THE RELATIONSHIP BETWEEN GOOD GOVERNANCE AND SUSTAINABILITY IN AUSTRALIAN SPORT

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Abstract

Governance, and in particular, the quest for ongoing good governance, has become one of the dominant paradigms of contemporary society. Good governance is a mantra for organisations such as the World Bank and the International Monetary Fund in how they deal with less developed nations. Similarly, the quest for good governance lies at the heart of much of the corporate law reform that has occurred in many of the most developed nations in recent times, such as Australia's Corporate Law Economic Reform Program (CLERP). This paper discusses how the impacts of these broader developments striving for good governance, especially in the corporate environment, have permeated into the sphere of sport in Australia, and how good governance is increasingly being viewed as essential for the sustainability of Australian sports and sporting organisations.

1. INTRODUCTION

Few movements in regulation have swept across the globe - from the developed countries to the developing, from the private sector to the public and from the for-profit organisations to the not-for-profit – like the quest for good governance. In the corporate, regulatory and economical development spheres, organisations which include the World Bank[1], the International Monetary Fund (IMF)[2] and the Organisation for Economic Co-operation and Development (OECD)[3] have made pronouncements on governance principles or practices which transcend national

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[1] The International Bank for Reconstruction and Development/The World Bank and Organisation For Economic Co-operation and Development, *Global Corporate Governance Forum: 1 Focus: Corporate Governance and Development*, Stijn Claessens author, 2003, Washington, DC; *2 Toolkit: Developing Corporate Governance Codes of Best Practice, User Guide*: *Volume 1 Rationale and Volume 2 Process,* 2005, Washington, DC, ('*WB Global Corporate Governance Forum'*).
[2] See for example, International Monetary Fund, *Good Governance: The IMF's Role,* August 1997, IMF Publication Services, Washington ('*IMF Guidance Note*').
[3] See for example, Organisation For Economic Co-Operation and Development, *OECD Principles of Corporate Governance 2004,* 2004, OECD Publications Service, Paris ('*OECD Principles*'). See also n 1.

boundaries. In the case of the OECD Principles, for example, the Preamble expresses that they are:

> intended to assist OECD and non-OECD governments in their efforts to evaluate and improve the legal, institutional and regulatory framework for corporate governance in their countries, and to provide guidance and suggestions for stock exchanges, investors, corporations, and other parties that have a role in the process of developing good corporate governance… The Principles represent a common basis that OECD member countries consider essential for the development of good governance practices. They are intended to be concise, understandable and accessible to the international community. They are not intended to substitute for government, semi-government or private sector initiatives to develop more detailed "best practice" in corporate governance.[4]

Continuing in the public corporate and regulatory spheres within Australia, regulatory bodies such as the Australian Stock Exchange (ASX) have imposed their own governance regimes in the corporate sphere. Under one aspect of the ASX model, for example, public companies listed on its exchange are required to disclose the extent of their compliance with ASX best practice recommendations.[5] Of course, the quest for good governance is not limited to publicly traded organisations. Governance principles and best practice guidelines have been developed in relation to state-owned enterprises[6] and for the non-profit and voluntary/community sectors.[7]

Concurrent with these developments, an awareness of the importance of good governance to sporting organisations – whether governing or participatory - has grown.[8] Within Australia, the Australian Sports Commission (ASC) in 1992 issued its own best practice principles for national sporting organisations ('NSOs').[9] A

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[4] OECD Principles, above n 3, Preamble, p 11.

[5] See ASX Listing Rule 4.10 and ASX Corporate Governance Council, *Principles of Good Corporate Governance and Best Practice Recommendations*, Australian Stock Exchange, March 2003 ('*ASX Best Practice Recommendations*'), p 5. Proposed changes to the ASX Best Practice Recommendations are currently the subject of public comment. See ASX Corporate Governance Council, *Principles of Good Corporate Governance and Best Practice Recommendations*, *Exposure Draft of Changes*, Australian Stock Exchange, 2 November 2006 ('*ASX Draft Recommendations'*).

[6] See, for example, Organisation For Economic Co-Operation and Development, *OECD Guidelines on the Corporate Governance of State-Owned Enterprises,* 2005, ('*OECD SOE Guidelines*)**.** The Preamble to the OECD Principles, above n 3, p 11 also expresses that "*to the extent they are deemed applicable, they might also be a useful tool to improve corporate governance in non-traded companies, for example, privately held and state-owned enterprises.*"

[7] See, for example, ACEVO, Charity Trustee Networks, ICSA, NCVO on behalf of The National Hub of Expertise in Governance, *Good Governance A Code for the Voluntary and Community Sector,* 1st edition, June 2005 ('*National Hub Voluntary Sector Code*') and the references listed in Appendix 4 thereto, pp 36-7.

[8] See Ferkins, L, Shilbury, D and McDonald G, "The Role of the Board in Building Strategic Capability: Towards an Integrated Model of Sport Governance Research" (2005) 8 *Sport Management Review*, 195-225. See also, for example, European Olympic Committee, Fédération Internationale de l'Automobile, Herbert Smith, *The Rules of the Game, Europe's first conference on the Governance of Sport, Conference Report & Conclusions*, Brussels, 26 & 27 February 2001. More recently, see Forster, J, "Global Sports Organisations and Their Governance" (2006), 6 (1) *Corporate Governance* 72, 72-83.

[9] Australian Sports Commission, *Governance: Principles of Best Practice*, May 2002 ('*ASC Governance Principles*').

statutory authority charged with the responsibility of distributing Commonwealth Government funds to NSOs, the ASC noted at that time that:

> It is important, therefore, that the ASC has a clearly stated position with respect to the governance of national sporting organisations to which the ASC provides taxpayer moneys.[10]

The purpose of the Part 2 of this paper is to examine broader developments in governance in the economic sphere, (in particular, corporate governance), in order to identify the policy and structural components of those developments which seek to promote successful long-term economic performance or, in other words, economic viability or sustainability (putting aside, for the moment, how that may be measured). The broader governance developments will not be examined individually in the way of detailed provisions. Instead, the paper will seek to identify core features or aspects of those governance structures, including recurring themes and tensions and examine how they seek to influence the various economic actors to which they pertain. In other words, how and to what extent, do the relevant structures impact on the relevant sectors, and what features, or variables, of a 'model' governance structure can be distilled from this?

Turning then to the sphere of sport in Part 3, the paper will seek to describe how, and to what extent, the broader developments in governance have been adopted as a means of improving the ability of Australian sporting organisations to achieve long-term economic sustainability for the purposes of achieving their various objectives. This will be done first by examining some special governance factors or considerations which arise in the case of sports and sporting organisations and, second, by a comparison of the ASC Principles issued by the Australian Sports Commission with an international sporting governance code, corporate governance schemes and non-profit/voluntary sector governance schemes.

2. CORPORATE GOVERNANCE SCHEMES

2.1 Purpose of Corporate Governance Schemes

The OECD explains the meaning and purpose of corporate governance in the following way:

> Corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined. Good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interests of the company and its shareholders and should facilitate effective monitoring.[11]

[10] Ibid, p 1.
[11] OECD Principles, above n 3, Preamble, p 11.

In this way, we submit that corporate governance schemes – through the establishment of various structures and processes - seek to balance a number of competing interests across various relational axes. On one axis, the freedom of a company's management to pursue (profit-maximising) objectives (value enhancement) at one end is balanced against the interests of the shareholders (owners) in monitoring management's performance (performance assessment and reporting) and seeing that a company's resources are not dissipated (value preservation). On another axis, "entrepreneurism" and "innovation" (risk-taking) are balanced against risk management, "control" and "accountability" (responsibility).[12] Lastly, the interests of those 'within' the company such as the board, management and shareholders (internal stakeholders) are balanced against the interests of those 'outside' the company such as lenders, government legislators and regulators and the general public (external stakeholders).

A detailed examination of the aims and consequential economic effects of the adoption by governments and companies of good governance practices is beyond the scope of this paper and has been well-traversed by other authors.[13] Speaking generally, the OECD sees corporate governance as essential for various reasons essentially related to market confidence, efficiency and development:

> The presence of an effective corporate governance system, within an individual company and across an economy as a whole, helps to provide a degree of confidence that is necessary for the proper functioning of a market economy. As a result, the cost of capital is lower and firms are encouraged to use resources more efficiently, thereby underpinning growth.[14]

Related to this in terms of global movements, the OECD also recognises the importance of "internationally accepted principles" of good governance in attracting long-term foreign investment.[15] In a detailed paper, Claessens summarises the developmental effects of good governance for businesses as including improved access to capital, reduced capital costs, managerial improvement (with consequent improvement in results) and enhanced stakeholder relationships.[16] The author identifies increased investment, growth and employment as some of the macro-economic benefits flowing from some of these.[17] The Commonwealth Association for Corporate Governance (CACG) similarly identifies enhanced profits and efficiency for organisations, sustained competitiveness for national economies and organisations and market 'stability' and 'credibility' as related to good governance.[18]

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[12] ASX Best Practice Recommendations, above n 5, p 3.

[13] See, for example, Claessens, S, "Corporate Governance and Development", in *WB Global Corporate Governance Forum: 1 Focus,* above n 1. See also, International Corporate Governance Network, *ICGN Statement on Global Corporate Governance Principles*, July 8, 2005, ICGN Annual Conference, London, ('*ICGN Statement*').

[14] OECD Principles, above n 3, Preamble, p 11.

[15] Ibid, p 13. See also ASX Best Practice Recommendations, above n 5, p 4.

[16] Claessens, S, "Corporate Governance and Development", in *WB Global Corporate Governance Forum: 1 Focus,* above n 1, p 14.

[17] Ibid.

[18] Commonwealth Association for Corporate Governance, *CACG Guidelines of Corporate Governance,* November 1999, ('*CACG Guidelines*') pp [3-4].

