**REPORT**

**OF THE MINISTERIAL COMMITTEE APPOINTED TO INVESTIGATE ALLEGED IRREGULARITIES OR MALPRACTICES IN THE GOVERNANCE AND MANAGEMENT OF THE SOUTH AFRICAN SPORTS CONFEDERATION AND
OLYMPIC COMMITTEE (SASCOC)**



**TO THE**

**HONOURABLE MINISTER OF SPORT AND RECREATION, MS. TOKOZILE XASA**

**DATE: 21 AUGUST 2018**

**INTRODUCTION**

1. In terms of Government Gazette No. 41186 which was published on
20 October 2017, the then Minister of Sport and Recreation, Thembelani Waltermade Thulas Nxesi, in terms of section 13(5)(a) of the National Sport and Recreation Act 110 of 1998 (“the Act”) read with the Public Finance Management Act 1 of 1999 (“PFMA”) and the Treasury Regulations (issued in terms of the PFMA), established a Committee to investigate alleged irregularities or malpractices in the governance and management of the South African Sports Confederation and Olympic Committee (“SASCOC”). The Minister appointed the Committee which comprised of Judge Ralph Zulman, a retired Judge, as Chairperson, Ms Shamima Gaibie, a practicing attorney as a member and Dr Ali Bacher as the other member (“the Committee”), following a consultation with the Minister of Justice and Correctional Services.
2. Soon after the Committee was appointed, and pursuant to various discussions of the Committee, relevant and interested parties were invited to make written submissions to the Committee. Once these were received, the hearings of the Committee were publicised and public hearings were held at a venue at the Emirates Airlink Park Stadium (formerly known as the Ellis Park Stadium) during the course of February and March 2018.
3. Various individuals[[1]](#footnote-1) provided the Committee with written submissions (in the form of documents, information, memoranda, affidavits and statements) and or oral testimony.
4. These individuals included:
	1. representatives of national federations, associations, provincial structures and entities involved in sport;
	2. members of the SASCOC Board;
	3. third parties or interested individuals; and
	4. employees and members of the management of SASCOC.
5. At the outset, it necessary to record, that during the hearings there were numerous submissions about the SASCOC Constitution, and many of these were raised by members of the SASCOC Board. After the public hearings were completed and whilst the Committee was analyzing the information received during the hearings, SASCOC adopted a revised Constitution sometime in June 2018, without notice to us and in circumstances when the Board was aware that the Constitution would feature prominently in our deliberations and in our Report. We are perturbed by this development and consider it necessary to deal with relevant aspects of the revised Constitution in so far as they impact on the issues raised in this Report. Accordingly and for the purposes of this report, any reference to a particular clause in the SASCOC Constitution is a reference to the previous Constitution, but the principle applies equally to the corresponding provision in the new Constitution except for article 12 which we will deal with later in this report.
6. We intend, in this report, to:
	1. refer to relevant provisions of the National Sport and Recreation Act 110 of 1998, as amended (“*the Act*”), and provide some analysis as to whether any conduct in pursuit of the objectives of *the Act* constitute administrative action;
	2. summarise the written submissions and testimony;
	3. summarise our findings;
	4. deal with four pertinent issues that arose during the hearings of the Committee, and with two additional issues that emanate from a construction of the relevant legislation; and
	5. provide our recommendations.
7. Before we deal with the submissions made by various role players in the sporting world, we are of the view that a brief synopsis of *the Act*, and issues relevant to the functions and duties of those involved in the structures envisaged in *the Act*, is necessary, not only to understand the legislation but to contextualise the submissions received by the Committee.
8. It is in this context that we ask the following question.

**IS THE EXERCISE OF POWER AIMED AT THE ADMINISTRATION OR MANAGEMENT OF SPORT IN SOUTH AFRICA, AN EXERCISE OF PUBLIC POWER OR THE PERFORMANCE OF A FUNCTION THAT IS PUBLIC IN NATURE?**

1. There is in the South African legal system much debate about how the exercise of public power must be identified. In the context of the South African sporting world, the appropriate enquiry would be whether private bodies or entities such as the various national federations, the provincial confederations and SASCOC that often administer sporting codes or make decisions about sport in general, exercise administrative power? This, in our view, is an important issue as it determines the nature and extent of the power that they exercise and it determines the benchmark against which their conduct must be assessed.
2. Whilst we do not intend, in this report, to provide a comprehensive legal analysis of the relevant law and the authorities, we are of the view that there are important factors that point towards the overwhelming view that the exercise of power aimed at the administration or management of sport in South Africa, is the exercise of public power or the performance of a public function as defined in the Promotion of Administrative Justice Act 3 of 2000 (‘PAJA’).
3. The core statute that deals with the administration and development of sport is the National Sport and Recreation Act 110 of 1998 (as amended by the National Sport and Recreation Amendment Act 18 of 2007) (‘*the Act*’). The preamble to *the Act* articulates its purpose in the following terms:

 *“To provide for the promotion and development of sport and recreation and the co-ordination of the relationships between Sport and Recreation South Africa and the Sports Confederation, national federations and other agencies; to provide for measures aimed at correcting imbalances in sport and recreation; to provide for dispute resolution mechanisms in sport and recreation; to empower the Minister to make regulations and to provide for matters connected therewith”.*

1. The reference to “*Sport and Recreation in South Africa*” is defined in section 1 of *the Act* to be the National Department of Sport and Recreation (“*the Department*”) and the reference to “Minister” is the Minister of Sport and Recreation (“*the Minister*”). In addition, the reference to the “*Sports Confederation*” is a confederation representative of sport or recreation bodies, including Olympic national federations, that is “recognised” by the Minister. In the current context, the reference to the “Sports Confederation” is the South African Sports Confederation and Olympic Committee, otherwise known as “*SASCOC*”. It has more than 75 affiliates made up of national sporting federations, provincial confederations and other associations. Approximately 50% of these affiliates are involved in “*high performance sport*”. A “*sport or recreation body*” is defined as ‘*any national federation, agency or body, involved in the administration of sport or recreation at national level*’[[2]](#footnote-2).
2. Section 2 of *the Act* which deals with the promotion and development of sport and recreation, is in our view central to the scheme of *the Act* because it identifies the various entities involved in the promotion and development of sport and sets out in broad terms their mandate. Section 2 provides as follows:

 *“2. Promotion and Development of Sport and Recreation*

 *(1) The Minister must recognise in writing a Sports Confederation which will be the national co-ordinating macro body for the promotion and development of high performance sport in the Republic.*

 *(2) The Sports Confederation may, from time to time, develop guidelines for the promotion and development of high performance sport.*

 *(3)*

 *(a) Every government ministry, department, province or local authority may carry out sporting or recreational activity or activities relating to physical education, sport and recreation, including training programmes and development of leadership qualities;*

 *(b) In relation to high performance sport, a government ministry, department, province or local authority referred to in paragraph (a) may consult with the Sports Confederation;*

 *(4) The Sports Confederation must co-ordinate all activities relating to high performance sport including team preparations and must consult with all the relevant sport bodies in that regard.*

 *(5) All national federations must develop its sport or recreational activity at club level in accordance with-*

 *(a) the service level agreement referred to in section 3A;*

 *(b) the development programmes referred to in section 10(3); and*

 *(c) the guidelines issued by the Minister in terms of section 13A, and submit the progress in such development to Sport and Recreation South Africa and Parliament on an annual basis.*

 *(6) The Minister must advise the Minister of Finance if a national federation fails to develop its sport or recreation activity as contemplated in subsection 5, to be dealt with in accordance with an Act of Parliament administered by that Minister.*

1. The term “high-performance sport” is defined as:

 *“The high-level participation in major international sporting events including but not limited to world championships and other international multi-sport events such as the Olympic Games, Commonwealth Games, Paralympic Games and All Africa Games”[[3]](#footnote-3).*

