

ELECTION AND APPOINTMENT OF BOARD DIRECTORS AND OFFICE BEARERS BY-LAW

Version 4

(By-Law Made Pursuant to Clauses 25, 26 and 27 of the Constitution)

©Exercise & Sports Science Australia

ACN 053 849 460

ABN 14 053 849 460

Locked Bag 4102 Ascot QLD 4007

Ph: 07 3171 3335

Email: info@essa.org.au

Website: www.essa.org.au

ELECTION AND APPOINTMENTS OF BOARD DIRECTORS AND OFFICE BEARERS BY-LAW

(By-law Made Pursuant to Clause 25, 26 and 27 of the *Constitution of Exercise & Sports Science Australia Limited*)

1. Purpose

- 1.1. This by-law outlines the process for:
 - 1.1.1. the election of Directors,
 - 1.1.2. the appointment of Directors, and
 - 1.1.3. the appointment of Board Office Bearers.

2. Definitions

- 2.1. **AFRC** means the Audit, Finance and Risk Committee
- 2.2. **Company Secretary** means a person appointed by the Board to efficiently administer the company, particularly with regards to ensuring compliance with statutory and regulatory requirements of the Organisation and Board.
- 2.3. **Director** means a Director of the Organisation.
- 2.4. **ESSA** means the Organisation, Exercise & Sports Science Australia Ltd.
- 2.5. **GNC** means the Governance and Nominations Committee.
- 2.6. **Leave of Absence** is defined as an extended period of leave of four weeks or more.
- 2.7. **Office Bearer** means President, Vice President and Chairs of Board Committees.
- 2.8. **Officer** means a director or secretary of the corporation
- 2.9. **Scrutineer** means a person who supervises the conduct of an election.

Part 1 - Election of Directors by Members

1. Responsibilities of ESSA

1.1. ESSA will:

- 1.1.1. ensure a fair and democratic election will take place for the election of ESSA Directors,
- 1.1.2. ensure membership is aware of the election and their ability to vote,
- 1.1.3. ensure all candidates are promoted equally using the candidates' statements, and
- 1.1.4. provide candidates guidelines on how electioneering can occur.

2. Responsibilities of Directors

2.1. Directors will not:

- 2.1.1. use their position to endorse Board candidates (other than themselves), and
- 2.1.2. use their position to influence the election.

2.2. The Board will utilise appropriate strategies to support succession planning.

3. Responsibility of the Candidates

3.1. Candidates will:

- 3.1.1. ensure they are a financial member eligible to be elected as a Director,
- 3.1.2. ensure they meet the requirements to be a Company Director as outlined by the Corporations Act (2001) and a responsible person as outlined in the governance standards of the Australian Charities and Not-for-profits Commission (ACNC) Act 2012 and listed in the nomination form,
- 3.1.3. provide the National Office with their nomination form and all required information by the due date, and
- 3.1.4. supply a copy of any campaign material (including emails and social media posts) to the Company Secretary for approval prior to its publication. The Company Secretary will review material and respond to the candidate within two (2) working days.

4. Responsibilities of the Company Secretary

4.1. The Company Secretary will:

- 4.1.1. notify members of the call for nominations for vacant Board positions,
- 4.1.2. prepare the nominations application form,

- 4.1.3. review campaign material and provide a response to the candidate within two (2) working days,
- 4.1.4. prepare notice of Annual General Meeting (AGM) and voting platforms and processes,
- 4.1.5. oversee the count of the votes with the scrutineers, and
- 4.1.6. declare the results of the election on the day of the AGM.

5. Calling Elections and Notice of Annual General Meeting (AGM)

- 5.1. Prior to the AGM, the Company Secretary must give notice of the AGM (as approved by the Board) and call an election as required by the Constitution to give effect to this By-law. This is by:
 - 5.1.1. posting notice of AGM and election notice on the ESSA website and relevant social media pages, and
 - 5.1.2. emailing financial ESSA members.
- 5.2. An election notice must:
 - 5.2.1. be posted and published in accordance with the Constitution and this By-law, and
 - 5.2.2. be posted and published no later than 28 days prior to the AGM and election.

