

AUSTRALIAN KARTING ASSOCIATION

GUIDE TO A NEW CONSTITUTION

Background

On 29 October 2005, the 7 members of the AKA resolved to give effect to constitutional reforms that had been under discussion since 2002. The members resolved that the AKA migrate to become a company limited by guarantee under the *Corporations Act* to reflect its structure as a national body, and endorsed a form of constitution which gave effect to various reforms.

On 25 June 2009, after much planning and discussion, the 7 members of the AKA agreed on the final form of constitution, amended since 2005, which they intend to adopt at the Annual General Meeting on 21 August 2009 in order to proceed forward with the reforms envisaged by them in 2005.

Proposed Constitutional Changes

1. Membership - After much discussion, the membership remains the same, being the 6 state and 1 territory Karting Associations (rule 2.2). However, to limit the ability of individual state members to frustrate the management of the AKA, the new constitution limits the ability of members to call a general meeting (rule 21). For an association to call a general meeting, it must have the support of at least a majority of associations (50% or more) and must first provide evidence to the AKA that it has been directed by a majority of its members in a general meeting to call a special general meeting.
2. The Board – The current four person executive of the AKA and the NKC will be replaced by a board of management comprising 9 positions (rule 7.1). The nine positions are as follows:-
 - (a) An independent chairman (rule 7.5). The chairman is elected at the AGM by the members to serve 12 month terms and can serve consecutive terms. The chairman's nomination will be subject to an independent endorsement process, as the chairman will be the public face of the AKA.
 - (b) Five elected board members, specifically elected to each of the following positions of responsibility-finance, administration, competition, technical, promotional and marketing. Each elected director is elected for a 3 year term (rule 7.2).
 - (c) Karting industry representative nominated by the association which best represents the karting industry (rule 7.11). If there is no obvious representative board for the karting industry, then the AKA board itself can call for nominations generally from the karting industry. The

karting industry director is appointed for a 12 month term and may serve more than 1 term.

- (d) Two additional directors appointed by the board for terms of 24 months (rule 7.1). The purpose with the nominated directors is to ensure that where required, the board can co-opt specialist directors. It is not necessary for the 2 positions to be filled however, the need to appoint specialist may emerge in special circumstance or if, for instance, no candidate nominates for a particular elected position.
- (e) No elected board member may occupy a particular directorship for more than 2 consecutive terms, although they can shift to a different directorship to continue serving on the AKA board (rule 7.10). Nominees for the position of elected director will be subjected to an endorsement process to be conducted by an independent management consultant (rule 7.4).

It is anticipated that the AKA board will engage an external HR firm to scrutinise all nominees for elected director positions (particularly nominees that have already been recommended and endorsed by the same HR consultants. Rule 7.4 of the new constitution sets out 9 general qualifications candidates are ideally expected to demonstrate.

3. Management Structure – Below each elected board member under rule 7.1, will sit a committee devoted to each elected directors’ area of responsibility (rule 9.1). While the board appoints the members of each of the five committees (rule 9.2), each ordinary member may nominate 1 or more members of its members for a position on each committee who is suitably qualified for the satisfaction of the AKA board. Each association is entitled to have at least 1 representative on each committee. Each association is responsible for its own representative on each committee subject to the board having the ability to “unappoint” any committee members it has appointed.

The purpose of rule 9 and its committees of management is to ensure that each state and association member of the AKA has input into the 5 principle areas of activity of the AKA. However, each committee is chaired by its relevant director from the AKA board (rule 9.1) and any motions or recommendations from a particular director to the AKA board will always be subject to the support of the AKA board, or at least its majority. This structure is designed to limit the ability of individual states to countermand the authority of the AKA board in future.

There are a number of other more minor amendments to the current AKA constitution, most of which rare consequential to the changes above.

Implementation & Transition

The proposed reforms will see a significant change in the management structure of the AKA. The current club-style set-up of an executive of four members and the National

Karting Council, will be replaced a more corporate-style board, with members exercising their rights through general meetings only.

Of course, while the reforms are being implemented, then the usual business of the AKA and karting will continue, so it will be necessary to allow a transition period before the new management structure is completely set in place.

Step 1 – The 2009 AGM

The first step is for the attached form of constitution to be formally adopted at the 2009 AGM of the AKA. The seven members are having a final telephone hook-up to confirm the process on 27 July 2009, before the required 21 day notice of special resolution is sent out in time for the 21 August 2009 AGM.

At the AGM, if 6 out of the 7 members required to form a 75% majority vote in favour of the form of constitution agreed, then transition will commence. Prior to the 2009 AGM, Andrew Jones of NEM Management will be engaged to commence the process of identifying suitable candidates for Chairman or other elected directors, and ready himself for the endorsement process when nominations are received.

Step 2 – Election of New Board within 30 Days

In order to allow enough time for nominations, R11(b) provides that within 30 days of the 21 August 2009 AGM vote to adopt the new form of Constitution, the AKA executive have to call a general meeting for the election of the inaugural Board of the new AKA Ltd. In the meantime, the AKA executive & NKC will govern in a caretaker mode only.