1. In terms of section 3A, SASCOC and national federations must enter into service level agreements with the Department *‘in respect of any functions assigned to them’*. These federations are required, in terms of section 6(1), to *“assume full responsibility for safety issues”* within their respective sports and to participate actively in and support programmes and services of the Department and SASCOC in respect of high performance sport.
2. That sport occupies a central place in the South African community is recognised by section 4(3) where the Minister is given the power to ‘determine the general policy to be pursued with regard to sport and recreation’.
3. The policy of the Minister binds ‘all sport and recreation bodies’, and it may relate to, amongst other things: the roles and responsibilities of sport and recreation role players to ensure co-ordination and efficiency; the provision of funds for the creation and upgrading of facilities in accordance with priorities determined by the Department; maintenance of the focus on the administration of sport and recreation; the enhancement of health consciousness; the identification of latent sporting talent; investment in the preparation of sports participants elected to represent the country in major competitions; helping in cementing the sports unification process; and instituting necessary affirmative action controls which will ensure that national teams reflect all parties involved in the process[[4]](#footnote-4).
4. In addition, both SASCOC and the Department are empowered to address the education and training needs of high performance sports[[5]](#footnote-5). The Department is also required, within its funding policy and the availability of its resources to ‘provide’ physical facilities for sport and recreation nationally[[6]](#footnote-6), and it must ‘organise programmes aimed at mobilising the nation to play’[[7]](#footnote-7).
5. Section 11 of *the Act* empowers SASCOC with the concurrence of the Minister, to establish a National Colours Board which must consider applications for national colours, and in terms of section 13A, the Minister ‘must establish guidelines of policies to promote equity, representivity and redress in sport and recreation’. Perhaps most significantly, sport or recreation bodies are placed under obligation by section 13B to report membership statistics to the Department, and by section 13C (a) and (b) to report to both the Department and Parliament on progress concerning the promotion of equity, representivity and redress, and to provide both with copies of their constitutions accompanied by a written declaration that their constitutions conform to the Constitution of the Republic. Finally, in terms of section 14, the Minister is given the power to make regulations concerning high performance sport, after consultation with SASCOC[[8]](#footnote-8).
6. It is apparent from the provisions set out above that *the Act* places the government, through the Department and the Minister, in a central position to oversee the administration of sport in the country. It also recognises that SASCOC and the national sporting bodies, such as the national federations and provincial confederations as well as entities involved in sport, have a significant range of obligations imposed on them by statute and are subject, in disciplinary matters, administrative matters and financial matters ultimately to the Minister.
7. On a literal reading of *the Act*, it is clear that the intention of the legislature was to ensure that any conduct associated with the administration, management and promotion of sport in general, and high performance sport in particular, constitutes the exercise of a public function[[9]](#footnote-9).
8. In addition to the provisions of *the Act* referred to above, it is widely accepted that sport has a substantial influence in our society and usually involves substantial sums of money as well as the exercise of control over who may earn a living from and represent the country in sporting activities. Sport in South Africa, in our view therefore raises issues of national importance, as is apparent from the Minister’s intervention in this matter and his appointment of this Committee.
9. In light of this analysis, it is clear that the Minister and the Department play an oversight role in respect of the activities of SASCOC. Whilst *the Act* does not specifically provide for such oversight in explicit terms, the fact that SASCOC exercises public power or performs a public function, sub-judicates the organization and its representatives to the principles and rigours of administrative law. Despite the application of the principles of administrative law to the functions of SASCOC, and indeed to its relationship with the Department, it is our view that some thought must be given to the overhaul of *the Act*. We return to this issue later in this report.
10. It is in the context of this analysis that the submissions received from the various role players in sport must be considered.

**SUBMISSIONS FROM FEDERATIONS, ASSOCIATIONS, PROVINCIAL STRUCTURES AND ENTITIES**

1. It is our view that the information that the Committee received from the various federations, associations, provincial structures and entities, as well as those closely aligned with various sports or sporting codes, was particularly significant. Not only because some of them are the constituent parts of SASCOC but because they provided significant insight about the sporting world within the South African sports framework. Their views and perceptions about the management of sport assisted the Committee greatly.
2. We deal with each of the relevant submissions below. These included submissions from:
	1. the South African Equestrian Federation (SAEF), and parties external to this federation who are or were involved in equestrian sport directly or indirectly;
	2. Mind Sport South Africa;
	3. the South African Sport Aerobics and Fitness Federation;
	4. the Western Province Sports and Fitness Federation;
	5. Athletics South Africa;
	6. The South African Football Association;
	7. South African Natural Bodybuilding Association;
	8. the South African Wrestling Federation;
	9. Volleyball South Africa; and
	10. Western Cape Karate.

