

# **DOMESTIC TRANSFER SYSTEM TRANSFORMATION WHITE PAPER**



**FOOTBALL  
AUSTRALIA**

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## 1. EXECUTIVE SUMMARY

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Throughout 2020, Football Australia, has focused its attention on returning football to the centre of the organisation to address some of the greatest and most complex challenges the game has seen. Of particular concern has been Australian football's inability to fully integrate into world football by embedding itself in the global transfer market, which FIFA currently values at US\$7.35 billion<sup>1</sup> for men alone, while the women's transfer market is still in its infancy. In 2019, FIFA reported US\$1.9M in transfer receipts for Australia, in stark contrast to its counterparts which are similarly ranked in FIFA's global standings. Domestically, the amounts exchanged between clubs under the current system are inconsequential and speak to a stagnant market in much need of invigorating.

Whilst alarming from an economic standpoint, a sporting analysis reveals a reality which is far more worrying: that Australian football clubs are not properly incentivised to invest in the ongoing training and development of players, and that this is having a significant impact on the production of Australian players. Additionally, competition structure and domestic football regulations have at times, acted as an impediment to player development and restricted the ability of players to gain valuable match minutes during the key development phase between the ages of 17 and 23.

This Domestic Transfer System Transformation White Paper (**White Paper**) is the latest in a series of steps which have been taken by Football Australia to bring to life the recommendation of its Starting XI to the Football Australia Board, to establish a new and modern domestic transfer system to address some of Australian football's player production challenges. This recommendation was then evolved in 'Principle III' of Football Australia's 'XI Principles for The Future of Australian Football' (**XI Principles**), which identified the stimulation and growth of the Australian football economy as a strategic priority for Australian football via the establishment of a new and modern domestic transfer system. Football Australia's transfer system webinar series in November and December of 2020 also provided a unique insight from some of the world's leading global football organisations into the workings of the global transfer system. These webinars have culminated in this White Paper.

There are several elements, from the procedural and administrative to the economic and sporting, which combine to form a properly functioning transfer system. As one of FIFA's Member Associations, Football Australia is obligated to implement a number of these elements without modification while others form the basis of principles which are adapted to suit the domestic landscape and align with national football objectives.

The White Paper identifies the following as being discrete areas for consideration and discussion in the context of transforming the domestic transfer system:

- (1) administration of transfers;
- (2) training rewards and young players;
- (3) loans;
- (4) player eligibility rules;
- (5) registration windows;
- (6) transfer fees;

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<sup>1</sup>

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- (7) special provisions relating to contracts;
  - (8) agents;
  - (9) dispute resolution and player status resolution;
  - (10) private academies; and
  - (11) recent amendments by FIFA (Coaches and Women)

The White Paper poses a series of questions in relation to each of the elements which are intended to provide a framework for structured and transparent consultation, and to encourage and facilitate an informed dialogue regarding a uniquely Australian domestic transfer system. These questions are identified in each section and have been collated in **ANNEXURE A** for ease of reference.

## PART 1 - INTRODUCTION

### 2. INTRODUCTION

The international transfer market is almost synonymous with international club football, with the major moves dominating the football news across the globe. The international transfer system (*ITS*) consisted of 18,042 international transfers for the 2019 calendar year,<sup>2</sup> which equates to a total aggregate of USD7.35 billion in transfer-related payments for that same period.<sup>3</sup> The ITS has continued to grow in terms of both the volume of transfers and the total of the transfer-related payments made by Clubs.

While the staggering fees paid by Clubs as transfer fees or payments to agents continue to garner news headlines (even in a COVID-19 environment), there are trends within the ITS that are significant for Australia. Globally, the total aggregate of transfer-related payments has continued to increase in recent years and has been accompanied by a general upward trend in the global mobility and movement of players, with there being annual increases in the number of transfers recorded by FIFA.<sup>4</sup> However, these trends aren't replicated in Australia, with the mobility of Australian players and transfer-related payments made by Australian Clubs not following the persistent upward trajectories. This White Paper will discuss the factors that may be contributing to these trends in Australia and will seek to address how Australia can more meaningfully engage in the ITS and access this USD7.35 billion market.

Within the ITS FIFA Member Associations (*MAs*) that frequently participate tend to be characterised as either 'buying' or 'selling' MAs, which reflect the nature and objectives of the domestic landscape and the volume of transfer related payments spent or received by Clubs associated with that MA. Australia doesn't have a clear identity in the ITS, is not a player and nor is it presently or historically relevant in the ITS, which is in part due to the challenges related to the Australian domestic transfer system (*DTS*).

For Australian Clubs to be a frequent participant in the ITS and to access the substantial market, there needs to be greater clarity of Australia's 'transfer identity', that is, whether it is a 'buying' or 'selling' MA.

During 2019, Australian Clubs spent USD500,000 on incoming player transfers.<sup>5</sup> This is almost inconsequential when compared to the MAs that had the highest aggregate spend, often referred to as the Big 5, being England, Spain, Italy, Germany and France. Collectively Clubs in these MAs spent USD5 billion on Transfer Fees in 2019. This incredible amount accounted for nearly 69% of all global spending on Transfer Fees.<sup>6</sup> Relevantly, the two AFC MAs with the highest aggregate

<sup>2</sup> FIFA, *Global Transfer Market Report 2019 – Men*, available via <https://resources.fifa.com/image/upload/global-transfer-market-report-2019-men.pdf?cloudid=x2wrgjstwjaoilnncnod> (accessed October 2020).

<sup>3</sup> FIFA, *Global Transfer Market Report 2019 – Men*, available via <https://resources.fifa.com/image/upload/global-transfer-market-report-2019-men.pdf?cloudid=x2wrgjstwjaoilnncnod> (accessed October 2020).

<sup>4</sup> FIFA, *Global Transfer Market Report 2019 – Men*, available via <https://resources.fifa.com/image/upload/global-transfer-market-report-2019-men.pdf?cloudid=x2wrgjstwjaoilnncnod> (accessed October 2020).

However, this may not be replicated in 2020 due to the ongoing impacts of the COVID-19 pandemic.

<sup>5</sup> FIFA, *Global Transfer Market Report 2019 – Men*, available via <https://resources.fifa.com/image/upload/global-transfer-market-report-2019-men.pdf?cloudid=x2wrgjstwjaoilnncnod> (accessed October 2020).

<sup>6</sup> FIFA, *Global Transfer Market Report 2019 – Men*, available via <https://resources.fifa.com/image/upload/global-transfer-market-report-2019-men.pdf?cloudid=x2wrgjstwjaoilnncnod> (accessed October 2020).

spend, being China with USD298.2 million and Saudi Arabia with USD133.3 million also significantly exceed Australia's expenditure. Accordingly, it is unlikely that given the expenditure by the renowned 'buying' MAs and the current domestic landscape that Australia will be a 'buying' MA anytime soon.

While Australia may not currently have the fiscal resources to compete with the 'buying' MAs, there is the potential for Australia to develop into a 'selling' MA. A number of the most prominent 'selling' MAs were prolific in 2019, with significant transfer-related receipts which exceeded the total expenditure by Clubs associated with that MA, including Belgium (total transfer receipts USD295.6 million and net position of USD113 million), Uruguay (total transfer receipts USD47.4 million and net position of USD46.4 million), Croatia (total transfer receipts USD 48.8 million and net position of USD37.4 million), even Mexico (total transfer receipts USD109.7 million and net position of USD-2.5 million) and Wales (total transfer receipts USD69.7 million and net position of USD7.6 million).<sup>7</sup> However, for this to occur, structural and cultural change would be required. By way of example, in 2019 Australia only received USD1.9 million in international transfer-related payments (for men). Whereas in 2019 prominent 'selling countries' received significantly more in transfer receipts, with the most prolific being the Netherlands with USD406.2 million, Portugal with USD564.5 million, and Belgium with USD295.6 million – these are all top football nations and are considered, in the global transfer market, as selling countries. The transformation of the Australian transfer system is crucial for the development of a 'transfer identity' for Australian football and will only further assist stakeholders in being able to access the ITS.

The current domestic system does not include all the components of a functioning modern DTS. The elements that do exist are not functioning effectively and have limited impact. There is an opportunity to reconsider the current framework and to develop a uniquely Australian DTS, one that includes the parts of the reforms that FIFA is proposing and implementing to the ITS that will be beneficial for Australian football. Similarly, it is important that any transformed DTS promotes and incentivises Clubs to engage young players and provides them with opportunities. Relevant considerations in this regard relate to the policies that apply to player eligibility, the loan regime, and financial mechanisms, such as the salary cap or player point system that applies in various competitions across the country.

The challenge with the current framework is particularly apparent in the value and composition of the current Australian domestic system. Australia has limited, if any, domestic Transfer Fees paid with the majority of transfer-related payments being generated by domestic training compensation (**DTC**). This is predominantly paid by A-League Clubs to other Australian Clubs that contributed to the training and development of players. This is evident in the value of the current Australian transfer market, which is primarily comprised of the total transfer-related payments receipts for international transfers received by Australian Clubs, and the value of DTC. In 2019, the total value of the Australian transfer market was only \$2,957,614<sup>8</sup>, which was comprised of the international transfer receipts received by Australian Clubs, being USD1.9 million, and the DTC paid by A-League Clubs (to training clubs in Australia), which was \$402,000. Relevantly, the average aggregate DTC paid by A-League Clubs across the last five (5) years is \$323,200. This equates to an average payment per training Club per year of approximately \$1,243 across the last five (5)

<sup>7</sup> FIFA, *Global Transfer Market Report 2019 – Men*, available via <https://resources.fifa.com/image/upload/global-transfer-market-report-2019-men.pdf?cloudid=x2wrqjstwjaoilnncnod> (accessed October 2020).

<sup>8</sup> The Australian dollar value of the market was calculated using the USD value of USD1 = AUD1.35.

years. These largely represent all domestic transfer-related payments made across this period. These amounts are dwarfed by the transfer receipts that other comparable MAs have received across similar periods. Whilst this provides a snapshot of the current system, there is an opportunity for Football Australia to capture this information to assist in measuring the future growth of the DTS and Australia's engagement with the ITS.

A contemporary and functioning DTS and the ITS are inherently linked, with a functioning modern DTS likely to lead to increased transfer receipts in the ITS. This nexus is particularly evident in the transfer-related payments received by MAs that are similarly ranked to Australia in the male FIFA rankings. By way of example, our two major competitors in the Asian Football Confederation (**AFC**) region who are ranked similar to Australia (currently ranked 41) are Japan (28) and Korea Republic (39) who received USD29.4 million and USD26.6 million respectively during 2019.<sup>9</sup> Globally, many countries ranked lower than Australia, such as the Czech Republic (45) received USD43.8 million, Scotland (49) received USD33.6 million and Canada (73) received USD30.4 million during the same period.<sup>10</sup> All of these MAs have contemporary DTS that are operating effectively and increasing the investment in and opportunities for players and Clubs.

A further contemporary example is the relative success of New Zealand in the male ITS, despite having only two (2) Clubs participate in the male ITS in 2019.<sup>11</sup> Over the same 12 months, New Zealand Clubs took in less than USD200,000. However, these Clubs received nearly USD1 million in male transfer receipts in 2019 alone. This is despite having only one (1) male professional club, Wellington Phoenix (**Phoenix**), which participates in the A-League. In 2020, it is likely that this figure will be surpassed, with it being reported that the transfer of Liberato Cacace from the Phoenix to Belgian Pro League Club, Sint-Truidense VV, involved a fee in the vicinity of €1 million.<sup>12</sup> This is in stark contrast to the transfer receipts received by Australia, which has had the remaining A-League Clubs and a host of NPL Clubs that have participated in the ITS but have had limited returns in recent years.

A strategic objective identified in the XI Principles is to create environments that support and are conducive to Australian Clubs being successful in the AFC Champions League. A key initiative in that regard is the implementation of a transformed DTS. Significantly, by enhancing player development and encouraging Clubs to invest in the development of players and enabling Clubs to recover such investment, the DTS will increase the quality of domestically produced players, and assist Clubs in competing and being successful at the continental level. In addition, the recent transformation of the FFA Cup to include a qualification slot, or colloquially a half slot, entry to the AFC Champions League only increases the importance of a transformed and modern DTS to support Clubs outside the A-League competing in Asia. Relevantly, in 2019, the MAs in the AFC with the highest male transfer receipts were Japan (USD29.6 million), Korea. Republic. (USD26.6

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<sup>9</sup> FIFA, *Global Transfer Market Report 2019 – Men*, available via <https://resources.fifa.com/image/upload/global-transfer-market-report-2019-men.pdf?cloudid=x2wrqjstwjaoilnncnod> (accessed October 2020).

<sup>10</sup> FIFA, *Global Transfer Market Report 2019 – Men*, available via <https://resources.fifa.com/image/upload/global-transfer-market-report-2019-men.pdf?cloudid=x2wrqjstwjaoilnncnod> (accessed October 2020).

<sup>11</sup> FIFA, *Global Transfer Market Report 2019 – Men*, available via <https://resources.fifa.com/image/upload/global-transfer-market-report-2019-men.pdf?cloudid=x2wrqjstwjaoilnncnod> (accessed October 2020).

<sup>12</sup> Although, there are conflicting reports as to the exact value of the fee paid and the addition fees that may be triggered based on a variety of conditions - <https://www.newshub.co.nz/home/sport/2020/08/football-liberato-cacace-set-to-join-belgium-club-sint-truiden.html#:~:text=Belgium%20news%20agency%20Het%20Laatste,Pro%20League%20closing%20on%20Monday>

million) and Saudi Arabia (USD22.2 million).<sup>13</sup> Since the AFC Champions League adopted the current competition structure in 2002, only two (2) finals have not included at least one (1) team from these three (3) MAs.

There is a relationship between the performance of a MAs national teams and the transfer receipts. While there may be a range of factors that contribute to this, the allocation by an efficiently operating transfer market of the elite players to the leading leagues globally clearly has an impact. By participating in these leagues, the players are able to access elite high-performance environments and to further develop as footballers. By way of example, France has recently had significantly increased transfer receipts and their national teams have performed remarkably at major tournaments. In comparison, there is a significant disparity between the FIFA ranking of the Socceroos and the ITS transfer receipts received by Australian Clubs, which indicates that Australia is underperforming in the ITS.

As a consequence, in June 2020 Football Australia's Starting XI recommended to the Football Australia Board the establishment of a new and modern domestic transfer system to address some of Australian football's player production challenges. Football Australia's XI Principles then evolved this recommendation further in Principle III, as it identifies the stimulation and growth of the Australian football economy as a strategic priority for Australian football. In particular, Principle III highlights the imperative for Australian football to hardwire itself into the ITS and the need to establish a modern DTS. It then proposes a range of measures and actions to facilitate the evolution and growth of an integrated and thriving football ecosystem driven by a modern DTS.<sup>14</sup> Following this, during November and December 2020, Football Australia convened a series of four webinars which included several football's leading organisations and focused on different aspects of the transfer system. These webinars have culminated in this White Paper. This living document is to be complemented and supplemented with a thorough stakeholder consultation process and the ongoing benchmarking against other MAs that is being undertaken.

The purpose of this White Paper is to explore the proposed measures outlined in Principles III of the XI Principles in further detail, outline and consider the foundational components of a modern DTS, and to stimulate and facilitate a football discourse regarding the opportunities for transformation, and what form these changes could take. The White Paper will be complemented and supplemented by stakeholder consultation, with it being anticipated that each relevant stakeholder will have an opportunity to contribute to the transformation process. As Clubs of all levels and players are the primary actors and participants in the transfer system, the consultation will, naturally, be focused on balancing the interests and priorities of each of these two groups.

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<sup>13</sup> FIFA, *Global Transfer Market Report 2019 – Men*, available via <https://resources.fifa.com/image/upload/global-transfer-market-report-2019-men.pdf?cloudid=x2wrgjstwjaoilnncnod> (accessed October 2020).

<sup>14</sup> Football Federation Australia *XI Principles For The Future of Australian Football* available via [https://www.ffa.com.au/sites/ffa/files/2020-10/FFA\\_X11\\_Principles\\_Final\\_Edition.pdf](https://www.ffa.com.au/sites/ffa/files/2020-10/FFA_X11_Principles_Final_Edition.pdf) (accessed October 2020).

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## PART 2 – BACKGROUND AND OBJECTIVES

### 3. BACKGROUND

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#### 3.1 Regulatory Basis of the Transfer System

The system of regulations and practices that govern the transfer of a player's registration is colloquially and commonly referred to as the transfer system. Fundamentally, it is the practical relationship between the FIFA regulatory framework and the movement of a player's registration relationship between either:

- (a) two (2) MAs and Clubs associated with these MAs, an international transfer; or
- (b) two (2) Clubs associated with one (1) MA, a domestic transfer.

An international transfer is governed by the FIFA Regulations on the Status and Transfer of Players (**RSTP**), whereas, a domestic transfer is regulated by each MA's domestic regulatory framework. In the case of Australia, Football Australia's National Registration, Status and Transfer Regulations (**NRSTRs**) will apply to domestic transfers.

The ITS is fundamentally comprised of three (3) components, being the:

- (a) balance of and relationship between the maintenance of contractual stability and the free movement of players;
- (b) set of rules that are implemented by FIFA at the international level, and must be implemented by the MAs at the domestic level (without modification), which govern the transfer of the player's registration between MAs and/or Clubs; and
- (c) broader regulatory framework which complements the player registration transfer rules referred to at 3.1(a) above and which governs relationships between the parties in the transfer system (such as between players and Clubs or between coaches and Clubs).

A DTS is likely to be comprised of similar elements but may also have the overlay of the domestic footballing landscape and legal or regulatory frameworks, which contribute to the structure of the system, the objectives and the applicable regulations. As noted above, a transfer system includes not just the rules that apply to the movement of players within a competition, but also incorporates rules that govern the movement of players between competitions. Given this, the discussion regarding the evolution of the DTS must include all stakeholders from across the game.

Generally, the transfer of a player registering as an amateur with that player's new Club does not include a Transfer Fee. Whereas a transfer of a player who is registered as a professional may be made against a range of payments, which can include Transfer Fees and training rewards, in addition to certain payments related to the future transfer of a player (if applicable). These payments are broadly referred to as the transfer-related payments or are often generalised as being the value of the transfer market.

