

14 January 2019

Mr Tim Holden  
Football Federation Australia

**By email: [tim.holden@ffa.com.au](mailto:tim.holden@ffa.com.au)**

Dear Tim,

**Re: National Club Identity Policy (NCIP) Review**

I refer to our recent telephone conferences involving a number of FFA personnel with Rabieh Krayem and me on behalf of AAFC in relation to FFA's review of the NCIP.

In response to your invitation to make a submission in relation to AAFC's position in respect of the NCIP, I now put forward the following:

1. AAFC's directors from each Member Federation have reported that they engaged with as many NPL Clubs within the respective Federation as they could at this time of year. They have been informed, variously, that a significant number of Clubs have responded directly to FFA's invitation for submissions and separately, they provided responses to AAFC;
2. AAFC directors were asked to find out from our Member Clubs in each Federation if they supported the retention of the NCIP. The overwhelming majority of Club reported that they do not;
3. Most Clubs do not have their own policy or view about whether or not the policy ought be amended and if so, how? They simply have a view on the existing NCIP and they do not support it;
4. The AAFC Board has given careful consideration to the NCIP and in particular, through its sub-committee comprising Rabieh Krayem, Christo Patsan and myself (as legal and regulatory advisor). After taking into account the position of our Member Clubs which AAFC has gleaned from its directors through:
  - i. Direct responses following FFA's NCIP review; and
  - ii. Ongoing feedback over an extended period of which AAFC directors are aware through their ongoing involvement in Football and our Member Clubs over many years;

AAFC is able to report that its Member Clubs do not support the NCIP but equally, they are concerned that individual Member Federations not be in a position to introduce their own NCIP in the event the FFA vacates this policy territory. Their concern that many different policies might eventuate which would create uncertainty and potentially, unfairness, in relation to our member Clubs which operate in a national program;

5. The NCIP was introduced a number of years ago. The Football landscape has changed significantly since then. One fundamental change is the introduction of the FFA Cup. Another is the introduction of the NPL and, as part of that, the National Championships. The implementation and operation of the NCIP has been made public and brought into sharp relief at fixtures such as these, and in particular FFA Cup fixtures;
6. The AAFC considers that the manner in which NCIP has been implemented, based on its provisions, may not have been in keeping with those concerns FFA legitimately sought to address when introducing it. As a result and having regard to examples such as the 2018 FFA Cup fixtures involving Melbourne NPL Club, Avondale FC, the application of the NCIP in such cases might be construed as contravening clause 1.2 of its Objects. That would have been inadvertent, but it is unfortunate and it has highlighted the problems arising under the NCIP policy.
7. AAFC's Members are NPL Clubs only. Accordingly, the number of Clubs involved at this level is not as high as those playing at community level. The abolition of the NCIP is unlikely to result in many, if any, NPL Clubs changing their name in a way which would cause concern to the FFA. AAFC is aware, however, that the NCIP and any policy occupying this field is designed to govern all clubs. Accordingly, the concern raised above about the potential for more than one such policy coming into existence is something which concerns AAFC;
8. AAFC is concerned about many aspects of the NCIP but one element of it has caused more consternation than others. The use of the word "ethnic" at clauses 4.1 and 4.2 is undefined and can have no legitimate meaning within multicultural Australia and the laws of Australia. For a group of people to be identified as "ethnic", another group must, by definition, not be identified in that way. That is not appropriate;
9. In the event the NCIP is removed or abolished and not replaced, the AAFC would encourage its Members not to seek to change their name to narrow their perceived appeal to the general public. Ultimately, however, that is an issue for each Club. We do not anticipate that our Member Clubs would readily take a decision to narrow their appeal to the community. The NPL Clubs are more mature than perhaps they are given credit for and the AAFC considers it is an opportunity for FFA to demonstrate its acceptance of its traditional Clubs by removing what is seen by them as a provocative document or at the very least, one which demonstrates a lack of confidence and support in them;
10. As qualifying Members of FFA Congress through the AAFC, NPL Clubs see themselves as governed nationally on such an issue. As I have noted, the AAFC prefers that the abolition of the NCIP not result in individual Member Federations seeking to occupy this "legislative space" and introduce rules which govern Clubs, including NPL Clubs, within their own jurisdiction. To that end, AAFC is prepared to work with FFA to create a more appropriate policy which provides for the naming of Clubs and protects against names which may cause offence or promote unwanted outcomes within our sport without descending into the type of prescriptive detail which has resulted in the difficulties FFA now seeks to address. (We anticipate proposing a model rule within 10 days);
11. That can be done without confronting Clubs by means perceived to impugn their cherished identity. Incorporating the need for approval of the name within licencing and other similar agreements and reserving the right to FFA to deny Clubs the ability

to use names with political connotations or containing racist overtones, which would readily be considered offensive by the Australian Community, is something which the AAFC would support.

Please do not hesitate to contact us if you require any further assistance or feedback.

Yours Sincerely,

Nick Galatas  
Legal Counsel  
Association of Australian Football Clubs