In respect of the relationship of good governance to the financial performance of enterprises, Brown and Caylor undertake a detailed examination of the relationship between 51 corporate governance variables to 'operating performance', 'valuation' and 'shareholder payout'.[19] The authors conclude that "better-governed firms are relatively more profitable, more valuable, and pay out more cash to their shareholders."[20] More recently on a similar theme, Goldman Sachs JBWere (GSJBW) produced a Research Report in 2006 entitled *Good Corporate Governance = Good Investment Returns.*[21] In the Research Report, GSJBW concluded in relation to the Australian market that there was "a good relationship between corporate governance ratings and share price performance for FY06…"[22] In this respect, in terms of quantitative results, GSJBW state that:

> The top rated, "Board Skills", "Overall Board", "Audit" and "Remuneration" companies have outperformed and, conversely, the bottom rated stocks under each of these categories have underperformed. Specifically, we find that an investment strategy investing long in top rated companies and selling short bottom rated companies would have generated the following "alpha" (ie return in addition to a passive market return) for each governance category: Overall Governance +10.9%, Board Skills +10.9%, Overall Board +10.0%, Remuneration +7.1%.[23]

Turning to the sphere of sport, long-term economic sustainability for a sporting organisation is, it is submitted, essential (or, at least, desirable) for that organisation to achieve its long-term objectives. Unlike the corporate sphere, the sporting organisation's pursuit of economic sustainability is not, in many cases, only for the purpose of maximising returns to 'owners' or measures such as 'operating performance', 'valuation' and 'shareholder payout'. For many non-profit or voluntary organisations, these will not be among the objectives at all or may only represent a 'means to an end' rather than the ultimate objective. In this respect, the multiple objectives and purposes of sporting organisations (and consequential stakeholder interests) are further discussed in section 3.1.1 below. For present purposes at least, the sporting organisation can only achieve its (sometimes mixed) long-term objectives if it continues to operate in the long run. In this respect, Burger and Goslin, in their review of the adherence of South African sporting organisations with corporate governance principles, recognise the impact of multiple stakeholder interests on the quest for economic sustainability:

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[19] Brown, L D and Caylor, M L, *Corporate Governance and Firm Performance*, December 7 2004, pp 1-52, available at www.issproxy.com (as at 9 January 2007).
[20] Ibid, Abstract, p 1 and Section VIII, Summary and Implications, pp 28-32.
[21] Goldman Sachs JBWere (Gray, A, analyst), Research Report, *Good Corporate Governance = Good Investment Returns, A strong result from governance investment strategies again for FY06*, June 2006, available at www.gsjbw.com. Source: Corporate Governance International, subscriber letter, 16 June 2006 and attachments (copy on file with authors).
[22] Ibid, p 6.
[23] Ibid, Key Points, p 4. For further discussion of the relationship between good governance and share price performance, see also, Cremers, K J M and Nair, V B, *Governance Mechanisms and Equity Prices*, Yale International Center for Finance, Yale ICF Working Paper No. 03-15, May 2003, available at Social Science Research Network Electronic Paper Collection, http://ssrn.com abstract_id=412140.

> The increased global and local attention sport receives from politicians, legislators, sponsors and government reflects a growing recognition of the importance of sport and the impact it has on society, culture, the economy and politics. This heightened interest, however, carries with it an inherent demand to justify long-term sustainability as well as show the ability to self-regulate (Burger, 2004). The ability to self-regulate is vested in an organisation's compliance with best-practice corporate governance principles.[24]

2.2 Scope and Methodology - Governance Schemes under Review

In Part 2 of this paper, we will examine various corporate governance schemes. As noted in the introduction to this paper, it is not our aim to examine in detail the provisions of those schemes. Instead, the paper will seek to identify core features or aspects of those governance structures in table form to distil the main themes (or variables) underpinning those structures. Given the numerous corporate governance schemes which have been proposed to date, this paper will not review all of them. Instead, the examination will involve a selection of the major well-established schemes in the world today - both global (cross-border) and national (Australia, UK) and both for-profit (corporate) and non-profit/voluntary/community - to reflect the sweeping growth of contemporary corporate governance..

Accordingly, the review in this paper will concentrate on the following schemes:

2.2.1 Global/Cross-Border:

- OECD Principles[25]
- ICGN Statement[26]; and
- CACG Guidelines[27]

2.2.2 National:

- ASX Best Practice Recommendations (Aust)[28]
- The Combined Code on Corporate Governance (UK)[29]

2.2.3 Non-Profit/Voluntary/Community (UK):

- National Hub Voluntary Sector Code[30]

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[24] Burger, S and Goslin, A, "Compliance With Best Practice Governance Principles Of South African Sport Federations" (2005) 27(1) *South African Journal for Research in Sport, Physical Education and Recreation* 11, 11. The authors cite Burger, S, "Compliance with best practice governance systems by national sports federations in South Africa", Unpublished Masters of Business Administration thesis, University of Pretoria, Pretoria.
[25] See above n 3.
[26] See above n 13.
[27] See above n 18.
[28] See above n 5.
[29] Financial Reporting Council, *The Combined Code on Corporate Governance*, June 2006, London ('*Combined Code'*). See also the related document, Financial Reporting Council, *Good Practice Suggestions from the Higgs Report*, June 2006, London.
[30] See above n 7.

In constructing Tables 2.3.1 and 2.4.1 below, this paper has adopted, as a foundation for the governance variables, the OECD Principles as these have been used as a model in the development of many other codes (including the ICGN Statement and the CACG Guidelines[31]). Where a governance variable was adopted in the first instance from one of the other governance schemes, the variable appears in bold type. In this way, Tables 2.3.1 and 2.4.1 set out the relevant principle or section of the relevant governance schemes. The function of Tables 2.3.1 and 2.4.1, while noting the relevant principles or sections, is *not* to present a comprehensive statement of the contents of each scheme *nor* is it to identify deficiencies or omissions among the relevant schemes. Indeed, the Tables do *not* contain detailed reference to all the principles or sections. Instead, the function of the Tables is to *build-up* a landscape of governance variables which have been identified as central or important in the construction of global and national governance codes. Indeed, and as can be seen from the Tables themselves, the various governance schemes cover much the same territory. For example, while Table 2.3.1 demonstrates that the ICGN Statement and CACG guidelines contain some additional provisions to the OECD Principles, these are often by way of placing a greater or different emphasis on particular aspects of governance rather than representing omissions from the OECD Principles altogether. This is recognised by the ICGN Statement itself which states:

> This revision, in general, endorses the revised OECD Principles, a number of which are thus repeated here. The revision also identifies additional principles of corporate governance of particular concern to the ICGN and its members.[32]

The CACG Guidelines, too:

> …have been structured on a basis complementary to the *OECD Principles of Corporate Governance*, with particular focus on the emerging and transition economies in the global market which comprise a substantial number of Commonwealth countries.[33]

Similarly, the governance variables in the Table are not intended to be a 'checklist' of matters which an organisation must satisfy. Like the OECD discussed above, we submit that good governance must be viewed in terms of 'relationships' between actors (which may well change over time) and, in this respect, the governance variables are intended to identify areas which must be examined in undertaking a governance review of the organisation for the purpose of achieving long-term economic sustainability and, in turn, the organisation's multiple objectives. In this way, these variables (ie, areas for examination) must also be viewed in light of the special factors pertaining to sporting organisations identified in Part 3.

2.3 Global/Cross-Border Corporate Governance Schemes

2.3.1 Scope and Applicability of Global Governance Schemes

The major global or cross-border governance schemes presented here operate largely in a 'top-down' way. In other words, generally speaking, the schemes are not binding

[31] See ICGN Statement, above n 13, p 1 and CACG Guidelines, above n 18, Preface, pp [2-3].
[32] ICGN Statement, above n 13, p 1.
[33] CACG Guidelines, above n 18, p [6].

on countries by way of international treaty or the like but are intended to operate by way of example or a benchmark for conduct in order to promote international consistency in governance. In the case of the OECD Principles:

> The Principles are non-binding and do not aim at detailed prescriptions for national legislation. Rather, they seek to identify objectives and suggest various means for achieving them. Their purpose is to serve as a reference point.[34]

The ICGN Statement[35] and CACG Guidelines[36] are intended to operate in a similar fashion. In the case of the ICGN Statement, its intention is to "highlight elements that ICGN investing members take into account when making asset allocations and investment decisions".[37] Hence, this emphasis can help to explain some of the governance variables *additional* to the OECD Principles in Table 2.3.1.

The following Table 2.3.1 represents the principal governance themes and variables which underpin the global governance schemes listed in section 2.2.1 of this paper.

Table 2.3.1 Global/Cross-Border Governance Schemes

No.	**Governance Variable (Based on OECD Principles)**	**OECD Principles**	**ICGN Statement**	**CACG Guidelines**
1.	External Governmental Legal and Governance Structure/Compliance[38]:	IA – D		
i	Appropriate legal structures/agencies		7.2	5, 7
ii	Demarcation and transparency for governmental and regulatory agencies			
2.	Owner Shareholding and Participation Rights[39]:	IIA – G	4.1-4.16	
i	Ownership and transfer structures			
ii	Participation in profits		2.1	
iii	Timely disclosure of information		2.1-2.2	6, 7
iv	Questions and voting in meetings including re:		4.4, 4.8	
	a. Appointment/removal of directors			
	b. Key/extraordinary changes		4.5	2, 9
	c. Corporate governance		4.9	
v	Protection for market for corporate control		4.5, 8.2	

[34] OECD Principles, above n 3, p 13.
[35] ICGN Statement, above n 13, pp1-2.
[36] CACG Guidelines, above n 18, p [6].
[37] ICGN Statement, above n 13, p 1.
[38] OECD Principles, above n 3, p 17.

3.	Fairness[40]:	IIIA-C		7
i	Ability to bring action for breach of shareholder rights		4.16	
ii	Equality within share classes		4.2	7
iii	Safeguards for minority		4.2	
iv	Interested or conflicted director disclosure		5.5, 5.14-5.15	7, 9
4.	Stakeholder Participation[41]:	IVA-F	7	8
i	Identification, consultation and participation			3, 6, 8
ii	Timely disclosure of information			6
iii	Employee/**management/director** incentive and participation schemes		**5.18**, 7.4	3
5.	Access/Transparency of Information[42]:	VA-F		8
i	Timely disclosure of material information:		2.1-2.2	6, 7
	a. results			
	b. remuneration policies		6.1	7
	c. director independence			
	d. risk factors			
	e. governance codes/policies		8.1	
ii	Independent/external audit		3.1-3.5	10, 15
iii	Quality and integrity of information		3.1, 3.5	6, 10
6.	Board Functions and Independence[43]:	VIA-F	5	
i	Compliance with statutory and legal duties on organisation/directors		5.3	1, 5, 7
ii	Fair and ethical decision making **and corporate social responsibility**[44]		**7.5**-7.6	5, 8
iii	Recognition of stakeholder interests			8
iv	Principal Responsibilities:		5.1(1)–(8)	1,3
	a.. Strategic/long-term planning; budget; performance review			2, 3, 4, 7, 14
	b. Corporate governance compliance			3,4
	c. Selection and monitoring of key management			3, 4, 7, 11 12
	d. Fair and open election of directors			2

