policies you have in place should suit the size, structure and resources available to your club!

It's about more than just having policies and procedures in place. It's about building a culture of child safety in your club and setting a clear tone that the safety and wellbeing of children is paramount for your club.

## Reportable Conduct Scheme

As a sporting organisation, you must be aware of your obligations under the Victorian Reportable Conduct Scheme. It is administered by the Commission for Children and Young People (CCYP).

The scheme requires your organisation to have a 'Head of Organisation'. This can be the CEO or principal officer, or a person that is nominated within your organisation and approved by the CCYP.

The Head of the Organisation then has the responsibility to:

- respond to allegations of reportable conduct made against workers, office holders and volunteers from their organisation;
- ensure that proper and appropriate investigations are undertaken by the organisation into allegations of reportable conduct;
- notify the CCYP within three (3) business days after becoming aware of a reportable conduct allegation (**3-day notification obligation**);
- within thirty (30) calendar days of becoming aware of the allegation, provide detailed information about the allegation to the CCYP and the proposed response (**30-day notification obligation**);
- provide the CCYP with the materials relating to the investigation of the allegation, including the investigation findings;
- ensure that the organisation has systems in place to:
  - prevent reportable conduct from being committed by a worker or volunteer in the course of their employment (think of the policies outlined above!);
  - investigate and respond to a reportable allegation;
  - enable any person to notify the head of a reportable allegation; and
  - enable any person to notify the CCYP of a reportable allegation.

Be aware that it is a **criminal offence** for a head of an organisation not to comply with the 3- and 30-day notification obligations above without a reasonable excuse.

## What conduct is reportable?

There are five categories of 'reportable conduct':

1. sexual offences committed against, with or in the presence of a child;
2. sexual misconduct committed against, with or in the presence of a child;
3. physical violence against, with or in the presence of a child;



4. any behaviour that causes significant emotional or psychological harm to a child; or
5. significant neglect of a child.

This means that if anybody in your club suspects an **employee, volunteer, contractor or office holder** has committed reportable conduct, they **must** advise the head of the organisation who must follow the reporting process above to the CCYP.

## Criminal offences

### Failure to report

All adults in Victoria are now mandatory reporters in relation to suspicions of child sexual abuse. Any adult who has a reasonable belief that a child under the age of 16 has been sexually abused by anybody **must** report that belief to the police. If you fail to do so, you may be imprisoned for up to three years.

#### What is a reasonable belief?

A reasonable belief can be based on one of the following:

- a child tells you they have been sexually abused;
- a child tells you they know someone who has been sexually abused (they may be talking about themselves);
- someone who knows the child tells you the child has been sexually abused;
- you observe signs of sexual abuse in a child.

You do not have to report rumours or unfounded suspicions. If you believe a reasonable person with the same information you have would suspect that a child has been sexually abused, then you must report it.

### Failure to protect

It is an offence for a person who is in a position of authority within an organisation to not reduce or remove a risk that a child will become a victim of a sexual offence by a person associated with the organisation. This includes employees, officers, office holders, volunteers, contractors or other agents.

Who is a person in authority? It depends on the organisation, but includes CEOs, board or committee members, or even coaches or volunteers in some cases.

If a person in authority within an organisation had the power to remove or reduce that risk, but negligently fails to do so, they will be guilty of a criminal offence.

For example, you are in a position of authority in your organisation. You hire somebody whom you know left their last job because of allegations of sexually inappropriate behaviour involving children. Despite this, you continue to employ that person in a role which has contact with children. In this case, you are likely committing a 'Failure to protect' offence.

## Working with Children Checks

There have been a number of amendments to the Victorian Working with Children Check (WWCC) legislation (the *Working with Children Act 2006* (Vic) (Act)). The amendments mean that some people in your organisation who did not need a WWCC may now need one in their role.

The two main changes are as follows:

- The definition of ‘**direct contact**’ has been expanded. Previously, only face-to-face and physical contact with children fell into the definition of direct contact. Now, oral, written or electronic communication, as well as face-to-face and physical contact, is direct contact.

For example, if you have a communications officer who runs your club’s social media page, and your page has interaction from children or young persons below the age of 18, then the communications officer has ‘direct contact’ with children and needs to hold a WWCC.

- The reference to ‘**supervision**’ has been removed from the Act. This means that even if a member of your club’s contact with children is supervised by another person, the supervised person will still need to apply for a WWCC.

For example, a trainee coach did not need a WWCC because they were supervised by a senior coach.

## ANNEXURE 1 - How to Implement a Risk Management Program

1. **Strategic Plan:** Have a 3-5 year strategic plan. Refer back to it regularly, at least yearly, to assess the performance of your Board. If you don't set targets, you won't maximise your performance.
2. **Review your constitution:** Read it carefully and know what it does and doesn't allow you to do. Update it if you need to, including submitting any changes to Consumer Affairs Victoria/ASIC, or amend it to suit your organisation's needs. Make sure the league/competition has an independent board with broad powers.
3. **Annual Personnel Review:** Review the Board and key staff of the organisation (if any) at least yearly.
4. **Comply with all Laws:** such as Equal Opportunity laws, right through to carefully checking that the annual financial report is accurate, and that your accountant and any Board member with accounting qualifications, has signed off on it. Other relevant laws include Taxation, Occupational Health and Safety, and Working with Children laws.
5. **Have a Board Induction Pack and a Board Induction Program:**
  - **Induction Pack:** include in it the constitution; any policies, by-laws; most recent financial report; copies of any member protection policy; copies of affiliation agreements with parent bodies or constituent bodies; director insurance policy.
  - **Board Induction Program:** hold a meeting between the CEO (or main administrative officer, whether or not a board member), board Chairperson, and the new board member, usually after the new board member has read through the Board Induction Pack. Explain the board's role, type of work done, what is expected of board members, and have some sort of position description that details the role of board members.
6. **Member Consultation:** Always consult the members of the organisation. Listen to any feedback from members. After all, the members own the organisation.
7. **Insurance:** Ensure that you have adequate insurance cover for the organisation, for example: public liability, professional indemnity for coaches etc. and personal accident insurance. At an organisational level, the organisation ought to have adequate director's liability insurance.
8. **Policies & Rules:** develop appropriate policies (e.g. bullying and sexual harassment) including Codes of Conduct (Board and other) that set the "tone" of the organisation. Provide seminars to members on important issues.