



# NOTICE OF ANNUAL GENERAL MEETING

## Athletics Australia

ABN 72 006 447 294

Notice is hereby given that the 34th Annual General Meeting of Athletics Australia (**Company**) will be held at Athletics House (Catherine Freeman Room, 31 Aughtie Drive, Albert Park) and by teleconference (if necessary) on Friday 26 October 2018 at 10.30am.

## Business of the Annual General Meeting

### Ordinary Business

**1. Apologies and obituaries**

**2. Minutes of the previous Annual General meeting**

To confirm the minutes of the Annual General Meeting held on 27 October 2017.

**3. President's Report**

To receive and consider the President's Report on the affairs of the Company.

*There is no vote on this item.*

**4. CEO's Report**

To receive and consider the CEO's Report on the affairs of the Company.

*There is no vote on this item.*

**5. Financial Statements and Reports**

To receive and consider the financial statements of the Company and its controlled entities and the reports of the directors and auditor for the financial year ended 30 June 2018.

*There is no vote on this item. An explanatory note to this item appears on page 6.*

**6. Election/Ratification of Directors**

To consider and if thought fit, pass the following resolutions as separate ordinary resolutions:

- (a) To elect as a Director of the Company Mr Mark Arbib who, being eligible, offers himself for election for a further term in accordance with Clause 28.3 of the Constitution.
- (b) To elect as a Director of the Company Mr Geoff Nicholson who, being eligible, offers himself for election for a further term in accordance with Clause 28.3 of the Constitution.
- (c) To elect as a Director of the Company Mr Ben Sellenger who, being eligible, offers himself for election for a further term in accordance with Clause 28.3 of the Constitution.

- (d) To elect as a Director of the Company Mr Chris Wardlaw who, being eligible, offers himself for election for a further term in accordance with Clause 28.3 of the Constitution.

An explanatory note to this item appears on page 6.

## **7. Appointment of Auditor**

To consider and if thought fit, pass the following resolution as an ordinary resolution:

That Grant Thornton Audit Pty Ltd be appointed as auditor of the Company.

An explanatory note to this item appears on page 6.

## **8. Special Awards**

To consider and if thought fit, pass the following resolution as an ordinary resolution:

That the nominations made by the Special Awards Committee under clause 11.2.1 (a) of the Company's By-laws be approved.

An explanatory note to this item appears on page 7.

## **Special Business**

### **9. Amendments to the Company's Constitution**

To consider and if thought fit, pass each of the following as separate special resolutions to amend the Company's Constitution:

Please note, detailed explanatory notes for this item appear on pages 7 to 9.

- (a) **Composition of the Board:** The following four special resolutions are proposed separately to amend current clauses 2.1, 27.1 and 28.7, and to add a new clause 27.3. The detail is set out below.
- i. That clause 27.1 of the Company's constitution be amended to state that the maximum number of Directors is ten, excluding any Director holding office ex officio as an IAAF Council member under clause 28.7 (who would, if required, be an additional Director).
  - ii. That the Company's constitution be amended by deleting the reference in clause 27.1 to the "Chairperson of the Athletics Australia Athletes Commission" and replacing it with reference to the "Athletes' Commission Representative", then adding the following definitions to clause 2.1.

*"Athletes' Commission" means a group which may be constituted under a charter approved by either the Board or CEO from time to time to represent athletes and inform the Board or CEO (as the case may be) about their*

concerns, interests or needs. For the avoidance of doubt, the Board or CEO may designate that the Athletes' Commission operates under another name."

"'Athletes' Commission Representative' means a Director that has been nominated by the Athletes' Commission and approved by the Nominations Committee from time to time. For the avoidance of doubt, their rights, obligations and term limits will be as for any other Director."

"'Nominations Committee' means the group constituted under clause 28.1."

For the avoidance of doubt, if special resolutions (i) and (ii) above are adopted by the Members, clause 27.1 will read as follows:

*27.1. The number of the Directors must not be less than seven nor more than ten, including any Athletes Commission Representative but excluding any Director holding office by virtue of clause 28.7 (ie an Australian member of IAAF Council who would be an additional Director).*

- iii. That the Company's constitution be amended by adding the following as a new clause 27.3.