39 Ibid, p 18-19.
40 Ibid, p 20.
41 Ibid, p 21.
42 Ibid, p 22-23.
43 Ibid, p 24-25
44 ICGN Statement, above n 14, p 9.
45 Ibid, p 7.
46 Ibid, p 8.
47 Ibid, p 9.
48 ICGN Statement, above n 13, p 4 and CACG Guidelines, above n 18, pp [18-19].
49 CACG Guidelines, above n 18, pp [20-21].
50 Ibid, pp [21-22].

	e. Interested director or management conflicts or transactions		5.5, 5.14-5.15	7, 9
	f. Reporting, audit, financial/ operational control, risk management			4, 10, 14
	g. Disclosure of information			6
v	Independence from management:			3, 9
	a. Non-executive/independent directors		5.4-5.8	1, 2, 9
	b. Responsibilities of Board sub-committees delineated and disclosed		5.12-5.13	10
vi	**Competency/experience and skills of directors**[45]		**5.2**	2, 9
vii	**Disclosure of director contribution/independence**[46]		**5.9**	
viii	**Board/director performance review**[47]		**5.16**	11
ix	**Maintenance/review of internal controls/procedures**[48]		**3.5**	**10**
x	**Use of Technology**[49]			**13**
xi	**Evaluation of Solvency**[50]			**15**
7.	**Maximising Profits**[51]		**1.1-1.2**	1, 14

2.3.2 Comparison of Global/Cross-border Corporate Governance Schemes

The CAGG Guidelines re-produce more of the OECD Principles than the ICGN Statement, but a number of issues have been directly transplanted from the OECD principles to *both* the ICGN Statement and CAGG Guidelines. The following Table 2.3.2 represents the principal corporate governance variables common to *all three* global governance schemes – the OECD Principles, ICGN Statement and CACG Guidelines.

Commonality Table 2.3.2 Common Global Governance Variables

No	Table 2.3.1 Reference	Common Global Governance Variable
1	1.i	Appropriate legal structure/agencies
2	2.iii, 5.i	Timely disclosure of material information
3	2.iv.b	Shareholder questions and voting in meetings re key/extraordinary changes
4	3.ii	Equality within share classes
5	3.ii.b, 6.iv.e	Interested or conflicted director disclosure
6	4	Stakeholder participation
7	4.iii	Incentive and participation schemes
8	5.i.b	Disclosure of remuneration policies
9	5.ii	Independent/external audit
10	5.iii	Quality and integrity of information
11	6.i	Statutory and legal compliance issues

[51] ICGN Statement, above n 13, p 3.

12	6.ii	Fair and ethical decision-making
13	6.iv	Principal (board) responsibilities
14	6.v.a	Independence of directors
15	6.v.b	Responsibilities of board subcommittees delineated and disclosed

That these issues should appear in all three is not surprising because together they are at the core of organisational activity and one or more can be the source of governance difficulties within, and across, organisations and sectors. However, it is easier to develop protocols on some more than others. For example, specific benchmarking regarding independent and/or external audit is easier to achieve than universal standards on what constitutes a truly independent director. Similarly, there can be much ambiguity around ethical decision-making and corporate social responsibility, whereas it is harder to fudge whether or not share classes are equal or not. Quality and integrity of information can be an elastic concept in many contexts, whilst statutory and legal compliance obligations tend in many, but obviously not all, instances to be more clear-cut. Some issues spill across many of these categories, for example, conflicts of interest. No non-binding, and indeed probably even any binding, codes could eliminate all such problems. The central purpose of these various codes, principles and statements is to promote improved behaviour. That promotion effort will occur through formal mechanisms, but also, and in the long-term perhaps more importantly, through normative channels. This positive normative change can occur on an intra-organisational basis, it can happen between organisations, it can be stimulated on an intra-sector level and in cross-sector contexts, it can be promoted on local, regional and national bases, and, as we see below, improved governance can be promoted in other international environs.

2.3.3 Other Global Governance Schemes

As noted in the introduction, other global bodies in addition to those in Table 2.3.1 have also been involved in the sculpting of the global governance environment. For example, in 1997, the IMF produced its guidance note entitled *Good Governance: The IMF's Role*.[52] Through this IMF Guidance Note, the IMF has expressed that while good governance is primarily a function of national governments and authorities[53], its participation will include:

- "a more comprehensive treatment in the context of both Article IV consultations and IMF-supported programs of those governance issues that are within the IMF's mandate and expertise;" [and]

- "a more proactive approach in advocating policies and the development of institutions and administrative systems that aim to eliminate the opportunity for rent seeking, corruption, and fraudulent activity[.]"[54]

[52] See above n 2.
[53] IMF Guidance Note, above n 2, p 3.
[54] Ibid, p 2.

In this respect, the IMF states that its primary involvement in enhancing governance will be through reforming public sector resource allocation and utilisation and fostering transparency and stability of economic and regulatory conditions.[55]

Similarly, the Global Corporate Governance Forum, established jointly by The World Bank and the OECD, has been influential in the global movement for good governance, producing a substantial and significant "toolkit" to assist national governments and others involved in the corporate governance process to evaluate, implement, review and improve good governance schemes.[56]

2.4 National Corporate Governance Schemes

2.4.1 Scope and Applicability of National Corporate Governance Schemes

Generally speaking, national corporate governance schemes are intended to be more focussed than their global counterparts because they are:

> …aimed at improving and guiding the governance practices of corporations within a country's specific legal environment and business context. These codes are typically based on principles and focus on country-specific issues.[57]

A detailed and comparative examination of the nature, status and content of various national corporate governance codes, guidelines and schemes and the differing approaches to compliance adopted by countries has been undertaken by the Global Corporate Governance Forum and so will not be repeated here.[58]

Inevitably, different national corporate governance schemes adopt various approaches to applicability/compliance. For example, in the case of Australia's ASX Best Practice Recommendations, companies listed on the Australian Stock Exchange are, under ASX Listing Rules, required to disclose the extent of their compliance with the Recommendations.[59] This method of compliance has been referred to as "disclosure (comply or explain)".[60] In the case of the UK Financial Reporting Council's Combined Code[61], a similar approach is adopted.[62] Interestingly (or confusingly), the National Hub Voluntary Sector Code is also expressed to be "based on the principle of 'comply or explain'" but that "[t]his means that it is not a legal or regulatory requirement".[63] This emphasis is probably due to the inherent voluntary character of

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[55] Ibid, p 3. See also, *The IMF and Good Governance*, address by Mr Michael Camdessus, Managing Director of the IMF, 21 January 1998, Paris, France, available at www.imf.org.
[56] WB Global Corporate Governance Forum, above n 1, *2 Toolkit: Developing Corporate Governance Codes of Best Practice, User Guide*, p 2 and *Volume 1 Rationale and Volume 2 Process.*
[57] WB Global Corporate Governance Forum, above n 1, *2 Toolkit: Developing Corporate Governance Codes of Best Practice, User Guide*: *Volume 1 Rationale,* p 21.
[58] Ibid, pp 21-35 and Annexures 3 and 5.
[59] See ASX Listing Rule 4.10 and ASX Best Practice Recommendations, above n 5, p 5.
[60] WB Global Corporate Governance Forum, above n 1, *2 Toolkit: Developing Corporate Governance Codes of Best Practice, User Guide*: *Volume 1 Rationale,* Annexure 5, p 64.
[61] Combined Code, above n 29.
[62] Ibid, Preamble, 2-3, p 1. See also WB Global Corporate Governance Forum, above n 1, *2 Toolkit: Developing Corporate Governance Codes of Best Practice, User Guide*: *Volume 1 Rationale,* Annexure 5, p 90.
[63] National Hub Voluntary Sector Code, above n 7, p 6.

the sector, but obviously there are intervening regulatory requirements which do have traction regarding the activities of any voluntary organisation

Of course, within national boundaries, more than one compliance method may be adopted according to the legal or regulatory status of the issuer. For example, although beyond the scope of this review, we note that in the United States the New York Stock Exchange (NYSE) has issued its Final NYSE Corporate Governance Rules.[64] Those Rules form Section 303A of the Exchange's Listed Company Manual and apply to all "common equity securities" subject to various exceptions.[65] Other US bodies such as the Business Roundtable have issued corporate governance principles. Comprised of CEOs from various large companies, the Business Roundtable has issued a number of influential guidelines and in 2005 produced its revised corporate governance principles - the Business Roundtable *Principles of Corporate Governance 2005* [66] which are voluntary in nature.[67]

Table 2.4.1 below represents the principal governance themes and variables which underpin the national governance schemes listed in sections 2.2.2 (national for-profit) and 2.2.3 (national non-profit/voluntary) of this paper. As can be seen from the Table, the governance variables are based on those in Table 2.3.1 so as to further build-up the landscape of variables.

Table 2.4.1 National Corporate Governance Schemes

No.	Governance Variable (Based on Table 2.3.1)	ASX Best Practice	Combined Code UK	Nat Hub Voluntary
1.	<u>External Governmental Legal and Governance Structure/Compliance</u>:			
i	Appropriate legal structures/agencies			
ii	Demarcation and transparency for governmental and regulatory agencies			
2.	<u>Owner Shareholding and Participation Rights</u>:	6, 6.1	D1-2	
i	Ownership and transfer structures			
ii	Participation in profits			
iii	Timely disclosure of information	6	D1, E1-2	
iv	Questions and voting in meetings including re:	6	E3	

[64] New York Stock Exchange, *Final NYSE Corporate Governance Rules*, approved by SEC 4 November 2003 (except s 303A.08) and 30 June 2003 (s 303A.08), ('*NYSE Rules*').
[65] Ibid, pp 1-3. The exceptions include "controlled companies", "Limited Partnerships and Companies in Bankruptcy", "Closed-End and Open-End Funds" and "Foreign Private Issuers".
[66] Business Roundtable, *Principles of Corporate Governance 2005, A White Paper by Business Roundtable*, November 2005, Washington, DC.
[67] Ibid, Foreward and Introduction, p 3. See also WB Global Corporate Governance Forum, above n 1, *2 Toolkit: Developing Corporate Governance Codes of Best Practice, User Guide*: *Volume 1 Rationale*, Annexure 5, p 91.

