

## **EXPLANATORY NOTES, COMMENTARY AND RECOMMENDATIONS**

The Board of the Melbourne Football Club made a commitment to the MFC Members to review the MFC Constitution. This review was brought about primarily by the identified need to amend the Constitution to allow electronic voting for Director Elections.

The MFC Constitution is an important document. It has existed in different forms since the Club was formed. The Constitution deals with matters such as how the board is appointed and how it works for members, as well as the rights of members and other governance matters.

Given the need to review the director election and voting sections of the MFC Constitution, the MFC Board decided that it was important to take the time and opportunity to review the whole Constitution, which has not occurred in over 15 years.

The MFC Board established a Constitutional Reform Working Group. Its purpose was to review the current Constitution, benchmark it against other similar organisations and against best practice governance principles, meet with Members to get feedback and to make recommendations to the Board about changes to the Constitution that are important for the future of the Club.

The Constitutional Reform Working Group has spent over 200 hours collectively reviewing the Constitution and meeting with Members. It is chaired by Mr David Rennick, (Director) and includes Ms Sally Freeman (Director), Mr John Trotter (Director), Ms Janette Kendall (Member), Mr Geoff Porz (Member), Mr David Chippindall (MFC Chief Operating Officer) and Mr David Goldberg (MFC Company Secretary and Returning Officer). The MFC has engaged a Barrister with expertise in Company Constitutions to advise on and assist in the drafting of the amendments to the Constitution.

Changes to the MFC Constitution require the support of over 75% of members that vote on the changes.

### **Amendments to the Constitution**

#### **Item 1**

##### **Club Purpose & Identity (Preamble)**

###### **Current Status**

The club's Constitution does not currently reflect any of the historical aspects of the club that are important to members, including but not limited to the Melbourne Football Club being the writer of the rules, the pioneers of women's football, our home as the Melbourne Cricket Ground, our colours, and Demons moniker.

###### **Recommendation**

These elements are important context for those reading the Constitution, and the Board are proposing that some of these important aspects be incorporated as a Preamble to the Constitution. Some parts of the identify are to be incorporated into a new Rule 1.1 of the Constitution.

The Preamble would not be technically part of the Constitution and does not require the approval of Members. However, it is important to note that the Board and the Constitutional Reform Working Group have consulted widely on its content.

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#### **Item 2**

##### **Inclusion & Diversity**

###### **(a) Chairman / President**

###### **Current Status**

The club's Constitution currently references the role of "Chairman" and "Vice-Chairman" throughout. This language is gender specific and is not reflective of the club's commitment to inclusiveness. It is also not reflective of the naming convention that the club uses for its leadership positions.

### **Recommendation**

It is proposed that these words are replaced with "President" and "Vice-President", or where relating to the chairing of meetings, "chair". This change is consistent with the public communication of these leadership roles.

### **(b) AFLW Team**

#### **Current Status**

Rule 1.2(b) of the current Constitution references that one of the objects of the club is "maintaining...a team of footballers to compete in the AFL competition and...in other football competition". There is no specific reference to the AFLW competition, given the Constitution was last amended prior to the introduction of AFLW.

### **Recommendation**

The requirement to maintain an AFLW team is inserted into of the Constitution (Proposed Rule 1.3(b)). This appropriately recognises the importance of our AFLW team within the Constitution and enshrines the requirement for the team to be maintained as part of our operations into the future.

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## **Item 3**

### **Member disciplinary action**

#### **(a) Ability to suspend a member**

#### **Current Status**

The Constitution presently does not allow for the Board to suspend a member pending an investigation – it only allows the Board to expel a member. This is a considerably more punitive action and may not be appropriate in all circumstances.

### **Recommendation**

The Constitution be amended to allow for the Chief Executive Officer to suspend a member in limited circumstances. The suspension will be for a period of no more than 28 days unless a decision is made to proceed to expulsion.

#### **(b) Appeal Committee**

#### **Current Status**

The Constitution outlines that the Appeal Committee for any expulsion of a member consist of:

- A person nominated by the Board (who will also be chair of the Appeal Committee);
- A member (not being a director) nominated by the Board;
- A person (not being a member) nominated by the President of the Law Institute of Victoria.

There is the potential for an Appeal Committee to be viewed as not being independent of the Board, given that two of the three positions are appointed by the Board.

### **Recommendation**

The club is recommending that in the unlikely event that the Board proposes to expel a member, that the Constitution be amended so that the Appeal Committee for expulsion of a member consists of:

- A member (not being a director) nominated by the Board;
- Two persons (not being a member or a director) nominated by the President of the Law Institute of Victoria, one of whom will be chair of the Appeal Committee.

This ensures an independence from the Board for the appeal process and also ensures an appropriate level of expertise on the Appeal Committee.

In addition, new protections for members the subject of an expulsion challenge have been included into the proposed Constitution, including a right of access to reasons for a decision.

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## **Item 4**

### **Director Election**

#### **(a) Requirement for postal ballot**

##### **Current Status**

The Constitution requires any director election be conducted by postal ballot. This is more costly, time-consuming and inefficient than electronic voting.