The RSTP in article 1.3(a) provides that each MA must implement certain provisions without amendment in that MA's regulatory framework.<sup>15</sup> For the purposes of domestic transfers, these mandatory RSTP provisions are included in the NRSTRs. The RSTP in article 1.3(b) also requires that MAs implement significant principles in its regulations, these include:

- (a) respect of contract;
- (b) unilateral termination of a professional player contract without consequence for Just Cause or Sporting Just Cause only;
- (c) professional player contracts cannot be terminated during the course of a season; and
- (d) that compensation (financial sanctions) or sporting sanctions may be imposed on a party where a professional player contract is unilaterally terminated without Just Cause or Sporting Just Cause.<sup>16</sup>

The implementation of these principles at a national level enables MAs to develop the regulations to suit the particular domestic environment and may include consultation with and feedback from key stakeholders such as players and Clubs.

Relevantly, the RSTP also provides that each MA must include in its regulatory framework provisions to protect contractual stability, including the principles of the RSTP article 17, which relates to the consequences of terminating a contract without just cause.<sup>17</sup> This seemingly standard provision actually forms a key component of the regulatory basis of both the ITS and the DTS, in that where a professional player currently contracted to one Club is seeking to move to another Club, there must be a mutual termination of the player's current contract, or a termination for just cause.<sup>18</sup> The player's former club may then be entitled to certain payments as a result of agreeing to mutually terminate that player's contract early. This is often the basis of a Transfer Fee.<sup>19</sup> A key consideration in the transformation of any DTS is the mechanism for calculating such a payment, or whether there should be a regulatory mechanism for calculating these payments or if it should be left unrestricted, as it currently is in the ITS. These matters will be considered further below.

### 3.2 Current Structure of the Domestic Transfer Framework

Before considering the structure of the current system, brief consideration should be given to the recent iterations of player transfer system in Australia. Prior to a key determination of the Australian Industrial Relations Commission (**AIRC**) in 1995, football in Australia operated a transfer and compensation system, which effectively provided that a player's registration was held by a Club,

<sup>15</sup> FIFA, *Regulations on the Status and Transfer of Players* (October 2020), available via <https://resources.fifa.com/image/upload/regulations-on-the-status-and-transfer-of-players-october-2020.pdf?cloudid=kgl4qp7cl25ut2dbuz7y> (accessed October 2020), article 1.3(a).

<sup>16</sup> FIFA, *Regulations on the Status and Transfer of Players* (October 2020), available via <https://resources.fifa.com/image/upload/regulations-on-the-status-and-transfer-of-players-october-2020.pdf?cloudid=kgl4qp7cl25ut2dbuz7y> (accessed October 2020), article 1.3(b).

<sup>17</sup> FIFA, *Regulations on the Status and Transfer of Players* (October 2020), available via <https://resources.fifa.com/image/upload/regulations-on-the-status-and-transfer-of-players-october-2020.pdf?cloudid=kgl4qp7cl25ut2dbuz7y> (accessed October 2020), article 1.3.

<sup>18</sup> Juan Pablo Arriagada, 'Jurisprudence Football Matter II Part Art 17 RSTP' in Court of Arbitration for Sport, *CAS Bulletin (Budapest Seminar October 2019)*, (2020), available via <https://www.tas-cas.org/en/bulletin/cas-bulletin.html> (accessed September 2020), 5.

<sup>19</sup> Omar Ongaro, 'Maintenance of Contractual Stability Between Professional Football Players and Clubs – the FIFA Regulations on the Status and Transfer of Players and the Relevant Case Law of the Dispute Resolution Chamber', in *Sports Law and Policy Centre European Sports Law and policy Bulletin 1/2011* (2011) available via [www.sportslawandpolicycentre.com/Bulletin%20I\\_2011.pdf](http://www.sportslawandpolicycentre.com/Bulletin%20I_2011.pdf) (accessed November 2020), 32-3.

even if that player's contract with the Club had concluded.<sup>20</sup> This retention system enabled a player to move, only if the current Club consented or received a compensation fee. This system and the challenge before the AIRC pre-dated the finding in Jean Marc Bosman's case challenging the transfer system, which materially altered the structure and operation of transfer systems generally.<sup>21</sup>

The ITS has continued to evolve since the Bosman decision in 1995, with the introduction of the RSTP in 2001 a significant inflection point. Since then, the RSTP have been revised repeatedly, with the most recent amendments released in December 2020,<sup>22</sup> and have been the subject of extensive engagement with a range of international stakeholders. The effect of these contextual and regulatory factors is that the ITS has evolved into a unique system that is distinct from any of the systems that operated prior to the AIRC determination and the Bosman decision. The opportunity for Australian football is to develop a DTS that is uniquely Australian, taking into account the historical evolution of the ITS and the factors that have contributed to that, and for this system to be considered by the global football world as an example of an industry-leading model. This model should include the reforms that FIFA has already implemented but should also account for the reforms that have been proposed by FIFA for future implementation and enable the DTS to be forward thinking and provide a competitive advantage for Australian Clubs.

The XI Principles expressly identifies the transformation of the DTS as being a strategic priority, as this is inextricably linked with the investment in and prioritisation of player development, and the growth and evolution of the domestic football economy. Based on this, it is necessary to consider the structure and operation of the system which is currently in place.

The current framework in Australia is limited in its operation given regulatory and contextual factors. In effect, aspects of this framework exist at the NPL level, with opportunities for Clubs in both the A-League and the NPL not realised and has resulted in limited participation of the Professional Leagues Clubs. Due to the inadequacies of the current system operating in Australia, consistently, relatively few, if any, players are transferred between Clubs. Players tend to either allow their contract to conclude, as the term is frequently for one (1) season, or the player's professional contract is terminated by mutual consent between the player and the Club to enable the player to move to another Club. In effect, as noted above, there are only elements of a transfer system within the current framework; for the domestic market to operate efficiently and effectively all the elements of a transfer system need to be present.

It may be that there isn't currently a 'transfer culture' within the Australian football ecosystem, as Australian Clubs only cumulatively paid \$500,000 in international Transfer Fees in 2019, which was a 101.5% increase on the previous calendar year. This transfer culture also includes awareness and understanding of the ITS, and importantly, the opportunities to maximise returns from participating in the ITS. According to Football Australia's records, there were no domestic transfers

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<sup>20</sup> Braham Dabscheck, 'Sport, Human Rights and Industrial Relations' (2000) 6(2) *Australian Journal of Human Rights* 129.

<sup>21</sup> Simon Gardner and Roger Welch 'Nationality Based Playing Quotas and the International Transfer System Post-Bosman' in Antoine Duval and Ben Van Rompuy *The Legacy of Bosman* (TMC Asser Press, 2016), 52-3.

<sup>22</sup> FIFA 'FIFA Circular 1743 – Amendments to the Regulations on the Status and Transfer of Players and to the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber' (14 December 2020) available via <https://resources.fifa.com/image/upload/1743-amendments-rstp-and-procedural-rules-x5672.pdf?cloudid=pchzzmjnv5po1vaw8mar> (accessed December 2020).

with a fee during 2019. It is important to note that this information is not currently captured in Football Australia's national online registration platform and Football Australia is reliant on this information being reported by competition administrators and Member Federations in accordance with the obligations set out in the NRSTRs.

This lack of activity is further compounded by a tendency towards short-term player contracting at all levels of the game, inconsistent application of the Training Rewards regime and the prevalence of special conditions in professional player contracts for players in the Professional Leagues and the NPL that enable the parties to mutually terminate the professional contract if a Professional League Club offers that player a professional contract. This short-term contracting presents a range of challenges, and is not beneficial for players, coaches, Clubs or fans.

The current system also operates in respect of the Professional Leagues with a salary cap. In outlining the current framework, it is necessary to provide due consideration to the objectives and the operation of a transformed DTS and a salary cap in the Professional Leagues. The transformed DTS and the salary cap in the Professional Leagues may be able to operate concurrently, this is rather an opportunity to consider whether a salary cap, or any other form of fiscal regulation, has an effect on the objectives and operation of the DTS.

The NRSTRs include a range of matters related to the structure and operation of the DTS. In particular, the NRSTRs provide certain mechanisms that balance the concepts of contractual stability with the free movement of players. This is effectively achieved by replicating the provisions in the RSTP, which provide that:

- (a) a contract between a professional player and a Club can only conclude at the end of the term, be terminated by mutual consent or unilaterally terminated for Just Cause or Sporting Just Cause;<sup>23</sup>
- (b) the maximum permitted duration of a contract between a professional player and a Club is, subject to the applicable domestic law, five (5) years, unless the player is under the age of 18, in which case the maximum permitted term is three (3) years. This distinction reflects the objective of the ITC in protection minor players;<sup>24</sup>
- (c) there are consequences for unilaterally terminating a contract without Just Cause or Sporting Just Cause;<sup>25</sup> and
- (d) there are restrictions on when a new Club may commence negotiations or enter into a professional player contract with a player.<sup>26</sup>

<sup>23</sup> FFA *National Registration, Status and Transfer Regulations* (December 2020) available via <https://www.ffa.com.au/governance/statutes-and-regulations> (accessed December 2020), article 9.

For further discussion regarding the termination for Just Cause or Just Sporting Cause, see generally, Frans. De Weger *The Jurisprudence of the FIFA Dispute Resolution Chamber* (2016, Second Edition, Asser Press), 193-268, and Nick De Marco *Football and the Law* (2018, Bloomsbury Professional) 94-108, and 124-144.

<sup>24</sup> FFA *National Registration, Status and Transfer Regulations* (December 2020) available via <https://www.ffa.com.au/governance/statutes-and-regulations> (accessed December 2020), article 8.1(c).

<sup>25</sup> FFA *National Registration, Status and Transfer Regulations* (December 2020) available via <https://www.ffa.com.au/governance/statutes-and-regulations> (accessed December 2020), article 9.4.

<sup>26</sup> FFA *National Registration, Status and Transfer Regulations* (December 2020) available via <https://www.ffa.com.au/governance/statutes-and-regulations> (accessed December 2020), article 8.3.

Unlike the RSTP, the NRSTRs impose a cap on the total value of a Transfer Fee,<sup>27</sup> which cannot be more than 50% of the total salary owing to the player for the remaining term of the player's current professional player contract, and prohibit transfers and Transfer Fees between Professional League Clubs, being Clubs participating in the A-League, W-League or Y-League.<sup>28</sup> A consequence of this is that there is limited or no value in a holding a registration of a player, which perpetuates short-term contracting and limits contractual stability. Consequently, this restricts the ability of Clubs to extract value in the transfer market for a player who is the subject of a short-term contract.

These restrictions are unique to the Australian context, particularly the prohibition on the Transfer Fees and transfers in the Professional Leagues. The effect of these restrictions is that it limits the existence and operation of a DTS, particularly among the elite professional clubs that may have access to resources in the first instance to invest in player transfers. Further, Clubs at all levels are not incentivised to invest in player development. The free movement of players doesn't reward Clubs for developing a player and there are effectively limited protections for Clubs and any investment made in a player. Similarly, the absence of player transfers at this level is likely to lead to the propensity for shorter term contracting in the Professional Leagues, as there isn't the additional incentive to invest in a longer term contract, with such investment potentially recovered by way of Transfer Fees, sell on fees or an adequate Training Rewards regime if that player is transferred to another Club. The prohibition on player transfers between Clubs in the Professional Leagues, and the absence of a modern functioning DTS generally, is likely to have implications for the perceived value of Australian players, particularly internationally.

The effect of this prohibition is that aspects of the framework effectively operate at the National Premier Leagues (**NPL**) level and below, with National Leagues Clubs permitted to engage in player transfers involving, and pay Transfer Fees to, NPL Clubs or Clubs in competitions below this level. Practically, this occurs infrequently, with Football Australia's records indicating that there are fewer than five (5) player transfers with a fee have occurred between A-League Clubs and NPL Clubs in the period from 2014 to 2020. Similarly, there have been a relatively small number of players loaned from NPL Clubs to National Leagues Clubs, with Football Australia's records indicating that there are fewer than 10 players who were loaned by NPL Clubs to A-League Clubs for the period 2015 to 2020.

Football Australia's records also indicate that players at the NPL level are also generally engaged on short-term contracts of one (1) to two (2) seasons. While there may be a number of factors that contribute to this, the lack of a modern and functioning DTS is likely to contribute to this practice.

At a more macro level, the performance of Clubs in the AFC Champions League is strategically important to the development of the game in Australia, and also in enhancing Australia's standing globally. An important strategic objective of the DTS transformation is to assist Clubs to perform well in the AFC Champions League. This strategic commitment is evident in the recent announcement of the allocation of a qualification slot to the AFC Champions League, commonly referred to as a 'half slot', to the winner of the FFA Cup from 2021.

<sup>27</sup> FFA *National Registration, Status and Transfer Regulations* (December 2020) available via <https://www.ffa.com.au/governance/statutes-and-regulations> (accessed December 2020), article 12.6.

<sup>28</sup> FFA *National Registration, Status and Transfer Regulations* (December 2020) available via <https://www.ffa.com.au/governance/statutes-and-regulations> (accessed December 2020), article 12.6(c).

As alluded to above, for Australia to have a clear identity as a selling or development MA, it is crucial that Australian Clubs perform well in the continental competitions, particularly given that it is anticipated that the AFC Champions League will be the competition that provides access to any future FIFA global club competitions, such as the Club World Cup. Similarly, strong performances in Asian competitions, will materially contribute to the global perception and standing of Australian football.

By way of summary, whilst player transfers aren't permitted between Clubs in the Professional Leagues, there are elements of transfer system at the NPL level, although this doesn't function efficiently or effectively. The cumulative effect of this is that there isn't currently a domestic transfer system operating in Australia. Consequently, Clubs aren't incentivised to invest in player development and players do not develop as quickly as their counterparts in other MAs.

In 2020, Football Australia undertook detailed studies into player development and production pathways of Australian football. These studies identified some significant challenges and also noted that Australia has underperformed in the ITS as a result of these challenges. While there are nuances in relation to the men's and women's game, the studies highlighted several common challenges, including a lack of match minutes being played by Australian football players, particularly at elite and professional levels, during the key development age group of 17- 23. The studies also identified in-built impediments to player development and production such as competition format and regulation.

The transfer rules outlined above operate in conjunction with the Football Australia Regulations on Working with Intermediaries (**Football Australia RWWIs**), which is a regulatory regime that governs the participation of Intermediaries in the movement of players between Clubs or the negotiation of player contracts with Clubs. The Football Australia RWWIs largely replicate the FIFA Regulations on Working with Intermediaries (**FIFA RWWIs**) which were implemented in 2015 and, as is discussed in this White Paper, remove the barriers to players selecting the Intermediary to represent them. A consequence of this is that the requirements to act as an Intermediary are limited. In addition, there is the potential for actual or perceived conflicts of interest, as Intermediaries can act for the player, the player's current Club and the player's future Club in the one transaction. Significantly, the impacts of this deregulation have been identified by FIFA as an area for reform, with FIFA introducing a new regulatory framework that will include an agent accreditation system and conflict of interest regulations. The effect of this is that an important participant in the domestic football economy may not have been supported by an effective regulatory regime to ensure industry-leading best practice is maintained at all times. However, the FIFA reforms in addition to ongoing engagement between Football Australia and this stakeholder group will assist in addressing this issue.

The operation of the current domestic framework is limited, and this only increases the importance of Clubs accessing the ITS. This initial focus on Australian Clubs extracting value from the ITS will assist in not only bringing more financial returns back into the domestic economy, but it is also likely to increase the awareness of the benefits of accessing the ITS. This may also encourage greater contractual stability within the domestic framework, which will enable Australian Clubs to progressively unlock a greater percentage of the USD7.35 billion ITS. Significantly, these factors will also contribute to the transformed DTS building value in the domestic market for players over time.

This also presents an opportunity for Australian Clubs to extract value from subsequent transfers or to unlock a greater proportion of the USD7.35 billion ITS by having better regard to contractual stability. That is not to suggest Australian Clubs and players should not be seeking appropriate Transfer Fees, it is more likely a reflection on the current state of the framework and the perceived value of Australian players. In particular, it highlights the importance of increasing match minutes for younger players and further exposure for Australian players at national team level, as these two factors will increase the value of Australian players on the transfer market.

This perceived undervaluing of Australian players may also be partly due to the status of the international leagues that Australian players are transferring into. Aside from our most high profile Matildas and Socceroos, or emerging elite youth players, the vast majority of Australian players transfer to developmental leagues or leagues considered to be the 'top tier selling leagues'. A recent example of this is Ryan Teague's move from Sydney FC to Portuguese side F.C. Famalicão,<sup>29</sup> with Portugal considered an elite development and player selling league. Given the propensity of Australian players to move to these types of leagues, it is imperative that Australian Clubs understand and access the:

- (a) Training Rewards framework, and
- (b) sell on fees or an entitlement to a proportion of a future Transfer Fee.

This is on the basis that it is likely the player's subsequent move that may attract a more substantial Transfer Fee, as the player will now have international experience and be considered a player of the MA in which they have been playing, rather than an undervalued Australian player.

Clubs do not appear to be incentivised to invest in player development, given the challenges associated with the current domestic Training Rewards regime, and the lack of a DTS practically means that there isn't perceived value in a player's contract. A consequence of this is that the domestic football economy isn't operating efficiently or effectively; accordingly, Australia is restricted in the interface between the domestic football economy and the global football economy, including the lucrative ITS. To enable Australian stakeholders to engage with more meaningfully, and participate in, the global football economy and the ITS, the underlying limitations of the current Australian system, including the current system, need to be addressed. Principle III of the XI Principles identifies this as a strategic priority and is the basis for this White Paper.

#### 4. OBJECTIVES OF THE WHITE PAPER

The objectives of this White Paper are to:

- (a) ensure that football is at the centre of the discussion regarding the transformation of the DTS;
- (b) enhance the awareness and understanding of the ITS and the various domestic transfer system frameworks that are implemented in and by MAs globally;
- (c) generate further dialogue and knowledge gathering and sharing in respect of the DTS and the ITS;
- (d) facilitate local but global consideration of the transformation of the DTS;

<sup>29</sup> Jacob Windon, 'Teague Departs for Europe as Sydney FC Receive Bumper Fee' [a-league.com.au](https://www.a-league.com.au/news/teague-departs-europe-sydney-fc-receive-bumper-transfer-offer) (30 January 2020) available via <https://www.a-league.com.au/news/teague-departs-europe-sydney-fc-receive-bumper-transfer-offer> (accessed October 2020).