*"27.3 The Company aims to ensure that no one gender is to constitute less than 40% of the total number of Directors at any one time."*

- iv. That the Company's constitution be amended by deleting the current clause 28.7 and replacing it with the following:

*Subject to this clause remaining a requirement of the IAAF constitution, any Australian citizen and resident that is a member of the IAAF Council from time to time may elect to also be a Director of the Company. If that person so elects, they will be a Director ex officio, without the need for election, and their rights and obligations will be as for any other Director.*

- (b) **Role and process clarity for the Nominations Committee:** That clauses 28.1 to 28.5 be deleted and replaced with the provisions set out below, and to incorporate the relevant definitions into clause 2.1:

*"28.1 A Nominations Committee will be formed with the principal purpose of ensuring that candidates for positions as Elected Directors possess skills, qualifications and experience to contribute to the Board and the sport. The Nominations Committee will comprise two Directors (appointed by the Board from time to time), two Member Association Representatives and one independent member. The Member Association Representatives will rotate annually amongst the Members on a four-year cycle. The Nominations Committee shall have a charter approved by the Board.*

*28.2 The Nominations Committee will call for nominations for positions as Elected Directors through a Notice in Writing to each Member's president / chair and chief executive officer, and in any other manner it deems appropriate. Whilst the Nominations Committee is entitled to set its own timeline in accordance with its charter, at a minimum this Notice in Writing must*

have been delivered by 30 June in each year and the nominations period must remain open for 28 days. The accidental omission to give notice to, or the non-receipt of the notice by, any person entitled to receive notice under this clause does not invalidate the process.

28.3 The Nominations Committee may endorse nominated candidates, or not, in its discretion. All nominations endorsed by the Nominations Committee will be submitted to a general meeting of the Company for election. Only people endorsed by the Nominations Committee may be put to the members for election as an Elected Director. For the avoidance of the doubt, there is no minimum or maximum number of candidates the Nominations Committee may endorse in any year.

28.4 Election of Elected Directors will be determined by an exhaustive ballot in accordance with the procedure described in the By-Laws from time to time.

28.5 Subject to this Constitution and the Law, Elected Directors will hold office for a term of three years. Elected Directors whose term has concluded and that are seeking re-election will require a renewed endorsement from the Nominations Committee.

28.6 No Director shall hold office for a continuous period of more than nine years from the time they are first elected or appointed to the Board."

Additional definitions for clause 2.1:

"Elected Directors' means a Director elected by the Members at a General Meeting following endorsement by the Nominations Committee."

"Member Association Representative' means a current president / chair of a Member, or an alternative person nominated by the board / committee of a Member from time to time.

"Nominations Committee' means the group constituted under clause 28.1."

- (c) **Alternate Directors:** That clauses 32 to 36 be deleted and replaced with the provision set out below:

"32. Directors are not entitled to appoint an alternate director."

- (d) **Circular resolutions of Board:** That the current clause 50 be deleted and replaced with the following:

"50. A resolution in writing, signed or assented to by email, facsimile, online portal or other form of visible or other electronic communication by all the Directors will be as valid and effectual as if it had been passed at a meeting of Directors duly convened and held. Any such resolution may consist of several documents in like form each signed or assented to by one or more of the Directors. The resolution is passed on the date and at the time when the last Director signs or assents and must as soon as practicable be entered in the minutes of the next Board meeting."

- (e) **Process for managing Director conflicts:** That a new clause 54.4 be added that reads as follows:

*"54.4 Where a Director has disclosed an interest under this clause they will, unless otherwise determined by the Board, absent themselves from discussion of such matter and shall not be entitled to vote in respect of such matter. In the event of any uncertainty as to whether it is necessary for a Director to absent themselves from discussions and refrain from voting, the issue should be immediately determined by vote of the Board, or if this is not possible, the matter shall be adjourned or deferred. The Company Secretary will maintain a register of declared interests."*

- (f) **Administrative matters:** That the Company's constitution be amended with such consequential amendments as are required to ensure that special resolutions adopted above (if any) results in a constitution that is clear, complete and with accurate cross-references.

#### **10. Other Business**

To consider any other business of which due notice has been given or which in the opinion of the Chair of the meeting, may be expedient.

In accordance with Clause 22 of the Constitution, Members have the right to appoint a person as a proxy. If you are unable to attend but wish to vote on matters dealt with at the meeting, please contact Darren Boyd, Company Secretary, on (03) 8646 4587 to organise a Proxy Form.

By order of the Board of Directors

**Darren Boyd**  
Company Secretary  
27 September 2018

## Other Information

### Resolutions of Members in Writing

In accordance with Clause 25 of the Constitution, if all the Members have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms is deemed to have been passed at a general meeting of the Company held on the day on which the document was signed and at the time at which the document was last signed by a Member or, if the Members signed the document on different days, on the day on which, and at the time at which, the document was last signed by a Member.