##### **Recommendation**

Remove the requirement for an election to be conducted via postal ballot. This will allow the club to conduct elections by electronic voting.

It is noted that the election rules will allow members who wish to continue to vote by post to be able to opt-in to do so.

#### **(b) Eligibility of members to vote in an election**

##### **Current Status**

The Constitution requires clarity regarding who is eligible to vote in an election. This arises as the election generally occurs in a new membership year (i.e. after 1 November), and discretion is therefore required to determine whether prior season members, or those that have signed up since 1 November, are eligible to vote.

Clarification is also required on what age members must be to vote in an election, with only junior members prohibited from voting – however junior membership categories cease at age 15.

##### **Recommendation**

It is proposed to amend the Constitution so that it is clear which members are eligible to vote in an election. This will include:

- Individuals who were members for the season immediately prior to the annual general meeting;
- Individuals who sign up as new members between 1 November and the time of the director election;
- Clarifying that only members 18 and over are eligible to vote in the election, consistent with Australian electoral law.

#### **(c) Nomination requirements of director election candidates**

##### **Current Status**

The Constitution presently requires a member to receive nomination by two voting members in order to be eligible as a candidate for a director election. Considering the significant level of investment in a director election process and the level of commitment required by directors, this is too low a threshold.

## **Recommendation**

The Constitution be amended so that a potential candidate for a director election requires nomination by 20 voting members in order to be eligible for the election. This ensures that the potential director is committed to their pursuit to be a director and has a reasonable level of support amongst the membership for their candidacy.

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## **Item 5**

### **Director Tenure**

#### **(a) Director tenure limits**

##### **Current Status**

There is no director tenure limit presently in the Constitution. This allows for circumstances where directors may seek to retain their positions indefinitely (subject to re-election requirements), preventing appropriate re-generation of the Board.

##### **Recommendation**

It is proposed to amend the Constitution to introduce a director tenure limit of three elected terms (~9 years). This time horizon is consistent with contemporary best practice for director tenure limits.

#### **(b) Extension of term for President**

##### **Current Status**

This issue is not contemplated in the existing Constitution, given director tenure limits do not exist.

##### **Recommendation**

With the introduction of director tenure limits, it is important to acknowledge the unique role of the President. Tenure requirements may have an impact on Presidential succession planning and create a sub-optimal outcome for the Club in that regard. Often it is later in a director's tenure that they are in a position or ready to be the best President for the Melbourne Football Club having regard to their experience on the Board and industry support.

These proposed rules allow that a director who is appointed President in their second term as a Director would be able to extend their tenure by one term, and a director who becomes President in their final term may extend their tenure by an additional two terms, provided that they remain President of the club during that time. This ensures that in all circumstances a President will have the opportunity to serve in that unique role for up to three terms in total.

The relevant director/President would still be required to be elected by the members for any additional terms in accordance with the Constitution.

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## **Item 6**

### **Governance & Committees**

#### **(a) Requirement for Nominations & Remuneration Committee**

##### **Current Status**

The only Committee currently required by the Constitution is the Finance, Audit & Risk Committee.

##### **Recommendation**

It is proposed to introduce the requirement for the Board to maintain a Nominations & Remuneration Committee. This committee is presently in place, however this formalises the requirement for the Board to have this

committee into the future. The recommendation does not extend to outlining the charter or objects of the Committee, allowing the appropriate flexibility for any future Board to make those determinations as required.

#### **(b) Requirement for Investment Committee**

##### **Current Status**

The only Committee required by the Constitution is the Finance, Audit & Risk Committee.

##### **Recommendation**

It is proposed to introduce the requirement for the Board to maintain an Investment Committee. Included within the clause is the requirement for this Committee to maintain stewardship of the club's Future Fund (the proceeds of the Bentleigh Club sale).

Having secured its future through the Bentleigh Club merger and now sale, it is critical that the Board maintains an Investment Committee to oversee the management of those funds and ensure the long-term financial sustainability of the club.

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#### **Item 7**

##### **AFL approval**

##### **Current Status**

Clause 29.2 requires that any changes to the Constitution must be approved by the AFL prior to taking effect.

This clause is considered not legally binding, outdated and unnecessary.

##### **Recommendation**

Delete clause 29.2

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#### **Item 8**

##### **Removal of references to "gaming" within Constitution**

##### **Current Status**

Clause 12 of the Constitution details the requirements of the Club relating to the maintenance of its gaming and liquor licenses. With the club divested of its gaming businesses as of 16 August 2022, there is no requirement to maintain the gaming provisions within the Constitution.

##### **Recommendation**

Remove the clauses previously required as part of the club's compliance with its gaming license.

It is not proposed to remove the clauses referencing the holding of a liquor licence, given the club may choose to hold one again in the foreseeable future.

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#### **Item 9**

##### **Consequential changes**

There are changes to cross-referencing and other minor non-substantive changes arising from proposed rule changes. These consequential changes have been identified in the marked-up Constitution.