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- (e) bring stakeholders together through a shared commitment to this transformation process;
  - (f) provide a framework for holistic and transparent stakeholder consultation and feedback regarding the evolution of the DTS;
  - (g) further substantiate the key elements of the DTS;
  - (h) identify opportunities for a transparent and accessible model of a DTS that complements the unique Australian footballing landscape; and
  - (i) highlight further opportunities for the domestic football ecosystem to 'hardwire' into the international football economy.

In pursuing these objectives, the next section of the White Paper will advance several matters which generally form the basis of a proper functioning of a modern transfer system and have continually been raised as important areas by stakeholders within the Australian game.

## PART 3 – AREAS FOR DISCUSSION

### 5. OBJECTIVES OF THE TRANSFER SYSTEM

#### 5.1 Background

Broadly speaking, the main objectives of the ITS may be summarised as promoting and ensuring the maintenance of contractual stability, protecting minors, promoting youth development and sustaining competitive balance (namely through contractual stability, registration periods, Solidarity Contribution and transparency rules).<sup>30</sup>

When grappling with its recent reforms, FIFA considered whether its RSTP still achieved the original objectives as initially intended and significantly, whether these objectives are still relevant or required updating at a time when the professional game is confronted by new challenges that were not foreseen in 2001 when the current ITS was first implemented. Over the years, the regulatory framework has evolved, however, FIFA has undertaken an assessment as part of these reforms to assess whether the objectives of the ITS are still applicable, and if so, the extent to which the RSTP continue to support and achieve these objectives.

#### Objective of Transfer System – Point of query:

- i. Are the objectives of the ITS relevant to Australian football?

#### 5.2 Current status - Domestic

In accordance with Principle III of the XI Principles and the overwhelming feedback from stakeholders during the XI Principles consultation phase, Australian football is in need of a transformed and modern DTS. To assist in facilitating this, there needs to be clarity regarding the objectives of the DTS and broad support from the full breadth of stakeholders in order for this to be entrenched within the Australian football landscape.

Australian football is unique in many ways, and accordingly, any DTS must reflect this distinctive landscape and be inherently Australian. Accordingly, what is common practice or effective in other jurisdictions may not immediately be applicable or practical in the first iteration of the Australian DTS. That being said, it is important that there is benchmarking undertaken in the context of the initial transformations and then on an ongoing basis to ensure that there is a frequent assessment of the efficacy of the framework and the relevance of the stated objectives to the current state of Australian football.

Fundamentally, any DTS in Australia will need to recognise the importance of this system to the domestic footballing economy, its relationship to the ITS, and strategically enable player development.

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<sup>30</sup> The Economic and Legal Aspects of Transfers of Players (January 2013) <The Economic and Legal Aspects of Transfers of Players> 1.

### 5.3 Proposed objectives for the Australian DTS:

Noting that these may be subject to change following stakeholder engagement, for the purposes of this White Paper the objectives of an effective and efficient DTS are being proposed as follows.

- (a) **Contractual stability** – recognition that the sanctity and value of a contract remain paramount and to provide all stakeholders with certainty and comfort. However, as noted above, at all times, this must be balanced against the freedom of movement of players and the DTS must strike an informed and reasonable balance between the two aspects of the objective of contractual stability;
- (b) **Incentivise Club investment in player development** – by having an effective Training Rewards regime and the opportunity for such investment to be recovered by way of Transfer Fees, the investment in the player development pathway can be incentivised. It is anticipated that enhanced player development pathways are likely to have positive impacts on the Australian youth and senior national teams, and strengthen Australian Clubs participation in AFC, and FIFA, Club competitions. Similarly, higher quality players are also likely increase the level of the domestic competitions, from the Professional Leagues all the way through Australian domestic competitions;
- (c) **Unlocking potential** – the Australian football ecosystem includes a wide variety of opportunities and potential, ranging from talented players to strong technical and footballing programs, to untapped opportunities for investment and strategic partnership. A strategic driver of the DTS is to facilitate the hardwiring of the Australian ecosystem into the ITS, and a modern DTS can assist in unlocking this potential, both domestically and internationally, and providing increased opportunities and exposure for all aspects of the footballing ecosystem, which consequently will assist Australian Clubs and players to access and participate in the USD7.35 billion ITS. This potential includes the prevalence of a strong ‘transfer culture’, which includes a strong understanding of the DTS and ITS, an understanding of the value of a player’s contract, and practices that support this knowledge and awareness. To fully unlock the value of the Australian football ecosystem, contractual stability is strategically and practically significant, as it allows value to be extracted from not just the first transfer of a player, but for future transfers also;
- (d) **Provide opportunities for, while protecting, minor players** – it is imperative that the DTS aligns with the player pathway and is structured in such a way so as to incentivise the development of minor players. Simultaneously, this must be balanced against the safeguarding responsibilities of the game in protecting young people and nurturing them as footballers and individuals. The DTS must complement Football Australia’s Safeguarding Policy and framework, as well as FIFA’s Guardians Program and the obligations contained in the RSTP; and
- (e) **Integrity and transparency** – the DTS must promote integrity and responsible behaviour by all stakeholders. For a system of this nature to operate effectively there must be confidence in the integrity of the process and the safeguards in place to ensure compliance by participants. Similarly, it must also be transparent and have appropriate mechanisms in place to promote the sustainability of the DTS and all participants, the regularity and integrity of competitions, and the integrity of the sport, generally. By entrenching transparency in the system, it will enable participants to measure the efficacy and growth of the system over time.

**Objectives of the Transfer System – Point(s) of query:**

- ii. **Are these objectives valid for the Australian DTS?**
- iii. **Australian football has underperformed in the global transfer market and this has had an impact on domestic football economics and player development. Should a DTS seek to address these issues?**
- iv. **Are there any additional objectives for the Australian DTS which should be considered?**

## 6. ADMINISTRATION OF TRANSFERS

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This part of the paper will consider the following:

- (a) clearing house;
- (b) Domestic Transfer Matching System (**DTMS**) and FIFA's International Transfer Matching System (**ITMS**);
- (c) player transfer and registration requirements
  - (i) FIFA Connect;
  - (ii) FA registration system; and
  - (iii) player passports.

### 6.1 Processing of transfer payments – potential for the 'Football Australia clearing house'?

#### Background

A key component of the transfer system is the process by which transfer compensation and registration is passed from one club (engaging club) to another (releasing club). Attached to this payment are the relevant Training Rewards payments, where appropriate, Training Compensation and Solidarity Payment, which are to be paid to the players' training clubs.

As part of its reform process, FIFA approved the establishment of a global 'Clearing House' which will apply to all international transfers and monitor this process. Around the world, the monitoring of the Transfer Fee process and payments between clubs at a domestic level is done inconsistently and without any uniform approach including, self-declaration, club licensing and, in some cases, a domestic clearing house (**DCH**).

#### *The FIFA Clearing House*

As part of the first tranche of transfer system reforms, FIFA has confirmed that it will introduce a Clearing House, which will operate as an independent facilitator and distributor of payments associated with a transfer, such as Transfer Fees and Training Rewards. The FIFA Clearing House was initially scheduled to come online in July 2020. This date was then delayed until January 2021, and then due to the unfortunate impacts of the COVID-19 pandemic, this was further delayed until July 2021.

The FIFA Clearing House was the result of extensive consultation and analysis of transfer-related payments by FIFA. As outlined further in section 7 below, a large proportion of the payments that were being made by Clubs in relation to transfers were to a player's Intermediary, with this being at the expense of the Training Rewards that were due and payable. Based on this, and to increase the transparency and accountability of the process, FIFA has developed the Clearing House. The currently available information indicates that this is likely to be an online platform that integrates with FIFA's Transfer Matching System (**TMS**), which is the platform used to facilitate the transfer of all players internationally. The Clearing House and TMS will capture data relating to player transfers and then ensure that Clubs that are due Training Rewards, or a Transfer Fee, receive this

effectively and efficiently. It appears that there will be sporting and possibly financial consequences for Clubs that fail to comply with their obligations, with this being enforced via the TMS.

Significantly for Australian Clubs, the FIFA Clearing House will automate the payment of Training Rewards. This may assist in mitigating the pressures that Australian Clubs currently face when players are seeking to move to an international Club, and Australian Clubs are requested to waive their rights to Training Rewards otherwise the international Club will not sign the Australian player. This undermines the integrity and purpose of the Training Rewards regime and the introduction of the FIFA Clearing House is an important development.

#### *Case Study: The English FA's Clearing House*

The FA effectively operates a clearing house to efficiently and independently collect and disperse certain payments related to the transfer of players. These range from payments made in relation to agents, through to Training Rewards and Transfer Fees.

By way of example, The FA Regulations on Working with Intermediaries provide that all but a very limited range of payments made by a Club to an Intermediary in relation to a transaction are required to be made via The FA clearing house.

Payments to Clubs belonging to other MAs in respect of Transfer Fees, solidarity and training compensation are also required to be made via The FA clearing house.

When a payment is made to The FA certain procedures are prescribed. The FA acts as the independent agent for payments and is able to enforce compliance and readily manage disputes by having a transparent, robust and independent service.<sup>31</sup> Relevantly, The FA internally resources the management of the service, compliance and provide support to stakeholders.

#### Challenges and opportunities

**(a) Clearing House – Material and important opportunity for Australian football to align with the initiatives being implemented by FIFA to address similar challenges.**

To ensure that Australian participants are able to maximise the involvement in the ITS, it is important that there is continued alignment with the reforms being implemented by FIFA. This is also highlighted as being strategically significant in the XI Principles in Principle III.

Additionally, there are challenges with the domestic implementation, enforcement and administration of the DTC. Based on this, the introduction of a DCH could assist in mitigating these challenges.

The FIFA Clearing House should assist significantly with the distribution of Training Rewards related to the international transfer of players from Australian Clubs. It is challenging to quantify the exact value of the training compensation that Australian Clubs have missed out on, as the:

- (i) agreement to waive these entitlements is a private matter between the two Clubs;

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<sup>31</sup> <https://www.thefa.com/football-rules-governance/policies/intermediaries/regulation-and-forms>

- (ii) there may be a lack of understanding and awareness by Australian Clubs of any such entitlements or the extent of these Training Rewards; and
- (iii) there are challenges enforcing these entitlements against international Clubs, with the process administered by FIFA via the TMS.

**(b) Increasing awareness and understanding – enhancing understanding of the Training Rewards regime is a necessary initiative**

To ensure that Australian Clubs are maximising their entitlements, while balancing the importance of providing opportunities for players, there is a significant opportunity to increase the awareness and understanding of Clubs in respect of Training Rewards. The introduction of the FIFA Clearing House may prompt this, but a DCH would be significantly beneficial in driving the collective understanding.

**(c) Distribution of Training Rewards –the need for effective distribution to provide a meaningful incentive**

As will be discussed in this White Paper, Training Rewards are an important component of the DTS, as it assists in distributing money across the ecosystem and, if structured and administered appropriately, provides a reward to Clubs for training a professional player. In the context

**Administration of Transfers – Point(s) of query:**

- i. **What are the objectives for which a domestic clearing house should be established?**
- ii. **How does a DTS ensure that clubs comply with their financial obligations towards players and other clubs as stipulated in the relevant agreements?**
- iii. **What mechanisms should be introduced to ensure the regular and timely payment of Transfer Fees, and associated Training Rewards between Australian Clubs?**
- iv. **What payments, such as Transfer Fees, training compensation and solidarity contributions and agents' commissions, should pass through the domestic clearing house?**

## 6.2 DTMS/ITMS

### Background

While the RSTP has required that the FIFA ITMS must be used for all international transfers of a professional players since 2010, as part of the first tranche of reforms to the transfer system FIFA now requires that all international transfers, including amateur players, are processed via ITMS and domestic transfers (or as they are referred to in the RSTP, National Transfers) are recorded in a DTMS. Both are online platforms that effectively and transparently transfer the player registration and require a Club and an MA to enter certain information and upload documents, depending on the type of transfer that is involved.<sup>32</sup>

<sup>32</sup> Adam Thatcher, 'Your Guide to FIFA's Transfer Matching System' *LawInSport* available via <https://www.lawinsport.com/topics/item/your-guide-to-fifa-s-transfer-matching->

ITMS is a platform that is operated and administered by FIFA and captures a range of information regarding international transfers. The sophistication of the ITMS has increased in the intervening 10 years and in 2019 it was used to process more than 18 000 international transfers of professional players.<sup>33</sup> With the introduction of female players in 2018 and the more recent requirement that the international transfer of amateur players must be processed via ITMS, there is now a single platform that captures all international transfers. This enables FIFA and other stakeholders to have a more comprehensive view and understanding of the movement of players, and facilitates enhanced records of a player's registration history, which is particularly significant for the management and administration of Training Rewards. To assist with this process, FIFA has also introduced the FIFA Clearing House (which is discussed above), the requirements for MAs to have a DTMS (or to access FIFA's DTMS platform, which is part of the FIFA TMS platform), and the integration with the FIFA Connect System (which is discussed in more detail below).

As noted above, the recent amendments to the RSTP now requires MAs to administer a DTMS, which must capture certain mandatory information regarding the domestic transfer of a player between two Clubs associated to that MA.<sup>34</sup> This is intended to enhance the records of MAs in respect of player movements and also assist in the management and distribution of Training Rewards.

#### Current Status: Domestic

In accordance with the NRSTRs and the RSTP, Football Australia requires that all international transfers are processed via the ITMS, with Clubs required to initiate the international transfer of a professional and Football Australia effectively managing the process for the international transfer of amateur players on behalf of Clubs.

The DTMS in Australia will be the national online registration system, currently called Play Football. Whilst this system captures all the necessary data for the domestic transfer of amateur players, additional information is required for the domestic transfer of professional players. Football Australia continues to work on enhancing the national online registration system to enable it to be the DTMS.

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[system#:~:text=On%201%20October%202010%2C%20FIFA's,%22historic%20moment%20for%20football%22](#) (accessed December 2020).

<sup>33</sup> FIFA, *Global Transfer Market Report 2019 – Men*, available via <https://resources.fifa.com/image/upload/global-transfer-market-report-2019-men.pdf?cloudid=x2wrqjstwjaoilnnchnod> (accessed October 2020)

<sup>34</sup> FIFA, *Regulations on the Status and Transfer of Players (October 2020)*, available via <https://resources.fifa.com/image/upload/regulations-on-the-status-and-transfer-of-players-october-2020.pdf?cloudid=kgl4qp7cl25ut2dbuz7y> (accessed October 2020),

### Challenges and Opportunities

**(a) Integrated player registration records – The integration of registration records will create significant opportunities for Australian Clubs?**

The integration of international and domestic player registration records and the FIFA Clearing House should lead to Australian Clubs receiving more Training Rewards, which may assist in incentivising Clubs to invest in player development and engage in the ITS more frequently.

**(b) Football Australia systems evolution**

The evolution and development of Football Australia's digital systems is necessary to comply with the amendments to the RSTP. In addition, there would be benefits to developing and implementing a domestic cleaning house. A key consideration in this would have to be the allocation of scarce resources, and the benefits attributable to the evolution and implementation of these system.

**(c) Opportunity for greater insights into the domestic and international movement of players**

There are material benefits in having a more comprehensive and complete registration history of player movements, this would enable Football Australia and Clubs to develop enhanced insights into the movement of players and then to implement strategically significant, data driven initiatives in response to these trends to address player development challenges and the maximisation of benefits for Australian Clubs and players.

**(d) Targeted initiatives and transformations**

Using the insights obtained from the ITMS and DTMS data, is there an opportunity for Football in Australia to utilise these insights to be targeted and specific with the discourse and initiatives.

#### **Administration of Transfers – Point(s) of query:**

- v. What would the objectives of a potential DTMS be?**
- vi. What are the opportunities to utilise insights from the ITMS and DTMS in transforming the DTS?**
- vii. How should Football Australia promote transparency, efficiency and governance in the DTS?**

### **6.3 Player Transfer and Registration Requirements – FIFA Connect, Football Australia registration system and player passports**

#### Background

As noted above, as part of the transfer system reforms, FIFA has identified the calculation and distribution of training rewards as being a current challenge at an international level. To assist in addressing this challenge, FIFA has developed and is implementing the FIFA Clearing House. This online platform will assist in calculating and distributing Training Rewards in respect of international transfers. It is understood that it will also restrict the ability of Clubs to engage in future transfers if there are outstanding Training Rewards to be paid by that Club.

To enable the Clearing House to operate, there must be a comprehensive and accurate record of a player's registration history in an online registration platform. This is prescribed in the RSTP, with MAs now required to have an online registration system. The record of a player's registration history is referred to as a player passport. The RSTP specifies that a player passport must include all the Clubs that the player has been registered with from the season of the player's 12<sup>th</sup> birthday. Where the player transfers internationally, the player passport must be provided to the player's new MA to assist with the distribution of any training rewards.

Prior to the recent reforms, a player passport was generally specific to the player's registration history with each MA. To overcome this, FIFA has developed the FIFA Connect System, and MAs are now required to integrate their online registration systems with this FIFA platform. The FIFA Connect System allocates each player, Club and MA with unique identifiers, which can then be used to track all the domestic and international transfers of a player. This will then enable players to have a unified player passport, and for this to be integrated with the FIFA Clearing House, which will enable all the Clubs that contributed to a player's training and development to receive the necessary Training Rewards.

#### Current Status: Domestic

In accordance with the RSTP, Play Football is the national online registration system that captures the data of players registering with Clubs in Australia. All players and officials are registered via this platform, even if a paper form is used initially, this data is then entered in Play Football to ensure that there is a single repository for all registration records. This system is currently being integrated with the FIFA Connect System to enable the allocation of FIFA Connect IDs to all players and Clubs in Australia. This will enable the integration of a player's registration history globally with Play Football.

The NRSTRs specifies the same matters as the RSTP above, but also required that Member Federations and Clubs assist Football Australia in the preparation of a player's player passport.

Play Football currently captures the movement of a player's registration from one Club to another Club, which is a domestic transfer. However, the integration with the FIFA Connect System will enable this system to take on a local but global character and to further connect the current player movement system to the broader ITS. These systems are imperative for the reforms of the DTS and will only assist and enhance the implementation of the transformed DTS in due course.

#### Challenges and Opportunities

##### **(a) Complete player registration history**

As noted above, there are material benefits to having a complete registration history for a player. Relevantly, it is a significant progression in the efficient distribution of Training Rewards

##### **(b) Awareness and understanding**

There is a current challenge in the understanding of the developments to Football Australia's digital systems, and consequentially, the potential opportunities for Australian Clubs, particularly in the context of player movements and Training Rewards. Accordingly,

it is strategically important that the understanding and there awareness of the implications of these requirements is enhanced.