   v	a. Appointment/removal of directors b. Key/extraordinary changes c. Corporate governance Protection for market for corporate control	2.4	7.1-2	
3. i ii iii iv	<u>Fairness</u>: Ability to bring action for breach of shareholder rights Equality within share classes Safeguards for minority Interested or conflicted director disclosure	 2.1, 3.1-3	 A3.1	 G
4. i ii iii	<u>Stakeholder Participation</u>: Identification, consultation and participation Timely disclosure of information Employee/management/director incentive and participation schemes	10 10.1 9.1, 9.5	 B1-2	H C15a,e,f, C17, E14 E16, H H D19c
5. i ii iii **iv** **v**	<u>Access/Transparency of Information</u>: Timely disclosure of material information: a. results b. remuneration policies c. director independence d. risk factors e governance codes/policies Independent/external audit Quality and integrity of information **Electronic communications**[68] **Website**[69]	 5, 5.1, 6 9, 9.5 4.4, 6.2 4.1 **6.1** **6.1**	 C1, D1-2 E1-2 A1,B1-2 SchA E2, SchC A1,C3 A5	 H D18-19 D7-8
6. i **ii** iii iv	<u>Board Functions and Independence</u>: Compliance with statutory and legal duties on organisation/directors Fair and ethical decision making; corporate social responsibility and **codes of conduct**[70] Recognition of stakeholder interests Principal Responsibilities: a. Strategic/long-term planning; budget;	 3.1 3, 10.1 **3.1, 10.1** 10.1 1.1	 A1 A1	 B1,B3,D1-3 G G B, B1 B, E13

[68] ASX Best Practice Recommendations, above n 5, p 39.
[69] Ibid, p 40.
[70] Ibid, pp 25-26, 59-60.
[71] Ibid, p 15.
[72] Ibid, p 20.

	performance review			
	b. Corporate governance compliance		SchC	C14
	c. Selection and monitoring of key management	8.1		D17
	d. Fair and open election of directors		A4, A7	C15c, E8-9
	e. Interested director or management conflicts or transactions	2.1, 3.1-3	A3.1	G1-9
	f. Reporting, audit, financial and operational control, risk management	7		C9-12
	g. Disclosure of information			
v	Independence from management:			
	a. Non-executive/independent directors	2.1-3, 9.3	A1.3,A3.1-3,A7,SchB	
	b. Responsibilities of Board sub-committees delineated and disclosed	2.4, 4.2, 7, 9.2	A1.2, A3 A4.1-3,C3	C7, E1, E14 F8
	c. Distinguish/specify board and management roles[71]	**1.1**	A1.1, A2	B7-9,F1-7
	d. Term of office[72]	**2.1**	A7.1	E6
vi	Competency/experience and skills of directors	2.5	A3, A4	D5, D9-13
vii	Disclosure of director contribution/independence	2.5		
viii	Board/director performance review	8.1	A6, A7	E1-2, E14
ix	Maintenance/review of internal controls/procedures	4.4, 7	C2	B1f, C5-8 E14
x	Use of Technology			
xi	Evaluation of Solvency		C1.2	B1
7.	Maximising Profits			
8.	**Disclosure of non-compliance with best practice**	**Guides To Reporting**	Preamble ss. 2-4	Introdn p 6 A2-3

2.4.2 Comparison of National Corporate Governance Schemes

As in Table 2.3.2, although we are examining different manifestations of recommended governance schemes, we can see from Table 2.4.1 that there are some variables that appear in *all three* table columns. The following Table 2.4.2 represents the principal governance variables common to all three national corporate governance schemes – the ASX Best Practice Recommendations, the UK's Combined Code and the UK's National Hub Voluntary Sector Code.

Commonality Table 2.4.2 Common National Governance Variables

No	Table 2.4.1 Reference	Common National Governance Variable
1	4.iii	Incentive and participation schemes
2	5.i	Timely disclosure of material information
3	5.i.b	Disclosure of remuneration policies

4	5.iii	Quality and integrity of information
5	6.i	Statutory and legal compliance issues
6	6.iv	Principal (board) responsibilities
7	3.ii.b, 6.iv.e	Interested or conflicted director disclosure
8	6.v.b	Responsibilities of board subcommittees delineated and disclosed
9	6.v.c	Independence of directors – distinguish/specify board and management roles
10	6.v.d	Directors' term of office
11	6.vi	Competency/experience and skills of directors
12	6.viii	Board/director performance review
13	6.ix	Maintenance/review of internal controls/procedures
14	8	Disclosure of non-compliance with best practice

2.4.3 Summary – Global and National Corporate Governance Schemes

All of the variables listed in Table 2.4.2 are important recurring themes in the policy and practice of corporate governance. Of the lists appearing in the *Commonality* Tables 2.3.2 (global) and 2.4.2 (national), the governance variables which have been prominent in *all* columns of Tables 2.3.1 (global) and 2.4.1 (national) are:

- Timely disclosure of material information (5.i)
- Interested or conflicted director disclosure (3.ii.b, 6.iv.e)
- Incentive and participation schemes (4.iii)
- Disclosure of remuneration policies (5.i.b)
- Quality and integrity of information (5.iii)
- Statutory and legal compliance issues (6.i)
- Principal (board) responsibilities (6.iv)
- Independence of directors (6.v.a, 6.v.c)
- Responsibilities of board subcommittees delineated and disclosed (6.v.b)

So, tentatively, one might project that these could be the most generalisable variables in corporate governance discourse. It is likely that different sectors will generate different core sets of governance variables, but it would be interesting to investigate, when one segments analysis down to a specific sector, how often this specific list is re-produced as the heart of key governance variables, and how generalisable it might be across sector-specific governance codes. We begin this process by looking at one sector as an example, sport in Australia.

3. CORPORATE GOVERNANCE SCHEMES AND SPORTING ORGANISATIONS

Part 3 describes the extent to which broader developments in governance have been adopted as a means of improving the ability of Australian sporting organisations to achieve long-term economic sustainability for the purposes of achieving their various objectives. This will be done first by examining some special governance factors or considerations which arise in the case of sports and sporting organisations and, second, by a review of the *Statement of Good Governance Principles* issued by the Governance in Sport Working Group.[73] Finally, Part 3 will conclude with a comparison, again in table form, of the ASC Governance Principles issued by the Australian Sports Commission, the GSWG Statement and the corporate and voluntary/non-profit governance variables set out in Tables 2.3.1 and 2.4.1.

3.1 Special Governance Factors Applicable to Sporting Organisations

Having identified the 'core' features or aspects of governance structures generally in the corporate and voluntary sphere, this paper will, before examining the extent to which those developments have been adopted in the sporting sphere, consider how some of the structural and organisational characteristics of sporting organisations could affect the application of corporate governance principles to those organisations. In other words, what special factors or considerations applicable to sporting organisations require modification to, or particular emphasis on, the 'relationships' described or envisaged by the relevant corporate governance principles?

3.1.1 Multiple Objectives and Multiple Stakeholders

First, in this respect, Ferkins, Shilbury and McDonald observe that sporting organisations do not fit neatly into the distinctive public/private and profit/non-profit spheres described in the introduction to this paper.[74] In this respect, and drawing on earlier work by Shilbury, they explain a divergence in the outcomes sought to be achieved by profit and non-profit organisations:

> According to Shilbury (2001), the key distinction can be found in the purpose for existence. Financial motives and the responsibility to create shareholder wealth dominate the mission of for-profit organisations. Non-profit organisations, in contrast, are motivated by a preponderance of goals. They are not solely driven by financial gain, and instead are charged to protect service-to-mission.[75]

This, by itself, of course, is *not* a ground for dismissing (putting aside, for the moment, modification of or placing particular emphasis on) the application of relevant

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[73] Governance in Sport Working Group, *Statement of Good Governance Principles,* contained in European Olympic Committee, Fédération Internationale de l'Automobile, Herbert Smith, *The Rules of the Game, Europe's first conference on the Governance of Sport, Conference Report & Conclusions,* Brussels, 26 & 27 February 2001, pp 4-7 ('*GSWG Statement*')
[74] Ferkins, Shilbury and McDonald, above n 8, 196-7.
[75] Ibid, at 196. The authors here cite Shilbury, D, "Examining board member roles, functions and influence: A study of Victorian sporting organisations" (2001) 2 *International Journal of Sport Management*, 253–281.

governance principles to sporting organisations. Indeed, if *all* organisations are viewed, as a matter of generality, as aiming to achieve *some type(s) of outcome* (whether financial or non-financial), then the relevant questions become first, whether corporate governance principles developed principally for publicly listed corporations can be applied to non-profit motive (or multiple motive) organisations (including many sporting organisations) and, if so, what modifications to, or emphasis on, those principles (again, the relationships envisaged by those principles) are needed to cater for the special features of such organisations?

However, the existence of multiple objectives as described in the preceding section is not, of course, without consequence. Primarily, the simultaneous existence of various objectives results in multiple stakeholders to which those objectives relate. In this respect, Ferkins, Shilbury and McDonald recognise multiple stakeholders as a governance issue facing sporting organisations.[76] Of course, the stakeholders of sporting organisations are not limited to the governments, legislators and sponsors as noted in section 2.1 of this paper. They range, depending on the type of organisation, from members and "grass roots" participants to governing or representative state, national and global organisations; from governmental funding agencies (for example, the Australian Sports Commission) and private lending or funding organisations to customers, goods and service suppliers and sporting facility providers and many more instances can be given. In this respect, Ferkins, Shilbury and McDonald conclude that:

> The board's ability to strategically lead the organisation is central to its capacity to avert major crises and respond to stakeholder concerns.[77]

In this respect, some of the governance variables identified in the case of voluntary/not-for-profit organisations (which, generally, do not have 'owners' in the sense of shareholders seeking dividends or capital appreciation from their investment) can be of assistance in guiding relationships with relevant stakeholders. In the case of the National Hub Voluntary Sector Code, Section H includes detailed provisions relating to the identification of, consultation with and participation of stakeholders of the organisation.[78] In the case of the principle of "communication and consultation", the Code states, among other things:

> **H1** The Board should identify those people and groups who have a legitimate interest in the organisation's work; these might include users, beneficiaries, members, partners, staff, volunteers, regulators, other government bodies and funders. We refer to these as 'stakeholders' in this code…
>
> **H3** There should be regular and appropriate communication and consultation with stakeholders to ensure that:
> **(a)** their views are taken into account in the organisation's decision-making;
> **(b)** they are informed and consulted on the organisation's plans and proposed developments which may affect them;

[76] Ferkins, Shilbury and McDonald, above n 8, 206-7.
[77] Ibid, 207.
[78] National Hub Voluntary Sector Code, above n 7, Section H, Board Openness, pp 28-30.