6. Electoral Rolls

- 6.1. On calling an election under Clause 25, the Company Secretary must prepare a roll of the names and email addresses of the persons entitled to vote at the AGM and Director election. Only financial Full members and Life members have voting rights under the Constitution. Non-financial Full members, Student members, Academic members, Associate members, Honorary members, and Patron members have no voting rights.
- 6.2. Each member entitled to vote must notify the National Office of any changes to their contact email address within 14 days of any change of that address.
- 6.3. The National Office must close the electoral roll at the time by which nominations must be lodged and may not alter the roll in any respect whatsoever, except if there is an oversight or error.

7. Contents of Election Notice as part of the AGM Notice

- 7.1. An election notice must:
 - 7.1.1. state the number and description of persons to be elected at the election,

- 7.1.2. inform the members of the voting process (electronic voting prior to the AGM or via the specified means at the AGM),
- 7.1.3. specify the time and date of the AGM (including the election),
- 7.1.4. set out the requirements with respect to the nomination of candidates for the election,
- 7.1.5. specify how nominations will occur, and
- 7.1.6. specify the time and day by which nominations must be lodged with the Company Secretary at the ESSA National Office, in accordance with the Constitution, being a date that is no less than 21 days prior to the election.

8. Nominations

- 8.1. The nomination of a person for the National Board must be:
 - 8.1.1. in the form prescribed in the election notice and include all required information,
 - 8.1.2. signed by two (2) members, each of whom is eligible to vote at the election (the candidate may nominate themselves),
 - 8.1.3. signed by the nominated person, and
 - 8.1.4. lodged with the Company Secretary before the time of which nominations close.

9. Dispatch of AGM Papers

- 9.1. The Company Secretary must distribute the ballot papers along with other AGM documents to all eligible members no later than 14 days prior to the AGM.
- 9.2. For those members who attend the AGM and vote at the meeting, those votes will be crossed checked with the votes submitted prior to the AGM.
 - 9.2.1. A voting medium must:
 - 9.2.1.1. be headed with a description of the election to which it relates,
 - 9.2.1.2. set out the names of the candidates in alphabetical order, and
 - 9.2.1.3. have available, against each name, a box in which the elector may indicate the elector's preferred vote.

10. Voting

- 10.1. Clause 26.7 of the Constitution states that at any General Meeting, a resolution put to the vote of the meeting shall be decided via a means to be determined by the Chairperson, unless a poll is demanded.

- 10.2. Clause 27.8 of the Constitution however, states that unless otherwise deemed not necessary by members at the AGM, a ballot will be conducted for all Board positions in the Director election.
- 10.3. Via a means to be determined by the Chairperson, every eligible member present shall have one vote. On a poll, every eligible member present shall be entitled to cast one vote.
- 10.4. In the Director election, an eligible member may vote for as many candidates as he or she pleases up to the maximum number of vacant positions, via the method instructed.

11. Sorting and Custody of Votes Pending Count

- 11.1. Members can vote prior to the AGM. Votes must be received 48 hours prior to the AGM.
- 11.2. Electronic votes submitted to the National Office prior to the AGM will be considered valid if the:
- 11.2.1. vote is received by the National Office by the due date, and
 - 11.2.2. the member has provided their name as it appears on the electoral roll.
- 11.3. If the vote is deemed not eligible, it will not be included in the count.
- 11.4. Votes submitted to the National Office prior to the AGM and Directors Election will be safely stored by the Company Secretary until the AGM.

12. Scrutineers

- 12.1. The Company Secretary will appoint two (2) people to act as scrutineers. A scrutineer must be an independent person and not a member who is eligible to vote at the AGM.
- 12.2. A scrutineer appointed under Clause 26.20 of the Constitution is required to be present at the counting of the votes cast in the election and to examine (during the count) the ballot papers included in the count.