**(c) Integration with FIFA Connect – Plugging into the international football economy**

The integration of Football Australia's player registration data with the FIFA Connect System is an important evolution, as it effectively provides all players and Clubs with a unique global football ID. The consequence of that is that this is an important step in the integration of the Australian football economy into the broader global football ecosystem. This presents an opportunity to further hardwire the Australian football economy into the ITS.

**Administration of Transfers – Point(s) of query:**

- viii. What should be the objectives of the player transfer and registration requirements?**
- ix. What are the opportunities for Football Australia to utilise the FIFA Connect integration and the insights into player movements domestically and internationally?**
- x. How could Football Australia raise awareness of the benefits of the FIFA Connect System integration with Play Football?**

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## 7. TRAINING REWARDS AND YOUNG PLAYERS

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### 7.1 Training Rewards

#### *Background*

Whilst there have been various iterations of the global football transfer market over time, the development of the modern football transfer system as we know it today began following the *Bosman* ruling of the European Court of Justice in 1995.<sup>35</sup> FIFA and UEFA entered into an agreement with the European Commission to reform the transfer system with the intention of ensuring the transfer regulations were compatible with EU law. This agreed framework was based on several pillars that specifically addressed the characteristics of football and was introduced by FIFA in 2001 in the amended RSTP.

A key pillar of this reformed RSTP placed an emphasis on the creation of a revenue distribution framework to recognise the efforts made by clubs who train young footballers.<sup>36</sup> To achieve this, the RSTP provided two limbs of revenue distribution related to the international transfer of players: the training compensation system and the solidarity contribution mechanism, collectively known in this paper as Training Rewards.

The Training Rewards framework has for the most part remained consistent since its inception, however, the below gives an overview as to the provisions as they operate in the current FIFA RSTP.<sup>37</sup> FIFA has indicated that the training compensation framework is under review. The first of these initiatives to be announced by FIFA is the additional FIFA training levy fund, which will be established to partly finance the payment of training compensation. The fund will be financed by an additional 1% levy on transfer fees. This system will incentivise and reward the training of Clubs and, as payments will be automated via the FIFA Clearing House, this will facilitate the mandatory payment of training compensation, which is currently not the case.<sup>38</sup>

#### *Training Compensation (Annexe 4 of the RSTP)*

Conceptually, training compensation is a financial reimbursement paid to a player's training clubs when a player signs their first professional contract and/or on each subsequent transfer until their 23<sup>rd</sup> birthday. A player's training clubs are considered to be every club that has contributed to their training, starting from the season of their 12<sup>th</sup> birthday through to the season of their 21<sup>st</sup> birthday.

#### *Solidarity Contribution (Annexe 5 of the RSTP)*

Where a professional player transfers from a Club before the expiration of their Contract, then 5% of any compensation paid to the former Club must be deducted from the total amount and distributed to all the Clubs involved in that player's training and football education between the seasons of their 12<sup>th</sup> and 23<sup>rd</sup> birthday.

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<sup>35</sup> CJEU, case C-415/93 *Union Royale Belge des Sociétés de Football Association and others v. Bosman and others*, ECLI: EU: C:1995:463.

<sup>36</sup> FIFA Circular no. 769, dated 24 August 2001, p. 2.

<sup>37</sup> FIFA RSTP.

<sup>38</sup> FIFA, 'Football stakeholders agree further steps in the reform of the transfer system' (27 February 2020) available via <https://www.fifa.com/who-we-are/news/football-stakeholders-agree-further-steps-in-the-reform-of-the-transfer-system> (accessed November 2020).

It is essential to note that the above Training Rewards principles explicitly relate to “the status of players... and their transfer between clubs belonging to different associations”.<sup>39</sup> Article 1, paragraph 2 of the RSTP provides that the transfer of players between clubs of the same association are to be governed by specific regulations issued by the member association concerned and, more specifically, “such regulations should also provide for a system to reward clubs affiliated to the relevant association investing in the training and education of young players”.<sup>40</sup> This effectively leaves a member association, such as Football Australia, with scope to regulate Training Rewards as it sees fit within its particular jurisdiction provided they align with the principles contained in the RSTP.

Current status: domestic:

*Training Rewards in Australia (Article 10 of the Football Australia NRSTRs)*

The current DTC regime has been in force and largely unchanged since 2013. During this time, the value of DTC being paid, and the number of players being trained and developed, by Australian Clubs has not increased materially. The Men’s Performance Gap has identified that the development of elite players to participate in the A-League has actually been declining, with fewer Australian players under 23 years of age receiving valuable match minutes across a season.<sup>41</sup> The player development challenges are further evident with only four (4) Australian under 23 players (being players born in 1996) who were included on an A-League Club’s player roster for the 2019/20 A-League Season, and only one (1) player born in 1996 having progressed to the Socceroos, being Ajdin Hrustic.<sup>42</sup>

Based on these player development challenges, the DTC being paid is relatively limited, which indicates that there isn’t any meaningful incentive for Clubs to train players and a likely over emphasis on registration fees, particularly for junior players, at certain levels of the game.

Football Australia, in consultation with a range of internal and external stakeholders has identified that this Training Rewards regime also requires review. It is timely given the inextricable link between the evolution of the DTS and the DTC regimes to also review the current DTC framework.

The NRSTRs in article 10 set out the application of training compensation to the Australian football structure, known DTC. The DTC framework currently operates by providing that a player’s new club must reimburse the player’s training clubs for the costs of playing and developing that player. The calculation of the costs of training a player is based on the category assigned to the player’s immediately preceding club and the player’s new club.

This process is set out in the NRSTRs, in [Football Australia’s Guide to Training Compensation and Solidarity Contribution](#) and brief summary is reproduced below. In short, the current training compensation system, which was introduced in 2013, does not appear to be achieving the objectives of developing players or incentivising Clubs to invest in player development. The key indicators for this are the declining number of young Australian A-League players and Socceroos

<sup>39</sup> FIFA RSTP, Article 1, Para 1.

<sup>40</sup> Ibid, para 2.

<sup>41</sup> Football Australia, *Men’s Performance Gap* available via <https://www.footballaustralia.com.au/sites/ffa/files/2020-11/The%20Performance%20Gap.pdf> (accessed December 2020), 5-7.

<sup>42</sup> Ibid, 7.

that are trained by domestic Clubs,<sup>43</sup> the relatively low number of player's that trigger training compensation each year, and the amount of training compensation that is paid when compared against the value of the training compensation that should have been paid annually.

Domestic Training Compensation IS due when:

- (a) a player signs their first professional player contract (currently Prescribed Form NRR 05); or
- (b) an existing professional, transfers between Clubs and signs a subsequent professional player contract, until the end of the season of their 23<sup>rd</sup> birthday.

**Note:** The obligation to pay training compensation involving a subsequent transfer will take place regardless if the transfer occurs during or at the expiry of a player's contract.

Domestic Training Compensation is NOT due:

- (a) where the former Club terminates the player's professional player contract without just cause (Without prejudice to the rights of the previous Club);
- (b) where the player is transferred to a 'Category C' Club – see below;
- (c) where a professional reacquires an amateur status when transferred; or
- (d) for female players.

#### (a) Calculation of DTC – Club Categories and Amount of Training Compensation

For the purposes of the NRSTRs, Football Australia categorises clubs as follows:

<b>Category A.1</b>	A-League clubs
<b>Category A.2</b>	A-League clubs in their National Youth League / National Premier Leagues capacity
<b>Category B</b>	Clubs other than an A-League club, who are licensed and participating in the National State Premier Leagues
<b>Category C</b>	All other clubs

The amount of Domestic Training Compensation payable by the club to which a Professional is being registered to, is presented in the following table:

<sup>43</sup> Football Australia, *Men's Performance Gap* available via <https://www.footballaustralia.com.au/sites/ffa/files/2020-11/The%20Performance%20Gap.pdf> (accessed December 2020), 6, 19.

<b>First Professional Contract</b>			
<i>Category of last prior Club Player was registered as amateur with</i>	<i>Category of Club Player is signing first professional contract with</i>	<i>Amount of Domestic Training Compensation payable</i>	<i>Pro-rated to all of the Player's junior Clubs</i>
C	C	Nil	N/A
C	B	Nil	N/A
C	A.1	\$5,000	Yes
B	B	\$6,000	Yes
B	A.1	\$10,000	\$5,000 pro-rated and remaining \$5,000 to the last Club Player was registered with
A.2	A.1	\$10,000	Yes

  

<b>Subsequent Professional Contracts When Transferred</b>			
<i>Category of last prior Club Player was registered with</i>	<i>Category of Club Player is signing a subsequent professional contract with</i>	<i>Amount of Domestic Training Compensation payable</i>	<i>Pro-rated to all of the Player's junior Clubs</i>
C	C	Nil	N/A
C	B	Nil	N/A
C	A.1	Nil	N/A
B	C	Nil	N/A
B	B	\$6,000	No
B	A.1	\$6,000	No
A.1	C	Nil	N/A
A.1	B	Nil	N/A
A.1	A.1	\$6,000	No

**(b) Payment and Use of Domestic Training Compensation**

- (i) If Training Compensation is payable, the new domestic club is responsible for paying the full amount to Football Australia within 30 days of registering the player in accordance with FIFA regulations.
- (ii) Football Australia will distribute the payable amount in accordance with the tables above. Any pro-rata payments will be distributed to all eligible clubs the player has been registered with since the season of the player's 12<sup>th</sup> birthday. These are identified by the player passport, being a record of the time period in which the player was registered at each club.
- (iii) If a club that was entitled to receive these payments is no longer participating in football for any given reason, Football Australia will receive these funds and reallocate them into National youth development programs.
- (iv) No DTC is payable to an Institute.
- (v) The Training Compensation otherwise payable to Institutes under the NRSTRs will go to the last Club the player was registered with prior to that Institute.
- (vi) Training Compensation MUST be used by a Club to further train and educate players.

Additionally, the recent amendments to the RSTP and NRSTRs provide for the payment of domestic solidarity where there is a Transfer Fee and there is at least one (1) international Club involved in the training and development of a player. It is also essential to note that currently there is no domestic solidarity framework in place in Australian football where a player has been trained and developed exclusively by domestic clubs. This is partly due to the fact that the NRSTRs prohibit the payment of domestic Transfer Fees between A-League Clubs. With no Transfer Fees payable there is currently no opportunity for a solidarity contribution to be applied at the top level of Australian football in similar fashion to the international RSTP framework. The historical context for this will be discussed below as this White Paper discusses the extent to which this is still appropriate in the current football landscape.

It is broadly acknowledged that the current Training Rewards regime does not satisfy the intended purpose for which it was implemented. This restricts or limits the incentive for Clubs to invest in the training and development of players.

**(c) Relationship between Academies, player development and Training Rewards**

The introduction of club-based academies, which is currently a key component of the player development framework, is a significant departure and distinct from the approach when the current DTC regime was implemented. Based on this, the DTC needs to be reviewed in the context of the academy accreditation scheme. Further, given the objectives of the training rewards regime is to reward Clubs for training players, there exists a relationship between academy accreditation, player development and Training Rewards regimes. The exact nature of this relationship needs to be considered in the development of the revised DTC framework but also in evolving the DTS, as the incentivisation of Clubs to invest in youth is a fundamental and underlying objective of the DTS. The DTC regime needs to adequately and appropriately reward Clubs for the development of players while not presenting undue impediments and barriers to the movement of players between Clubs; in effect, this tension is an inherent consideration in the development of the DTS generally.

**Challenges and opportunities**

**(a) International Training Rewards – a lost opportunity?**

As a starting point for this assessment, it may be necessary to first attempt to quantify the amount of international training rewards that all Australian clubs have been paid and compare this to the amount that is theoretically available to them under the current RSTP framework. This is likely to provide an insight as to whether there are potential training rewards that can be injected back into the Australian football economy and, if so, hypothesise the reasons behind why these funds are not being captured before outlining potential solutions. That being said, it is likely that the introduction of the FIFA Clearing House in Australia from July 2021 will assist in mitigating a proportion of the lost international training rewards.

For further details regarding the FIFA Clearing House, see FIFA's [explanatory video here](#), and a [further explanatory article](#).

**(b) DTC Application and Enforcement – A real and practical challenge?**

Lack of oversight or visibility by Football Australia due to current systems and inconsistent application and enforcement of the regulatory framework.

**(c) Training Reward Regime Reform – Impending opportunities for Australian Clubs?**

The current DTC framework is under review, as is the international training rewards regime. There are material and substantive opportunities available to all Australian Clubs in the context of both reforms. The introduction of the FIFA Clearing House will assist significantly in the effective and efficient distribution of training rewards. Additionally, the DTC review has identified that the current framework was developed at a time when the landscape was materially different and needs review and reform. This is an opportunity to formulate a DTC regime that complements and enables the objectives of the DTC, whilst also actively incentivising the investment by Clubs in player development.

**(d) Incentivising Clubs to invest in youth development**

It is proposed that the training rewards system be designed to encourage and facilitate better training of young football players and create a solidarity mechanism amongst football clubs by providing adequate financial compensation to those clubs who have been involved in the football education and training of young players.

**(e) DTC Reform – Transparency and understanding**

For the training rewards regime (in whatever form it takes) to be effective, it needs to be understood. The XI Principles identified that there may be a gap in the understanding and awareness of the DTC framework. This needs to be explored and any transformed model should be tested with stakeholders to assist in application.

There is a clear nexus between the training rewards regime and the player pathway. However, the current model doesn't accurately reflect the current player pathway, particularly since the advent and introduction of the academy accreditation framework. A key consideration in any evolution of the DTC regime needs to be the relationship with the player pathway and the key structures within this.

**Training Rewards and Young Players – Point(s) of query:**

- i. **Promotion of youth development – does the Training Rewards regime incentivise Clubs?**
- ii. **Should training compensation be payable on an annual basis (as opposed to a one-off payment) and apportioned to each Club that has held the player's registration each year?**
- iii. **DTC Reform – is the current DTC model effective and appropriate?**
- iv. **Is the current DTC system understood?**
- v. **Clarify the relationship between DTC and the player pathway – is this clear to stakeholders?**
- vi. **Should the relationship between the Professional Leagues Clubs and the grassroots of the game be considered in the context of training rewards review? Is there an opportunity for there to be a solidarity contribution to be introduced as part of the DTS?**
- vii. **At what age should Training Rewards eligibility commence and conclude?**

- viii. **How is training compensation calculated? Should it be based on per year of training at a Club? What is the relationship between the Club's level of academy accreditation? Should it be based on the categorisation of the releasing Club or the engaging Club?**
- ix. **What are the relevant values? How are these determined?**
- x. **Education - How could Football Australia enhance the understanding and awareness of Training Rewards, particularly in relation to the ITS? Should Football Australia have a resource to support clubs recover Training Rewards?**
- xi. **Accreditation of academies/player pathway – relationship between the regulation of the player pathway and the participation of young players in the ecosystem and DTS?**
- xii. **Relationship between academy accreditation and the calculation of Training Rewards?**

## 7.2 Young Players

### Background

The development of young players is a key objective of the Training Rewards regime and the DTS. However, these objectives need to be balanced against ensuring that the young player is appropriately supported, safeguarded and empowered to pursue opportunities outside of football, such as education or trades. By ensuring that these young players are catered for holistically within the game, the sport will benefit as a whole.

The FIFA regulatory framework provides for certain conditions regarding the development of young players and their participation in footballing programs. For example, the RSTP prohibits the international transfer of players unless certain conditions are satisfied, which can include an application for the prior approval of the FIFA Players' Status sub-Committee.<sup>44</sup> These conditions are limited and intended to provide protection to young players to avoid exploitation and movement for purely footballing purposes. By restricting the movement of young players for exclusively footballing reasons, FIFA is recognising the particular and important needs of young players, including familial or pastoral care and protections. The RSTP also provides that a young player's contract may not have a term of more than three (3) years and reporting obligations for Clubs that operate academies.

There are also restrictions in the FIFA RWWIs regarding the involvement of Intermediaries and young players, including a prohibition on commissions or fees being received by Intermediaries in respect of transactions involving young players.

In addition to this, FIFA and Football Australia have recognised the importance of safeguarding young players, and this is reflected in both organisations implementing safeguarding programs. The FIFA Guarding program is recognition of the significance of safeguarding and the role that FIFA has to play in ensuring that the sport is safe, welcoming and accommodating of the needs of

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<sup>44</sup> For further details regarding the treatment of minor players within the FIFA framework and Football Australia's regulatory framework see:

[FIFA Guide to Submitting Minor Applications](#) and the [FIFA website](#); and

[Football Australia's ITC Guide](#), particularly the minor's section and [Football Australia's website](#).

younger players, particularly in development programs.<sup>45</sup> Similarly, Football Australia as part of the national Member Protection Framework has recently introduced a new Safeguarding Policy following extensive stakeholder consultation and feedback.<sup>46</sup> This policy provides a framework for the safe and structured participation of young people in football.

The transformation of the DTS needs to balance the provision of high-quality player development initiatives with ensuring that young players are supported. This could be achieved via a range of regulatory mechanisms but would need to be supplemented by a responsible culture. Other MAs have a range of approaches to this, including requiring players to complete their secondary schooling as part of a Club's academy program, or requiring that Clubs incorporate secondary education into the players academy programs. There are also incentives or regulatory concessions to encourage Clubs to invest in young players and to provide them with opportunities.

#### Current Status: Domestic

The provisions of the RSTP regarding minor players are binding at national level and must be replicated without amendment. Accordingly, the NRSTRs include the relevant provisions of the RSTP. In addition to this, the NRSTRs prohibit a young player from executing a professional player contract unless and until that player is the statutory school leaving age. This is also replicated in the relevant player contracting regulations for the Professional Leagues. The NRSTRs also provide that a young player seeking to register for the first time and who was not born in Australia must obtain the prior approval of the FIFA Players' Status sub-Committee.

A strategic component of the national approach to player development is currently the accreditation of Club-based academies. To be accredited at certain levels, these Clubs are required to comply with certain standards, which include but are not limited to criteria relate to the technical, financial or infrastructure of the Club. These academies are aimed at providing certain standards of training, coaching, Club sustainability and welfare for young players, with the level of accreditation representing the relevant standards. The costs of running an accredited academy are not insignificant, and Clubs need to be able to offset or recover part of these costs via a combination of a transformed DTC regime and DTS, neither of which are currently available. The accredited academies are currently only operated by Professional Leagues Clubs, which may restrict the reach of this initiative.