***Equestrian Sport***

1. It was apparent to the Committee during its hearings that several members of the various equestrian disciplines or sporting codes[[10]](#footnote-10) within equestrian sport were concerned about the management of that sport. They questioned the rationality of the SASCOC principle of one federation for all equestrian sport especially in light of the fact that of some 15 equestrian sporting codes, only 3 of them are considered to be high performance sport that participate in the Olympic Games.
	1. The representatives of equestrian sport included amongst others:
		1. Robyn Louw;
		2. Larry Wainstein;
		3. Clem dos Santos;
		4. Rogan Asken;
		5. Shelly Beckbessinger;
		6. Advocate Willhelm Edeling; and
		7. Sandra Copeland.
2. ***Robyn Louw***
	1. Ms Louw, a sports journalist who writes for ‘horseracing publications’, questioned the basis upon which national colours are approved or awarded by SASCOC for the purposes of international representation by South African athletes[[11]](#footnote-11). In particular, she informed us that during 2013, SASCOC had awarded national colours to certain jockeys of the National Jockey Association even though they were not affiliated to the South African Equestrian Federation (SAEF), nor were they recognised or granted membership independently of SAEF by SASCOC.[[12]](#footnote-12)
	2. According to –
		1. section of the 11 of *the Act*, SASCOC must with the concurrence of the Minister, establish a National Colours Board which ‘will consider all applications for the awarding of national colours’;
		2. article 10.1.2 of the SASCOC Constitution[[13]](#footnote-13), SASCOC undertakes to regulate the awarding of colours and emblems in accordance with the National Sports Colours Regulations, an internal policy of SASCOC. In terms of these regulations, SASCOC has the power, through its National Colours Board to award national colours to athletes.
	3. It was not in dispute during the hearings that this award of national colours to the jockeys was not done in terms of section 11 of *the Act* or in terms of the SASCOC regulations. In fact, we were informed by Mr Sundrasagren (Tubby) Reddy, the erstwhile Chief Executive Officer of SASCOC (“Mr Reddy”), that the National Colours Board has been dysfunctional for a very long time and consequently SASCOC generally awards national colours to athletes upon application from the federations and approval by the executive management of SASCOC, which ultimately means the approval of the CEO. In this example, and in the absence of membership to the SAEF or independent recognition and affiliate membership of SASCOC, the award of national colours by the CEO or by the executive management of SASCOC to the jockeys was irregular and unlawful.
	4. In addition to Ms Louw’s contribution, there were several other persons who were involved in equestrian sport in one form or another, who provided the Committee with written submissions and or testified at the hearings of the Committee. These included:
		1. **Larry Wainstein**: the Chief Executive Officer of the Racing Association;
		2. **Clem dos Santos**: a businessman who was previously (in 2013) the President of the South African Show Jumping Association;
		3. **Rogan Asken**: who was previously involved in equestrian sporting bodies. Amongst other things, he currently owns and runs stables north of Johannesburg and he trains riders and horses for all levels of competition. He has however been banned from serving on any Committee or holding any office in equestrian sport for another four years;
		4. **Shelly Beckbessinger**: the Managing Director of Equine and Equestrian Professionals of South Africa, a non-profit company which is registered with SAQA (the South African Qualifications Authority) as a professional body in terms of Section 13(i) of the National Qualifications Framework Act 67 of 2008;
		5. **Advocate Wilhelm Edeling**: the President of the South African Equestrian Federation (SAEF); and
		6. **Sandra Copeland**: holds the legal portfolio in the South African National School’s Association (SANESA).
3. In order to understand the submissions made by the various personalities in equestrian sport, it is important to record the following background information that was provided to us by one or more of the persons referred to above:
	1. Several disciplines within equestrian sport were historically represented by SANEF (the South African National Equestrian Federation) which was linked to the FEI (Federation Equestre Internationale), the international federation that was aligned to the IOC (the International Olympic Committee).
	2. SANEF essentially represented the equestrian disciplines of “eventing”, “show jumping”, “dressage”, “endurance”, “volting” and “reining”. Amongst others, “horse racing” was excluded from SANEF.
	3. During this time provincial sport was managed by the provincial committees, and they reported to the National Executive Committee of SANEF.
	4. This changed in 2013 when SASCOC required all disciplines (some 15 of them) within equestrian sport, to be affiliated to one federation[[14]](#footnote-14). For this purpose SANEF was replaced by SAEF and amongst other things, the new federation adapted a new constitution sanctioned by SASCOC.
	5. The intention was that SAEF would control, administer and manage all disciplines within the equestrian sport, irrespective as to whether they were high performance disciplines within equestrian sport, organised at both club and provincial level.
	6. We were informed that this approach by SASCOC effectively created parallel structures and confusion as:
		1. clubs are based in provinces and the potential for duplication in representation at provincial level was accordingly real;
		2. clubs and provincial structures had distinct, if not different, rules for the various disciplines; and
		3. the requirements of high performance equestrian disciplines are markedly different from the other disciplines within equestrian sport.
	7. Within this context various witnesses asserted, not only in equestrian sport but in others, that unless a federation complied with the requirements established by SASCOC, the latter had at its disposal the ability to threaten refusal of recognition, or the award of national colours, which are required for the purposes of participation in international events.
4. Much of their submissions revealed significant tension and conflict between the various disciplines within equestrian sport and it raised the following important questions:
	1. Whether the various disciplines within equestrian sport such as: show jumping; eventing; dressage; horse racing; etc. could comfortably sit and be represented in one federation or whether one or two of them such as horse racing, for instance, warranted the establishment of a different federation?
	2. Whether the various equestrian sporting bodies or associations are equitably and appropriately represented in the current and only equestrian federation, SAEF?
	3. Whether SASCOC’s imposition of a single federation for all disciplines within equestrian sport is compliant with *the Act* and or its constitution, and is in line with international practice or the IOC’s requirements?
	4. Whether it is necessary to separate out the high performance disciplines or sporting codes from the other sporting codes within equestrian sport?
5. In this regard:
	1. Mr Wainstein confirmed –
		1. the tension that has been generated by SASCOC’s insistence on one federation for all the equestrian sporting codes; and
		2. that the jockeys were awarded national colours by SASCOC in 2013 even though they did not belong to a federation, nor were they independently recognised by or affiliated to SASCOC.
	2. Mr dos Santos contended that:
		1. equestrian sport was in “turmoil” since the creation of SAEF, as it is the only federation for a multiplicity of equestrian disciplines that have different focuses and needs;
		2. SASCOC’s insistence on one federation for different equestrian disciplines based on the common denominator that each of these disciplines involves a horse is simply illogical; and
		3. there are approximately 15 sporting disciplines in equestrian sport and only three of these constitute “high performance” sport that compete in the Olympic Games and other international sports events. It is accordingly not feasible nor manageable that all 15 be governed under the auspices of one federation.
	3. Mr Asken, in essence –
		1. repeated Mr dos Santos’ concerns about the appropriateness of one federation for all of the equestrian sporting disciplines both in the context of their different focusses and needs and in relation to those that constitute “high performance” sports as opposed to others.
	4. Ms Beckbessinger informed us that-
		1. the Counsel of Equine and Equestrian Professionals of South Africa (CEEPSA) is responsible for controlling, managing and monitoring the activities of Equine and Equestrian coaches, formally known or designated as “Equine Practitioners” and “Equestrian Practitioners” or “Equestrian Coaches”;
		2. CEEPSA is therefore concerned about SASCOC’s moves towards establishing a unit responsible for registering and monitoring coaches (in general) which in their view directly conflicts with the purpose for which CEEPSA was established in equestrian sport;
		3. CEEPSA has become aware that SASCOC is in the process of establishing a professional body relating to sports coaches, to be known as the Coaches Association of South African (“CASA”) and that this association will be the only nationally recognised body responsible for sports coaches (including equestrian coaches);
		4. according to CEEPSA, CASA has not yet been registered as a professional body with SAQA, nor does it have designations relating to sports coaches registered on the NQF; and
		5. it was in this context that CEEPSA took the view that the establishment of CASA by SASCOC not only falls beyond its powers (in terms of its Constitution) but creates uncertainty for them about the “legitimacy of the current equestrian qualifications” for which they have been registered with SAQA.
	5. This view or approach from Ms Beckbessinger, and by implication from CEEPSA, is quite different from their approach in a meeting held on 18 July 2017 that was arranged by SASCOC at the request of SAEF (“the SASCOC meeting”). The contentions raised by Ms Beckbessinger in her submissions to the Committee were not raised at all in the *SASCOC meeting*. In fact, the transcript of the SASCOC meeting establishes amongst other things that:
		1. SASCOC had consulted widely among its constituent members, including the various federations, about the establishment of a professional body for coaching in the country;
		2. pursuant to that consultative process, SASCOC submitted the relevant application to SAQA in October 2015, and in 2017 SAQA recognised SASCOC as a professional body for coaches;
		3. although there was a debate in the SASCOC meeting about whether CASA should operate as an entity on its own or under the auspices of SASCOC, it was finally decided at the general meeting on 22 April 2017 that the latter option was the most appropriate option for now;
		4. the effect of these developments, is that SASCOC has now been recognised as the over-arching professional body for coaches in South Africa and in light thereof the position of CEEPSA within this development required collaboration between the various parties for the purposes of finding an amicable resolution;
		5. Dr Lloyd from SAQA indicated that this development will not take anything away from CEEPSA as a professional body in equestrian sport but that its position within the broader SASCOC coaching framework will require further discussion and placement; and
		6. during the *SASCOC meeting*, Ms Beckbessinger stated her unequivocal support for CEEPSA’s continued collaboration with SASCOC in this regard. She stated that:

*“I want to make it very clear that we have made every attempt to work with the Federation and with SAQA and we intend to continue”.*

* 1. This approach of collaboration and a commitment to seeking a resolution of the matter is quite different to the one taken in the hearings before the Committee.
	2. Advocate Wilhelm Edeling –
		1. in essence responded to the submissions made by Mr dos Santos and Mr Asken by suggesting -
			1. implicitly, if not explicitly, that the submissions made by Mr dos Santos and Mr Asken should be discounted because they were both involved in litigation with SAEF, and as a result thereof they both signed settlement agreements which were made orders of Court and in terms of which:
				1. Mr dos Santos effectively undertook not to hold any position within any structure under the auspices of SAEF for a period of five years; and
				2. Mr Asken resigned as Chairperson of Kylami Park Club and insofar as he derived any livelihood from equestrian sport, and to the extent that such activities fall under the auspices of SAEF, he will be bound by its Constitution and the relevant Codes of Conduct.
	3. Contrary to the position taken by Advocate Edeling about Mr dos Santos’ and Mr Asken’s participation in the hearings of the Committee, we are of the view that both Mr dos Santos and Mr Asken were entitled to participate in the hearings of the Committee, and that their participation did not constitute “*interference in the administration of equestrian sport*”, nor did it amount to participation in the “*administrative or Committee aspects of the sport*”, as contended for by him. If anything, it is the Committee’s view that their views assisted us in understanding the historical development of the sport from the days of SANEF to that of SASCOC and SAEF and their respective contributions raised important issues both for the sport in general and for SASCOC’s management of it.
	4. Adv Edeling contended, contrary to the views held by Mr dos Santos and Mr Asken, that: SAEF is well managed; SAEF is an appropriate amalgamation of all the disciplines within equestrian sport; and that SAEF’s relationship with SASCOC was on a sound footing.
	5. Ms Copeland -
		1. holds the legal portfolio in the South African National Equestrian School’s Association (“SANESA”);
		2. provided the Committee with a detailed affidavit, in response to Asken’s assertions about its activities. In the affidavit, she recorded amongst other things, that:
			1. SANESA is a voluntary organisation which is registered as a non-profit organisation and is an associate member of the SAEF;
			2. SANESA administers, co-ordinates and promotes competitive equestrian sport at school level throughout South Africa;
			3. SANESA denied the assertions made by Mr Asken about its financial income and activities, and provided information to support its denials.
	6. However, and in light of the fact that the issues raised by Mr Asken in this regard and disputed by SANESA, dealt with matters that do not fall within the terms of reference of the Committee and we do not deal with them in this report.

***Mind Sport SA (MSSA)***

1. On behalf of MSSA, Mr Colin Webster contended that -
	1. the suspension of MSSA from SASCOC several years ago was unlawful; and
	2. the conversion of SASCOC from a company to a voluntary association was unlawful and that this had a range of consequences including but not limited to breaches of the Companies Act 71 of 2008.
2. The main detail and circumstances of MSSA’s suspension was however not placed before the Committee and Mr Webster did not purport to be an expert in company law or a lawyer.