> **(c)** there is a procedure for dealing with feedback and complaints from stakeholders, staff, volunteers and the public; and
> **(d)** the organisation's performance, impacts and outcomes are reported to stakeholders…[79]

Detailed provisions also appear in the Voluntary Sector Code relating to "openness and accountability" and "stakeholder involvement".[80] Stakeholder interests, however, are *not* limited to voluntary or not-for-profit sector codes. As can be seen from Table 2.3.1, the OECD Principles similarly contain principles relating to the identification of stakeholder interests, participation, the provision of information and communication.[81] OECD Principle IV states in part:

> ***The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.***
>
> **A.** The rights of stakeholders that are established by law or through mutual agreements are to be respected.
>
> **B.** Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.
>
> **C.** Performance-enhancing mechanisms for employee participation should be permitted to develop.
>
> **D.** Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis.
>
> **E.** Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board and their rights should not be compromised for doing this…[82]

Outside these schemes, the characteristics of multiple objectives and stakeholders is also developed within principles of corporate social responsibility. While a detailed examination of the underpinning theories and developments in that principle are beyond the scope of this paper, it is apt to note that the Australian Government's Corporations and Markets Advisory Committee (CAMAC) issued in December 2006

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[79] Ibid, p28.
[80] Ibid, pp 29-30.
[81] OECD Principles, above n 3, Principle IV, The Role of Stakeholders in Corporate Governance, pp 21 and 46-48.
[82] Ibid, (Principle IVF omitted and emphasis in original). Principles IVA-D are also set out in Michie, J and Oughton, C, "The Corporate Governance of Professional Football Clubs in England" (2005) 13(4) *Corporate Governance* 517, 522.

its Report entitled *The Social Responsibility of Corporations.*[83] In that Report, CAMAC observes that:

> The term 'corporate social responsibility' does not have a precise or fixed meaning. Some definitions focus on corporate compliance with the spirit as well as the letter of applicable laws regulating corporate conduct. Other definitions refer to a business approach by which an enterprise takes into account the impacts of its activities on interest groups (often referred to as stakeholders) including, but extending beyond, shareholders, and balances longer-term societal impacts against shorter-term financial gains.[84]

CAMAC explains that the "societal impacts" are usually categorised as "environmental", "social" and "economic".[85] Notable for the purposes of this paper, CAMAC observes that the ASX Draft Recommendations[86] assume that directors may consider stakeholder interests pointing to the proposed replacement to Principle 10 of the ASX Best Practice Recommendations in this respect.[87] Draft Principle 3 of the ASX Draft Recommendations is expressed in part in the following terms:

> **Principle 3:**
> **Promote ethical and responsible decision-making**
>
> **Companies should actively promote ethical and responsible decision-making**.
>
> To be successful, companies need to have regard to their legal obligations *and the interests of a range of stakeholders including shareholders, employees, business partners, creditors, consumers, the environment and the broader community in which they operate.* It is important for companies to demonstrate their commitment to appropriate corporate practices and decision making…[88]

With reference to Table 3.3.1 below, the ASC Governance Principles provide for the recognition of, and participation by, interested stakeholders. ASC Governance Principle 1.5 states in part:

> 1.5 The ASC advocates that each board should:
>
> • Set the broad strategic direction of the organisation *through appropriate consultation with stakeholders*. This includes determining the

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[83] Corporations and Markets Advisory Committee, *The Social Responsibility of Corporations, Report,* December 2006, Australian Government, Sydney, available at www.camac.gov.au, ('*CAMAC Social Responsibility Report'*).
[84] Ibid, para. 2.1, pp 13-14 (footnote omitted).
[85] Ibid, para. 2.1 and n 5 therein, p 14 . CAMAC further defines these three "impacts" by reference to the *Global Reporting Initiative (GRI) 2002 Sustainability Reporting Guidelines* which define "environmental impacts" to include effects on " land, air and water"; "social impacts" to include "labour practices [and] human rights"; and "economic impacts" as affecting "economic resources" at all levels.
[86] ASX Draft Recommendations, above n 5.
[87] CAMAC Social Responsibility Report, above n 83, Para 3.5, pp 94-95.
[88] ASX Draft Recommendations, above n 5, Draft Principle 3, p 19 (bold in original, emphasis added). See also CAMAC Social Responsibility Report, above n 83, Para 3.5, p 95.

> organisation's purpose, core values and the *ethical framework as well as key objectives* and performance measures…
>
> - *Provide an avenue for key stakeholder input* into the strategic direction of the organisation.[89]

ASC Governance Principle 5 entitled "Member responsiveness" governs recognition and participation of members in the relevant NSO. It states in part:

> The board should ensure it exercises leadership, integrity and good judgment, always acting in the best interest of the organisation as a whole, demonstrating transparency, accountability and responsibility to members.
>
> 5.1 The board should strive to ascertain the interests, aspirations and requirements of members and create responses to these in the form of a national strategic plan with alignment between this and member plans.
>
> 5.2 Members of an organisation should have the ability to remove board members (or a board as a whole) and change the constitution should they see fit…
>
> 5.3 The board should provide the members with a comprehensive annual report outlining how they fulfilled the governance roles of the organisation, the achievements of the organisation, the aspirations of the organisation and sufficient financial information so that members can make a judgment as to how effectively the board is fulfilling its role.[90]

Unlike Principle 1.5, this Principle refers to "member" rather than wider "stakeholder" interests. In this respect, Principle 1.5 operates in a broader sphere while Principle 5 is more specific in application intending, in a 'top-down' way, to accommodate the interests of an NSO's 'nearest' or constituent stakeholder. In turn, a member or constituent stakeholder (such as a State or, in turn, a local organisation) *should* be subject to similar governance obligations so that accountability at the national level 'trickles-down' to wider (in terms of an NSO) stakeholders. At the same time, such a process contemplates that wider stakeholder interests and input (again) *should* flow to an NSO from the 'bottom-up' through its members. Governance reviews of an organisation also provide an avenue for consideration of wider stakeholder interests through submissions and the like. A report containing a review of athletics and relevant athletic organisations (including governance issues) was published in 2004 and is discussed in section 3.3.3 below. Similarly, a governance review of Australian soccer was conducted in 2003 and is also discussed in that section.

While the current and future status, scope and content of the principles of corporate social responsibility are, again, beyond the scope of this paper, it may well be that wider developments in those principles as contemplated by the CAMAC Social

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[89] ASC Governance Principles, above n 9, Principle 1.5, p 4.
[90] ASC Governance Principles, above n 9, p 11.

Responsibility Report and the ASX Draft Recommendations will prompt review of other governance codes. In particular, the activities of organisations within the sporting sphere - whether global, national, state or local, whether governing or participatory and whether for-profit or voluntary – result in varying degrees in the "environmental", "social" and "economic" impacts envisaged by the corporate social responsibility movement.[91] In addition to identification of, consultation with and participation of stakeholder interests and ethical decision-making, *other* governance variables affected by this movement are likely to include such issues as the external governmental legal and governance structure/compliance, timely disclosure of material information, interested or conflicted director disclosure, governance codes/policies and codes of conduct, directors duties, strategic/long-term planning, budget and performance review, reporting and financial/operational control and risk management and disclosure of non-compliance with best practice.

3.1.2 Growing Professionalism

Ferkins, Shilbury and McDonald also undertake a literature review of corporate, non-profit and sports-based organisational and governance literature and identify the continual transformation from a volunteer-based to professional-based management in sporting organisations as creating difficulties in the application of some traditional governance variables.[92] In particular, and relying on, among others, the findings of Amis and Slack and, separately, Shilbury, the authors conclude that, as greater "control" and "responsibility" shifts to professional management and away from (volunteer) boards, the important strategic-planning responsibility which corporate governance schemes ascribe to the board "may be impeded by tensions between, and a lack of clarity in, the relationship between the agent (paid staff) and the board".[93] Similar conclusions were drawn by the authors from non-profit governance findings[94] and sport-based organisational[95] and governance[96] literature.

3.1.3 Board Representation

Related to this, many boards of sporting organisations, in particular state and national representative and governing bodies, are structured in a way that they are comprised of representatives or delegates from participatory organisations in the relevant sport.

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[91] See CAMAC Social Responsibility Report, above n 83, para 2.1 and n 5 thereto, p 14. As noted in n 85 above, CAMAC further defines these three "impacts" by reference to the *Global Reporting Initiative (GRI) 2002 Sustainability Reporting Guidelines* which define "environmental impacts" to include effects on " land, air and water"; "social impacts" to include "labour practices [and] human rights"; and "economic impacts" as affecting "economic resources" at all levels.

[92] Ferkins, Shilbury and McDonald, above n 8, 198-204 and 208-213.

[93] Ibid, at 198-9. The authors there cite, among others, Amis, J and Slack, T, "The size-structure relationship in voluntary sport organizations" (1996) 10 *Journal of Sport Management*, 76–86 and Shilbury, above n 72.

[94] Ferkins, Shilbury and McDonald, above n 8, 200-201. The authors there cite, among others, Heimovics, R D and Herman, R D, "Responsibility for critical events in nonprofit organizations" (1990) 19 *Nonprofit and Voluntary Sector Quarterly*, 59–72; Harris, M, "The governing body role: Problems and perceptions in implementation" (1989) 18 *Nonprofit and Voluntary Sector Quarterly*, 317–333 and Katsioloudes, M I and Tymon, W G (2003). "Strategic planning practices: Are they what they should be?" (2003) 22 *Human Systems Management*, 177–183.

[95] Ferkins, Shilbury and McDonald, above n 8, 201-204. The authors cite, among others, Shilbury, above n 75, 253 and Amis and Slack, above n 93, 84.

[96] Ferkins, Shilbury and McDonald, above n 8, 208-210 and 211-12.

Burger and Goslin identify, among other issues, that the 'representative' nature of the boards of sports federations may hinder the quest for "long-term sustainability" and "self-regulation" described earlier in this paper[97] :

> …sports federations should have access to individuals with skills best suited to the strategic intent of the organisation so as to ensure long-term sustainable profitability and growth and appointments should not be based on a system of representativity. The board should, of course, be broadly reflective of its key stakeholders but not at the expense of board skills mix. When members do represent a constituency they must never allow representation to become advocacy at the expense of the organisation as a whole.[98]

Shilbury, writing prior to this in 2000, foresaw the need for change in board composition in many state sporting organisations and NSOs.[99] Shilbury discussed the need for sports and sporting organisations to form "clusters" as a means of, among other things, increasing funding sources beyond government funding.[100] He concluded that governance considerations required "broader representation" among the boards of the organisations adopting this model with a reduced role for the "delegate system of governance".[101]

Governance problems in board representation of this kind have also been recognised by the ASC. In its ASC Governance Principles[102], the ASC states in Principle 1.6:

> 1.6 The ASC advocates that each board should be structured to reflect both the constituency it represents and the complex operating environment facing the modern sporting organisation. Normally, it is envisaged that a board will:
>
> …Have a sufficient blend of expertise and skills necessary to effectively carry out its role. As such the ASC advocates *a board with the necessary skills to carry out its governance role rather than a representative board*…[and]…
>
> …Be broadly reflective of the organisation's key stakeholders, but not at the expense of board skills mix. *When directors do represent a constituency, they must never allow representation to become advocacy at the expense of the organisation as a whole.*[103]

Similarly, the ASC's Governance Principle 1.9 seeks to minimise this problem. It states, in part:

> 1.9 The ASC advocates that the board outline the role of individual directors/board members, including (at a minimum):

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[97] See quotation in the text at n 24.
[98] Burger and Goslin, above n 24, 19.
[99] Shilbury, D, "Considering Future Sport Delivery Systems" (2000) 3 *Sport Management Review* 199, 216.
[100] Ibid, 217. For the term and concept of "clusters", Shilbury adopts and cites Porter, M E, "Clusters and the new economics of competition" (1998) 76(6) *Harvard Business Review* 77-91.
[101] Shilbury, above n 99, 216.
[102] See above n 9.
[103] ASC Governance Principles, above n 9, Principle 1.6, p 4 (emphasis added).