As noted above, the Men's Performance Gap identified the player production challenges that Australia is currently facing. To reward Clubs and incentivise them to invest in player development, the transformation of the DTC regime and the academy criteria must address this challenge and provide appropriate rewards or enable Clubs to recover the cost of training a player.

#### Challenges and Opportunities

##### **(a) Greater opportunities for young players**

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<sup>45</sup> For further details see [FIFA's Guardians / Child Safeguarding Programme](#)

<sup>46</sup> Football Australia Safeguarding Policy available via [https://www.footballaustralia.com.au/sites/ffa/files/2020-12/20-12%20-%20Member%20Protection%20Framework%20-%20Safeguarding%20Policy%20%28Final%29\\_0.pdf](https://www.footballaustralia.com.au/sites/ffa/files/2020-12/20-12%20-%20Member%20Protection%20Framework%20-%20Safeguarding%20Policy%20%28Final%29_0.pdf) (accessed December 2020).

Providing a consistently structured and safe environment for young players to play more match minutes – this was identified in the XI Principles and the Men's Performance Gap as being a key area for development and transformation. In this regard, it is important that the DTS accounts for this in the management of opportunities for young players.

**(b) Training Rewards regime**

As noted in section 7.1 above, the Training Rewards regime must adequately reward Clubs for the investment in player development. The current DTC regime doesn't provide the appropriate rewards to reflect the existing environment and requires structural transformation.

**(c) Enhanced opportunities for young players**

The XI Principles and Men's Performance Gap have highlighted the need for increased incentives for Clubs to provide opportunities to players. The development of a DTS needs to address this challenge and provide mechanisms to incentivise Clubs to prioritise and appropriately and responsibly invest in youth development.

**(d) Academy accreditation**

The implementation of a DTS, in addition to other regulatory mechanisms, such as club licensing, presents an opportunity to expand the scope of the academy accreditation scheme. This would also enable there to be greater integration between academy accreditation and the DTC regime.

**(e) Australian national teams**

By enhancing player development and prioritising youth development, there is undeniably an opportunity to enhance player development environments and improved national team performances.

**Training Rewards and Young Players – Point(s) of query:**

- xiii. What are the objectives of developing young players in relation to a DTS?
- xiv. How does a DTS support the training and development of young players to produce more and better homegrown players?
- xv. How does a DTS ensure that young players are playing regularly and gaining valuable match minutes, particularly between the age of 17 and 23?
- xvi. What mechanism can Football Australia introduce to promote the technical, tactical, physical, mental, lifestyle and welfare development of young players by Clubs?
- xvii. What mechanisms can Football Australia introduce to promote positive recruitment practices?
- xviii. Should Football Australia introduce rules which promote young players staying in the family unit for longer? Or regulations that require that the young player finish their secondary education and encourage Clubs to provide opportunities for players to pursue their tertiary education?
- xix. Is it necessary to restrict the age that an agent can recruit a player?
- xx. Should there be a restriction on the age that a young player can sign their first professional contract?



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## 8. LOANS

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### 8.1 Background

FIFA's RSTP<sup>47</sup> permits the loan, being the temporary transfer of a player's registration, of a professional from one Club to another and makes such a transaction subject to the same rules as apply to the permanent transfer of players, including the provisions on Training Compensation and the Solidarity Contribution. The RSTP does not clearly define an objective for the 'loan' mechanism and this is said to have led to some potentially excessive and abusive practices which might have an impact on the development of young players or impact the integrity of competitions.

As part of the reforms to the transfer system, FIFA has announced a number of reforms to the loan of players between Clubs.<sup>48</sup> These reforms were initially scheduled to come into effect from July 2020, however, due to the unfortunate impacts of the COVID-19 pandemic, the implementation of these reforms has been delayed. These reforms were prompted by the centralisation of talented young players at large Clubs, particularly European Clubs. These Clubs either retain these talented players without providing them opportunities or then loan these players out to other Clubs in the same competition or lower division Clubs for increased game time. This practice is referred to as warehousing and may have implications for the development of young players or can undermine the integrity of competitions. Based on this, the loan regulations are intended to ensure that the loan of players has a valid sporting purpose for youth development. The reforms effectively provide a cap on the number of players aged 22 or older that a club may have, or send out, on loan.

### 8.2 Current status – domestic:

Under the NRSTRs, loans are currently permitted between Clubs, with the loan of players by Professional Leagues Clubs in limited circumstances. The loan of players between Clubs in the A-League is permitted where certain criteria are met, including that the player is Australian, 23 or under and cannot participate in matches against his parent Club. Whilst the regulatory framework effectively permits the domestic loan of players, it is a facility that is used infrequently. Since the regulatory framework was revised to permit loans between A-League Clubs there have been only four (4) such loans. Similarly, as noted above, loans between NPL Clubs or NPL and Professional League Clubs are limited. There are a range of factors that contribute to this, but significantly, the short contract duration is an ongoing challenge.

### 8.3 Challenges and opportunities

#### (a) There must be clarity regarding the purpose for regulating player loans

The purpose of regulating the loan of players is a balance between the prevention of warehousing against the objective of providing opportunities for young players across the

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<sup>47</sup> FIFA RSTP, Art 10.

<sup>48</sup> FIFA 'Football Stakeholders Agree Further Steps in the Reform of the Transfer System' available via <https://www.fifa.com/who-we-are/news/football-stakeholders-agree-further-steps-in-the-reform-of-the-transfer-system> (accessed November 2020).

domestic football ecosystem – this was identified as being of strategic and footballing importance in the XI Principles, in particular, Principle V and the Men's Performance Gap;

**(b) Short-term contracting presents a challenge to the loan of players, however, there is also an – opportunity for change**

As noted, there is a tendency towards short-term contracting of professional players. This practice is not conducive to players being eligible for loans, as they are often able to leave a Club at the end of the season or there may even be certain conditions within the contract that would permit the parties to agree to mutually terminate the contract early regarding potential opportunities at another Club. These types of clauses are quite common in professional player contracts at the NPL in respect of offers by A-League Clubs. These practices would need to materially change in order for there to be an increase in the number of loans.

**(c) Youth Development presents an important opportunity for Clubs and players to prioritise quality match minutes for young players**

As noted above, the Men's Performance Gap and the XI Principles identify more quality match minutes for young players as being strategically significant for Australian football. This is particularly relevant as the Men's Performance Gap highlighted the age profile of the A-League as the oldest surveyed for the study, and possibly the professional league with the oldest age profile globally, with players who turned 32 years old during the season playing the most match minutes over the past five (5) seasons.<sup>49</sup> However, this may require cultural change. The introduction of a DTS may facilitate this, however, cultural change can be slow, and the regulatory framework would need to be supported by broad endorsement from stakeholders and active supplementary education and awareness raising. A key driver of this could be the strategic significance of the opportunities for young players and the need to provide them with enhanced opportunities, particularly if there is a shift towards valuing a player's contract and registration.

**Loans – Point(s) of query:**

- i. **Should the loan mechanism as understood as part of the ITS be introduced into the Australian football landscape?**
- ii. **If introduced, what are the objectives of loans?**
- iii. **Should Football Australia introduce an unrestricted player loan system for professionals, or should these be regulated?**
- iv. **Should there be a cap on the amount of loans (both in and out) which a club can make?**
- v. **Should there be a cap on the amount of loans (both in and out) between clubs?**
- vi. **Should there be an exception for young players to be exempt from loans to encourage young players to be playing quality match minutes?**
- vii. **How should training compensation and solidarity apply to players that are domestically on loan?**

<sup>49</sup> Football Australia, *Men's Performance Gap* available via <https://www.footballaustralia.com.au/sites/ffa/files/2020-11/The%20Performance%20Gap.pdf> (accessed December 2020), 6, 19.

viii. Should a domestic loan period count towards the calculation and distribution of Training Rewards?

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## 9. PLAYER ELIGIBILITY RULES

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### 9.1 Background

Player eligibility rules are an integral part of player registration and determine which players are eligible to register for and participate in organised football.

Because player eligibility rules are regulated at a domestic level, there is a variance in the number of players permitted within each squad from country to country. At a continental level, each Confederation also regulates player eligibility rules, including squad sizes, in accordance with their own regulatory framework. For example, UEFA stipulate its squad sizes at 25 players while the AFC stipulate 30 players for the competition that these confederations administer.

At a global level, player eligibility rules have often been delegated to the domestic level, but in recent times concerns have been raised as to whether the lack of regulation at global level has diminished opportunities for young and homegrown players to play regular football at the highest domestic level because clubs can 'warehouse' or 'hoard' players, ultimately diminishing the quality of jobs for all players. In the case of young players, they are often loaned out and their development may be impacted negatively.<sup>50</sup>

In many jurisdictions, player eligibility rules also include the regulation of homegrown players. These homegrown player rules may be structured to effectively prescribe a minimum number of domestically trained players or players born in that territory, or who are eligible for that MA's national teams within a squad. A related set of eligibility rules concern the maximum number of foreign players that may be included in a squad.

Homegrown player rules may focus on whether the player is trained within the jurisdiction of the MA or within a specific club. This distinction is important, as it is likely to have an effect on Club's recruitment policies and the investment in player development, which would in turn change the dynamic of the DTS. Similarly, as noted above, the player eligibility rules may prescribe a maximum number of foreign players that may be included on a Club's player roster for a particular competition.

Homegrown player rules aren't confined to the composition of a player roster, they may also be structured as match day rules, which could include requiring a certain number of homegrown players are included in the starting XI, or that certain positions must not be foreign players (for example a goalkeeper or strikers).

The homegrown player rules are often intended to ensure that competitions provide sufficient opportunities for players that have received their training and football education in a country, or that were born in that particular country. However, these rules typically differ between MAs and even between confederations and may be subtly distinct despite having the same general purpose or objectives. However, it may be that this is an area for review and enhancement in due course, as there may be broader continental objectives that could drive such reforms, or alternatively, it may be that the integrity of competitions is considered an appropriate driver of reform. By way of example, UEFA and The English FA both have homegrown player rules that apply to the competitions that they administer. And Clubs that compete in an English competition with a

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<sup>50</sup> See discussion on loans.

particular squad composition may be required to amend that squad for UEFA competitions to comply with the homegrown player regulations.

## 9.2 Current status – domestic

As noted above, player eligibility rules are frequently MA specific. While the NRSTRs do specify certain eligibility criteria and the regulatory frameworks for each of the Professional Leagues includes player eligibility rules, Football Australia does not have discrete national regulations governing player eligibility rules for competitions or setting out requirements in respect of composition of a squad. The lack of these types of rules has been a core drive of the challenges in developing players that the game is experiencing, as it hasn't enabled the efficient implementation of strategic initiatives to assist with player development. As an example, there are regulations applicable to each of the A-League and W-League, which provide the maximum number of foreign players that can be included in a Club's squad. In the A-League, there is also salary cap concessions for a player that meets certain conditions to be classified as a homegrown player. For the purposes of the A-League, a homegrown player is one that has either:

- (a) participated in that Club's academy and signed their first professional agreement with that A-League Club, or
- (b) been registered with the A-League Club for a prescribed period of time and signed his first professional agreement with that A-League Club and does not satisfy additional criteria related to that player's previous registration history.

Whilst not strictly to do with the size of a Club's squad, these salary cap concessions can have an impact on the composition of a Club's squad.

As with the UEFA and England example above, the foreign player regulations applicable to the A-League are not consistent with the AFC Champions League foreign player rules, and A-League Clubs are often required to alter the squad's composition between competitions or be selective in their recruitment to ensure that they comply with the AFC regulations when participating in the AFC Champions League.

In the context of the NPL and the FFA Cup, there are regulations regarding the maximum and minimum size of a Club's squad and in addition there is a regulatory mechanism that effectively impacts the number of foreign players who may be included in a Club's squad. However, in the NPL, these regulations may also be supplemented by competition-specific rules regarding squad size and composition.

To ensure competition integrity, player eligibility rules should be aligned and applied consistently across all competitions administered by Football Australia. Australian competitions are more connected than ever, particularly with the introduction of the AFC Champions League slot for the winner of the FFA Cup and the ongoing work on a national second division. The interconnectedness of the competitions provides that there should be harmonisation of the regulations between competitions, including player eligibility rules.

## 9.3 Challenges and opportunities

- (a) **A Lack of Regulatory Consistency – this presents a challenge and may undermine the intended purpose and objectives**

As noted above, there is an absence of regulatory consistency across competitions within a MA, and between MAs and even at confederation level. In developing a DTS, there should be uniformity in terms of a national football strategy, including regarding the appropriate homegrown player rules to achieve certain strategic and footballing objectives. The introduction of the entry slot to the AFC Champions League for the winner of the FFA Cup means that there are Clubs that could be competing in the A-League, FFA Cup, NPL and AFC Champions League. This further demonstrates the need for harmonisation and alignment of the player eligibility rules.

**(b) Player Warehousing the DTS would need to examine the extent to which this is an Australian issue**

The short term contracting that is prevalent in Australian football and has been problematic in the context of other aspects of a DTS, may have historically reduced the risk of player warehousing. However, with the increasing importance of Club academies and realising the value of a player's contact, this may not be sufficient going forward. Based on this, it may be worth considering whether this is an objective that would justify or warrant certain protective regulations.

**(c) Homegrown Players – striking a balance to continue to grow Australian football's diversity**

A key strength of Australian football is the diversity of the participants. It is a feature that makes the sport unique and it is crucial that this is further enhanced. If homegrown player rules are implemented, it would need to be balanced against this diversity and ensuring that there is sufficient nuance in the regulatory framework to further augment the diversity of this sport. The level of football that this would apply to would need to be considered.

**Player Eligibility Rules – Point(s) of query:**

- i. **The appropriate number of homegrown players to address the challenges identified in the Performance Gap report?**
- ii. **What are the appropriate homegrown player rules? Should the rules for homegrown players be club or association trained?**
- iii. **Should there be limitation on the number of foreign players? What should they be? Should the number of foreign players be harmonised with the Asian Champions League? Many foreign players have added tremendous value to Australian football, but some have not; how do we ensure through regulation that foreign players are at a level higher than that of local players?**
- iv. **Should this be extended to minors? If so, is there a permitted number of minors? What is the age? Should minors be exempt to promote?**
- v. **Should there be specific match day rules regarding the composition of the starting XI (e.g., a minimum number of players eligible for Australian National Teams in the starting XI)? Should there be position-specific rules regarding player eligibility (e.g., a specific position such as goalkeeper must be eligible for Australian national teams)?**

**Player Roster Limits – should there be a limitation of the maximum roster size permitted for certain types of football to assist with the integrity of competitions and to prevent against ‘warehousing’ of players?**

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## 10. REGISTRATION PERIODS

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### 10.1 Background

The RSTP provides that a player in a professional competition, being a competition in which at least one (1) professional player is registered, may only be registered with a Club during one of the two (2) Registration Periods set by the MA. These Registration Periods are for a total of 16 weeks, with the first being for a maximum of 12 weeks and which occurs prior to the commencement of the season, and the second Registration Period is for a maximum of four (4) weeks and usually occurs on or around the middle of the season. There are exceptions to the requirement for a player in a professional competition being registered during a Registration Period, but these are limited, and consideration must always be given to the sporting integrity of the competition.

The RSTP also specifies that Registration Periods do not apply to purely amateur competitions.

The RSTP has been amended in the last 12 months by FIFA to provide that Registration Periods now apply to all players seeking to register in a professional competition. This has effectively tightened the rules regarding the timing of these Registration Periods. This has and will significantly impact on Football Australia setting the Registration Periods. This will require better alignment of competitions across the country and we will need to set windows in line with FIFA rules.

In the course of the transfer system reforms, FIFA have considered amendments to the operation Registration Periods, with various initiatives being considered, including the requirement for the first Registration Period to conclude prior to the commencement of matches for a season, and restricting the number of players that a Club may register during the second Registration Period.

The objectives and purpose of this regulation are to ensure the sporting integrity and regularity of competitions. In effect, it is to maintain the stability of playing squads and to provide certainty for both players, clubs, and by extension, all stakeholders associated with the Club. This squad stability assists, to an extent, with the contractual stability that was discussed several times in the preceding sections. However, it is also relevant in preventing Clubs from materially altering a squad during the course of a competition.

### 10.2 Current status – domestic

In accordance with the RSTP and the NRSTRs, Football Australia sets the Registration Periods for professional competitions. Generally, there are only two (2) Registration Periods permitted per season, with male and female competitions able to have separate Registration Periods. However, due to the effects of the COVID-19 pandemic, MAs were eligible to apply to the FIFA Administration to split one (1) Registration Period for the 2020 or the 2020/21 Season (as applicable).<sup>51</sup> Based on this, Football Australia has successfully applied to 'split' the first Registration Period for both males and females into two (2) blocks – this will not be permitted by FIFA going forward.

Further information regarding the current Football Australia Registration Periods is available via [FFA Circular 20-17 – Registration Periods](#).

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<sup>51</sup> FIFA COVID-19 Football Regulatory Issues Guide & Frequently Asked Questions available via <https://www.fifa.com/who-we-are/news/fifa-provides-further-guidance-on-covid-19-football-regulatory-issues-x6809> (accessed November 2020); FIFA RSTP Article 6.

### 10.3 Challenges and opportunities

**(a) Setting the tone – the timing of Registration Periods and increased interest**

There is, undeniably, increased interest in sports in the USA and the United Kingdom around the time of player registration deadlines, whether it be transfer deadline day in England, or the drafts in the major league sports. There is a significant opportunity to increase engagement with the sport around the transfer deadline days, particularly if there is greater alignment and integration between the Professional Leagues and the tiers of the sport beneath them.

**(b) Timing of other MAs Registration Periods, in particular throughout Asia, to increase transfer receipts**

By being cognisant of the timing of Registration Periods throughout Asia, there is the opportunity for Australian football to further integrate with the confederation and to explore opportunities to maximise opportunities for Australian Clubs in respect of transfer-related payments. However, that is not to contend that this is a determinative factor, the setting of the Registration Periods must continue to reflect the unique Australian footballing landscape and the discrete challenges that are faced as a result.

