



Constitution explanatory notes

for the
ACTTBA 2020 Constitution (Constitution)

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Introduction and purpose

1. A re-worked Constitution document is to be presented at a Special General Meeting in May 2020 to replace the current ACTTBA Constitution adopted in 2014.
2. This document provides the background for the change and identifies key elements of the new Constitution. The document will follow the layout of the new Constitution and provide comparisons with the current Constitution – the documents are not laid out in the same order.

Background

3. The ACTTBA is operating under a set of business rules that were drafted and adopted in 2014. These rules only have a loose alignment with the Model Rules defined under Schedule 1 of the Australian Capital Territory *Associations Incorporation Regulation 1991* made under the Australian Capital Territory *Associations Incorporation Act 1991* (effective 1 July 2019). While strict alignment with the Model Rules is not mandatory (Section 31(2) and Section 32 of the Regulation), the current set of rules no longer fully aligns with the relevant section relating to using rules other than the Model Rules.
4. TBA, as the National Sporting Organisation, is transitioning to a One Management model as described by Sports Australia. Part of this transition is similar governance amongst all the State Sporting Organisations. TBA have drafted a template which is consistent with the Model Rules, satisfying the requirements of the Regulations and the Act.
5. The currently published rules are no longer consistent with the way that ACTTBA conducts business. A simple example is the definition of the Financial Year, which was brought into line with the NSO a couple of years ago.
6. The current set of By-Laws reflect rules that should be in the Constitution. However, because of how By-Laws can be set/amended, they do not form part of the strong foundation of the Association and cannot be considered to be part of the Constitution.
7. As a result, the current Constitution does not reflect good governance of the ACTTBA and does not provide a strong foundation for the management of bowling in the ACT.

Explanatory notes

Preliminaries

8. The current Constitution does not contain any formal preliminaries. These preliminaries are necessary to provide context for the Constitution, and to provide any key definitions that will be depended upon for interpretation of the Constitution.

Powers of Association

9. The old Constitution has a section called “Organisation and government”, which states “The control and management of the Association shall be vested in its officers as provided below.”
10. In addition, the old Constitution section notes that the quorum for meetings shall be a majority of the Association – a statement that is out of place. The rule of the quorum has the following shortfalls:
 - a. The type of meeting is not specified (e.g. formal General Meeting, informal Association meeting, Board meeting), and
 - b. A majority of the Association is in excess of 200 people.

11. The new Constitution sets out in clearer detail what the Association may do, and that the Association is not for profit. Meeting related information is presented in the sections on meetings.

Members

12. The old Constitution simply states “Membership in this Association shall be open to all individuals within the jurisdiction of the Association as defined by the NSO, who participate or are interested in the sport of Tenpins.” This rule has the following shortcomings:

- a. The NSO does not currently define a jurisdiction of the Association.
- b. The rule does not tie membership of the ACTTBA to membership of TBA, but does not otherwise define any membership fees or limitations. According to the rule as written, any social bowler can apply to be a member of ACTTBA and be freely admitted – regardless of the cost of administering or managing these additional members.

13. The old Constitution does not allow for a register of Members but does identify that a records of bowlers’ averages must be maintained.

14. The new Constitution link the membership to an active TBA registration – enforcing consistency between ACTTBA and TBA. In addition, the new rules define the categories of membership and what the rights of members are. Tied into the rights of members is the definition of members who are eligible to vote at General Meetings.

15. **Key point.** In the current draft of the Constitution, the definition of members who are eligible to vote remains consistent with the current Constitution. This allows a smooth transition between the old Constitution and the new Constitution. The wording of the rule minimises the work required for future amendment should the Association wish to transition to a direct member involvement (not a delegate) method.

16. The new Constitution ties the register of members to the TBA register of members. This allows for a centralised membership database include yearly averages without having to duplicate records or paperwork.

Disciplinary Procedures and Grievances

17. The old Constitution contains sections pertaining to dispute resolution and discipline. These rules operate in parallel with the rules laid down by TBA, creating a parallel pathway for discipline and duplicating efforts by TBA. Over time, these rules are becoming inconsistent with those set by TBA.

- a. Half of the existing Constitution is taken up by these rules.

18. The new Constitution allow the Board to conduct disciplinary procedures and deal with grievances in line with TBA guidance. This allows ACTTBA to follow TBA policy and rules without having to manage and maintain a parallel set of policies and rules.

General Meetings of the Association

19. The old Constitution provides scant guidance on how General Meetings should be organised and run. The timeline in the old rules is no longer valid for the ACTTBA financial year. The allocation of voting rights is described.

20. The new Constitution provide stronger guidance around the conduct of General Meetings, including the timelines for notification. These guidelines are consistent with the ACT Model Rules and the TBA provided template.