13. The Count and Declaration of the Results

- 13.1. The attendance of a member at the AGM will be cross-checked with members who have submitted their votes prior to the AGM. Any duplicate votes will be removed.
- 13.2. The valid votes submitted prior to the AGM and Directors Election will have been counted by the Company Secretary and verified by the scrutineer prior to the meeting.
- 13.3. The votes cast at the AGM and election are to be counted as soon as practicable during the meeting and added to the pre-meeting votes.

- 13.4. The count must be conducted by the Company Secretary in the presence of a scrutineer.
- 13.5. Once the count is completed and verified, the President will announce the result of the ballot to the meeting.
- 13.6. The outcome of the election comes into effect at the close of the AGM.
- 13.7. An election is rendered invalid by the failure of the scrutineer to attend the count.
- 13.8. The Company Secretary must keep records of the votes cast at the election and must make those records available to candidates on request.

14. Publication of Results

- 14.1. The National Office must, as soon as practicable after declaring the persons who have been elected to the National Board, publish the results on the national website and in the ESSA newsletter.

Part 2 - Appointment of Directors

1. Appointed Directors

- 1.1. The Constitution, Clause 27, allows for the appointment of three (3) Directors by the Board.
- 1.2. Appointed Directors do not need to be a member of the Organisation.
- 1.3. Appointed Directors will be appointed for up to a three-year period based on skills identified as being needed on the Board.
- 1.4. An Appointed Director must meet the requirements to be a Company Director as outlined by the Corporations Act (2001) and meet ACNC standards and be a responsible person under that Act.

2. Casual Appointments

- 2.1. The constitution, Clause 27.10, allows for the Board to appoint a casual Director until the next AGM if an elected position becomes vacant.
- 2.2. The casual appointee needs to be a financial Full member who meets the requirements of a Company Director under the Corporations Act (2001).

3. Role of the Governance and Nominations Committee (GNC) in the appointment of Appointed Directors

- 3.1. The GNC will review the skills matrix of the Board to identify the appropriate skills required by the Board to assist in achieving the Organisation's strategic vision.
- 3.2. The GNC will recommend the criteria for the selection of new Directors to serve as Appointed Director to the Board.
- 3.3. The GNC will oversee the recruitment of Appointed Directors. This includes:
 - 3.3.1. determining an appropriate recruitment process,
 - 3.3.2. approaching directly an appropriate candidate, if known to the Board or Organisation as meeting the criteria required,
 - 3.3.3. reviewing the applications and undertaking due diligence to create a short list of applicants,
 - 3.3.4. interviewing short listed applicants, and
 - 3.3.5. providing recommendations to the Board regarding appointment.
- 3.4. When considering the applicants, the GNC will consider:
 - 3.4.1. missing key skills sets on the Board or skills that will add value to the Board and Organisation,
 - 3.4.2. the current composition and diversity of the Board,

- 3.4.3. conflicts of interests that could arise through the recruitment process or appointment,
- 3.4.4. competencies and qualifications of the applicants,
- 3.4.5. other directorships held (previously and currently) by the applicants,
- 3.4.6. time availability of the applicant to dedicate to the role of Director,
- 3.4.7. contribution to the overall balance of the composition of the Board,
- 3.4.8. experience and depth of understanding of the role and legal obligations of a Director, and
- 3.4.9. reference and verification checks of the applicant.

4. Role of the Board

- 4.1. The Board will consider and vote on the recommendations by the GNC.
- 4.2. The President will contact and welcome the successful candidates and introduce them to the Board.
- 4.3. The Company Secretary will contact the unsuccessful candidates.