**(c) Registration Periods and AFC Champions League – A nexus between performance and the timing of the windows**

It is difficult to schedule for every competition given the lack of alignment in competitions, however, there are material challenges in the timing of the Registration Periods and the participation of Australian Clubs in the AFC Champions League. To provide Australian Clubs with the best opportunity to be competitive in this competition, the timing of the Registration Periods should consider the effect on the participation of Australian Clubs in the AFC Champions League.

**(d) Awareness and compliance**

As with many elements of the transfer system, in transforming the DTS, there are significant opportunities to engage with stakeholders and enhance the understanding of the reasons for the various components, including the operation of Registration Periods.

**(e) Determining a professional competition**

The amendments to the RSTP have presented a range of challenges, including the administrative challenges with identifying professional competitions. Competition Administrators are required to monitor the registration of participants to determine the status of the competition. However, there are already examples of registrants seeking to register as a professional in what had been anticipated to be an amateur competition and that this then has the effect of deeming the competition as professional. The management of this is an ongoing challenge that administrators at all levels will need to continue to manage collectively.

**Registration Periods – Point(s) of query:**

- i. What are the objectives of the Registration Periods? Are they consistent with the objectives of a uniquely Australian DTS?**
- ii. Should the first Registration Period conclude prior to the commencement of matches for the season?**
- iii. Should there be restrictions on the number of players that can be registered during the second Registration Period?**
- iv. How Registration Periods assist with sporting integrity and regularity in an Australian context?**
- v. How can our competition calendar be better aligned across the country so the windows can be set appropriately?**
- vi. When is the best time to set Registration Periods from a Domestic Match Calendar point of view? When is the best time to set Registration Periods to increase the total amount of transfer receipts and unlock more revenues from the global transfer market?**
- vii. When is the best time to set the Registration Periods to give our clubs the best chance of success in the Asian Champions League?**
- viii. FIFA have recently hardened their rules on when MAs can set Registration Periods (i.e. 2 Registration Periods per year - 12 weeks in between seasons and 4 weeks during the season. How does Football Australia set its Registration Periods when the calendars for the top-tier competitions and second-tier competitions (both of which have many professional players that must be registered) are not aligned?**

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## 11. TRANSFER FEES

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### 11.1 Background

The transfer fee in football is an area of extensive discussion domestically and globally. In particular, it is a pivotal consideration of any DTS model.

The general principle is that a Transfer Fee is payable due to a player seeking to mutually terminate an employment agreement with a Club to join another Club. The mechanism for determining the value of this fee could be:

- (a) via the market, which is the current system in the ITS, and to an extent in Australia;
- (b) a pre-agreed amount that is entered in the player's employment contract with the Club, which is often referred to as a buy-out clause; or
- (c) calculated using a complex algorithm, which effectively applies transparent and objective criteria to determine the value.

At a global level, FIFA does not currently impose any requirements on how a transfer fee is determined, with it being left open to the market, that is the two clubs involved in the transactions, to determine the value of a transfer fee. With the market effectively determining the value of the Transfer Fee. This is an area of ongoing review and consideration at the international level, with FIFA assessing a range of potential mechanisms to address the perennially inflating transfer fees in the largest footballing economies. One potential model could include a series of objective criteria that could be used to assess and determine the value of a player and the fee to be paid. Despite this ongoing consideration, in some jurisdictions, there are domestic requirements that these fees be calculated via certain mechanisms, or that buy-out clauses must be included in a player's employment contract.

In addition to Transfer Fees and buy-out clauses, a player's transfer may also trigger a sell on fee. A sell on fee is often negotiated by a player's current club when it is agreeing to mutually terminate a player's employment contract and often take the form of either an agreed amount or a percentage of a future Transfer Fee. That is, if a player:

- (a) was registered at Club A but agrees to mutually terminate their contract with Club A to join Club Z, and Club A and Club Z enter into a transfer agreement, which includes a sell-on fee of either a fixed amount or a percentage of a future Transfer Fee; and
- (b) agrees to mutually terminate their contract with Club Z to allow the player to join Club T and Club T and Club Z enter into a transfer agreement, which includes the payment of a Transfer Fee of \$100,000,

then Club A would be entitled to either a fixed fee from, or a percentage of, that future Transfer Fee.

As noted above, there can be sporting or financial sanctions imposed by either an MA or FIFA if a party to an employment contract unilaterally terminates without just cause or sporting just cause. The RSTP provides that sporting sanctions may be applied when a party breaches a contract during the protected period. For the purposes of the RSTP the protected period is a prescribed period of time which is determined based on the player's age. The RSTP permits the FIFA dispute resolution bodies to impose sporting sanctions on either a player or a Club (whichever is applicable) that unilaterally terminates without just cause or sporting just cause.

However, it has been identified as a potential area for potential reform, with the implementation of the FIFA Clearing House the first fiscal regulatory initiative, which provides certainty and transparency regarding the distribution of payments related to transfers.

## 11.2 Current Status – Domestic

The NRSTRs are the main basis of the transfer fee regulatory mechanisms, by effectively imposing a restriction on the maximum Transfer Fee that is payable by a Club to another Club for a player. The practical effect of this is that it limits the incentive for a either Club to pay a Transfer Fee, as the value of the fee is not even equivalent to the residual value of the contract. The player's current Club is unlikely to be motivated to push for a Transfer Fee, as they cannot recover the remaining value of the contract, and the player's prospective new Club may not be motivated to pay a Transfer Fee given that they would be unable to recover the residual value of the player's contract if the player were ever the subject of a future domestic transfer. In order for the market to effectively operate, there would need to be structural and cultural change to encourage and incentivise Clubs to engage in the market and pay Transfer Fees. .

As noted above one aspect of the regulation of transfer fees is the introduction of a DCH and specific regulations for minors. These proposals will be considered further in other sections.

## 11.3 Challenges and Opportunities

### (b) Calculating Transfer Fees

There will inevitably be a variety of views of whether the Australian DTS should immediately reflect the systems implemented in a variety of other MAs and included in this is the extent to which a framework for calculating a Transfer Fee should be considered. Given the consistent inflating of Transfer Fees globally, there may be an opportunity to consider a structured approach to calculating Transfer Fees, whether this be by way of indexing it as a proportion of player salary, or whether it could be linked to age and number of first team matches played translates to a prescribed ceiling, or if it is linked, at least in part, to the remaining term on the player's current contract or even simply the player's age. These are matters that need to be considered and discussed. Given the need to manage a Club's costs, and the cost of football generally, these matters should be factored into the Transfer Fee discourse. These issues are currently being discussed at global level, but no firm position has been agreed to change from the status quo.

### (c) Club sustainability

Ensuring a Club's ongoing sustainability could be considered an objective for the implementation of the calculation of Transfer Fees. Is this a reasonable expectation or priority? Or is it at odds with allowing the market to determine the value of a player?

### (d) Maximising fiscal returns – opportunities for the Australian football economy

As noted above, it is inherent in any transformation process that this is supplemented with complementary education and knowledge sharing. This is particularly important in relation to the identification and understanding of financial opportunities for Australian Clubs, such as Training Rewards, Transfer Fees and sell on fees.



**Transfer Fees – Point(s) of query:**

- i. Should the calculation of Transfer Fees be regulated and if so, what would be the objectives of regulating the calculation of Transfer Fees? Or should it be left up to the releasing and engaging club to set the transfer fee?**
- ii. Could mechanisms such as a 'buy-out' clause, a formula which considers various factors be used to calculate the Transfer Fee or should this be left to the market to determine?**
- iii. Reducing the cost of football – a potential opportunity?**
- iv. Are financial mechanisms which control or restrict what a Club can spend on player salaries and benefits compatible with a transformed DTS or regulatory controls regarding the calculation of transfer fees?**
- v. Should protected periods be included in the determination of sanctions for unilaterally terminating a contract without just cause or sporting just cause?**
- vi. Understanding the financial opportunities in a transfer – how to enhance the broader understanding of and maximise these opportunities?**

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## 12. SPECIAL PROVISIONS RELATING TO CONTRACTS

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### 12.1 Background

There are a series of provisions in the RSTP which are specific to the contracting framework and the terms of a contract for players and coaches. These provisions include the term of the contract, certain notification requirements when a Club is intending to commence negotiations with a player, and requirements specific to minor players. In addition, the FIFA RWWIs also include certain requirements about engaging players on representation contracts. A number of these matters have been outlined above; however, they will be briefly addressed below.

As for the duration of a contract, as a general principle, the longer the remaining term of the contract is at the point at which it is terminated, the more valuable it is. However, as outlined above, there are limits within the FIFA RSTP on the duration of a contract. Specifically, subject to domestic laws, a contract cannot be longer than five (5) years, or in the case of a minor, three (3) years. The minimum duration of a contract is the period between two Registration Periods (transfer windows).

Whilst the RSTP doesn't specify the age that a player can execute a professional player contract, the NRSTRs provide that player must not enter into a professional player contract if they are under the statutory school leaving age.

Given the principle of contractual stability and the respect for contract which exists in the RSTP and the NRSTRs the duration of a contract has a meaningful effect on the value of a player, and the Transfer Fee that the market (or in conjunction with the regulations) deem is appropriate for a player. As noted above, a player's contract with a Club can only conclude, be terminated by mutual consent, or unilaterally terminated for just cause or sporting just cause. There are sporting and financial penalties that can be applied to a party that unilaterally terminates a contract without just cause.

For the purposes of this White Paper, just cause generally relates to a right to terminate for a breach of the contract that cannot or, within a certain timeframe will not, be remedied. Sporting just cause is a right to terminate the contract on the basis of only appearing in 10% of a Club's official matches in the course of a season. The right to terminate a contract for sporting just cause is particular to football.

The stability of contract is a key principle in a transfer system, as it provides certainty and value for both the Club and player. This important element also contributes to why a Transfer Fee is paid. By restricting the circumstances in which a contract can be terminated, there is commercial value in terminating the contract.

### 12.2 Current status – domestic

As has been outlined above, there is a tendency in Australian football for professional players to be contracted on a short-term basis. There are likely a variety of factors that contribute to this, including a culture of short-term contracting, the absence of a functioning modern DTS to effectively recover the value of the longer-term contract, and a domestic Training Rewards regime that may not be achieving the intended purpose. Further, there may be a general lack of awareness of the

FIFA Training Rewards regime and how Clubs can maximise these returns and therefore be incentivised to engage players on longer term contracts.

The NRSTRs and the applicable competition-specific regulations for the Professional Leagues replicate the FIFA limits. Despite this, the majority of professionals outside the Professional Leagues are engaged on one (1) or two (2) year contracts.

Whilst neither the RSTP or the NRSTRs prescribes minimum contracting standards, other than the provisions referred to above, the NRSTRs and the player contracting applicable to each of the Professional Leagues provide that a professional player contract must be in the form of a prescribed standard player contract. This assists in ensuring that there is a degree of consistency for all stakeholders and practically does provide for minimum standards. In relation to the Professional Leagues, the relevant player contracting regulations and the collective bargaining agreements also include a series of minimum contracting standards.

While the NRSTRs specify the minimum age that a player may execute an employment agreement with a Club, the FIFA RWWIs and the Football Australia RWWIs do not prescribe the minimum age that a player can sign a representation agreement with an agent.

### 12.3 Challenges and opportunities

**(a) Contract duration – consider incentivising or providing regulatory concessions for Clubs that engage players on contracts of longer duration.**

As noted above, contractual stability and any incentives to engage on longer contracts must be balanced against the free movement of players in addition to the integrity and regularity of sporting competitions, the certainty associated with player contracts and player rosters, and the role of Registration Periods (transfer windows).<sup>52</sup> In considering all of these factors, there may be value in providing certain concessions to Clubs that engage in longer-term contracts. This could be in the form of access to a greater Transfer Fee, to the extent that the calculation of Transfer Fees is regulated or may be in the form of concessions in any player points system. Alternatively, it could relate to access to greater Training Rewards if that player was eligible to trigger Training Rewards, or even enabling Clubs to have larger squads or salary cap concessions (if applicable).

**(b) Specific regulations to apply for minor players – balancing opportunities against encouraging quality match minutes, a delicate challenge?**

As discussed above, there is a strategic imperative to provide young players with greater opportunities. However, at first glance, this may be challenging to balance against the objective of longer contracting. However, if this is carefully considered, these objectives can be compatible, particularly with the use of loans and ensuring that there are regulatory mechanisms, concessions or incentives for providing young players with opportunities.

Further, specific regulations could be introduced regarding the conditions, minimum remuneration or duration of a contract for a minor player to ensure that these players receive the appropriate care and are provided with opportunities to develop as footballers

<sup>52</sup> KEA European Affairs and The Centre for the Law and Economics of Sport, *The Economic and Legal Aspects of Transfers of Players* (2013) available via <https://ec.europa.eu/assets/eac/sport/library/documents/cons-study-transfers-final-rpt.pdf> (accessed September 2020) p2.

but also holistically. Such regulations have been implemented in a number of European MAs to complement the minimum mandatory requirements set out in the FIFA RSTP. Any regulatory framework would need to complement the FFA Safeguarding Policy and the FIFA Guardians program.

**(c) Integration of coaches – providing coaching contractual stability?**

By integrating coaches into the regulatory framework, does this facilitate a degree of contractual stability for coaches akin to that the regulatory framework enables for players? The amendments to the RSTP largely replicate the regime that applies for players. This may have interesting implications for Clubs, as it effects their employment relationship with a coach in ways that the regulatory framework hasn't done before. That being said, the operation of the FIFA dispute resolution bodies for coaching disputes with an international dimension has tended to reiterate the respect for contract principles that are now expressly stated in the RSTP. This will remain an interesting area for ongoing review and assessment as the revised regulations are applied and enforced by the FIFA judicial bodies.

**(d) Contract length – encourage longer term contracting, a reasonable expectation?**

A challenge that has been discussed at various stages in this White Paper has related to the short-term contracting that is prevalent in the professional game. However, by creating a modern and transformed DTS would it be a reasonable expectation that player contracting increase in the typical duration? If so, would this be beneficial for all stakeholders? Relevantly, the duration of a players contract may also create value in the player, and assist in evolving the domestic market for players.

**(e) Increased player contracting – a balance of opportunity and appropriate Training Rewards?**

Should there be an increase in the number of players contracted by Clubs, there would need to be a balance struck between providing professional opportunities for players and ensuring that the Training Rewards regime appropriately rewards Clubs for investing in the player but also doesn't create unnecessary impediments to the movement of players between Clubs, particularly young players.

**Special Provisions Relating to Contracts – Point(s) of query:**

- vii. **What are the objectives of the special provisions relating to contracts for coaches and players?**
- viii. **Promotion of contractual stability – how to balance against the free movement of players?**
- ix. **Should there be standard form contracts or minimum contracting standards for players and coaches?**
- x. **Should there be a minimum period that a Club must contract a player or coach? Should this be different for young players or should they be exempt?**
- xi. **Should there be an age limit for young players signing representation agreements with agents other than the legal school leaving age?**
- xii. **What age can a minor sign? How long can a contract be for a minor?**

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| xiii. | <b>Right of first refusal for training clubs? Way to incentivise players to stay closer to family and support network? Are there other regulatory measures that could be introduced to ensure that young players can stay closer to their families and finish school (with limited interruption) while pursuing their football career?</b> |
| xiv.  | <b>Should there be a limit on how long a player can trial with a Club? Should a player be able to be charged to trial with a Club?</b>   |

## 13. PLAYER AGENTS

### 13.1 Background

The role of a player's agent has become more important and influential as the use of agents increasing significantly in recent years.<sup>53</sup> Agents, as they are colloquially known or intermediaries in the FIFA lexicon, advise players and/or clubs on a range of matters, including the prospective movement of players between clubs, and the likely strengths and weaknesses of such a transfer.<sup>54</sup> To understand the role of the agent within the context of an international or domestic transfer, further context regarding the regulatory landscape is necessary.

Prior to 2015 player agents were heavily regulated and required to be licensed in accordance with the FIFA Players' Agents Regulations to perform their role. This included having an understanding of a range of important matters and provided a regulatory enforcement tool to ensure that agents adhered to certain minimum standards.<sup>55</sup> However, in April 2015 FIFA repealed the licensed player agent scheme and replaced it with the FIFA RWWIs, which removed the licensing component and were required to be implemented at a national level at a minimum but could be supplemented by MA's domestic regulation.<sup>56</sup> In short, the responsibility was effectively delegated to the MAs. Based on this, Football Australia implemented the [Football Australia Regulations on Working with Intermediaries](#).<sup>57</sup> These regulations closely resembled the FIFA RWWIs and were a significant scaling back of the conditions permitting an agent to be involved in a transfer. The FIFA RWWIs and Football Australia RWWIs were intended to:

- (a) enhance transparency;
- (b) clearly identify the party responsible for payment to an agent;
- (c) facilitate the effective disclosure and management of conflicts of interest; and
- (d) increase the protections for minor players (no fee is payable if the player involved is a minor).

It appears that the underlying objective of the implementation of the FIFA RWWIs, and subsequently the Football Australia RWWIs, was to increase transparency and provide a framework for the control and supervision of the parties to a transfer.<sup>58</sup>

<sup>53</sup> FIFA TMS, Intermediaries in International Transfers 2020 Report (2020).

<sup>54</sup> An agent performs a multitude of important functions, and it is not simply confined to negotiating a transfer between Clubs. As Ioannidis notes:

The role of a football agent in modern society is multifaceted, and it cannot be limited only to negotiations leading to the transfer of a player between two clubs. If done appropriately and in a professional manner, it requires the agent to perform a series of different functions such as scouting, counselling, assistance with financial/tax services, evaluation and execution of image rights and the securing of sponsorship/ marketing opportunities. Such functions are largely unknown, at least to the public, but they play an important role towards maximisation of the player's commercial and employment opportunities.'

Gregory Ioannidis, 'Football Intermediaries and Self-Regulation: The need for greater transparency through disciplinary law, sanctioning and qualifying criteria', (2019) 19 *The International Sports Law Journal* 154, 155.

<sup>55</sup> FIFA, 'Working with intermediaries – reform of the players' agents system' available via <https://www.fifa.com/who-we-are/news/working-with-intermediaries-reform-of-fifa-s-players-agents-system-2583543#:~:text=Following%20the%20approval%20of%20the,current%20FIFA%20Players'%20Agent%20Regulations> (accessed September 2020).

<sup>56</sup> Jonathan Himpe, 'FIFA's New Regulations on Working with Intermediaries Explained', *LawInSport* (27 August 2014) available via <https://www.lawinsport.com/topics/item/fifa-s-new-regulations-on-working-with-intermediaries-explained-entry-c> (accessed September 2020).