21. The new Constitution also describe the management of proxies.

Board

22. The old Constitution mentions the Board in three places:
- Association Board of Directors. A shortfall in this section is that it ties in the specialist roles (that may be done more effectively through a sub-committee) to a Director. Any change to a definition of the specialist role must therefore be conducted through a General Meeting. The clause relating to General Meetings is redundant.
 - Removal from Office. The current text is light on details and also does not convey rights to Director to be removed.
 - Board of Director Duties. The rule that the President is the CEO removes the flexibility from the Board to decide how to govern ACTTBA and removes the potential to engage a CEO separate from the Board. The President of the Board is a Director as are other Directors and is not an employer of the other Directors – the idea that the President can dictate the duties of other Directors is contrary to the concept of an independent Board of Directors.
23. The new Constitution provide greater structure around the composition and execution of the Board.
24. The new Constitution identify the general duties of a Director, consistent with the Act and Regulations. The new rules also described the duties of key Office Bearers consistent with the Act and Regulations. Other than that, the Board may conduct activities as necessary to ensure the good running of the ACTTBA without being further constrained.
25. **Key Point.** The new rules currently call for separate elections of the 4 key office bearers, which reflects the current practice (albeit not laid down in the current Constitution). A future amendment may be to directly elect the President when relevant, and then elect other Members to the Board with the Board to appoint Directors to key positions at a Board Meeting directly following the General Meeting.
26. **Key Point.** The new rules reduce the size of the Board from 8(+) to 5(+) Directors. The considerations taken here are the intent to rely on Committees or Working Groups to execute the day-to-day operations and manage key events; the difficulty in getting volunteers to be on the Board; and the difficulty in getting Directors to turn up to Board meetings. In addition, two key positions on the current Board are transferred to non-Director representation at the Board (next point).
27. **Key Point.** Two key positions on the current Board are transferred to non-Director representation at the Board which addresses the issue of a non-volunteer/non-elected Director on Board along with their obligations under law. **A hypothetical situation** could be where a Centre Representative could inadvertently breach their duties as a Director (including conflict of interest), when the representative was appointed by the Centre to the Board as part of their employment duties and not given adequate guidance or training to be on the Board. The nomination of a non-volunteer as a Director also has ramifications if that person does not turn up to Board meetings without due cause.

Financial Matters

28. The old Constitution addresses sources of funding, but does not directly address financial management, financial records or financial statements.
29. The new Constitution provides more structure around financial matters consistent with the Act and Regulations.

General Matters

30. The old Constitution addresses the Common Seal, the winding up of the Association and the amendment of the Constitution. The old Constitution also notes that records may be inspected at place “in the charge of the Association” – which is unworkable because the Association is not in charge of any venue.
31. The new Constitution also address the means of formal notification and provides more controls around the right to inspect books and records – consistent with the Act and the Regulations.

Impact of not adopting the new Constitution

32. Failure to adopt the new Constitution will simply mean that the old Constitution still stands. However, sections of this old Constitution must still be amended, which can only be done through another period of drafting and a Special General Meeting.
33. Further more, the old Constitution will remain unfit for purpose. The issues raised in the previous sections will not be fixed and your Board will not have the tools to effectively meet the objects of the ACTTBA.

Additional reading

34. The following resources provide some additional reading on the importance of the Constitution or Constitution:

<https://www.nfplaw.org.au/constitution>

https://www.nfplaw.org.au/sites/default/files/media/Changes_to_an_incorporate_d_associations_rules_ACT.pdf

https://aicd.companymen.com.au/~media/cd2/resources/director-resources/director-tools/pdf/05446-3-1-mem-director-tools-gr-number-of-directors_a4-web.ashx

Comparison between ACTTBA draft Constitution and the TBA provided template.

35. The following table identifies the adjustments from the TBA provided template to get to the ACTTBA Constitution. The format of the document has been changed to make it more readable and less legalistic for the general Member. The TBA provided template is consistent with the Model Rules but are no longer the Model Rules/replaceable rules due to tailoring to suit TBA needs.

Template reference	ACTTBA corresponding reference	Comments
Preliminary	ACTTBA at a glance	Additional information identifying ACTTBA added. Objectives tweaked. Definitions put into a readable format. Additional disclaimers included.
Powers of Association	[same order]	
2.1 Powers of association	1, 2, 3	Content similar
2.2 Not for profit organisation	4, 5	Content similar
Members	[same order]	