***SASAFF (the South African Sport Aerobics and Fitness Federation) and WPSAFF (the Western Province Sports and Fitness Federation)***

1. The Western Province Sport and Fitness Federation (WPSAFF) is a provincial sports confederation.
2. The South African Sports and Fitness Federation (SASAFF) is a national sports federation. We were advised that WPSAFF is affiliated to SASAFF.
3. Pursuant to several complaints made against SASAFF by Dr George Van Rensburg (in his own capacity and on behalf of his minor daughter, Emma who was involved in the sport) and Ms Lynette Earley (a former office bearer of SASAFF), SASCOC appointed Advocate Alex Pullinger during February 2013 to investigate the complaints.
4. Acting on the instructions of the complainants, Attorney David Becker from RD Becker and Associates Attorneys provided us with both written and oral submissions. In brief summary, it arises from his submissions *inter alia* that-
	1. after an extensive investigation, Advocate Pullinger presented his report and findings to SASCOC on 10 July 2015 (the Pullinger Report);
	2. the Pullinger process involved an investigation which was conducted at the behest of SASCOC into the complaints made by Dr Van Rensburg and Ms Earley against SASAFF and WPSAFF;
	3. Advocate Pullinger, in summary found that:
		1. SASAFF was guilty of: the intimidation of minors; discriminatory conduct; manipulation of scoring; maladministration in the award of national colours; and that the relationship between SASAFF and WPSAFF was “*prima facie* corrupt”; and
		2. there was misappropriation or maladministration of funding by WPSAFF and that senior officials on SASAFF were aware of this.
	4. Advocate Pullinger *inter alia* recommended that:
		1. Mr Keith Barends (President of SASAFF) and Ms Lynette le Roux (General Secretary of SASAFF) be barred from holding any leadership position in any SASCOC affiliated federation in the future;
		2. in light of the finding that Mr Barends and Ms le Roux are not fit and proper to hold office, recommended that the sporting codes administered by SASAFF are absorbed into other federations and that SASAFF be disbanded as the damage to its integrity is irreparable.
	5. Despite the Pullinger Report, no communication was ever received from SASCOC confirming that it had read or considered the Pullinger Report or that it intended to or did not intend to implement the findings and recommendations, if any.
5. In fact, when the issue of the Pullinger Report was raised with Mr Gideon Sam, the President of SASCOC (“Mr Sam”), during his testimony before the Committee, he offered no tangible, logical or rational explanation as to why SASCOC had not considered: the Report; the seriousness of the findings made in the Report; or the appropriateness or otherwise of implementing some or all of the recommendations in that Report.
6. Furthermore, during the course of the submissions made by Mr Barends and Ms Le Roux to the Committee, and apart from the technical issues raised by them about the validity of the Pullinger Investigation and Report, they offered no reasonable explanation why they or SASAFF did not participate in or co-operate fully with Advocate Pullinger in the course of the investigations into the various complaints made by Dr Van Rensburg and Ms Earley, that ultimately led to his findings.
7. It is of course surprising that in circumstances where SASCOC had instituted the Pullinger process, it did not make an effort to ensure that WPSAFF fully participated in a process that was aimed at investigating serious allegations of wrongdoing.

***Athletics South Africa (ASA)***

1. During the Committee hearings, Mr James Evans, the erstwhile President of ASA contended amongst other things that SASCOC was integrally involved in and interfered with the affairs of ASA, without its knowledge and prior to placing ASA under administration in 2013.
2. This contention was in our view broadly supported by, amongst other things-
	1. a pro-forma account rendered by ASA’s attorneys, dated 23 May 2013, from which it is apparent (from the fee narration) that notwithstanding the fact that the attorneys were instructed by ASA, they were consulting with and obtaining instructions from SASCOC officials about ASA. In this regard and by way of example, the fee narrations record:
		1. a meeting with “Tubby Reddy” on 4 April 2013 for 4 hours;
		2. a letter dated 4 April 2013 to “Tubby Reddy” thanking him for instructions, amongst other things;
		3. a memo dated 6 April 2013 addressed to SASCOC on ‘*dealing with budget for legal costs, difficulties with merits, our approach to application and disciplinary enquiry*’ which are issues that the attorneys were dealing with on behalf of ASA;
		4. several telephone calls to “Tubby Reddy” regarding ‘*ASA meeting on Sunday and discussing approach*’ and ‘*to discuss SASCOC’s approach in light of recent developments and possible placing of ASA in administration*’.
	2. When this proposition was put to Mr Reddy, he was unable to put up any formidable defence thereto.
3. Mr Alex Skhosana, the President of ASA, also provided oral submissions to the Committee. His contributions however relate to issues relevant to the SASCOC Board and the 2016 election process. We deal with his submissions in that context, later in this report.

***South African Football Association (SAFA)***

1. On behalf of the South African Football Association, its Chief Executive Officer, Mr Dennis Mumble, in broad terms submitted that:
	1. during 2012, Mr Reddy caused SAFA great embarrassment by engaging the media, and the *Sowetan* in particular, in relation to allegations concerning SAFA without first raising such issues with them;
	2. SASCOC had interfered in the internal affairs of SAFA; and
	3. SASCOC had distributed a dossier of information, without SAFA’s knowledge or consent purporting to expose widespread corruption in SAFA which coincided with the SAFA elections in 2013.
2. Mr Mumble’s submissions raised the important issue about the legal basis, if any, for SASCOC’s interference in the internal issues of sporting bodies or member federations.
3. Much of the conduct complained about is attributed to Mr Reddy and it was asserted by Mr Mumble that such conduct severely prejudiced the interests of SAFA, costing it millions of rands in sponsorship and great reputational damage.

***South African Natural Bodybuilding Association***

1. On behalf of the South African Natural Bodybuilding Association (SANBA), we received submissions from Mr Brandon Jacobs and Mr Hoosain Bester.
2. In broad summary they submitted that:
	1. their association had been in existence for more than 60 years;
	2. there are two associations that represent the sport of bodybuilding in South Africa, one of which is the International Federation of Bodybuilding South Africa (IFBB SA) and the other is SANBA; and
	3. the IFBB SA was recognized by SASCOC as the national federation representative of bodybuilding in South Africa in the absence of any consultation with SANBA, and in circumstances where SANBA had been repeatedly denied recognition by SASCOC.
3. SANBA’s submissions raised an important issue about the mechanism for the resolution of disputes between representative associations, and the appropriateness or applicability of SASCOC’s internal dispute resolution processes when SASCOC’s role and decisions are pertinent aspects of such disputes[[15]](#footnote-15).

***South African Wrestling Federation***

1. During the hearings, Mr Willie Meyer, from the South African Wrestling Federation raised the following important issues:
	1. Whether SASCOC is entitled to develop Olympic qualifying criteria that is different to or at odds with those stipulated in the IOC’s charter, especially in circumstances were the SASCOC Constitution requires “observance of the Olympic Charter in South Africa”?; and
	2. Whether the internal dispute resolution mechanisms of SASCOC is appropriate or applicable for the resolution of disputes that involve SASCOC’s conduct or decisions?

***Volleyball South Africa***

1. We received submissions from two officials from Volleyball South Africa (“VSA”), a member federation of SASCOC. Mr Kriba Reddy and Mr Size Vardhan. Much of their contentions did not relate to VSA’s interaction with SASCOC but rather their own views and perceptions about Mr Reddy.
2. Mr Vardhan, the Technical Director of VSA submitted that VSA’s payment of R171,800.00 to SS Griffin Risk Management Services (‘SS Griffin’) for services rendered to SASCOC (at the behest of Mr Reddy and without any knowledge of the SASCOC Board), was paid without consultation with or the consent of the VSA executive and membership[[16]](#footnote-16).
3. Mr Kriba Reddy, the President of VSA, made submissions that resonated broadly with those of Mr Reddy. Mr Kriba Reddy’s submissions, in essence, questioned the following events at SASCOC:
	1. The transgression of the SASCOC Constitution in the 2016 elections of the Board despite the views expressed by two senior counsel on the eligibility of membership of the Board;
	2. The media campaign waged against Mr Reddy;
	3. The legal fees incurred by SASCOC in relation to the investigation and disciplinary process instituted against Mr Reddy, Mr Vinesh Maharaj and Ms Jean Kelly; and
	4. The financial costs incurred by SASCOC on Board members to attend intentional sports events and the necessity for such expenditure.

***Western Cape Karate***

1. Mr Patrick Ross from Western Cape Karate (“WCK”) in broad summary contended, in the context of competing federations in the sport of karate, that:
	1. SASCOC had treated WCK differently from Karate SA and Marshall Arts South Africa in a number of respects including but not limited to the award of national colours for participating in international events; and
	2. SASCOC was inconsistent by allowing school rugby teams in one province to play rugby in other provinces, but that the same approach was not applied to WCK who were restricted to the geographical boundaries of the Western Cape.
2. Once again, these submissions, raised a common theme that was raised by other federations or associations with the Committee. It is the question about the appropriateness or applicability of SASCOC’s internal dispute resolution processes in disputes between federations or associations, and especially in matters that concern the conduct or the decisions of SASCOC.