<sup>57</sup> For further details see <https://www.ffa.com.au/governance/intermediaries>

<sup>58</sup> For further details see <https://img.fifa.com/image/upload/tbdujllue64j8v1aog2.pdf> or <https://www.fifa.com/who-we-are/news/working-with-intermediaries-reform-of-fifa-s-players-agents-system-2583543>

At a global level, the effective deregulation of agents enabled Clubs and players to have greater freedom in selecting their representative to a transaction. However, that also meant that these representatives were not required to have any certification, qualifications or comply with ongoing eligibility requirements (such as continuing professional education or development).

Similarly, the FIFA RWWIs did not restrict the parties to a transaction that an agent may represent, which has the potential for significant implications in the actual or perceived independence and integrity of the agent's advice, and is likely to give rise to actual or perceived conflicts of interest.<sup>59</sup> There is an abundance of examples where an agent has acted for the player and at least one of the Clubs involved in a transaction; however, one of the most high profile examples that demonstrates this was the transfer of Paul Pogba from Juventus FC to Manchester United in 2017. It has been reported that the agent involved in this transaction, Mino Raiola, was acting on behalf of all three parties and received in excess of £41 million for his role in the transfer.<sup>60</sup> Whilst this may not have been a technical breach of the FIFA RWWIs, it is indicative of the challenges that the current framework is faced with.

The limitations of the current framework are further evident in the value of payments being made by Clubs to agents, with Clubs paying agents a cumulative USD1.59 billion for the period January 2013 to November 2017.<sup>61</sup> These payments have only further increased in the intervening period, with FIFA recently reporting that from January to November 2020, global commissions paid by Clubs to agent were relatively steady when compared to 2019 at USD496.2 million, which was only in relation to 20.4% of the total international transfers for this period.<sup>62</sup> It might be reasonable to expect that with the increases in Transfer Fees and payments to agents that there would be proportional increases in the total Training Rewards paid by Clubs in respect of international transfers. Unfortunately, FIFA's reporting indicates that the payment of Training Rewards has increased marginally over the period 2013 to 2019. Given the nature and basis of solidarity contributions, being a proportion of an eligible Transfer Fee, it may be understandable that FIFA's annual reporting indicates that of the Training Rewards paid, solidarity contributions comprise a higher proportion. For the period 2013 to 2017, USD277 million was paid in solidarity contributions, with only USD100 million paid in training compensation. Similarly, only 75.5 million was paid in training rewards during the 2019 calendar year, with solidarity contributions account for USD63.3 million of this.<sup>63</sup> The relatively insignificant value of the total training compensation paid in 2019 is indicative of two things, being that the current Training Rewards regime is not operating or being enforced as efficiently as it could or should be, and the Clubs contributing to the training and development of these players are missing out on significant payments. The consequences of training compensation payments not being made for training Clubs are likely profound, with the incentive to invest in the player pathway impacted, and the operations of these Clubs also effected, generally.

<sup>59</sup> Josep F. Vandellos Alamilla, 'The Limits to Multiple Representation by Football Intermediaries under FIFA Rules and Swiss Law' *Asser International Sports Law Blog* (11 October 2017) available via <https://www.asser.nl/SportsLaw/Blog/post/the-limits-to-multiple-representation-by-football-intermediaries-under-fifa-rules-and-swiss-law-by-josep-f-vandellos-alamilla> (accessed October 2020).

<sup>60</sup> David Conn, 'Paul Pogba Transfer Shows Mino Raiola's Power in Stark Contrast to FIFA Inaction' *The Guardian* (11 May 2017) available via <https://www.theguardian.com/football/2017/may/10/mino-raiola-manchester-united-paul-pogba> (accessed October 2020); Serhat Yilmaz and Antoine Duval, 'What Pogba's Transfer Tells Us About the (de)Regulation of Intermediaries in Football' *The Sports Integrity Initiative* (19 May 2017) available via <https://www.sportsintegrityinitiative.com/pogbas-transfer-tells-us-deregulation-intermediaries-football/> (accessed October 2020).

<sup>61</sup> FIFA TMS, *Intermediaries in International Transfers, Period Jan 2013 – November 2017* (2017), 2.

<sup>62</sup> FIFA TMS, *Intermediaries in International Transfers 2020 Report* (2020), 3.

<sup>63</sup> FIFA TMS, *Intermediaries in International Transfers 2020 Report* (2020), 3.

Against the backdrop of these persistent and pervasive challenges, the regulation of agents has been identified by FIFA and global football stakeholders as an important area of reform, particularly given the increasing role and prominence of these trusted advisors, and FIFA's ongoing reforms to the international transfer system. Accordingly, in 2018 FIFA announced the introduction of an agent licensing system<sup>64</sup> and in September 2019 that there would be a series of measures to limit the influence of agents in the transfer of players between Clubs.<sup>65</sup> The September 2019 measures are particularly contentious, as the FIFA Football Stakeholders Committee (**FSC**) recommended to the FIFA Council the introduction of:

- (a) a cap on agents' commissions (10% of the Transfer Fee for agents of releasing clubs, 3% of the player's remuneration for player agents and 3% of the player's remuneration for agents of engaging clubs); and
- (b) limitation on multiple representation to avoid conflicts of interest.<sup>66</sup>

The FSC recommendations were the result of extensive consultation and analysis and reflected a significant departure from the decision taken in 2015 to remove the licensing framework and the conditions of access to the transfer system for agents. As with DTC transformation, amendments to the agent regulatory framework must align with the broader objectives of reforming the ITS, and the objectives of the ITS itself.

### 13.2 Current status – domestic

The current value of payments being made to agents in the Australian football economy is outlined in Football Australia's mandatory annual agent reporting. During the latest reporting period of 1 April 2019 to 31 March 2020, the total payments to agents from Australian Clubs and players participating in domestic competitions was \$2,428,043.51. Of this, \$2,150,510.51 was paid by players and \$277,533 was paid by Clubs. A total of 233 transactions involving an agent were conducted on behalf of players from the AL and WWL, with 125 of these transactions attracting a payment to the agent. Only 4 transactions involving an agent were conducted on behalf of 2 Clubs during this period, with all of these transactions attracting a payment to the agent.

There were no reported agents being engaged to represent players in the NPL during the 2019/20 reporting period, however, there have been a nominal amount of agent representations at the NPL level over the past five (5) seasons.

Whilst acknowledging that agents may not be as prolific or the value of commissions as significant in Australia as they are in the UEFA jurisdictions, they are still important advisors and participants in the ITS and the domestic movement of players. Accordingly, as a modern DTS is evolved, the role and regulation of agents is an inherent component of the DTS. Further, Principle III of the XI Principles includes initiatives for enhanced engagement with and integration of this stakeholder group.

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<sup>64</sup> FIFA, 'FIFA Council makes key decisions for the future of football development' (26 October 2018) available via <https://www.fifa.com/who-we-are/news/fifa-council-makes-key-decisions-for-the-future-of-football-development> (accessed September 2020)

<sup>65</sup> Football Legal, 'FIFA Announces a Series of Reform Proposals Concerning the New Football Agents' Regulations' *Football Legal* (23 January 2020) available via <https://www.football-legal.com/content/fifa-announces-a-series-of-reform-proposals-concerning-the-new-football-agents-regulations> (accessed September 2020).

<sup>66</sup> FIFA, 'FIFA and football stakeholders recommend cap on agents' commissions and limit on loans' (22 September 2019) available via <https://www.fifa.com/who-we-are/news/fifa-and-football-stakeholders-recommend-cap-on-agents-commissions-and-limit-on-loans> (accessed September 2020)

Football Australia is continuing to monitor these reforms, and the proposed implementation timeline. Football Australia will work with FIFA in due course to implement the necessary regulatory frameworks but is also committed to ensuring that any Australian player agent accreditation system is part of the football regulatory framework, includes ongoing education as part of any accreditation system, ensures the highest levels of professionalism and integrity are maintained at all times, and incorporates the unique nature of the Australian football ecosystem.

### 13.3 Challenges and opportunities

#### (a) Adopting FIFA's reforms at a domestic level

If FIFA introduce a cap on Agent's commissions that is binding on all its MAs, how can Australia ensure that it is fair and reasonable for the specific needs and interests in Australia?

#### (b) Establishing Agent Accreditation

The XI Principles identify the establishment of an industry-leading agent accreditation framework as being a key initiative of the DTS reforms. However, to achieve this, there would need to be broad acceptance of the structure and objectives of such a system. This would inevitably involve stakeholder consultation with Clubs, players and agents and other stakeholder groups, such as the PFA.

#### (c) Agent Accreditation

As noted immediately above, there is an opportunity to specify certain minimum standards and required knowledge or qualifications for agents to operate in the Australian framework. For the purposes of this, there would also need to be ongoing education or qualification requirements, similar to what is required for other professions.

#### (d) Agent eligibility

As part of the framework, there is an opportunity to entrench the independence of agents and to specify certain roles or positions that would prevent a person from acting as an agent while holding that position or for a period afterwards. This would need to be debated with stakeholder groups to establish what these are and any other conditions. However, the importance of the role of agents is evident in the commentary above, and like other agency relationships, independence, trust and transparency are important to the effective functioning of the system.

#### Player Agents – Point(s) of query:

- i. **What are the fundamental aspects of an Agent's role?**
- ii. **If FIFA introduce a cap on Agent's commissions that is binding on all its MAs, how can Australia ensure that it is fair and reasonable for the specific needs and interests in Australia?**
- iii. **What are the requirements for a uniquely Australian agent accreditation framework? Should we have one and what is the criteria?**

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| iv.  | How many parties to a transaction may be represented by the same agent? Should an agent be able to represent two or more parties to a transaction? Should our system be that an agent can only, in principle, represent a player Like other sports or can agents represent clubs too? |
| v.   | Should there be a standard form representation contract to be used by players and agents?   |
| vi.  | The agent accreditation framework, should it strike a balance between agent's conduct and behaviour, and agent eligibility?   |
| vii. | How do we create a platform for agents to engage with Football Australia?   |

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## 14. DISPUTE RESOLUTION AND PLAYER STATUS RESOLUTION

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### 14.1 Background

The FIFA Statutes in article 59 effectively specify that a MA must either provide for independent arbitration within its dispute resolution framework or provide for such disputes to be determined by the appropriate arbitration tribunal of the confederation, FIFA or by the Court of Arbitration for Sport.

This requirement is particularly relevant to the transformation of the DTS, as there is a need for the resolution of contractual disputes between Clubs and players and, following recent reforms to the RSTP, Clubs and coaches.

The RSTP specifies the jurisdiction of the FIFA dispute resolution bodies for these types of disputes, being the Dispute Resolution Chamber (**DRC**) and the Players' Status Committee (**PSC**). In particular, the RSTP provides the jurisdiction and basic procedural rules for the DRC and the PSC. Further procedural rules, including the independence of the arbitrators and the mechanisms for resolving challenges to the selection of the arbitrators, and the composition of the panel to hear certain matters, are set out in the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (**Procedural Rules**). Significantly, the Procedural Rules provide for the conduct of hearings, the provision of determinations and the costs associated with a matter. The Procedural Rules complement the RSTP and are foundational in the establishment and operation of an international arbitration framework.

To give effect to article 59 of the FIFA Statutes, an MA may establish a National Dispute Resolution Chamber, with FIFA promulgating standard regulations that MAs may adopt or vary.

### 14.2 Current Status: Domestic

The Football Australia National Dispute Resolution Chamber (**NDRC**) has been agreed with Professional Footballers Australia (**PFA**) as part of the collective bargaining agreements (**CBAs**) for the A-League and W-League respectively. Accordingly, the NDRC is only available for certain contractual disputes that involve A-League or W-League Clubs and players. The NDRC is not available to players at other levels or to coaches.

The NDRC Regulations specify the procedural rules for the operation of the NDRC, including the selection of arbitrators to be appointed to the NDRC roster, the jurisdiction of the NDRC, composition of NDRC for certain types of matters, and the process for a hearing. These regulations have been agreed with the PFA in the context of the CBAs and provide that the PFA and Football Australia have the right to appoint certain arbitrators to the roster, with the Chair of NDRC to be agreed between the parties. A degree of further complexity is the ongoing unbundling of the Professional Leagues from Football Australia. The administration and operation of the NDRC once this process is complete raises a series of interesting questions, in particular, if the jurisdiction and/or structure of the NDRC is revised and the roster of arbitrators expanded also.

Given the limited jurisdiction of the NDRC, this body doesn't currently hear matters from the NPL level or below which involve professional players and Club, or coaches and Clubs. There may be a significant opportunity for the jurisdiction of the NDRC, or a chamber of the NDRC, to be extended to include these cohorts, as well as expanding the types of matters that this body could hear.

If the NDRC were to be expanded to include disputes in relation to the employment contracts for all professional players, coaches and professional Clubs, the NDRC Regulations would need to be revised. Football Australia could retain the administration of the expanded NDRC, with Member Federations providing certain support and revising their regulatory frameworks to enable this. Significantly, there would need to be consideration of the composition of the roster of arbitrators and the process for appointing these arbitrators, including the appropriate qualifications and/or experience. Further, the costs of applying to the NDRC would need consideration, as there may be significantly more matters to be considered by the NDRC than there are currently. However, costs would need to remain affordable, in particular, for the NPL and levels below this, with this being an inexpensive and expedient method of dispute resolution. Finally, there would need to be consideration of the parity and equality, and mechanisms to ensure the independence, of the process, as FIFA Circular 1010 specifies a range of conditions and principles that for the purposes of the FIFA Statutes constitute the minimum procedural standards.<sup>67</sup>

Notably, there isn't an equivalent to the PSC in the current domestic framework. Some of these functions are absorbed by competition administrators and certain domestic disputes are captured by the Football Australia Grievance Procedure By-Law. However, it may be worth considering whether there is merit and utility in having a separate body to perform the equivalent function to the PSC, or whether the remainder that is not currently accounted for, to the extent that exists, should or could be delegated to the NDRC in the course of the proposed transformation process outlined above.

### 14.3 Challenges and Opportunities

#### (a) Expanded jurisdiction

By expanding the jurisdiction of the current NDRC, there could be an opportunity for broader representation and swift dispute resolution for all professional players. This would assist in professionalising all levels of the game and also remove a potential barrier to player's executing professional contracts, as there would be a clear dispute resolution mechanism.

#### (b) Player status disputes

By having a player status function (in whatever form that it takes) there would be an opportunity for greater clarity on the management of these disputes. In turn this will only enhance dispute resolution within football and stakeholder support for such transparent and consistent frameworks.

#### (c) Coach integration

The integration of coaches is an important evolution at an international level. This further provides equality of treatment within the football regulatory framework for a broader range of stakeholders. The integration of coaches into the dispute resolution mechanism expands the jurisdiction of the appropriate arbitration body (which could be the NDRC or another body).

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<sup>67</sup> FIFA, *FIFA Circular 1010 – Art. 60 par 3(c) of the FIFA Statutes – independent and duly constituted arbitration tribunal* (20 December 2005) available via [http://goldengate-law.com/pdf/fifa\\_circular/fifa\\_circular\\_1010.pdf](http://goldengate-law.com/pdf/fifa_circular/fifa_circular_1010.pdf) (accessed December 2020).

**(d) Access to arbitrators**

The expanded jurisdiction of the NDRC and the resourcing of the players status dispute resolution mechanism represent important evolutions. However, there are potential challenges in appointing and retaining quality arbitrators, particularly when this is balanced against the principle of low costs. In terms of the appointment and retention of arbitrators, there would need to be recognition of the breadth of stakeholders and the appointment mechanisms. Similarly, to ensure the quality of these appointments, there would need to be minimum eligibility criteria, and potentially costs indexed against the seniority of the arbitrators or the complexity of the matter or the level at which the dispute arises.

**(e) Allocation of resources**

There are challenges in resourcing the NDRC in its current form. However, if Football Australia were to retain the administration of the expanded NDRC, there may be challenges regarding the resourcing of this function. There could be opportunities to work collaboratively with Member Federations and the Professional Leagues to appropriately resource this function.

**(f) Broad panel of arbitrators**

As noted above, diversity in decision making aids in improved and more holistic decision. In that regard, the diversity in decision making is an important reflection of the breadth of stakeholders involved in the expanded NDRC and the nature of participants in the game generally. The challenge, as previously alluded to, relates to the mechanisms for appointing arbitrators to the panel and ensuring that they meet minimum standards.

**(g) Representation at hearing**

In expanding the jurisdiction of the NDRC (or other arbitration bodies) there would need to be consideration given as to how to ensure the parties to a hearing were appropriately advised or represented prior to and during a hearing, whilst ensuring that costs were managed. The Court of Arbitration for Sport is an example of a body with similar objectives to an NDRC, in respect of the low costs and efficiency of decision making, however, over time the costs have increased as have the complexity of matters. Based on this experience, there would need to be appropriate mechanisms to ensure the process remained accessible and affordable, whilst also being sufficiently comprehensive to ensure that the potentially complex matters are dealt with appropriately.

**Dispute Resolution and Player Status Resolution – Point(s) of query:**

- i. **What are the objectives of a NDRC in respect of the DTS?**
- ii. **Should there be another dispute resolution body to consider matters that are currently reserved for the PSC in the FIFA framework?**
- iii. **How could arbitrators be appointed to the NDRC roster to ensure that there was appropriate representation and the NDRC remained independent?**
- iv. **How should coaches be integrated into the NDRC framework?**
- v. **How should the NDRC be administered and serviced? Should there be a resource that could be shared between Football Australia and the Member Federations?**

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| vi.   | What are the appropriate qualifications and experience for arbitrators to be included on the roster of arbitrators? |
| vii.  | What types of matters could the NDRC hear?  |
| viii. | Is it important that both the parties be appropriately represented and advised in relation to a hearing?            |

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## 15. PRIVATE ACADEMIES

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### 15.1 Background

In addition to the Club-related academies referred to above, there are a range of private academies that are operated independently from the FIFA and Football Australia regulatory frameworks.

Private academies may have range of objectives or purposes, with some aimed at the elite players, whereas others are focused on participation and community level participants. In addition, these private academies may have varying degrees of involvement with registered Clubs but are almost exclusively outside the scope of 'organised football'.