Template reference	ACTTBA corresponding reference	Comments
3.1 Eligibility to be a member	6	Eligibility more tightly defined. Members of ACTTBA are tied to the zone rather than the general any member of TBA anywhere in the world. Yes, really, still!
3.2 Categories of membership	7	Wording in plain English. Categories limited to only those that are relevant to the conduct of the association.
3.3 General rights of members	8, 9, 10	Converted to plain English, and presented in a logical manner. Meaning unchanged, except for a tweak in the “Member eligible to vote” definition peculiar to the ACT at this time. No need to keep repeating about someone who has paid the fee, because if they have not paid the fee they are not a member by definition.
3.4 Rights not transferrable	11	Content same
3.5 Ceasing membership	12, 13	Rolls in the resignation (which is a sub category of ceasing) for better grouping of rules.
3.6. Rejection or termination of membership	16, retitled	Retitled to address the appeal, which is what the TBA template covers – not the actual termination.
3.7 Resigning of members	[14, 15]	Rolled into ceasing membership
3.8 Register of members	17, 18, 19	Now TBA have to check that tenpinresults actually contains the right information!
Disciplinary Procedures and Grievances	[same order]	
4.1 Disciplinary Procedures	20, 21, 22, 23	
4.2 Grievances	24	
4.3 Application of Model Rules	25	
General Meetings of the Association	[same order]	
5.1 Annual general meetings	26, 27, 28, 29	Same content
5.2 Special general meetings	30, 31, 32	Same content
5.3 Special general meeting held at request of Members	[34-37]	Rolled into special general meetings. Same content
5.4 Notice of general meetings	38, 39	Same content
5.5 Proxies	40-46	Same content
5.6 Use of technology	47, 48	Same content
5.7 Quorum at general meetings	49-52	Same content

Template reference	ACTTBA corresponding reference	Comments
5.8 Adjournment of general meeting	53-56	Same content
5.9 Voting at general meeting	57-59	5.10, 5.12(b)-(d) rolled into this section based on contents of those rules. Otherwise content same.
5.10 Postal and electronic voting	[60]	Rolled into voting at general meetings
5.11 Special resolutions	[65]	Rolled into determining whether resolution carried based on content of rule.
5.12 Determining whether resolution carried	[61-53] 64-66	5.12(a) only, and 5.11 5.12(b)-(d) Rolled into voting at general meetings
5.13 Minutes of general meeting	67-69	Same content
Board	[same order]	
6.1 Role and powers	70-72	Same content
6.2 Delegation	73-75	Same content
6.3 Composition of Board	76-79	Similar content. Size of Board adjusted to suit the size and duties in the ACT. Non-Director roles included to cover the appointed representatives who may not be volunteers and to mitigate the legal ramifications of their position on the Board. Stricter rules around appointed Directors to limit liability and scope.
6.4 General Duties	80-85	Same content
6.5 Chair	86, 87	“President”. Tweak of wording so that the President is responsible for compliance with the Constitution regardless of whether they are chairing a meeting or not. Rule 87 tweaked to be consistent with Rule 88 (Vice-President).
6.6 Vice Chair	88	Same content
6.7 Secretary	89-92	Largely same content. Accounts for a non-ACT resident Secretary and nomination of Public Officer.
6.8 Treasurer	93-95	Same content
6.9 Eligibility to be a Director	96	Content changed to refer to earlier definition of Member eligible to vote.
6.10 Positions to be declared vacant	97	Content tweaked to reflect that not all positions will be declared vacant, and removed the unnecessary use of “subsequent”
6.11 Nominations	98-102	Similar content. Re-ordered to better flow. Removed requirement for nomination of Centre Representative.
6.12 Election of Chair, Vice Chair, Secretary & Treasurer	103-106	Same content
6.13 Appointment of Centre Representative/s	N/A	Removed – see “Composition of Board”

Template reference	ACTTBA corresponding reference	Comments
6.14 Ballot	107-117	Same content
6.15 Term of office	118-124	Moved 6.15(e) to a more suitable location. Otherwise content the same
6.16 Vacation of office	125-129	Rule 126 covers Rule 6.156(e). Rules 127 and 128 cover removal of Director for reasons other than at a general meeting.
6.17 Filling casual vacancies	130-133	Same content
6.18 Meetings of Board	134, 135	Same content
6.19 Notice of meetings	136-140	Same content
6.20 Urgent meetings	141-143	Same content
6.21 Procedure and order of business	144, 145	Same content – except an omission corrected in 6.21(b) ('Directors' instead of 'Director')
6.22 Use of technology	146, 147	Same content
6.23 Quorum	148-150	Same content
6.24 Voting	151-153	Same content
6.25 Conflict of interest	154-156	Same content
6.26 Minutes of meeting	157, 158	Same content
6.27 Leave of absence	159, 160	Same content
Financial Matters	[same order]	
7.1 Source of funds	161	Same content
7.2 Management of funds	162-167	Same content. Some duplication with earlier rules on the role of the Treasurer – may remove these or cross-reference to avoid future inconsistency based on change.
7.3 Financial records	168-170	Same content
7.4 Financial statements	171-173	Same content
General Matters	[same order]	
8.1 Common seal	174, 175	Same content. ACTTBA has a common seal, but is not obliged to use it and has not used it for a long time.
8.2 Registered address	176	Same content.
8.3 Notice requirements	177-179	Same content

Template reference	ACTTBA corresponding reference	Comments
8.4 Custody and inspection of books and records	180-184	Same content
8.5 Winding up and cancellation	185-188	Same content
8.6 Alteration of rules	189	Same content