## Explanatory Notes

### Item 5: Financial Statements and Reports

The Corporations Act 2001 requires the Financial Report (which includes the Financial Statements, Directors' Report, the Directors' Declaration and the Auditor's Report) to be laid before the Annual General Meeting.

There is no requirement either in the Corporations Act or in the Company's Constitution for members to approve the Financial Report, the Directors' Report or the Auditor's Report.

### Item 6: Election of Directors

The Company's Constitution states that a director elected under clause 28.3 of will hold office for a three-year term or, if appointed by the Board until the conclusion of the third annual general meeting after his / her appointment.

Having completed their current terms, Company directors Mark Arbib, Geoff Nicholson, Ben Sellenger and Chris Wardlaw, being eligible, have each offered themselves for re-election for a further term in accordance with Clause 28.3 of the Constitution.

Clause 28.3 of the Constitution provides that the Athletics Australia Nominations Committee identify and endorse candidates for election as directors. The Nominations Committee has endorsed the candidacy of each of Mr Arbib, Mr Nicholson, Mr Sellenger and Mr Wardlaw for re-election for a further term.

### Item 7: Appointment of Auditor

LNP Audit and Assurance have been the Company's auditors for nine years. To follow best practice procurement practices, the Company's Audit and Risk Committee recommended to the Board that it would be appropriate for AA to go to tender for external audit services. The Board endorsed this recommendation and the tender process commenced. LNP Audit and Assurance, Grant Thornton Audit Pty Ltd and three other firms submitted responses to the tender. The tender responses were reviewed on the basis of experience, contract delivery, staffing, price and overall value. The tender review panel recommended the appointment of Grant Thornton Audit Pty Ltd, which was endorsed by the Board.

Accordingly, this resolution seeks the appointment of Grant Thornton Audit Pty Ltd as the auditor of Athletics Australia. LNP Audit and Assurance has resigned as auditor effective from the date of the annual general meeting.

From a process perspective, section 327C of the Corporations Act 2001 provides that a company shall at each annual general meeting, if there is a vacancy in the office of auditor of the company, appoint a person or firm to fill the vacancy. As set out above, the Directors wish to appoint Grant Thornton Audit Pty Ltd as auditor of the Company and seek this appointment to be made by the members.

As required by section 328B of the Corporations Act 2001, a member of the Company (Athletics Victoria) has nominated Grant Thornton Audit Pty Ltd as auditor of the Company. A copy of the nomination is attached to this Notice of Meeting. Grant Thornton Audit Pty Ltd is eligible and has consented to being appointed auditor of the Company as required by section 328A of the Corporations Act 2001.

### Item 8: Special Awards

Full citations will be distributed to Member Associations under separate cover in advance of the Annual General Meeting. As always, the names of the nominees must be kept confidential prior to the announcement at the Annual General Meeting.

### Item 9: Amendments to the Company's Constitution

Through a review process with Sport Australia (formerly the Australian Sports Commission) and conversations with its Member Associations, the Company has identified a number of areas in its Constitution for amendment.

The primary purpose of these amendments is to update and/or clarify key existing provisions, not to materially alter the effect of the document or the relationship between the Company and the MAs, nor to overhaul the Constitution extensively. The amendments will help to ensure AA continues its evolution towards best practice governance.

The specific issues for review are the procedure for the Nominations Committee, the number of directors, promotion of gender diversity on the Board, and the process for managing Director conflicts and the business of Board meetings.

The amendments were endorsed by the Company's Board in September 2018 and are now presented to the Members for consideration and adoption.

- (a) **Composition of the Board:** The four special resolutions proposed separately here are discussed below, using numbering to correspond with the Notice of Meeting.
- i. There are two elements to this proposed amendment.
    - The first is the total size of the Board. Whilst the nature of the organisation and its context is relevant, best practice governance advice suggests that the optimum size for a Board is between five and nine Directors. The Company's current Board consists of nine Directors, which is consistent with its practice in recent years. However, the Constitution currently allows up to 12 Directors to be elected or appointed. The Board considers that if 12 Directors were elected or appointed, it would be too many for the efficient and effective management of the Company's business. Accordingly, the Board has suggested a reduction in this number.