**Summary of findings from the submissions received from member federations**

1. In light of the submissions made by member federations and provincial confederations, by entities who are not recognized by SASCOC, as well as those persons who are involved in the various sports in one form or another, our findings are as follows:
	1. SASCOC’s decision to impose one federation for all sporting disciplines in a particular sport on the basis of one common denominator and nothing more, must be reassessed or revisited in line with international norms and the requirements of the IOC, in the interest of managing sport in general and high performance sport, in particular;
	2. SASCOC’s failure to appoint a National Colours Board in terms of *the Act*, its constitution and internal regulations, and to manage the process of the award national colours to athletes is irrational and arguably unlawful;
	3. SASCOC’s award of national colours to athletes through its executive management and or the CEO, is irregular and unlawful;
	4. SASCOC’s failure and or refusal to consider the Pullinger report and to determine the appropriateness or otherwise of implementing some or all of its findings is inexplicable and irrational;
	5. SASCOC’s liaison with ASA’s attorneys about matters relevant to that federation during the course of 2013 was unprofessional and unethical;
	6. SASCOC’s interference in the internal affairs of SAFA during the course of 2012 and 2013, was unprofessional and unethical; and
	7. SASCOC’s internal dispute resolution processes is not only inappropriate but is not applicable for the purposes of mediating or determining disputes between federations and between federations and other sporting entities, especially in circumstances in which SASCOC or its officials are involved or where the dispute relates to or concerns the decisions made by SASCOC.

**SUBMISSIONS BY THIRD PARTIES OR INTERESTED INDIVIDUALS**

1. There were a number of submissions made by various third parties. These included:
	1. Wessel Oosthuizen, a writer, photo journalist and sports photographer, amongst other things, who was previously contracted by SASCOC to take photographs of athletes at international events;
	2. Larraine Lane, an experienced athletics coach who was formally employed by Athletics South Africa, a federation of SASCOC;
	3. Christiaan Mostert, whose daughter was involved in an Olympic sport;
	4. Graeme Joffe, a journalist;
	5. Leonard Chuene, the former president of Athletics South Africa and a former member of the SASCOC Board;
	6. Phindiwe Kema, a private individual who has a business interest in an entity known as Africa Race Group (Pty) Ltd; and
	7. Raymond Hack, a senior attorney who rendered legal services to SASCOC from time to time.

***Wessel Oosthuizen:***

1. Mr Oosthuizen’s main complaint was the manner in which his contractual arrangements with SASCOC had been terminated by Mr Reddy. Apart from having a contractual or independent contractor related issue, the complaint in our view was largely resolved by Mr Reddy’s departure from SASCOC.
2. Mr Oosthuizen also informed us about other SASCOC activities or conduct that fell within the terms of reference of the Committee, but which had largely been dealt with by other witnesses. These included, amongst other things, allegations about:
	1. the notorious “Griffin Report”; and
	2. the payment of the CFO’s (Vinesh Maharaj) renovations at his home by Fli-Africa, a SASCOC service provider.
3. It was Mr Oosthuizen’s initial view that despite the myriad of unethical and dishonest conduct that plagued SASCOC, the Minister should not have appointed this Committee of Enquiry and should have left it to SASCOC to resolve these issues. Mr Oosthuizen was however present during most of the Committee’s hearings and he clearly did not persist with this view.

***Larraine Lane***

1. Ms Lane has been a manager, coach, selector and supporter of South African athletics for a number of decades.
2. Ms Lane’s experience in the field of athletics is commendable. She was closely involved in the Caster Semenya saga and has in general played a significant role in the development of athletics as a high performance sport in South Africa.
3. Unfortunately, much of her complaint against SASCOC relates to the issues of her employment relationship with ASA, which was the subject of litigation both in the High Court and then in the Supreme Court of Appeal (SCA). Ms Lane was successful in the High Court but unsuccessful in the SCA.
4. Ms Lane also raised several issues relevant to the principle of “conflict of interest” in respect of particular members of the SASCOC Board, and their directorship of other companies, which is dealt with later in this report.

***Christiaan Mostert***

1. Mr Mostert provided us with the financial statements of the National Lotteries Board, which detailed the distribution of monies from the National Lottery Distribution Trust Fund Agency (“NLDTF Agency”) to SASCOC and to various federations. In addition thereto, he also made the following contentions:
	1. that there was something inappropriate or unlawful about the corporate status of SASCOC in terms of the Companies Act;
	2. that the SASCOC Board was not appropriately appointed in terms of its constitution;
	3. that the principle of women in sport is not promoted by SASCOC; and
	4. that several high-ranking officials in SASCOC have brought the sport into disrepute.
2. Much of Mr Mostert’s assertions in this regard were hearsay and some of these themes were in fact presented to us by members of the SASCOC Board. We accordingly deal with some of these issues later in this report.

***Graeme Joffe***

1. Mr Joffe is a journalist and he raised many issues in his written submissions which have been echoed in other submissions received by the Committee. These include, amongst others, the following contentions:
	1. the excessive legal bills incurred by SASCOC;
	2. the cost incurred by SASCOC on travel for members of the executive management, including administrative staff, such as Mr Reddy’s personal or executive assistant, Ms Monique Tar;
	3. irregularities associated with the use of public funds for costs not associated with the development of high performance sport; and
	4. the appropriateness of SASCOC’s internal dispute resolution mechanisms for matters that involve SASCOC.

***Leonard Chuene***

1. Mr Chuene was deeply concerned about the state of the management of South African sport and suggested a complete overhaul and restructure in relation thereto. In this regard his proposals in principle included, amongst others, the following:
	1. the creation of two structures for the management of sport, one dedicated to high performance sports and the second to other sports;
	2. the need for greater representation in the sport structures, incrementally from the remotest of areas to the more established areas, such as, the rural areas, the regions, the districts and the provinces, to ensure that sports talent is identified at inception and wherever it exists;
	3. that greater measures of corporate governance be established and implemented in the new structures;
	4. that consistent and regular monitoring and evaluation of the management of sport must be established;
	5. that an independent dispute resolution structure be implemented for the purposes of managing disputes in sport;
	6. that random lifestyle audits be implemented in respect of those persons who manage sport in South Africa; and
	7. that funding criteria be established not only for SASCOC but for the various federations and entities involved in sport.

***Phindiwe Kema***

1. Ms Kema questioned the legal, ethical and corporate governance issues in respect of:
	1. SASCOC’s involvement[[17]](#footnote-17) in the Thoroughbred Horseracing Trust (“the Trust”) that allegedly ‘was used’ to acquire Gold Circle Western Cape, an entity or a business associated with horse racing which Ms Kema through her company Africa Race Group (Pty) Limited, sought to acquire;
	2. Mr Sam’s role as a trustee in the Trust; and
	3. the appropriateness of the Trust’s acquisition of Gold Circle Western Cape in circumstances where –
		1. SASCOC should be focused on the promotion of sport in South Africa; and
		2. SASCOC through its financial interest in the Trust allegedly exercised an undue advantage in acquiring Gold Circle Western Cape.
2. The contentions raised by Ms Kema were, in our view, both broad and unsubstantiated for the following reasons:
	1. Although Ms Kema contended that Mr Sam received commissions or dividends in relation to his role as a trustee of the Trust, she did not despite her undertaking to do so, provide the details thereof to the Committee;
	2. The assertion that SASCOC had exerted an undue advantage in the Trust for the purposes of acquiring Gold Circle Western Cape was not substantiated; and
	3. The contention that SASCOC should be focused on the promotion of sport instead of exerting such an undue advantage is based on several assumptions that were not articulated or substantiated.
3. In any event, the Committee was informed that the appropriateness of the Trust’s acquisition of Gold Circle Western Cape had been referred by Ms Kema (or by Africa Race Group (Pty) Ltd) to the Competition Commission and to the Public Protector for investigation.

***General***

1. Some of the issues raised by the individual contributions are dealt with later in this report either in relation to the submissions made by the Board or by the staff and management of SASCOC. We accordingly make no findings in relation to the submissions made by this category of persons.
2. It is however necessary to record that Mr Hack, SASCOC’s long standing attorney, was invited by the Committee to answer certain questions for the purposes of clarification. His assistance in this regard was greatly appreciated.

**SUBMISSIONS BY MEMBERS OF THE BOARD**

1. In this section of the report, we set out a summary of the submissions that the Committee received from members of the Board. We intend to deal with the main pertinent themes that have emerged from these submissions later in this report.
2. Several members of the SASCOC Board provided the Committee with written and oral submissions. They included:
	1. Natalie du Toit, a former Olympic athlete, who was appointed by the Board as the representative of the Athlete’s Commission since February or March 2017;
	2. Merrill King;
	3. Muditambi Ravele;
	4. Hajera Kajee, the Deputy President of SASCOC;
	5. Kaya Majeke;
	6. Kobus Marais;
	7. Barry Hendricks, the Deputy President of SASCOC;
	8. Les Williams; and
	9. Gideon Sam, the President of SASCOC.