- The fiduciary duty of directors to act in the interests of the members as a whole *and not to represent individual constituents*. Thus, once elected the board should have the *ability to operate independently in the interests of the organisation as a whole*, free from undue influence…[104]

Governance issues relevant to the separation of the board from management also come into play in board representation of sporting organisations. Typically, corporate governance schemes provide for the division of these decision-making structures.[105] In the sphere of the governance of non-profit organisations, Siebert relies on the work of Fama and Jensen to explain the reasons for this separation:

> Fama and Jensen stated that due to the lack of an active market for shares and the lack of formal "ownership," a one-tier board of a nonprofit organization may not face a takeover threat similar to that of for-profit organizations. This difference calls for a separation of decision-making and control from the chosen perspective. Because corporate boards are disciplined by the external control the market for shares imposes, they may have unitary boards with the advantage of having inside managers with their specific knowledge participate substantially in the board's decision-making.[106]

After an examination of decision making by boards and cooperation with and methods for controlling executives in non-profit organisations[107], Siebart concludes that executive director inclusion in the board is preferable to enhance the standard of decision-making provided the requisite alignment between the organisation's interests and those of the executive exists.[108]

As noted in Tables 2.3.1 (global) and 2.4.1 (national), strategic/long-term planning (and, consequently, strategic decision-making, management and review) is one of the principal responsibilities of the board. To be effective, this responsibility is in turn dependent on several other governance variables also listed in those tables (strategic management:governance relationship) - such as external governmental legal and governance structure/compliance, identification of and consultation with stakeholders (including related corporate social responsibility), independent/external audit, quality and integrity of information, governance codes/policies and codes of conduct, directors duties, budget and performance review, reporting and financial/operational control and risk management, internal controls/procedures, independence of directors and competency/experience and skills of directors. Related to this, detailed work on the quality and effectiveness of decision-making and related practices by boards and management of non-profit organisations has been undertaken by Herman and Renz [109]

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[104] Ibid, Principal 1.9, p 6 (emphasis added).
[105] See Tables 2.3.1, 2.4.1 and 3.3.1 under Item 6, Board Functions and Independence, v, Independence from management.
[106] Siebart, P, "Corporate Governance of Nonprofit Organisations: Cooperation and Control" (2005) 28 *Intl Journal of Public Administration* 857, 857. Siebart cites Fama, E and Jensen, M, "Separation of Ownership and Control" (1982) 26 *Journal of Law and Economics* 310-25.
[107] Siebart, above n 106, 861-3.
[108] Ibid, 864.
[109] Herman, R D and Renz, D O, "Nonprofit Organisational Effectiveness: Contrasts Between Especially Effective and Less Effective Organisations" (1998) 9(1) *Nonprofit Management & Leadership* 23; "Board Practices of Especially Effective and Less Effective Local Nonprofit

who call for a 'critical' examination of so-called best practice in the area.[110] At the same time, the authors conclude that consultation with stakeholders is of prime importance to effective decision-making:

> If there is a best practice,…it is regular and effective communication in a variety of ways with significant stakeholders…This is important to enhance the organization's leaders' understanding of stakeholders' interests and expectations and to help the organization stay abreast of how stakeholders' criteria for judging effectiveness are evolving.[111]

3.1.4 'League' Considerations

In the case of participatory organisations, Farquhar, Machold and Ahmed undertake a detailed examination of current theories underpinning corporate governance – agency, stewardship and stakeholder models – and suggest further considerations on account of various special characteristics.[112] First, the authors point to an interdependence between sporting teams *in a league or competition* arising from a need for "coordination":

> In other industries such coordination is generally seen as anathema as it would be viewed as anti-competitive. Without coordination, professional sport competition would not occur. It is also clear that one team cannot obtain revenue without another team to play with. The financial viability of a sports team is thus dependent on the success of other sports teams.[113]

Second, the authors also describe the phenomenon of "uncertainty of outcome" – that the more equal is the level of on-field competition between relevant teams, the more will be consequent consumer demand and, in turn, team profits.[114] Michie and Oughton similarly see teams as needing coordination for the delivery of a "joint product" which consequently "increases the economic value of the product supplied by each individual club" and also concur in relation to the profit-enhancing role of uncertainty.[115] The effect of these considerations lead Farquhar, Machold and Ahmed to conclude that traditional corporate governance regimes (i.e., which are 'firm-specific') are not sufficient[116] and that issues concerning the 'league' – such as "format", "hierarchy" and "governance" - must also be considered.[117]

Organisations" (2000) 30(2) *American Review of Public Administration* 146 and "Doing Things Right: Effectiveness in Local Nonprofit Organisations, A Panel Study" (2004) 64(6) *Public Administration Review* 694.

[110] Herman and Renz, "Doing Things Right: Effectiveness in Local Nonprofit Organisations, A Panel Study", above n 109, 701-2.

[111] Ibid, 702.

[112] Farquhar, S, Machold S and Ahmed, P K, "Governance and football: an examination of the relevance of corporate governance regulations for the sports sector" (2005) 1(4) *Int. J. Business Governance and Ethics* 329, 337.

[113] Ibid.

[114] Ibid. The authors cite, among others, Rottenberg, S, "The baseball players' labour market" (1956) 64 *Journal of Political Economy*, 242–258.

[115] Michie and Oughton, above n 82, 517-518.

[116] Farquhar, Machold and Ahmed, above n 112, 338.

[117] Ibid, 339.

3.1.5 Achieving On-Field Success

Stadtmann discusses the relationship between on-field success and revenue/profit of a (successful, in terms of on-field performance) listed German football club, Borussia Dortmund.[118] In short, the author explains that significant domestic on-field success permits qualification (entry) into relevant international competitions with consequential benefits such as broadcast revenue.[119] In addition, the author identifies that (again, on-field) success leads to increased gate takings and merchandising sales[120] as well as "higher advertising and sponsoring revenues, because most sponsoring agreements provide for graduated revenues based on the team's performance".[121]

What is the relevance of this for the relationship between good governance and long-term economic sustainability of sporting organisations? On-field success is a key issue for sporting organisations because the possible effects of that success 'balance' various (sometimes competing) interests of the sporting organisation. As noted in section 2.1 above, economic sustainability in terms of maximising financial performance may be, in some sporting organisations, a 'means to an end' of achieving the organisation's long-term objectives (whether financial or otherwise). In this section, we have noted that improved financial performance (and, consequently, long-term financial sustainability) of a participatory organisation is dependent *in part* on increasing various revenue streams which are sensitive to on-field success. However, the discussion in section 3.1.4 would suggest that, in order to maximise overall profits among 'league' teams, the organisation's on-field success must not be wholly disproportionate to the on-field success of other teams in the league (uncertainty of outcome). In addition, the pursuit of on-field success through financial expenditure (for example, on playing facilities/stadiums or player transfer fees and salaries) may, *if left unchecked*, pose tension or conflict with good governance issues such as those related to other stakeholder interests (for example, the interests of government funding agencies and other funders/lenders; the interests of members or spectators through membership or attendance fees; the development of participation in the sport through investment in "grass roots" programs), statutory and legal duties of directors (for example, to act in the best interests of the organisation and to exercise financial and operational control and risk management) and, indeed, long-term financial viability itself. In the latter respect, Michie and Oughton also identify as a special

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[118] Stadtmann, G, "Frequent News And Pure Signals: The Case Of A Publicly Traded Football Club" (2006) 53(4) *Scottish Journal of Political Economy* 485.
[119] Ibid, 488.
[120] Ibid, 490. The author cites Gartner, M and Pommerehne, W W, "Der Fußballzuschauer – ein homo oeconomicus? Eine theoretische und empirische Analyse" (1978) 29 *Jahrbuch für Sozialwissenschaften*, 1089–95; Lehmann, E and Weigand, J, "Money Makes the Ball Go Round – Fußball als ökonomisches Phänomen" (1997) 43(3) *ifo Studien–Zeitschrift für empirische Wirtschaftsforschung*, 381–409, and Czarnitzki, D and Stadtmann, G, "Uncertainty of outcome versus reputation: some empirical evidence for the German Premier-League Football" (2002) 27(1) *Empirical Economics*, 101–12.
[121] Stadtmann, above n 118, 490. For a discussion of successful and unsuccessful sport sponsorship strategies, see Amis, J, Slack, T and Berrett, T, "Sport sponsorship as distinctive competence" (1999) 33 (3/4) *European Journal of Marketing* 250-272. See also Smolianov, P and Shilbury, D, "Examining Integrated Advertising and Sponsorship in Corporate Marketing Through Televised Sport" (2005) 14 *Sport Marketing Quarterly* 239-250. For a discussion of the steps undertaken by a sporting event to sell sponsorship, see Sack, A and Fried, G, "Pitching Women's Tennis to Corporate Sponsors: A Case Study of Pilot Pen Tennis" (2001) 10(2) *Sport Marketing Quarterly* 68.

characteristic of some professional sporting organisations - in this case, English football teams – the need for on-field success:

> This latter imperative introduces an incentive to "invest" (or gamble) on success, through buying players and paying high player wages to attract and retain the best players. This may provide part of the reason, at least, for most professional football clubs in England being unprofitable…[122]

The authors identify this factor (and increases in player salaries) as requiring adequate governance responses.[123] The current "Bungs Inquiry" by a former Commissioner of the Metropolitan Police, Lord Stevens, initiated at the request of the Football Association (FA), into payments to agents of soccer players in transfers involving English soccer clubs, is testament to concerns at the highest levels about governance standards in soccer.[124] In one instance Middlesbrough FC agreed to pay agent Pini Zahavi £3,000,000 on top of the £7,500,000 they were spending to sign his client player, Yakubu Aiyegbeni, from Portsmouth in July 2005.[125] £3,000,000 payment to a player agent is an astonishing amount of money, a total light years away from the reality of most people who participate in soccer and is suggestive of how the desperation for on-field success can dilute the thirst of some sporting clubs for transparent governance of commercial dealings.