- The second relates to the provision in the IAAF Constitution that states that an IAAF Council Member is entitled to a place on the Board of the country in which they are a citizen. In recent years this has not been relevant to Australia however, if it is in the future, the Board considers that such a person should be an additional Director. Currently, such a person would sit in one of the seats that would otherwise be open to a nominee of the Members.
- ii. The Company's Constitution has, for some years, provided that if an athlete representative body exists, that body is entitled to have a Director on the Board. The Board has benefited from this and considers the position should be retained. However, it considers the Constitution should clarify who the "Athletes' Commission" is (currently this is undefined) and that because the chairperson of that group may not always be best placed to sit on the Board, the Athletes' Commission should select its own representative (who may be the chairperson) for endorsement to sit on the Board.
  - iii. This proposed clause is to promote gender diversity and equality on the Company's Board. The language is non-binding (ie "the Company aims to ensure..."), but the goal of 40% is the target set by Sport Australia, which is endorsed by the Directors.
  - iv. The final special resolution in this section seeks to clarify the position of any Australian IAAF Council member on the Company's Board. It differs from the current clause in two respects:
    - first, it states that if the IAAF constitutional requirement disappears, this clause will no longer have effect; and
    - second, although any such person does not need to be elected to the Board, the clause makes it clear that this person must take action in order to hold this position (ie it is not passively bestowed upon them), which is reasonable in the context of Australian legal requirements.

The Company has sought advice that this drafting is in accordance with the requirements of the IAAF Constitution, and it has been confirmed that it is.

- (b) **Role and process clarity for the Nominations Committee:** Over the past 18 months, the Company has received feedback from the Nominations Committee and a number of MAs on the role and process for the Nominations Committee. In summary, the feedback was that changes could be made to confirm and clarify the following principles:
- i. MA representation on the Nominations Committee be retained (see new clause 28.1);
  - ii. minimum standards be set in the Constitution for the Nominations Committee to consult with the MAs on the nomination of Directors (see new clause 28.2);
  - iii. that, in accordance with current process and best practice governance principles, all nominees for elected director positions are to be endorsed by the Nominations Committee (see new clause 28.3);
  - iv. that no minimum or maximum number of candidates are required to be endorsed in any year because the Nominations Committee may receive a large number of qualified candidates, or very few (see new clause 28.3, noting that this clause is appropriate because the size of the Board is a range, not a fixed number, and in the unlikely event there are issues with quorum, these are dealt with in other provisions);

- v. directors seeking re-election be re-endorsed by the Nominations Committee (see new clause 28.5).

The Board's view is that the proposed clauses do not alter current practice, they merely clarify some elements. Accordingly, the Board endorses the changes to the Members.

- (c) **Alternate Directors:** Currently, directors of AA are entitled to appoint another person as an alternate director, subject to the alternate person being approved by the Board. Given the structure and composition of the Board and the nature of the Company, it has been recommended that clauses 32 to 36 be deleted and replaced with a clause that simply states that a director not be entitled to appoint an alternate director.
- (d) **Circular resolutions of Board:** It has been recommended that this provision be updated to reflect current technology and practice. For example, the proposed new clause confirms that all Directors (whether within Australia or not) are required to consent to a circular resolution (which is appropriate given current technology).
- (e) **Process for managing Director conflicts:** The current constitution has two clauses (53 and 54) which require Directors to disclose relevant interests in contracts or dealings with AA. The constitution does not include a provision that sets out the process for dealing with those conflicts. AA has received feedback from Sports Australia that the constitution could be improved on this point, so it is proposed that a new clause be added to complement the existing provisions. The proposed new clause is in line with the Board's current conflict policy.
- (f) **Administrative matters:** The final special resolution is proposed to allow the Company to clean up any referencing or similar issues that arise from the proposed amendments, for example if clause numbering is wrong or if there is a trailing reference to something that has been deleted.



21 September 2018

The Company Secretary  
Athletics Australia  
2/31 Aughtie Drive

#### NOMINATION OF AUDITOR

In accordance with the provisions of s328B(1) of the Corporations Act 2001, I, Glenn Turnor, on behalf of Athletics Victoria, being a member of Athletics Australia hereby nominate Grant Thornton Audit Pty Ltd for appointment as auditor of the Athletics Australia.

Please distribute copies of this notice of nomination as required by s328B(3) and (4) of the Corporations Act 2001.

Yours sincerely



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**Glenn Turnor**  
CEO & Secretary Athletics Victoria Inc.

Athletics Victoria  
1/31 Aughtie Drive  
Albert Park Vic 3206.  
CC Rob Ewart, Athletics Australia