***Natalie du Toit***

1. In broad terms Ms du Toit made, *inter alia* the following submissions:
	1. That Board meetings in general did not deal with SASCOC’s core business of sport and high performance sport in particular;
	2. The Board meets 4 times a year and that consequently many decisions of the Board are conducted via email or round robin processes;
	3. That an inordinate amount of SASCOC’s finances was spent on legal fees, and that very little in comparison was being spent on athletes;
	4. That SASCOC has experienced great difficulty in securing sponsorship because the Board is effectively dysfunctional;
	5. That the Board is divided and is effectively made up of two opposing factions and that much of the discussions at Board level reflect political “in-fighting”; and
	6. That in certain circumstances information about pertinent issues is provided to selected Board members to the exclusion of others, and on other occasions the flow of information is controlled by some and only released to others when it is considered appropriate or convenient to do so.
2. Much of the information provided by Ms Du Toit was repeated in the submissions of several other members of the Board.

***Merrill King***

1. In broad terms, Ms King repeated the contentions made by Ms du Toit.
2. In addition, she informed us that she undertook a survey amongst a large majority of the federations who were affiliated to SASCOC to determine whether and to what extent they were being supported by SASCOC, and that the vast majority of them were of the view that –
	1. they received little, if any, support and/or guidance from SASCOC; and
	2. SASCOC was pre-occupied with ensuring that any engagement with participants in sport occurred through established processes, through the federations and other sporting structures, and that this approach elevated form above substance with little, if any, commitment to the management and development of high performance sport.

***Muditambi Ravele***

1. Ms Ravele has commendably, over the years, occupied senior positions in various sporting bodies including netball, football and boxing. She is currently the chairperson of wheelchair tennis and is the chairperson of a non-governmental organisation known as “The SA Women and Sport Foundation”. Amongst other things, she also serves on the SASCOC Board.
2. Ms Ravele raised several issues, including the following:
	1. SASCOC’s inconsistent application of its constitution in respect of the eligibility of persons seeking to be members of the SASCOC Board. In this regard she informed us that SASCOC had not in the past raised any interpretation issues about its constitution when Kobus Marais was previously appointed to the Board, but that his appointment inexplicably became a contentious issue in the 2016 election of board members; and
	2. SASCOC has not thought about or considered the nature or the calibre of persons that should be co-opted onto the Board in terms of the SASCOC constitution. In this regard she contended that:
		1. such appointments should be made in the interests and the advancement of sport and often it is not;
		2. in light of SASCOC’s difficulties in attracting sponsorship for its activities and for high performance sport in particular, some thought should be given to the co-option of members who have expertise in marketing and sponsorship; and
		3. in the context of SASCOC’s excessive expenditure on legal fees, she suggested the co-option of a member who is an expert on sports law, in order to reduce legal costs.

***Kobus Marais***

1. In his submissions, Mr Marais, took issue with Mr Reddy’s conduct prior to the Quadrennial General Meeting in 2016 (2016 QGM), in which he sought to exclude from the election process of Board members, those members who did not represent federations who were affiliated to SASCOC. In order to contextualise Mr Marais’ submissions and that of other members of the Board, regarding the membership of the Board, it is useful to record the following:
	1. Board members are, in terms of SASCOC’s constitution elected, or co-opted (where applicable) for a period of four years;
	2. Until the 2016 elections, it does not appear that Mr Reddy or any other members of the Board, raised issues with the interpretation of the SASCOC constitution, and whether or not the members of the Board had to be constituted, in the main, by members who were representative of national federations only;
	3. Prior to the 2016 election, Mr Reddy without consulting the Board, sought the opinions of two senior counsel, Advocates Beasley SC and Chaskalson SC, on the interpretation of relevant clauses of the constitution which was focused on who could or could not be members of the Board. Both senior counsel concluded, in general terms, that any member may nominate a person for election to the Board but that the persons so nominated could only be drawn from the federations;
	4. Despite the factual context, it is in any event apparent from a reading of the constitution that it is far from clear on this issue and in relation to various other issues, including the co-option of members of the Board;
	5. What is clear however, is that according to Mr Reddy, and according to the opinions sought by him, Mr Marais could not be a member of the 2016 Board as he did not represent a federation. Mr Reddy did not explain why he considered it appropriate to raise this issue in the 2016 elections and not in the previous elections, but it became implicitly clear to the Committee, after we heard several members of the Board, that Mr Reddy and Mr Marais were in opposite factions of the Board, and that there was an ulterior motive at play in relation to how and for what purpose this issue was raised; and
	6. Despite Mr Reddy’s protestations about the non-eligibility of Mr Marais and one or two other personalities as members of the Board, and the opinions of the two senior counsel, the Council of the 2016 QGM, which is the highest decision making body of SASCOC, decided on 26 November 2016 that members of the Board would be drawn from both federations and provincial structures, and that the constitution would be amended, post the elections, to ensure clarity on these issues.
2. In light of the decision of the 2016 QGM, it is our view that Mr Marais’ appointment, like that of other members of the Board in his position, is valid unless set aside by a court of law[[18]](#footnote-18).
3. There is one further issue that we raised with Mr Marais and with Ms Patience Shikwambana, the Chief Operating Officer who is currently the Acting Chief Executive Officer of SASCOC, both before and after the public hearings were completed. We requested sufficient information about the monies spent by SASCOC on international travel for members of the SASCOC Board and senior management for the last five years. In response to that request, Mr Marais provided us with some of the financial information, and articulated his assessment of the nature of that information in an email dated 11 June 2018, in the following terms:

“It was a struggle to get reasonable representative records of what you have requested, primarily because of unapproved management over-rides, which were now exposed. This correlates with the latest Audited Financial Statements where both the internal Audit Committee and the external Auditors found that irregular management over-rides took place of many expenses perceived to be unnecessary and possibly irregular.

Attached you will find 3 Report Sheets as per your request, which information I must admit I cannot confirm and/or guarantee the integrity of the transactions and quantum. I have marked the transactions (even those who seems to be fraudulent where we know for a fact Board members did not travelled and/or attend) ……………..”

***Hajera Kajee***

1. In her submissions, and although Ms Kajee contended that the elections were held contrary to the provisions of the SASCOC’s Constitution, she accepted that the 2016 QGM had decided that the members of the Board should be drawn from both the federations and the provincial structures.
2. In addition to this contention, Ms Kajee also asserted *inter alia* that –

Allegations of sexual harassment against Mr Reddy

* 1. she had no knowledge of the allegations of sexual harassment[[19]](#footnote-19) made by Ms Vardhan against Mr Reddy despite Ms Vardhan’s assertions to the contrary. This denial must, in the Committee’s view be seen in the context of one of the recurring themes that emerged from the hearings: that there were essentially two factions in the Board which not only divided the Board but rendered it dysfunctional. Ms Kajee was in the faction that supported Mr Reddy together with other Board members, including Mr Kaya Majeke and Mr Les Williams, amongst others. Why then did she deny knowledge of the allegations of sexual harassment, especially in circumstances where another Board member, Mr Barry Hendricks informed the Committee that Ms Kajee had knowledge of such allegations in advance of other Board members because she called him to inform him that Ms Vardhan had, at the relevant time, raised allegations of sexual harassment against Mr Reddy with her;

 Lack of consultation of board members on key issues

* 1. there was a complete lack of proper consultation of Board members in relation to key issues, such as for example the appointment of attorneys to deal with the disciplinary process against Mr Reddy, Mr Maharaj and Ms Kelly;

 Lack of corporate governance and financial reporting management of resources

* 1. corporate governance and proper financial management of SASCOC resources was non-existent. That this is so, was according to her evident from, amongst other things, the appointment of service providers, the monies expanded on legal matters, the non-disclosure of funds used for legal matters and the late receipt of minutes of meetings;

 Travel and per diem perks for board members

* 1. in terms of SASCOC’s Policy, board members are entitled to business class travel to international events, amongst other things, and to excessive daily stipends. Ms Kajee conceded during her oral submissions that she was a recipient of these perks.
		1. In relation to these perks, various policies were applicable over the years. For instance, for the period October 2014 to sometime in 2016, the Policy and Procedure Manual (‘the 2014 Policy’) was applicable, and for the period 2016 to date, the Financial Policy and Procedure (‘the 2016 Policy’) was and is applicable.

