

## FOOTBALL SEASON: LAST DAY IN AUGUST OR LAST DAY IN SEPTEMBER? (AKA CAUTION IN AMENDING CONSTITUTIONS AND BY-LAWS)

The Supreme Court of South Australia had to determine whether only minor rounds or minor rounds plus finals had to be considered for the purposes of relegation of a football club from First Division to Second Division, in the case of *Echunga Football Club Inc v Hills Football League Inc [2014] SASC 201* delivered on 22 December 2014.

Essentially the Court was required to interpret the Constitution and by-laws (as amended) of the Hills Football League Inc (“the League”). The League conducted a football competition in 2 divisions, with clubs fielding seniors, reserves and underage teams in each division. The competitions were governed by the League’s by-laws.

Echunga Football Club Inc (“Echunga”) is a member of the League and fielded various teams in the First Division competition in 2014. The by-laws provided for promotion of a team from Second Division to First Division and relegation of a team from First Division to Second Division on an annual basis. The by-laws prescribed a formula. In the League’s interpretation of the formula it determined that Echunga should be relegated.

Echunga contested that interpretation in the Supreme Court arguing that on a proper interpretation of the by-laws another team should be relegated for the 2015 season.

The formula in the by-laws provides for a number of points per win in different grades achieved by the club in a season. The club with the least total points would be relegated. The intent appeared to be to consider a broader view of the strength of the club rather than just the strength of the senior team. Many in suburban and country football clubs are aware that bias of resources towards the senior team can sometimes impair the clubs general performance.

In short the League interpreted a “season” as constituting only the minor rounds and therefor Echunga should be relegated. Whereas Echunga interpreted a “season” as minor rounds plus finals and therefor another club qualified for relegation.

The League named its two competitions Central (First Division for the purposes of this article) and Country (Second Division).

The relevant by-law concerning promotion and relegation is by-law 18.2 which provides:-

**“18.2 PROMOTION AND RELEGATION**

*A Country Division Club may, during the current season, nominate in writing for the promotion to Central Division for the following season. For any nomination to proceed, the nominee Club must be in a position to satisfy all the following criteria*

*18.2.1.1 The Senior Team (A grade) of that Club must contest the Grand Final for that current season; **and***

*18.2.1.2 Must have all teams as specified within the 18.1 to compete within the Central Division Competition, (with these being A and B Grade, Senior and Junior Colts, **and** any other team that may be specified and agreed by the League, for the inclusion in Central Division Competitions, for the next season); **and***

*18.2.1.3 Any such nomination must be submitted prior to 31 October in the that current season; and*

*18.2.1.4 Confirmation must be tabled at the HFL AGM (1)(December) for the current season.*

*18.2.1.5 If two (2) Country Division clubs nominate, the Club finishing in the higher position and meeting all the necessary criteria, shall have first preference.*

*If a Country Division Club nominates for promotion as per 18.2.1, the Board of Directors of the HFL shall advise all Clubs of the HFL of the nomination.*

**18.2.2 Relegation to Country Division**

*If the nomination of a Country Division Club for promotion to Central Division meets all criteria the following shall be applied in determining the Central Division Club that will be relegated:*

*18.2.2.1 A Central Division Club may nominate to be relegated to Country Division and if successful shall be relegated in the next season.*

18.2.2.2 *If no Central Division Club nominates for relegation, the Board of Directors of the HFL shall apply the promotion and relegation points system as referred in Rule 18.2.3, to all Central Division Clubs.*

18.2.2.3 *The Central Division Club with the lowest points shall be relegated to Country Division in the next season.*

18.2.2.4 *If two clubs finish on equal lowest points in the Central Division, the percentage of all four (4) teams (ie: A grade, B grade, S/C and J/C) of each Club shall be added and the Club finishing with the lowest percentage shall be relegated to Country Division.*

### **18.2.3 Promotion and Relegation Points System**

*The following points rating system shall be applied to all Central Division Clubs so as to confirm the Central Division Club to be relegated as per the HFL Promotion and Relegation as referred to in Rule 18.2.2.*

- *A Grade win: 10 points*
- *B Grade win: 5 points*
- *Senior Colts win: 5 points*
- *Junior Colts win: 3 points*
- *Drawn game: ½ points to each team (points to be shared equally)*
- *Forfeited game: Full points awarded to the team receiving the forfeit*
- *Abandoned game: Referred to the HFL Board of Directors”*

The essential question for the Court was to interpret the by-laws. The Court did this by considering:-

1. The previously repealed by-laws and the current by-laws as a whole; and
2. The text and context of the by-laws from an objective intention.

Accordingly, the Court decided that the formula prescribed in by-law 18.2 was to be decided by all wins (and draws) during the season being both minor rounds and finals.

One of the factors that the Court took into account was that in other places in the by-laws and Constitution specific mention was made of minor rounds and excluded finals (e.g. the medal count for the best player award).

Further the Court gave a warning that if the League sought to amend the by-laws retrospectively so as to harm Echunga's position it would be beyond the power of the League and invalid.

The court also commented that whilst many club officials were well intentioned the amendment of Constitution and by-laws needed careful consideration.

### **Lessons from the case for NFP's**

We frequently see after the event, when a problem arises, the following difficulties:-

1. Resolutions for amendment of Constitutions and by-laws that express a general intent which is imprecise and often ambiguous.
2. Resolutions or by-laws that are inconsistent with the Constitution.
3. Amendments to the Constitution or by-laws which are inconsistent with the rest of the Constitution or by-laws.
4. Inconsistency between defined terms.
5. Key terms that are not defined.

Unfortunately, frequently an issue is only identified when a problem arises. A problem which could easily have been avoided at the outset if greater caution and consideration could have been displayed.

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