Given that there is limited oversight or governing body control over the programs offered by these private academies, there is no alignment with Football Australia's strategy for player development. This is a material issue, given the number of registered participants who are understood to attend such academies. Further, as these private academies frequently are targeted at minors, the same safeguarding protections and measures that would apply if they were sanctioned are not extended to the private operators.

Finally, as these academies are not subject to the FIFA or Football Australia regulatory frameworks, even though they may have contributed to the training and development of a players, they aren't eligible for Training Rewards.

### 15.2 Current status – domestic

Private academies are understood to attract a significant number of registered participants as a means of enhancing technical training or supplementing the programs offered by Clubs. However, as these operators are not subject to the Football Australia regulatory framework, they aren't accredited or sanctioned by Football Australia, or the Member Federations, and accordingly, there is limited oversight or consistency in the nature and the quality of the programs offered.

Private academies are not a phenomenon unique to Australia, however, with Club academy accreditation still being rolled out in this country, there is a section of the market that is not being serviced by the sanctioned offerings or programs and is turning to these private operators for a service that could be offered within the existing structures if a greater number of Club academies were accredited.

As has been highlighted at several stages above, the absence of a DTS has resulted in player development challenges, as Clubs are not incentivised to invest in player development. By having a large number of participants engaging with unregulated or un-licensed academy programs, it is difficult to assess the effect of these private operators on player development.

### 15.3 Challenges and opportunities

#### (a) Regulating private academies

The challenges of regulating private academies are manifold. However, a fundamental challenge relates to the incentive for these private operators to be licensed and to join the football family.

**(b) Enhancing and aligning player development programs**

A key opportunity for the regulation of private academies is that there would be the potential to align the player development programs with any national development strategy. This would need to be balanced against enabling these private academies to retain their identity and a degree of flexibility.

**(c) Program quality assurance**

Another challenge of regulating private academies is maintaining quality assurance across these programs. However, conversely, this is also an opportunity to enable increased oversight, which would in turn facilitate a program for greater quality monitoring. This would likely require additional resources to ensure that this is feasible.

**(d) Private academy licensing**

The regulatory framework for private academies could take the form of a licensing regime that would implement minimum standards initially and then require ongoing or annual compliance audits. This would assist in facilitating greater transparency and quality assurance. It could be similar to or a derivative of the academy accreditation scheme that would be utilised for Club-based academies.

**Private Academies – Point(s) of query:**

- i. **What are the objectives of regulating private academies? Should these be formally regulated and licensed?**
- ii. **Should incentives be provided for operators to be licensed or regulated?**
- iii. **Does the licensing or regulating of private academies impact the academy programs offered by Clubs?**
- iv. **If private academies are licensed, what are the requirements or criteria, if any, to be licensed?**
- v. **Administering and enforcing the licensing criteria, an achievable outcome?**
- vi. **How do we enhance alignment to promote consistency in program content and delivery?**
- vii. **Do private academies contribute to the high costs of participating in football?**
- viii. **How does the licensing or regulating of private academies address the player development challenges?**
- ix. **What are the biggest opportunities associated with the licensing or regulating of private academies?**

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## **16. RECENT REGULATORY AMENDMENTS: FIFA, COACHES AND FEMALE PLAYERS**

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### **16.1 Background**

In December 2020, FIFA announced amendments to the RSTP regarding maternity conditions for female players and introduced minimum standards for the employment of coaches. These are significant developments, as FIFA has not only guaranteed certain conditions for female players but included concessions in respect of the transfer rules to facilitate a player going on parental leave. Further, the inclusion of coaches and the minimum standards is an important and significant evolution of the framework.

These reforms raise the question as to whether other discrete groups of participants need to be considered, and how to ensure that the uniquely Australian DTS is inclusive of and accessible to all participants.

#### **(a) Amendments to the RSTP: Specific labour conditions for professional female players**

These amendments prescribe minimum employment conditions that apply. Whilst MAs may introduce additional or further measures, it guarantees a baseline.

The RSTP now explicitly defines maternity leave as a minimum period of 14 weeks' paid absence, with at least eight weeks to be taken after birth. Significantly, reform provides that maternity leave must be paid at the equivalent of two thirds of the contracted salary, during the term of a contract, unless more beneficial conditions exist via the domestic law or in the form of a collective bargaining agreement.

Fundamentally the reforms relate to:

- (vii) the validity of a contract, which may not be made subject to a player becoming pregnant, being pregnant, or exercising her maternity rights in general;
- (viii) the rights of female players once they become pregnant;
- (ix) the obligation for clubs to provide suitable facilities for a player returning to duties to breastfeed and/or express breast milk;
- (x) the special protection from a contract being terminated on the grounds of the player being or becoming pregnant, being on maternity leave or utilising rights related to maternity in general.

The reforms include material sporting and financial sanctions for Clubs that do not comply with these obligations.

As alluded to above, the transfer rules permit the exceptional registration of a female player outside a registration period to either temporarily replace a player who has taken maternity leave, or to facilitate the return of a player upon the completion of her maternity leave.

#### **(b) New regulatory framework for coaches**

The RSTP has also been amended to include a minimum regulatory framework for coaches. These amendments primarily relate to the employment of coaches by Clubs or MAs and expand the jurisdiction of the FIFA decision making bodies to consider these matters.

## 16.2 Current status – domestic

In relation to the maternity conditions for female players in the W-League, Football Australia and Professional Footballers Australia have incorporated certain minimum standards into a collective bargaining agreement and Clubs and players are also bound by a competition-specific maternity policy. This hasn't been extended to the WNPL. However, based on the terms of the RSTP amendments, these players and Clubs would need to consider whether the relevant domestic legislation provides a more favourable position.

As for the position of coaches, Football Australia will review the amendments to the RSTP and implement these reforms domestically, as there isn't any domestic equivalent at this stage. However, this complements a Memorandum of Understanding signed by Football Coaches Australia and the ongoing work being undertaken to engage with an important stakeholder group.

There will need to be consideration of the integration of the provisions regarding female players, as these are binding at national level unless more favourable conditions are available in accordance with the relevant domestic law. An assessment of the applicable legal positions will need to be undertaken quickly, with the RSTP providing that these must be implemented within six (6) months of entering into force, and this will inform the strategies for implementation. These strategies will need to be mindful of any collective bargaining agreement with the PFA for the W-League.

As for the provisions regarding the employment of coaches, as discussed above, there is already work being undertaken in this regard. However, it is understood that these provisions are not mandatory at the national level. That is not to suggest that these wouldn't be incorporated into the regulatory framework.

### **Recent Regulatory Amendments: FIFA, Coaches and Female Players – Point(s) of query:**

- i. **So far as it is relevant, should Football Australia implement the reforms that are being proposed in respect of coaches at a domestic level?**
- ii. **Should there be a standard form employment contract for coaches?**
- iii. **Should coaches be able to access the same domestic arbitration processes as players?**
- iv. **Beyond the requirements specified in the FIFA Regulations on the Status and Transfer of Players, what standards should be implemented to protect female players?**
- v. **Beyond the requirements specified in the FIFA Regulations on the Status and Transfer of Players, what standards should be implemented to protect coaches?**
- vi. **Are there any other discrete groups that the regulatory framework should provide certain concessions for or integrate?**

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## **17. PROPOSED ACTIONS**

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This White Paper is intended to facilitate and encourage dialogue, and to provide a framework for structured and transparent consultation. Based on this, Football Australia will undertake a consultation process with all relevant stakeholders in early 2021 (in particular the clubs and the players). This will enable all stakeholders to contribute to the structure of the transformed DTS. Further details regarding the consultation process will be publicised shortly.

Following this consultation process, Football Australia will synthesise the feedback and develop a model for the DTS based on the input from stakeholders and benchmarking against the systems implemented by other MAs. However, any system will need to be uniquely Australian and reflect the domestic footballing landscape.

## ANNEXURE A. POINTS OF QUERY

### Objective of Transfer System – Point of query:

- i. Are the objectives of the ITS relevant to Australian football?
- ii. Are these objectives valid for the Australian DTS?
- iii. Australian football has underperformed in the global transfer market and this has had an impact on domestic football economics and player development. Should a DTS seek to address these issues?
- iv. Are there any additional objectives for the Australian DTS which should be considered?

### Administration of Transfers – Point(s) of query:

- i. What are the objectives for which a domestic clearing house should be established?
- ii. How does a DTS ensure that clubs comply with their financial obligations towards players and other clubs as stipulated in the relevant agreements?
- iii. What mechanisms should be introduced to ensure the regular and timely payment of Transfer Fees, and associated Training Rewards between Australian Clubs?
- iv. What payments, such as Transfer Fees, training compensation and solidarity contributions and agents' commissions, should pass through the domestic clearing house?
- v. What would the objectives of a potential DTMS be?
- vi. What are the opportunities to utilise insights from the ITMS and DTMS in transforming the DTS?
- vii. How should Football Australia promote transparency, efficiency and governance in the DTS?
- viii. What should be the objectives of the player transfer and registration requirements?
- ix. What are the opportunities for Football Australia to utilise the FIFA Connect integration and the insights into player movements domestically and internationally?
- x. How could Football Australia raise awareness of the benefits of the FIFA Connect System integration with Play Football?

### Training Rewards and Young Players – Point(s) of query:

- i. Promotion of youth development – does the Training Rewards regime incentivise Clubs?
- ii. Should training compensation be payable on an annual basis (as opposed to a one-off payment) and apportioned to each Club that has held the player's registration each year?
- iii. DTC Reform – is the current DTC model effective and appropriate?
- iv. Is the current DTC system understood?
- v. Clarify the relationship between DTC and the player pathway – is this clear to stakeholders?

- vi. Should the relationship between the Professional Leagues Clubs and the grassroots of the game be considered in the context of training rewards review? Is there an opportunity for there to be a solidarity contribution to be introduced as part of the DTS?
- vii. At what age should Training Rewards eligibility commence and conclude?
- viii. How is training compensation calculated? Should it be based on per year of training at a Club? What is the relationship between the Club's level of academy accreditation? Should it be based on the categorisation of the releasing Club or the engaging Club?
- ix. What are the relevant values? How are these determined?
- x. Education - How could Football Australia enhance the understanding and awareness of Training Rewards, particularly in relation to the ITS? Should Football Australia have a resource to support clubs recover Training Rewards?
- xi. Accreditation of academies/player pathway – relationship between the regulation of the player pathway and the participation of young players in the ecosystem and DTS?
- xii. Relationship between academy accreditation and the calculation of Training Rewards?
- xiii. What are the objectives of developing young players in relation to a DTS?
- xiv. How does a DTS support the training and development of young players to produce more and better homegrown players?
- xv. How does a DTS ensure that young players are playing regularly and gaining valuable match minutes, particularly between the age of 17 and 23?
- xvi. What mechanism can Football Australia introduce to promote the technical, tactical, physical, mental, lifestyle and welfare development of young players by Clubs?
- xvii. What mechanisms can Football Australia introduce to promote positive recruitment practices?
- xviii. Should Football Australia introduce rules which promote young players staying in the family unit for longer? Or regulations that require that the young player finish their secondary education and encourage Clubs to provide opportunities for players to pursue their tertiary education?
- xix. Is it necessary to restrict the age that an agent can recruit a player?
- xx. Should there be a restriction on the age that a young player can sign their first professional contract?

#### **Loans – Point(s) of query:**

- i. Should the loan mechanism as understood as part of the ITS be introduced into the Australian football landscape?
- ii. If introduced, what are the objectives of loans?
- iii. Should Football Australia introduce an unrestricted player loan system for professionals, or should these be regulated?
- iv. Should there be a cap on the amount of loans (both in and out) which a club can make?
- v. Should there be a cap on the amount of loans (both in and out) between clubs?
- vi. Should there be an exception for young players to be exempt from loans to encourage young players to be playing quality match minutes?

- vii. How should training compensation and solidarity apply to players that are domestically on loan?
- viii. Should a domestic loan period count towards the calculation and distribution of Training Rewards?

**Player Eligibility Rules – Point(s) of query:**

- i. The appropriate number of homegrown players to address the challenges identified in the Performance Gap report?
- ii. What are the appropriate homegrown player rules? Should the rules for homegrown players be club or association trained?
- iii. Should there be limitation on the number of foreign players? What should they be? Should the number of foreign players be harmonised with the Asian Champions League? Many foreign players have added tremendous value to Australian football, but some have not; how do we ensure through regulation that foreign players are at a level higher than that of local players?
- iv. Should this be extended to minors? If so, is there a permitted number of minors? What is the age? Should minors be exempt to promote?
- v. Should there be specific match day rules regarding the composition of the starting XI (e.g., a minimum number of players eligible for Australian National Teams in the starting XI)? Should there be position-specific rules regarding player eligibility (e.g., a specific position such as goalkeeper must be eligible for Australian national teams)?
- vi. Player Roster Limits – should there be a limitation of the maximum roster size permitted for certain types of football to assist with the integrity of competitions and to prevent against ‘warehousing’ of players?

**Registration Periods – Point(s) of query:**

- i. What are the objectives of the Registration Periods? Are they consistent with the objectives of a uniquely Australian DTS?
- ii. Should the first Registration Period conclude prior to the commencement of matches for the season?
- iii. Should there be restrictions on the number of players that can be registered during the second Registration Period?
- iv. How Registration Periods assist with sporting integrity and regularity in an Australian context?
- v. How can our competition calendar be better aligned across the country so the windows can be set appropriately?
- vi. When is the best time to set Registration Periods from a Domestic Match Calendar point of view? When is the best time to set Registration Periods to increase the total amount of transfer receipts and unlock more revenues from the global transfer market?

- vii. When is the best time to set the Registration Periods to give our clubs the best chance of success in the Asian Champions League?
- viii. FIFA have recently hardened their rules on when MAs can set Registration Periods (i.e. 2 Registration Periods per year - 12 weeks in between seasons and 4 weeks during the season. How does Football Australia set its Registration Periods when the calendars for the top-tier competitions and second-tier competitions (both of which have many professional players that must be registered) are not aligned?

**Transfer Fees – Point(s) of query:**

- i. Should the calculation of Transfer Fees be regulated and if so, what would be the objectives of regulating the calculation of Transfer Fees? Or should it be left up to the releasing and engaging club to set the transfer fee?
- ii. Could mechanisms such as a 'buy-out' clause, a formula which considers various factors be used to calculate the Transfer Fee or should this be left to the market to determine?
- iii. Reducing the cost of football – a potential opportunity?
- iv. Are financial mechanisms which control or restrict what a Club can spend on player salaries and benefits compatible with a transformed DTS or regulatory controls regarding the calculation of transfer fees?
- v. Should protected periods be included in the determination of sanctions for unilaterally terminating a contract without just cause or sporting just cause?
- vi. Understanding the financial opportunities in a transfer – how to enhance the broader understanding of and maximise these opportunities?

**Special Provisions Relating to Contracts – Point(s) of query:**

- i. What are the objectives of the special provisions relating to contracts for coaches and players?
- ii. Promotion of contractual stability – how to balance against the free movement of players?
- iii. Should there be standard form contracts or minimum contracting standards for players and coaches?
- iv. Should there be a minimum period that a Club must contract a player or coach? Should this be different for young players or should they be exempt?
- v. Should there be an age limit for young players signing representation agreements with agents other than the legal school leaving age?
- vi. What age can a minor sign? How long can a contract be for a minor?
- vii. Right of first refusal for training clubs? Way to incentivise players to stay closer to family and support network? Are there other regulatory measures that could be introduced to ensure that young players can stay closer to their families and finish school (with limited interruption) while pursuing their football career?

- viii. Should there be a limit on how long a player can trial with a Club? Should a player be able to be charged to trial with a Club?

**Player Agents – Point(s) of query:**

- i. What are the fundamental aspects of an Agent's role?
- ii. If FIFA introduce a cap on Agent's commissions that is binding on all its MAs, how can Australia ensure that it is fair and reasonable for the specific needs and interests in Australia?
- iii. What are the requirements for a uniquely Australian agent accreditation framework? Should we have one and what is the criteria?
- iv. How many parties to a transaction may be represented by the same agent? Should an agent be able to represent two or more parties to a transaction? Should our system be that an agent can only, in principle, represent a player Like other sports or can agents represent clubs too?
- v. Should there be a standard form representation contract to be used by players and agents?
- vi. The agent accreditation framework, should it strike a balance between agent's conduct and behaviour, and agent eligibility?
- vii. How do we create a platform for agents to engage with Football Australia?

**Dispute Resolution and Player Status Resolution – Point(s) of query:**

- i. What are the objectives of a NDRC in respect of the DTS?
- ii. Should there be another dispute resolution body to consider matters that are currently reserved for the PSC in the FIFA framework?
- iii. How could arbitrators be appointed to the NDRC roster to ensure that there was appropriate representation and the NDRC remained independent?
- iv. How should coaches be integrated into the NDRC framework?
- v. How should the NDRC be administered and serviced? Should there be a resource that could be shared between Football Australia and the Member Federations?
- vi. What are the appropriate qualifications and experience for arbitrators to be included on the roster of arbitrators?
- vii. What types of matters could the NDRC hear?
- viii. Is it important that both the parties be appropriately represented and advised in relation to a hearing?

**Private Academies – Point(s) of query:**

- i. What are the objectives of regulating private academies? Should these be formally regulated and licensed?
- ii. Should incentives be provided for operators to be licensed or regulated?

- iii. Does the licensing or regulating of private academies impact the academy programs offered by Clubs?
- iv. If private academies are licensed, what are the requirements or criteria, if any, to be licensed?
- v. Administering and enforcing the licensing criteria, an achievable outcome?
- vi. How do we enhance alignment to promote consistency in program content and delivery?
- vii. Do private academies contribute to the high costs of participating in football?
- viii. How does the licensing or regulating of private academies address the player development challenges?
- ix. What are the biggest opportunities associated with the licensing or regulating of private academies?

**Recent Regulatory Amendments: FIFA, Coaches and Female Players – Point(s) of query:**

- i. So far as it is relevant, should Football Australia implement the reforms that are being proposed in respect of coaches at a domestic level?
- ii. Should there be a standard form employment contract for coaches?
- iii. Should coaches be able to access the same domestic arbitration processes as players?
- iv. Beyond the requirements specified in the FIFA Regulations on the Status and Transfer of Players, what standards should be implemented to protect female players?
- v. Beyond the requirements specified in the FIFA Regulations on the Status and Transfer of Players, what standards should be implemented to protect coaches?
- vi. Are there any other discrete groups that the regulatory framework should provide certain concessions for or integrate?