*The 2014 Policy*

* + 1. The 2014 Policy provided that:
			1. board members, the CEO and the CFO were entitled to travel business class on local and international travel[[20]](#footnote-20):
				1. only the President was entitled to be accompanied by his or her spouse who also travelled business class at SASCOC’s expense[[21]](#footnote-21); and
				2. other board members were entitled to travel with their spouses at their own cost or they could both travel economy class at SASCOC’s expense[[22]](#footnote-22);
			2. the personal assistants of the President and the CEO were entitled to economy class flights for local travel and business class flights for international travel[[23]](#footnote-23);
			3. the President was entitled to US $500 per day as a stipend[[24]](#footnote-24) for ‘international duty’, and the Deputy and Vice Presidents were entitled to US $350 per day for the same purpose. The amount of the stipend for other officials decreased depending upon where they were located on the hierarchy. For instance, other board members, the CEO and the CFO were entitled to US $200 per day, and if the need arose for other staff to travel, their entitlement would range from US $50 to US $100 per day; and
			4. accommodation costs would be covered by SASCOC and included ‘*three meals where such is not catered for by the organisers or multi-coded events*’[[25]](#footnote-25).

*The 2016 Policy*

* + 1. The 2016 Policy provides for similar benefits with some amendments thereto, including the following:
			1. The personal assistant is no longer entitled to business class travel on international flights, only economy class travel[[26]](#footnote-26);
			2. The range of the daily stipend for staff on ‘international duty’ has been increased from US $75 to US $150[[27]](#footnote-27); and
			3. The entitlement to meals when on ‘international duty’ has been removed.
1. Ms Kajee’s involvement in the NLDTF Distributing Agency raises an area of concern in the context of the following facts:
	1. She is a representative of the table tennis federation on the SASCOC Board, and she has during her membership of the SASCOC board simultaneously sat on the board of NLDTF Distribution Agency which distributes monies to both SASCOC and to various federations;
	2. It is apparent from the annual financial statements of the National Lotteries Board provided to us by Mr Mostert[[28]](#footnote-28), that for a number of years large amounts of money flowed from the NLDTF to the table tennis federation, in comparison to other federations; and
	3. Whilst it may be argued that it is the NLDTF Distributing Agency and not Ms Kajee that determines the amounts distributed to federations, her presence on the board of the agency raises the important issue of a conflict of interest between the interests of the table tennis federation, SASCOC and that of the NLDTF Distributing Agency. We will revert to this issue of the apparent ‘conflict of interests’ later in the report.

***Kaya Majeke***

1. Mr Majeke, like Ms Kajee, also raised the contention of the unconstitutionality of representatives from the provincial sports confederations on the SASCOC Board, but later conceded that he agreed with the decision of the general council at the QGM in November 2016 that the SASCOC Board should be comprised of representatives from both constituencies, and that a review of or amendments to the SASCOC Constitution should be undertaken after the 2016 QGM to clarify a number of issues including membership of the Board.

Lack of governance or compliance with policies and procedures

1. In addition to that contention, Mr Majeke, also raised the lack of governance and compliance with policies and procedures relating to the procurement of services, such as for example the appointment of Professor Mchunu to undertake a review of the SASCOC Constitution, and the costs related thereto. It was generally common course amongst a number of Board members that Professor Mchunu’s appointment was effected without consultation with or agreement of the Board; and perhaps more importantly without a quotation, or the sourcing of other quotations, or indeed any understanding of the costs associated with his appointment. It was also not disputed that SASCOC had not anticipated the amount of his initial bill for services rendered to SASCOC, and in light thereof SASCOC sought and obtained a generous reduction of his bill.

Little or no focus on SASCOC’s core business

1. During Mr Majeke’s oral testimony, he accepted that if one were to put a percentage to the time spent by the Board on dealing with the core business of SASCOC, particularly its focus on high performance sport, then the dismal figure of 10% of total time spent on SASCOC matters would be a generous allocation of time.

***Barry Hendricks***

The composition of the Board

1. Mr Hendricks took a different view about the composition of the Board. He contended that whilst some members of the Board came from associate bodies or provincial confederations, they also belonged to national federations with the exception of Mr Marais who did not come from a national federation. For instance, he stated that although he came from a provincial sports organization known as the Gauteng Sports Confederation, he also belongs to a national federation.
2. In other words, his view was that the Board was properly constituted as each member who represented a provincial sports confederation in fact also came from a national sports federation, and that the opinions of the two senior counsel that members of the Board had to be representative of national federations only, was in fact complied with. This view, in the Committee’s assessment:
	1. appeared to be a retrospective justification about the composition of the Board and was not placed before the QGM prior to the 2016 election process; and
	2. does not explain why certain members of the Board, and its President in particular, took the view that the SASCOC Constitution was unclear and then embarked on a constitutional review process aimed at rectifying all the ambiguities therein.

The appointment of service providers

1. Mr Hendricks confirmed that SASCOC did not in the appointment of its service providers, such as for example the entities or individuals who rendered legal services to them comply with its internal policies or at the very least engage them with a view to containing or limiting costs for SASCOC. He agreed that the legal costs incurred by SASCOC in the last year or two were astronomical and that there was no evidence that the SASCOC Board, and in particular its leadership, undertook any measures to contain those costs.

***Les Williams***

1. Mr Williams, like Ms Kajee and Mr Majeke, raised the issue about the constitutionality of the Board and the members that were later co-opted onto the Board. During his oral testimony, he too accepted that the general council of the 2016 QGM determined the matter contrary to the legal opinions obtained by Mr Reddy. In addition thereto, he raised the following issues:
	1. the President’s lack of consultation in relation to a range of matters, including the correspondence received from the Minister and his replies thereto;
	2. the excessive fees incurred by SASCOC in relation to the disciplinary and consequential processes against Mr Reddy, Mr Maharaj and Ms Kelly;
	3. the operation of factions within the Board and its detrimental effect on the operations of SASCOC; and
	4. the failure of the Board to consider and or implement the findings and recommendations in the Pullinger Report.

**FINDINGS IN RELATION TO THE SUBMISSIONS FROM THE BOARD**

1. In light of the submissions made by members of the Board, we find that:
	1. the issues of the eligibility of members of the Board in respect of the 2016 elections was raised and dealt with in the context of factionalism within the Board rather than in the interest of the organisation and in the interest of sport. Nevertheless, and in light of the principal established by the Supreme Court of Appeal in *Oudekraal Estates (Pty) Ltd v City of Cape Town[[29]](#footnote-29)*, it is our view that the election of Board members and their existence as a Board is both lawful and valid until set aside by a court of law;
	2. in the absence of compliance with appropriate governance and procurement processes and policies, an inordinate amount of SASCOC resources have in fact been spent on legal fees both in relation to disputes relating to the management of SASCOC and in relation to disputes that emanate from and between federations, provincial bodies or confederations and the like;
	3. there is in our view both a manipulation and a deliberate exclusion of some Board members as opposed to others in relation to the flow of information which is controlled by some and only released to others when it is considered appropriate or convenient to do so;
	4. there is a lack of consultation of Board members by the President of SASCOC on key issues including communications from and to the Minister;
	5. a miniscule amount of time of the Board is in fact spent on the statutory mandate given to SASCOC to promote and develop high performance sport;
	6. there is no compliance with the basic principles of ethics, transparency, accountability, good governance, or with policies and procedures for the purposes of managing the affairs of SASCOC, including its financial affairs;
	7. in light of the factionalism within the Board, it is a Board that is essentially dysfunctional;
	8. there is a significant lack of corporate governance in the management of SASCOC and especially in the management of its financial resources;
	9. there has been a complete mismanagement of funds used for costs associated with international travel for members of the Board and senior management;
	10. the excessive travel and subsistence perks for Board members, and for members of the management of SASCOC, amount to an abuse of SASCOC monies, and therefore of public funds, and such benefits are in our view are out of sync or incongruous with the principal of the efficient and effective use and management of public monies; and
	11. members of the Board who are in fact members of other Boards where money is raised or generated for SASCOC or for any of the federations, represents in our view a conflict of interest.

**SUBMISSION FROM EMPLOYEES AND MEMBERS OF MANAGEMENT**

1. Several senior employees of SASCOC provided the Committee with their submissions, including:
	1. Desiree Vardhan, the Manager: Coaches Development;
	2. Patience Shikwambana, the Chief Operating Officer who is currently the Acting Chief Executive Officer of SASCOC;
	3. Ezera Tshabangu, the General Manager: High Performance Department of SASCOC;
	4. Tubby Reddy, the former Chief Executive Officer of SASCOC until his dismissal in January 2018;
	5. Vinesh Maharaj, the former Chief Financial Officer of SASCOC until his dismissal in January 2018; and
	6. Jean Kelly, who was Mr Reddy’s executive PA, until her dismissal in January 2018.
2. For convenience, we include in this section of the report the contribution made by Gideon Sam, a non-executive director and President of SASCOC (‘Mr Sam’).