3.2 Governance in Sport Working Group Statement of Good Governance Principles

In examining sporting governance schemes for the purpose of identifying the corporate governance themes which have permeated into the sporting sphere, it is again apt to begin with a review of international codes and then progress to the national perspective. Accordingly, this section will identify the main themes of the Governance in Sport Working Group (GSWG) *Statement of Good Governance Principles* arising out of "The Rules of the Game" conference in 2001.[126] The GSWG Statement is intended to achieve various aims. Among these, it states that:

> …iii by demonstrating the virtues of self-regulation, it should assist in persuading legislators that there is no need to interfere further in the running of sports.[127]

Like the GSWG, Burger and Goslin similarly identify the object of self-regulation as being dependent on adherence to good governance codes.[128]

The GSWG Statement principles are arranged under nine major principles in section 3 of the conference report. The following Table 3.2 contains a summary of the contents of those principles.

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[122] Michie and Oughton, above n 82, 518.
[123] Ibid.
[124] There has been enormous media coverage of this issue, for example: Ziegler, M., "Stevens willl hand over eight agent names to FA", *The Independent*, 9 January 2007
[125] Conn, D., "How Zahavi made contact sport an art form and became English football's kingmaker", *The Guardian*, 17 January 2007
[126] GSWG Statement, above n 73.
[127] Ibid, p 3.
[128] See quotation in the text at n 24 above.

Table 3.2 GSWG Statement

No.	GSWG Statement Major Principle	Content Variables
3.1	**The role of the governing body**	Construct rules Development/promotion of sport Good governance Representation of members Specify role/function Stakeholder interests
3.2	**Structure, responsibilities and accountability**	Separation of Functions: Rule making Executive/managerial decision-making Dispute resolution Specify hierarchy/function of all decision-making structures
3.3	**Membership and size of the governing body**	Disclosure of identity, experience and appointment details of officers Disclosure of voting rules Stakeholder interests identified in decision-making
3.4	**Democracy, elections and appointments [to governing body]**	Representatives elected by members Disclosure of voting procedures Fixed terms of office Fairness and transparency in elections Disclosure of voting results
3.5	**Transparency and Communication**	Statement of governance code/role of body Communication to and Consultation with members Reporting Electronic communications
3.6	**Decisions and appeals**	Disclosure of reasons Dispute resolution/appeal procedures specified Exclusion of conflicts/interests
3.7	**Conflicts of interest**	Separation of governance and commercial roles Delineation of committee functions
3.8	**Solidarity**	Equity and transparency in, and disclosure of, policy for distribution of revenues to all levels of sport

3.9	**Recognition of other interests**	Identification/recognition of stakeholder interests in decision-making Anti-discrimination within sport

The GSWG Statement is compared with the corporate governance variables in Tables 2.3.1 (global) and 2.4.1 (national) in Table 3.3.1 below. Table 3.3.1 also contains a comparison of the GSWG Statement with the ASC Governance Principles. For present purposes, if we return to the composite set of variables (set out in section 2.4.2) that appeared across *all* columns of Tables 2.3.1 and 2.4.1, the following receive special attention in the GSWG Statement:

- Timely disclosure of material information (2.iii, 5.i)
- Interested or conflicted director disclosure (3.ii.b, 6.iv.e)
- Principal (board) responsibilities (6.iv)
- Responsibilities of board subcommittees delineated and disclosed (6.v.b)

At first glance, this suggests, in relation to global sports governance, that they *might* be the four most generalisable of corporate governance variables. However, the GSWG Statement is obviously not the only summation of what might constitute good governance in sport at the international, or indeed any other, level. More particularly, a review of the GSWG Statement Major Principles listed in Table 3.2 indicates that the variables are directed *in the main* to governing or 'upper-hierarchy' bodies such as national representative bodies rather than participatory or other 'lower-hierarchy' bodies. Even in the case of governing bodies, additional responsibilities can be suggested. In this respect, Forster undertakes a review of the functions and governance of global governing bodies in sport and provides a list of typical responsibilities similar to those in the GSWG Statement.[129] More particularly, additionally he identifies among those responsibilities the "development and governance of the athletes within a sport" and relations with national sporting bodies, governments and regulatory agencies and sponsors.[130] Forster traces the development and authority of various global organisations (GSOs) including the International Federation of Football Associations (FIFA) and the International Olympic Committee (IOC). He identifies the revenue-raising ability (important, we have noted in section 3.1.5, for attaining long-term economic sustainability of a sporting organisation) and cultural significance of GSOs as contributing to their importance:

> …despite being non-profit organisations, one reason for the significance of the GSOs is their commercial importance, given the revenues that some generate and their impacts on the commercial sports industry. In this direct revenue raising ability, as opposed to operating as charities, they differ appreciably from other international non-governmental organisations (INGOs)… Intimately related to their commercial significance is the suggestion sport

[129] Forster, above n 8, 73.
[130] Ibid.

> embodies cultural values with which individuals, communities and even nations identify.[131]

Forster, through a historical analysis of the authority of relevant GSOs, concludes that many have "highly contestable governance monopolies"[132] with large revenues but a "lack of accountability [which] in turn is attributed to a problem of lack of "ownership"…".[133]

Other governance problems stemming from the globalisation of particular sports have also been identified. For example, Giulianotti and Robertson undertake a sociological study of the globalisation of football (usually referred to as soccer in Australia) and identify various governance issues in the case of FIFA including its method of election:

> No innately democratic procedures exist for electing congressional members, who are appointed instead by their respective football associations…A more democratic system would begin at national, grass-roots level, to elect congressional members, and to facilitate more regular congressional sittings.[134]

Among other things, the authors also suggest that FIFA should realign its functions to put profits behind "humanitarian functions" (such as improving participation in developing countries) [135] and "social inclusion" (such as increasing the participation of women).[136] As discussed in section 3.1.1, such matters fall within the governance realm of corporate social responsibility, ethical decision-making and codes of conduct.

3.3 The ASC, GSWG and Corporate Governance Principles Compared

3.3.1 The ASC Governance Principles

The ASC Governance Principles were issued by the ASC in May 2002. At that time, the ASC stated that:

> It is commonly accepted that governance structures have a significant impact on the performance of a sporting organisation. Poor governance has a variety of causes including director inexperience, conflicts of interest, failure to manage risk, inadequate or inappropriate financial controls, and generally poor internal business systems and reporting. Ineffective governance practices not only impact on the sport where they are present, but also undermine confidence in the Australian sports industry as a whole.[137]

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[131] Ibid, 74.
[132] Ibid, 79.
[133] Ibid.
[134] Giulianotti, R and Robertson, R, "The globalization of football: a study in the glocalization of the 'serious life'" (2004) 55(4) *The British Journal of Sociology* 545, 559.
[135] Ibid, 559-560.
[136] Ibid, 561-562.
[137] ASC Governance Principles, above n 9, pp 1-2.

To combat this, the ASC Governance Principles are arranged under five major principles[138]:

1. Clear delineation of governance roles
2. Effective governance processes
3. Effective governance controls
4. Governance improvement
5. Member responsiveness

The following Table 3.3.1 represents a comparison of the ASC Governance Principles and GSWG Statement with the principal governance themes and variables which underpin the global and national corporate governance schemes built-up from, respectively, Tables 2.3.1 and 2.4.1.

Again, as in the case of Tables 2.3.1 and 2.4.1, the following Table 3.3.1 does *not* contain detailed reference to all the principles or sections of the ASC Governance Principles or GSWG Statement. Instead, the function of Table 3.3.1 is to demonstrate in table form how the governance variables of global and national corporate governance schemes have permeated into the international and Australian sporting governance spheres.

Table 3.3.1 Comparison of ASC, GSWG and Corporate Governance Principles

No.	**Corporate Governance Variable (Based on Tables 2.3.1 and 2.4.1)**	**ASC Governance Principles**	**GSWG Statement**
1	<u>External Governmental Legal and Governance Structure/Compliance</u>:		
i	Appropriate legal structures/agencies	1	
ii	Demarcation and transparency for governmental and regulatory agencies		
iii	**Preferred entity structure as corporation limited by guarantee or incorporated association**[139]	**1.2**	
iv	**Written constitution**[140]	**1.3,** 5.2	
2.	<u>Owner Shareholding and Participation Rights/**Member Participation**</u>[141]:	**5**	
i	Ownership and transfer structures		
ii	Participation in profits		
iii	Timely disclosure of information	5.4	3.4, 3.6
iv	Questions and voting in meetings including re:	5.3	3.3
	a. Appointment/removal of directors	5.2	3.4
	b. Key/extraordinary changes		

[138] Ibid, p 2.
[139] Ibid, p 3.
[140] Ibid.

v	c. Corporate governance Protection for market for corporate control		
3. i ii iii iv	Fairness: Ability to bring action for breach of shareholder/**member** rights/**disputes**[142] Equality within share classes Safeguards for minority Interested or conflicted director disclosure	 1.9	 **3.2,** 3.6 3.6, 3.7
4. i ii iii	Stakeholder Participation: Identification, consultation and participation Timely disclosure of information Employee/management/director incentive and participation schemes	 1.5, 5 5.4	3.1, 3.9 3.1, 3.3, 3.5 & 3.9 3.5, 3.6
5. i ii iii iv v **vi**	Access/Transparency of Information: Timely disclosure of material information: a. results b. remuneration policies c. director independence d. risk factors e. governance codes/policies Independent/external audit Quality and integrity of information Electronic communications Website **Policy for distribution of revenues to all levels of sport**[143]	5 5.4 5.4 5.4 3.7 2.5, 4.3, 5.4 **3.8**	3.5, 3.6 3.4, 3.5 3.5 3.5
6. i ii iii iv	Board Functions and Independence: Compliance with statutory and legal duties on organisation/directors Fair and ethical decision making; corporate social responsibility and codes of conduct Recognition of stakeholder interests Principal Responsibilities:	 1.3, 1.5, 1.9, 3.5 1.5, 1.9, 5 5	 3.6, 3.7 3.3, 3.9 3.1, 3.2

