

Notes on the Darwin Cricket Forum held 21st July 2018

Thanks to each of you for giving your time on the 21st July to consider the draft constitution for Cricket North Australia Ltd.

It was clear from the meeting that there are many issues and layers of concern that need to be teased out and responded to as we go through the steps of the reform process.

The meeting made it clear that the issues that relate to Darwin Cricket need to be examined to determine the degree to which they will be resolved either through a constitutional avenue or a more operational management response.

In order to focus our future discussions on the Draft Constitution I thought it would be useful to set out some of the issues and understandings I took from the meeting and to set out some of the choices we would like to make at our next meeting.

As a general statement people clearly want to know how the various activities, competitions, members, clubs etc stack together within NT Cricket or Cricket North Australia. The notes that follow will try to focus on the issues that are directly related to the draft constitution, That does not mean we are disregarding the other concerns raised rather we can respond to them outside the constitutional discussion. Included in this group of issues are the many matters raised in the context of staffing and roles within management of NT cricket and the relationship between management and the clubs and competitions.

We did spend a considerable amount of time at the outset presenting the context for NT Cricket from the national perspective and the reasons we are pursuing the reforms. We also spent time outlining the strategic directions set for the next few years and the opportunities that we believe could flow to the north if we successfully pursue the strategy.

Agreement regarding a move from Incorporated Association to Company Ltd.

I think it is fair to record that there was ultimately agreement to the shift from NT Association to Company Ltd under the Corporations Act.

Whilst the issues leading to this agreement are agreed the implications of acting as a company rather than an association may still require discussion. Most of these implications however will be obvious from the many other clauses in the Constitution.

Calling the new Company Cricket North Australia.

There is reasonable support for the change of name acknowledging that we still need to do some research as to any unforeseen implications of such a change. The safety net however is that once a company is registered with a registered name it can trade under any name that is not otherwise being used as a business name.

Membership and how it all hangs together.

There were three broad principles of democracy raised at the meeting.

The first *every playing member has a direct vote* to elect someone to the Board

The second was more like the Australian Parliamentary system where *every member in a particular electorate (club, association or committee) gets to elect a voting member* who votes on their behalf.

There was also a reference to a congress model where a congress of members were able to discuss and refer issues and presumably vote either directly or indirectly. This model was discussed further the day after the meeting with the proponents but should be clarified further.

What is clear under the Corporations Act is that whoever has a vote only exercises that vote once per year at an AGM and generally on three things. Who is elected as a Director, changes if any to the Constitution and any dramatic change to the business.

Under the company model the Board sets the vision, determines strategy and oversees management in the delivery of that strategy.

It seemed to me from the meeting that the levels of dissatisfaction felt within Darwin Clubs were not necessarily going to be made any easier by interfacing more complex member obligations or policy setting congresses.

This is not meant to imply that any board worth its salt would not have mechanisms to hear and engage with members and to respond to situations as the business changes, rather that the constitutional remedies are already in the constitution to achieve this.

The other issue to consider in the Company context is that Directors are not representative of either their club or association when they become a Director. So electing a Director who will necessarily run with an agenda imposed externally is highly improbable if the issue is not in the best interests of the Company as a whole.

A further protection is found in the independence of the nominations committee.

Proportional voting was also raised. In the world of commercial business shareholders vote according to their shareholding and receive proportionate returns from the performance of the company.

In a company limited by guarantee members do not get a dividend or a response that is necessarily proportional to their stakeholding. The purpose of a Company Limited by Guarantee is to deliver against its objects rather than to deliver a dividend proportionate to shareholding.

What I am asking people to consider is whether the concepts that were advanced could be considered as follows:

Is it possible to imagine the 30 voting members as a form of congress. The company board can meet with the voting members (Congress) in between AGM's much the same as we currently have regular Darwin Forums. Such forums would not necessarily have to be confined to the congress of voting members.

I would argue that on most if not all issues that might arise 30 members will have just as good a chance of providing a representative input to board considerations, provided they have also polled their playing members, and that a more elaborate proportional membership or rights holding model would not significantly alter the outcomes that the voting member base would arrive at. This approach would also mitigate against what some call 'branch stacking'.

Having said that the Board would not be required legally to take up any of the 'Congress' issues, although if they are to make a success of the business and deliver the strategic plan it would be most unlikely that they would not listen and react because in business terms the congress represents the market.

At the end of the day the question is how can everyone have a say at what ever level of input they might want but at the same time we can achieve a more manageable governance model.

The meeting was reminded that in the 40 year history of NTCA we have had three contested elections. Under the model of election and rotation proposed in the draft Constitution it would take a concerted 4 year effort by an aggrieved group of voters to achieve a majority of elected Directors on the Board.

Reliance on clubs for member register

The forum agreed that the Directors of the Company should not have to rely on the clubs to ensure a playing membership is up to date thereby ensuring that the company member register is accurate and legal. My view is that the club is the point of engagement between the company and the playing members. In turn the club as a separate legal entity can organise their membership in what ever way it has to under its constitution but that should not impact or compromise the Company membership requirements. In this model the club becomes the organising hub for players and the club or club delegate represents the players on the Company.

The club is not a member but a part owner of CNA.

The intent of the company constitution is to shift from a model of individual ownership to a model where the clubs and associations are collectively the owners of the company.

Terms for Directors

The proposed constitution sets a cap for Director terms. A question about the size of the Territory and the consequent pool of people willing to be Company Directors might require us to think more carefully about imposing caps. One possible option is to leave that decision to the nominations committee to resolve rather than mandating them in the constitution.

Darwin Cricket

Under the current NTCA constitution, in the absence of a Darwin Cricket Association, the NTCA has responsibility for the Darwin Cricket Competition.

Much discussion centred on concerns that Darwin was being pushed out of NTCA or distanced. The point was made that under a company structure if Darwin was not a separate legal entity it could only operate as a committee of the Company.

There are two clear paths forward.

One is that Darwin Clubs may wish to *reestablish an incorporated association*. Under this separate legal status they could pursue whatever rules bylaws competition formats etc they wished to, although if they also wished to be affiliated with Cricket North Australia as the peak body for cricket they would need to observe the constitution of CNA.

Given that CNA does not receive funding from CA for the running of the Darwin Cricket Competition the new Darwin Association would be responsible and legally liable for the competition. As a peak body CNA would obviously assist and support as it does with the ASCA Inc.

The other option is that Darwin *remains a committee* but that the Company *delegate and devolve sufficient authority and control* to enable the committee to act in all intents as an Association would act with the exception that the legal liability for matters would pass up to the Directors of CNA. That is the committee of Darwin cricket could do all things required to run Darwin Cricket that did not expose the Directors of CNA to increased risk or liability or their obligations under company law. If this outcome could be achieved there would be significant saving in overheads and duplication but it would require a greater level of trust and goodwill than currently appears to be the case.

If one of the issues for Darwin Cricket is the availability of people to lead an association as well as sustain leadership of a club then I suspect that forming a separate association would not deliver a greater level of benefit to having a better structured and more accountable committee process.

The meeting covered a number of other areas such as Premier Cricket, funding from Cricket Australia, the allocation of resources around performance and elite cricket pathways versus club access to coaching etc and junior cricket.

These matters will be picked up by management as they visit clubs over the next couple of months.

I will be in Darwin to meet with CA on the 15th August and available on the evening of the 15th if there are members who wish to pursue any of the points raised above or other aspects of the draft constitution.

Thank you again for your interest in these reforms and I look forward to your continued involvement as we progress.

Bruce Walker
President
NTCA Inc