



Government of South Australia

Office for Recreation and Sport

SBFSC CLUB CONSTITUTION

Deed of Agreement - Draft

February 2009

TEMPL

This Model Deed of Agreement has been prepared for the Office for Recreation and Sport as a guide for state-wide sports to formalise the arrangements between the various levels within the sport. It is designed to complement the template model constitutions provided by the Office.

Research conducted by the Office for Recreation and Sport and the Australian Sports Commission indicates that the most common reason clubs choose to disaffiliate with their state or national sporting bodies is an expressed dissatisfaction with the services provided by those bodies. Aligned with poor communication between the levels of sport this compounds until it becomes a major issue, affecting many sports nationally and within the state.

To be effective requires that all levels of the sport are working together for the betterment of the sport and therefore they will share common purposes, common structures, common policies and procedures, have the ability to work together to address issues of joint concern, and to ensure that information can flow freely between all levels of the sport. It also enables the various levels of the sport to share common strategic goals and work together to maximise the ability of the sport to market itself.

Finally with the increasing amount of legislation affecting Sport it enables the organisation to enact consistent and complementary policies and strategies that address areas of common risk and that these can flow effectively through the organisation.

To enable ease of use, this Model contains extensive footnotes and explanations on clauses and highlights sections that can be varied to suit your local situation. As you work through it you should think not just of your current situation but where you envisage the sport being in 5 or 10 years.

Within this template there will be references to sections that would be detailed in the Schedules developed to accompany the Deed. These are marked by (S).

Sections where you need to insert specific information are marked [Sport] and highlighted in red. The comments /discussion boxes will need to be deleted from your final version.

This template assumes a three tier arrangement within the state, that is it assumes that there is a national sporting organisation (NSO) which is not a party to this agreement. Within South Australia it assumes that there is a state sport organisation (SSO), underneath this that there are regional sport organisations (RSO) and that there are then sport clubs (clubs).

The Clubs would affiliate with the RSO who would in turn be affiliated with the SSO.

Where a level does not exist, for example where the club affiliates directly with the SSO they can be removed from this template.

A separate Deed would be prepared and used with each RSO as they affiliate with the SSO and a separate Deed with be prepared and used with each Club as they affiliate with the RSO.

As with any legal document this does not replace obtaining legal advice on your specific requirements.

**DISCLAIMER:
THE INFORMATION PROVIDED IN THIS PRESENTATION IS FOR YOUR
INFORMATION ONLY. THE OFFICE FOR RECREATION AND SPORT ACCEPTS
NO RESPONSIBILITY FOR THE ACCURACY OF THE INFORMATION OR YOUR
RELIANCE UPON IT.**

Prepared by:
Lander & Rogers Lawyers
Level 12 600 Bourke Street
Melbourne Vic 3000
Tel: (03) 9672 9111
Fax: (03) 9670 2723
e-mail: law@landers.com.au

THIS DEED is made the _____ day of _____ 2007

BETWEEN: **South Australian Ice Skating Association Incorporated** of P.O Box 125, Oaklands Park, South Australia ("SSO")

AND: ~~_____

_____~~ ("**Region**")

AND: **Silver Blades Figure Skating Club** of P.O. Box ----... ("**Club**")

RECITAL

The parties have agreed to enter into this Deed to:

- (a) commit to a co-ordinated and directed approach for the future of the sport of **ice skating** throughout South Australia ("**Commitment**"); and
- (b) undertake agreed obligations and services in respect to the Commitment.

This Deed is a legally binding document, which sets out the respective roles and responsibilities of the various levels within a SSO.

Its fundamental principle is that all levels of the sport commit to a co-ordinated and directed approach through the sport.

The document expressly recognises however that each level has its own particular role to play in seeking to achieve the commitment. It operates from a practical "sport-delivery" perspective over and above the constitutional framework of the SSO.

IT IS AGREED as follows

1. INTERPRETATION

This Deed and terms used in it will be interpreted in accordance with the SSO Constitution.

The Deed must be interpreted in accordance with the definitions and interpretation section of the SSO Constitution.

2. OBJECTIVES AND PRINCIPLES OF CONDUCT

2.1 Objectives and Purpose of Agreement

The parties acknowledge and agree that the primary objectives of this Deed are to:

- (a) commit to, and implement, the Commitment;
- (b) ensure co-operation between the parties to ensure the success of the Commitment; and
- (c) enable the parties to successfully undertake and meet their respective objectives and responsibilities under this Deed.

2.2 Principles of Conduct

The general principles of conduct which the parties agree to observe and respect in their dealings with each other in achieving the objectives in **clause 2.1** and satisfying their respective obligations under this Deed are to:

- (a) act in such a way as is consistent with and conducive to achievement of the stated objectives; and

- (b) deal with one another in good faith in all dealings, acts, matters and things and to co-operate with one another including conducting in good faith such discussions and negotiations as may be necessary or desirable to resolve amicably any difference or dispute which may arise between them.

3. UNDERTAKING OF COMMITMENT

3.1 Commitment

In consideration of the mutual promises in this Deed the parties:

- (a) will comply with their respective obligations under the SAISA Constitution, the SAISA Regulations and all policies made by SAISA;

This clause reaffirms the SSO constitution.

- (b) commit to the Commitment from the date of this Deed until [INSERT DATE]; and

The term of the commitment needs to be included here.

- (c) will meet the obligations and provide the respective services in the manner and as set out in the respective schedule as follows:

SAISA – schedule 1
~~Region – schedule 2~~
 SBFSC – schedule 3 2.

Each party's respective obligations need to be identified and set out in the relevant schedule. These could include everything from running competitions to marketing and fundraising etc.