141 Ibid, p 11.
142 GSWG Statement, above n 73, p 4.
143 Ibid, p 7.
144 ASC Governance Principles, above n 9, p 8.
145 Ibid, p 4.
146 Ibid, p 5.
147 Ibid, p 7.

	a. Strategic / long-term planning; budget; performance review	1.5, 3.1, 3.3, 5.1	
	b. Corporate governance compliance	1.3, 1.5, 1.10, 3, 5.4	3.1
	c. Selection and monitoring of key management	1.5, 3.3, 3.6	
	d. Fair and open election of directors		3.4
	e. Interested director or management conflicts or transactions	1.9	3.6, 3.7
	f. Reporting, audit, financial/ operational control, risk management	1.5, 3.4, 3.7, 5.4	3.5
	g. Disclosure of information	5.4	3.6
v	Independence from management:	1.11	
	a. Non-executive / independent directors	1.9	
	b. Responsibilities of Board sub-committees delineated and disclosed	1.4, 2.7, 3.7	3.2, 3.7
	c. Distinguish/specify board and management roles and **protocols**[144]	1.1, 1.4, 1.10, 1.11, **3.2**, 3.8	3.1, 3.2
	d. Term of office	1.6	3.4
vi	Competency/experience and skills of directors		3.3
vii	Disclosure of director contribution/independence		3.3, 3.6, 3.7
viii	Board/director performance review	4	
ix	Maintenance/review of internal controls/procedures	3.5	
x	Use of Technology		
xi	Evaluation of Solvency	3.5	
xii	**Increased/equal representation for women on board**[145]	**1.7**	
xiii	**Interim board (fixed term) for merging bodies**[146]	**1.8**	
iv	**Specify board meeting procedures**[147]	**2.1-4**	3.3
7.	<u>Maximising Profits</u>		
8.	<u>Disclosure of non-compliance with best practice</u>	5.4	
9. **i** **ii** **iii**	**<u>Role of Governing Body</u>** **Construct rules**[148] **Development/promotion of sport**[149] **Representation of Members**[150]		**3.1** **3.1** **3.1** **3.1**
10.	**<u>Anti-discrimination within sport</u>**[151]		**3.9**

148 GSWG Statement, above n 73, p 4.
149 Ibid.
150 Ibid.
151 Ibid, p 7.

3.3.2 Common Variables in ASC, GSWG and Corporate Governance Principles

The following Table 3.3.2 represents the principal governance variables common to the ASC Principles, GSWG Statement and corporate governance variables identified in Tables 2.3.1 (global) and 2.4.1 (national).

Table 3.3.2 Common ASC, GSWG and Corporate Governance Variables

No	Table 3.3.1 Reference	Common Governance Variable
1	2.iii, 4.ii, 5.i, 6.iv.g	Timely disclosure of material information
2	2.iv 2.iv.a	Questions and voting in meetings including re: a. appointment/removal of directors
3	3.iv, 6.iv.e	Interested or conflicted director disclosure
4	4.i, 6.iii	Identification, consultation and participation of stakeholders
5	5	Access/transparency of information
6	5.i.e, 6.iv.b	Governance codes/policies
7	6.ii	Fair and ethical decision-making; corporate social responsibility and codes of conduct
8	6.iv.f	Reporting, audit, financial/operational control, risk management
9	6.v.b	Responsibilities of Board subcommittees delineated and disclosed
10	6.v.c	Distinguish/specify Board and management roles and protocols
11	6.v.d	Term of Office
12	6.iv	Specify board meeting procedures

Again, the above commonality Table 3.3.2 displays a well-known group of governance variables appearing at the core of global and national corporate governance codes. In terms of the aims of this paper, it demonstrates, using as a (perhaps crude but functional) analytical measure/construct the distillation of cross-transfer of core variables across the various tables, the extent to which global and national corporate governance issues have been received into the international and Australian sports governance environment. While the list of common variables in Table 3.3.2 is relatively wide, its composition is somewhat skewed or narrowed as the Table identifies commonality between opposite ends of the spectrum. On the one hand, the GSWG Statement represents an international sporting governance scheme directed mainly to global governing bodies. On the other hand, while the ASC Governance Principles are directed to NSOs, their operation will extend to many lower-level participatory bodies. In the end, this skewness or narrowness is compensated to some degree by using as the comparative benchmark the corporate governance variables built-up from *both* Tables 2.3.1 (global) *and* 2.4.1 (national).

Of course, our earlier comments (see section 2.3.2) regarding the ease or otherwise of developing protocols in relation to the variables still applies. While protocols/benchmarking for many of the above variables may be clear cut, variables such as access/transparency of information, ethical decision-making and corporate social responsibility and identification/participation of stakeholders remain 'fudgeable'. Importantly, the scope of the first of these three 'fudgeable' variables will be dependent to a large extent on the content of the second and third variables. In this respect, we have already noted above that an important distinguishing characteristic of sporting organisations is the presence of multiple objectives and, therefore, multiple stakeholders with consequent corporate social responsibility effects (see section 3.1.1). How well (or poorly) a sporting organisation identifies its objectives (and, consequently, its stakeholders) and prioritises them will have important ramifications for the practical operation of these interdependent variables. How the received corporate governance variables are applied in practice in the sporting environment in Australia may also be demonstrated by governance reviews of sports and sporting organisations.

3.3.3 Sports Governance Reviews

In July 2004, an Athletics Review was undertaken on behalf of the ASC and Athletics Australia (AA).[152] Part B of the ASC Athletics Review presented, among other things, a governance and management review of AA with thirty-one recommendations made (Recommendations 89 – 119).[153] The 'financial management' recommendations included monthly financial reports[154], quarterly provision of profit and cash flow statements to State member associations[155] and recommendations as to the composition and functions of the audit committee.[156] Recommendations relating to 'communications' included the preparation of monthly 'key issues' reports to State member associations[157] and half-yearly meetings with those associations.[158] In the case of the board and management, the Review recommended, among other things, that the Board specify performance indicators and the powers delegated to the Chief Executive Officer[159], that performance reviews of the CEO be conducted at least once a year[160], public advertisement for 'senior' positions[161] and Board review and approval of the strategic plan[162] prepared with input of key staff.[163]

A detailed governance review has also been undertaken in Australia in relation to soccer.[164] In the Crawford Soccer Report, the Independent Review Committee made

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[152] Australian Sports Commission and Athletics Australia, *Athletics Review, Re-creating a culture for athletics in Australia, A report into the high performance, development and governance of athletics in Australia*, July 2004, Canberra ('*ASC Athletics Review*'). In relation to governance review of horse racing, see Hoye, R, "Governance reform in Australian horse racing" (2006) 11 *Managing Leisure* 129.
[153] ASC Athletics Review, above n 159, Part B, Recommendations 89-119, pp 30-33.
[154] Ibid, Rec 89, p 30.
[155] Ibid, Rec 92, p 30.
[156] Ibid, Recs 96 and 98, pp 30-31.
[157] Ibid, Rec 100, p 31.
[158] Ibid, Rec 101, p 31.
[159] Ibid, Rec 104, p 32.
[160] Ibid, Rec 106, p 32.
[161] Ibid, Rec 108, p 32.
[162] Ibid, Rec 114, p 32.
[163] Ibid, Rec 109, p 32.
[164] Australian Sports Commission, *Independent Soccer Review, Report of the Independent Soccer Review Committee into the Structure, Governance and Management of Soccer in Australia*, (David Crawford, Chairman), April 2003 Canberra ('*Crawford Soccer Report*').

53 recommendations[165] covering issues including replacement of Soccer Australia's constitution[166], establishment of various sub-committees to improve available information[167], a board of six "elected independent directors"[168], the CEO be permitted to attend board meetings without vote[169] and amendments to the voting structure of Soccer Australia's national council.[170] Further recommendations included establishment of a board conflict of interest policy[171], statement of directors' duties[172], clearer separation of board and management functions[173] and the establishment of the National Soccer League as an independent entity from Soccer Australia with independent directors.[174]

4. CONCLUDING REMARKS

So, what might we conclude from the above discussion? First, and we want to emphasise this most strongly, this paper is the first step in what is likely to be a long, but interesting, journey into researching how prominent codes of corporate governance are transposed across sectors and cultures. As such, all our observations are cautionary, methodologically limited and currently lacking empirical robustness – these are deficiencies which we plan to address on an ongoing basis. Nevertheless, some conclusions might be drawn.

- If we look at Table 2.3.2, Table 2.4.2 and Table 3.3.2, they suggest that some governance protocols such as: timely disclosure; competency and experience of Board members; quality and integrity of information; and legal compliance issues gain traction across sectors more easily than others.
- This is obviously a cursory measure and may in some cases represent only a formal, rather than a substantive, commitment to "good" governance, but it is an indicator nonetheless.
- Sport is a sector which involves significant contributions from voluntary as well as commercial actors, so may be more difficult to research in some ways than a sector which is pre-dominantly populated with commercial actors that possess greater organisational capacity.
- Governance sprawls across human and organisational activity, and as such is affected by many of the realities of human and organisational existence. Consequently, codes of conduct can never be much more than tramways of preferred behaviour within those sectors. Normative factors will be hugely influential in how "good governance" is played out in practice, and there has been, there is and there will continue to be, significant interaction between human agency and structural factors in the praxis of governance.[175] Only

[165] Ibid, Part 3, List of Recommendations, pp 9-12.
[166] Ibid, Rec 2, p 9.
[167] Ibid, Rec 4, p 9.
[168] Ibid, Rec 10, p 9.
[169] Ibid, Rec 13, p 10.
[170] Ibid, Rec 24, p 10.
[171] Ibid, Rec 36, p 11.
[172] Ibid Rec 37, p 11.
[173] Ibid, Rec 40, p 11.
[174] Ibid, Rec 46, p 12.
[175] For a discussion of the human agency: social structures interactive paradigm see generally: Giddens, A., *The Constitution of Society, Outline of the Theory of Structuration*, Polity Press, Cambridge 1984

more detailed research beyond the borders of this paper can shed light on what the processes and shape of that good governance might be. However, one possibly useful starting point for any analysis of how corporate governance has emerged in a particular sector is to discern as we have done with regard to sport, just which themes have jumped sectoral boundaries to become totem poles of governance.

- As a final comment, again heavily qualified, our suspicion is that precisely because of the fundamental character of agency: structure interaction and its centrality in governance praxis, governance is as much art as it is science. This paper has been skewed towards the former and has been led by intuition to a significant extent. Our future strategy will be to beef up the latter, by incorporating greater components of empirical material, in order to investigate whether intuitions about the relative generalising power of specific governance variables are manifested in practice, as well as in the rhetoric of governance codes and other protocols.