The six elected board members will all face election therefore in September 2009 and the KIA representative will be nominated by that date. However, the six elected members will be elected for different initial terms to avoid the entire board standing for election at subsequent AGMs (rule 7.2) – the Chairman, Administration & Marketing Directors for 12 months, the Technical Director for 24 months and the Competition Director for 36 months. Thereafter, all terms are 3 years for elected directors, except the Chairman who remains on 12 month terms.

Step 3 – Transition of Corporate Registration

Under the *Victorian Associations Incorporation Act*, any association migrating to become a company is deemed to remain the same body. The AKA simply acquires a shelf company which is registered with the ASIC with the new form of constitution and register of members and officers. The AKA then has to notify the registrar within 14 days that it has changed its status to become a company limited by guarantee.

Step 4 – Transition of Management Structure

There will be a number of steps that the new Board will have 6 months to set in place, such as appointing the new Committees of Management, notification of change of officers, change of forms and the like. A period of 6 month from the new Board's election has been provided under R11(c) during which time the old AKA executive

will pass over the various administration responsibilities to the new Board members, without upsetting the ongoing business of the AKA such as national championships.

Future Role of State & Territory Associations in the AKA

The State and Territory Associations will remain as the seven voting members, after they agreed that proposed reforms to alter the membership to karting clubs required more discussion and planning to preserve balance. However, to address concerns, the ability of the members to over-ride the authority of the AKA Board will be limited by both the change of structure and also the 50% minimum required to call a general meeting to out-vote the Board.

A further reform which has been agreed is that each of the seven members will sign a Memorandum of Association with the AKA (rule 8.5). The first subject matter raised to fall under such an MoU is reflected in rule 27.1 of the proposed new constitution.

In effect, members (being corporate entities) can only speak through their human representatives. Therefore, the members have agreed that each of their representatives is required to show proof of how they have been directed to vote by their members – similar to a specific proxy form common to company meetings. A similar requirement also appears at rule 21(c) for the calling of an extraordinary general meeting.

Accordingly, all State and Territory bodies will be required under their MoU to amend their own constitutions within 12 months to incorporate a section which provides as follows –

“When casting its vote as an ordinary members of the AKA at General Meetings of the AKA, the Association will only permit itself to vote by proxy or through a representative who is provided with written evidence of their appointment by the Association and the manner in which they have been directed to vote by the Association.”

Guidelines for Board Positions

The current AKA handbook sets out guidelines and areas of responsibility of various officers and committees from page 23 onwards. In a similar fashion, the new positions created by the Constitution will carry the following responsibilities –

The Chairman

The nearest current equivalent is the AKA National President. Therefore, the Chairman will carry similar responsibilities as set out under section A2 on page 23 of the current AKA handbook. In addition, it is envisaged that the Chairman will be selected to develop a higher public profile for the sport of karting, as well as acting as a member liaison (under rule 7.5).

The Finance Director

The nearest current equivalent is the AKA National Treasurer. Therefore, the Chairman will carry similar responsibilities as set out under section A4 on page 23 of

the current AKA handbook. In addition, the Finance Director will also chair the Finance & Audit Committee.

The Administration Director

The nearest current equivalent is the AKA National Vice-President. Therefore, the Chairman will carry similar responsibilities as set out under section A3 on page 23 of the current AKA handbook, except for the preparation of budgets, which will fall under the portfolio of the Finance Director. In addition, the Director will also chair the Administration Committee.

The Competition Director

The nearest current equivalent is the AKA National Events Co-Ordinator. Therefore, the Chairman will carry similar responsibilities as set out under section A7 on page 24 of the current AKA handbook. In addition, the Director will also chair the Competition Committee.

The Technical Director

The nearest current equivalent is the AKA National Technical Co-Ordinator. Therefore, the Chairman will carry similar responsibilities as set out under section A6 on page 24 of the current AKA handbook. In addition, the Director will also chair the Technical Committee.

The Promotion & Marketing Director

The nearest current equivalent is the AKA National Publicity Officer. Therefore, the Chairman will carry similar responsibilities as set out under section A11 on page 25 of the current AKA handbook. In addition, the Director will also chair the Promotion & Marketing Committee.

The Company Secretary

The AKA will continue to have a secretary to the board who will oversee the functions listed at section A5 on page 23 of the current AKA handbook except point (a) – organisation of national & international events would more naturally become the joint responsibility of the Promotion and Competition Directors. Where the current AKA handbook refers to the secretary as being a reference to the CEO (section A19), the new constitution anticipates a general manager being appointed.

Other Portfolios

The AKA will continue to have a medical officer equivalent to section A8, however, it will not specifically have a national track safety co-ordinator, officials co-ordinator or CIK delegate. The Constitution permits the appointment of two nominee directors and it is within the power of the Board to assign them particular areas of responsibility. Subject to particular nominees being appointed, it is expected that the roles of the track safety and officials co-ordinators would fall within the portfolio of

the Competition Director, while CIK delegate would fall within the same portfolio or betaken up by the AKA chairman.

Committees of Management

Each of the five committees listed under rule 9.1 will have portfolios suggested by their titles and the general responsibilities of each Director who chairs them. The current AKA handbook refers to three national committees at pages 25-26. Technical will clearly remain under the Technical, while Track Safety and Officials would both appear to fall within the portfolio of Competition management, subject to the Board creating separate sub-committees.