Part 3 – Appointment of Board Office Bearers

1. President

- 1.1. The Constitution, Clause 27.6, allows for Board to elect the President/Chair of the Board.
- 1.2. The President must be from the pool of Elected Directors.
- 1.3. The appointment will be for up to a three-year period, depending on the current sitting term of the Director.
- 1.4. If the President dies, is removed from office, resigns, or is deemed to have vacated the office, the Vice-President shall become President until such time as the Board is able to meet to elect its new President/Chair.
- 1.5. If the President is required to take extended leave, they are required to put forward this request to the Board for consideration.
- 1.6. The Company Secretary will list the nominees in alphabetical order in the Board Paper.
- 1.7. The candidate receiving a simple majority of the votes cast shall be President.
- 1.8. The National Office must communicate the result of the President appointment to Members as soon as practicable.

2. Vice President

- 2.1. The Constitution, Clause 27.6, allows for the Board to elect the Vice President.
- 2.2. The Vice President must be from the pool of Elected Directors.
- 2.3. The appointment will be for up to a three-year period, depending on the current sitting term of the Director.
- 2.4. If the Vice President is removed from office, or resigns, the Board will meet as soon as possible to elect its new Vice President.
- 2.5. Those wishing to nominate for Vice President must lodge their expression of interest with the Company Secretary before the allocated time.
- 2.6. The Company Secretary will list the nominees in alphabetical order in the Board Paper.
- 2.7. The candidate receiving a simple majority of the votes cast shall be Vice President.
- 2.8. The National Office must communicate the result of the Vice President appointment to Members as soon as practicable.

3. Chair of the Audit, Finance and Risk Committee (AFRC) and Chair of the Governance and Nominations Committee (GNC)

- 3.1. The Chair of the AFRC and Chair of the GNC may be appointed from either of the Elected or Appointed Directors pools.
- 3.2. The respective Chairs will be appointed for up to a three-year period, depending on the current sitting term of the Director.
- 3.3. If the Chair is removed from office, or resigns, the Board will meet as soon as possible to appoint a new Chair.
- 3.4. Those wishing to nominate for Chair must lodge their expression of interest with the Company Secretary before the allocated time.
- 3.5. Appointments will be carried out by simple agreement of the Board.

4. No Confidence

- 4.1. At any time, if a Director or Directors have lost confidence in the President, Vice President and/or Chair of one of the Board Committees, they may lodge a motion of no confidence to have the person removed from the position.
 - 4.1.1. A motion of no confidence must be lodged in writing with the Company Secretary. The motion must contain reasons for calling the vote.
 - 4.1.2. The person subject to the no confidence motion will be given seven (7) working days to provide a written rebuttal of the motion.
 - 4.1.3. The Company Secretary will table the motion at the next scheduled Board meeting or coordinate an urgent Board meeting, if required.
 - 4.1.4. A seventy-five (75) percent majority of the Board Directors is required to pass a motion of no confidence.

5. Leave

- 5.1. A Board Director must seek the Board's approval for a leave of absence.
- 5.2. Board Directors must understand the failure to miss two (2) consecutive Board meetings without prior consent of the Board creates a vacancy on the Board under Clause 27.15.6 of the Constitution.
- 5.3. If a Board Director takes leave for more than four (4) weeks, the following will occur:
 - 5.3.1. If it is the President taking leave, the Vice President will act as President,
 - 5.3.2. If it is the Vice President taking leave, the Board will consider appointing an acting Vice President, and
 - 5.3.3. If the Chair of one of the Board Committees is taking leave, the Committee will consider appointing an acting Chair and notify the rest of the Board.

6. Board Committees Membership

- 6.1. At the meeting following the AGM, the Board will consider the membership of the various Board Committees.
- 6.2. No formal application is required by Directors for positions and appointments will be carried out by simple agreement.

Modification History

Date	Version	Details
Feb 14	1	Approval date
Jan 15	2	New format
July 15	2.1	Update Constitution number
July 18	3	Three-year review, overhaul with change to constitution and missing information
June 22	3.1.	Administrative edits as noted by the Board on 17 June 2022. Removed by-law numbering and minor reformatting for consistency with other by-laws.
12 August 2022	3.1.	Board reviewed by-law for three-year review. No changes required. Next review due 12 August 2025.
25 August 2023	4	Updated in line with Constitution updates.