3.2 Withdrawal

The parties agree that they cannot withdraw from this Deed and the Commitment unless:

- (a) they unanimously agree to release a party or parties from the Commitment; or
 (b) a party or parties winds up or amalgamates; or
 (c) ~~the Region or~~ Club ceases to be a Member of SSO.

Note: once executed the parties cannot withdraw from the Deed and the commitment unless any of the circumstances in paragraphs (a), (b) or (c) occur.

3.3 Future operation of the Commitment

Unless otherwise set out in this Deed the parties acknowledge and agree that:

- (a) the Commitment will be operated and managed by SSO; and
 (b) planning for the Commitment will be the responsibility of SSO.

The commitment is generally under the control and management of the SSO, subject however to the terms of this Deed and in particular the schedules.

4. CONFIDENTIALITY

These are standard confidentiality undertakings.

4.1 Undertaking

Subject to **clause 4.2**, each party shall keep the terms of this Deed confidential.

4.2 Exceptions

A party may make any disclosure of the terms of this Deed that it thinks necessary to:

- (a) any professional advisers, auditors, bankers, financial advisers and financiers, on receipt of an undertaking from that person to keep the terms of this Deed confidential;
- (b) comply with any law or requirement of any regulatory body (including any relevant stock exchange);
- (c) any employee or any employee of any Related Body Corporate (as defined in the Corporations Act) to whom it is necessary to disclose the terms, on receipt of an undertaking from that person to keep the terms of this Deed confidential; or
- (d) any shareholder or affiliate of the party, including any members, officers or councillors of a shareholder or affiliate of the party, provided that the Deed is not reproduced and distributed to such persons in part or in full.

5. ACKNOWLEDGEMENTS

The parties acknowledge that they enter into this Deed fully and voluntarily on their own information and investigation.

6. ALTERNATIVE DISPUTE RESOLUTION

This clause refers to and reflects the grievance procedure in the SSO Constitution.

The second paragraph below effectively ousts the civil courts' jurisdiction.

If any dispute or difference arises between any of the parties to this Deed under this Deed and they are unable to resolve the dispute or difference, then the dispute or difference will be resolved under the Grievance Procedure under the SAISA Constitution.

If the matter proceeds to the State Sport Dispute Centre (SSDC) for resolution the determination of SSDC will be final and binding on the parties and no party may institute or maintain proceedings in any court or tribunal. In particular, and without restricting the generality of the foregoing and for further and better assurance, notwithstanding that such provisions have no applicability, neither party will have the right of appeal under section 3 of the Commercial Arbitration Act of any of the Australian States or to apply for the determination of a question of law under section 39(1)(a) of such Act.

The State Sport Dispute Centre is operated by the South Australian Sports Federation (Sport SA). The services are provided to SSO who are members of Sport SA. Should your SSO not wish to become or remain a member of Sport SA you will need to amend this clause accordingly and insert a different Dispute Resolution process.

7. FURTHER ASSURANCES

Each party shall take all steps, execute all documents and do everything reasonably required by the other parties to give effect to the transactions contemplated by this Deed.

8. AMENDMENT

This Deed may be amended only by another deed executed by all parties.

9. ASSIGNMENT

The rights and obligations of each party under this Deed are personal. They cannot be assigned, charged or otherwise dealt with, and no party shall attempt or purport to do so without the prior written consent of all the parties.

10. NO WAIVER

No failure to exercise and no delay in exercising any right, power or remedy under this Deed will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

11. COUNTERPARTS

This Deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one agreement.

12. GOVERNING LAW

This Deed is governed by the laws of South Australia. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

TEMPLATE

EXECUTION

THE COMMON SEAL of **SAISA** was)
affixed to this document in accordance with its)
constitution in the presence of:)
)
)
)

Signature of director/secretary

Signature of director

Name of director/secretary (please print)

Name of director (please print)

~~**THE COMMON SEAL** of **REGION**)
ABN _____ was affixed to this)
document in accordance with its constitution)
in the presence of:)
)
)
)~~

~~_____
Signature of director/secretary~~

~~_____
Signature of director~~

~~_____
Name of director/secretary (please print)~~

~~_____
Name of director (please print)~~

THE COMMON SEAL of **SBFSC** was)
affixed to this document in accordance with its)
constitution in the presence of:)
)
)
)

Signature of director/secretary

Signature of director

Name of director/secretary (please print)

Name of director (please print)

Schedules of Obligations and Services to be included

SSO – Schedule 1

In this section the obligations of the SSO need to be identified and set out. Generally these obligations would be statewide.

These could include: Liaison with the NSO; Developing state strategic and operational plans; Managing and maintaining databases and records keeping systems; Representing the sport to Government and Local Government; Professional development, education and development of ~~coaches~~, officials and volunteers; Communications; Running elite competitions; Selection of state representatives and operating elite development squads; Marketing, Sponsorship and Fundraising; Operating a statewide group insurance scheme; etc.

~~Region – Schedule 2~~

~~*In this section the obligations of the RSO need to be identified and set out. Generally these obligations would apply to an agreed region.*~~

~~*These could include: Liaison with the SSO; Developing complimentary strategic and operational plans; Managing and maintaining regional databases and records keeping systems; Representing the sport to Local Government in the region; In conjunction with the SSO coordinating professional development, education and development of coaches, officials and volunteers; Communications with Clubs; Running regional competitions; Selection of regional representatives and operating regional development squads; Regional Marketing, Sponsorship and Fundraising; etc.*~~

Club – Schedule 3

In this section the obligations of the Club need to be identified and set out.

These could include: Working with Local Government; Education and development of the Club ~~coaches and~~ officials; Running intra Club competitions; Selection of Club representatives and operating junior development squads; Club Marketing, Sponsorship and Fundraising; etc.