***Desiree Vardhan***

1. The information that Ms Vardhan provided to us concerned, in the main, serious allegations of misconduct on the part of Mr Reddy, including but not limited to allegations of sexual harassment, victimisation and conduct that she stated had violated her constitutional right to fair labour practices. Her concerns, or most of them, were however ultimately dealt with by the disciplinary proceedings that were undertaken by SASCOC against Mr Reddy which led to his dismissal in January 2018.
2. Whilst the Committee does not wish to traverse the issues dealt with by the disciplinary process and those that will be dealt with in the arbitration proceedings involving Mr Reddy, it is our view that Ms Vardhan raised two significant issues that require articulation in this report:
	1. The first, is that Ms Vardhan’s allegations of sexual harassment against Mr Reddy were, in our view dealt with by the Board in lackadaisical fashion. In this regard the following is pertinent:
		1. Ms Vardhan informed us that she had attempted to solicit the assistance of the Vice President of the SASCOC Board, Ms Hajera Kajee, at least one year prior to the submission of her internal grievance dated 21 April 2017, in relation to the allegations of sexual harassment, and that despite Ms Kajee’s re-assurance that she will take the matter up on her behalf, nothing was done to assist her. Whilst Ms Kajee denies that Ms Vardhan sought her assistance or told her about the allegations, we were informed by another Board member, Mr Barry Hendricks, that Ms Kajee had knowledge of these allegations in advance of any other Board member, and did nothing about it; and
		2. On 21 April 2017, Ms Vardhan submitted an internal grievance about these allegations, and it was only after her attorneys involvement that SASCOC began, some months later, a process of investigation, suspension and disciplinary proceedings that led to the dismissal of Mr Reddy.
	2. The second, is that Ms Vardhan’s allegations relating to the hacking of her computer at the SASCOC offices, was dealt with months after her complaints were brought to the attention of management. In this regard, Ms Vardhan informed us that since the submission of her grievance in April 2017, her computer was hacked. This included what is generally known in the technical world as ‘cyber-attacks’, ‘hacked e-mails’, ‘imposter created correspondence’, the distribution of such correspondence in her name, the blocking of WIFI, and the apparent access to her gmail account. She provided us with details of when and how this occurred, and confirmed that she had brought this state of affairs to the attention of management, who did nothing about it.
	3. These allegations are serious, they indicate not only a deliberate attempt to undermine Ms Vardhan’s work space and her right to privacy, but they establish an astounding inability by the management of SASCOC not only to manage the affairs of SASCOC but to protect: its employees; its correspondence, information and the integrity of its organisational information. Whilst Ms Shikwambana informed us, in her submissions to the Committee, that Ms Vardhan’s computer was being dealt with, it is clear that the ‘hacking’ began soon after Ms Vardhan had submitted her grievance in April 2017, and accordingly her computer was being dealt with or sorted out during February 2018, when Ms Shikwambana presented herself to the Committee.
	4. Perhaps even more importantly, it is the Committee’s view, that from an organisational point of view, conduct such as this requires more than a restoration of a computer free from ‘hacking’, it requires a comprehensive investigation to determine precisely: how this occurred; who was responsible for such conduct; whether the organisation’s IT system is vulnerable; what information was hacked and who is culpable for such conduct. Such an investigation was however not undertaken.

***Patience Shikwambana***

1. Ms Shikwambana did not provide us with written submissions. She responded to a range of questions put to her by the Committee relating *inter alia* to: the number and duration of Board meetings per annum; the award of national colours to athletes; and the expenses incurred by SASCOC for travel and accommodation for members of the Board and other officials of SASCOC, including the CEO and the CFO. Her evidence was largely neutral and she refused to be drawn into expressing an opinion into any contentious issues related to the Board or to the management of SASCOC.

The Board and Board meetings

1. In relation to this issue, Ms Shikwambana informed the Committee:
	1. that members of the SASCOC Board, including its President, were non-executive officials, that the President has an office at the SASCOC offices and is only present when circumstances warrant it;
	2. that the Board meets four times a year, and on each occasion the meeting commences at 11h00 and ends at approximately 15h00, and that the first hour is usually dedicated to the Minister’s speech and or discussions with the Minister. The Board therefore meets for approximately three hours, four times a year; and
	3. in response to a query as to whether three hours four times a year was enough time for the Board to deal with the business of high performance sport, she responded in neutral terms indicating that everything depended on the agenda for the meeting, ‘and in most cases they are able to run through the program.’
2. In essence, she indicated that in the context of its mandate to manage and promote high performance sport, a non-executive Board of 14 Board members, spend approximately three hours every quarter in a Board meeting to discuss the business of Olympic and other sports, which in the Committee’s view hardly gives them a sufficient amount of time to develop policies and procedures or take strategic decisions in the interests of South African sport, requiring them to ‘run through the program’, as she articulated it. Even in its neutrality, her contribution to the Committee’s work, told a telling and poignant story about how SASCOC is run.

The award of national colours

1. In relation to this issue, Ms Shikwambana informed the Committee that:
	1. SASCOC’s ‘National Sports Colours Regulations’ (an internal policy hereinafter referred to as the ‘regulations’) requires that the ‘National Colours Board’, must manage, ratify and determine the award of national colours to athletes; and
	2. that despite these regulations, the –
		1. National Colours Board has been dysfunctional for many years; and
		2. award of national colours to athletes is in the circumstances signed off by her in her post as the Acting CEO, and was previously signed off by her predecessor, Mr Reddy.
2. It is unclear to the Committee whether this function was delegated by the Board to the CEO, or whether the exercise of this function was simply assumed by Mr Reddy and later by Ms Shikwambana unilaterally, in order to ensure that SASCOC’s business was being performed by one or other functionary, albeit contrary to *the Act*, SASCOC’s constitution or its regulations. It appears to the Committee, that the exercise of this function by the CEO, on his or her own and in contravention of the Act and the SASCOC constitution, is not only unlawful, it also –
	1. lends itself to abuse and manipulation by a single official; and
	2. constitutes a serious dereliction of duty by the Board to manage a fundamental aspect of the management of sport in South Africa.

Travel expenses for members of the Board and employees of SASCOC

1. In relation to questions concerning the nature and extent of this expenditure for members of the Board and certain officials of SASCOC, Ms Shikwambana constantly referred to SASCOC’s Policy which governs such expenditure.
2. We have referred to the relevant aspects of the 2014 and the 2016 policies in the section which deals with the submissions received from Ms Kajee, and we will deal with the nature of these policies later in this report.
3. We have dealt with the issue about the actual financial expenditure on international travel benefits for members of the Board and senior management in the section that deals with Mr Marais’ submissions.

***Ezera Tshabangu***

1. Ms Tshabangu, like Ms Shikwambana, did not provide us with any written submissions. She made herself available to the Committee and accordingly answered questions that were put to her by members of the Committee.
2. It appeared during her testimony that she was highly qualified both in understanding sport from a physical point of view and from an academic perspective.
3. During the course of her responses she informed the Committee, *inter alia that* -
	1. the High Performance Commission which she led, had a staff of some 70 people and that the Commission generally interacts with member federations, assists them by initiating and leading discussions on their 4 and 8 year plans to ensure that athletes are supported in their quests to participate in international events such as the Olympics or the Commonwealth Games, amongst others;
	2. that despite this, the High Performance Commission was under staffed;
	3. she was of the view that funding was a major concern for SASCOC and for the High Performance Commission in particular and that SASCOC should be funded, like other international commissions, especially if we are, as a country, serious about promoting high performance sport; and
	4. in order to promote sport in South Africa, to develop and identify young talent and to make SASCOC accessible to young athletes, she suggested that it was necessary to establish an Athletes Commission in each federation and that those commissions should collaborate with the SASCOC High Performance Commission, so that young and promising talent can access the athletes commission rather than to do so through the current system which requires such athletes to move through successive and bureaucratic layers, beginning at club level, progressing through to the provincial structures, then the national structures and ultimately SASCOC.
4. Ms Tshabangu’s views were, in the Committee’s view progressive and required further engagement and debate for the purposes of developing not only sport in South Africa but especially for ensuring that SASCOC has a structure and organs within it that will ensure focus on the appropriate core businesses for which it has been established.

***Mr Tubby Reddy, the erstwhile CEO of SASCOC***

1. Mr Reddy’s services were terminated by SASCOC during January 2018 pursuant to internal disciplinary proceedings. The Committee was informed that his dismissal is the subject of arbitration proceedings at the CCMA.
2. Mr Reddy, and Mr Vinesh Maharaj (the erstwhile CFO of SASCOC) who was similarly terminated by SASCOC during January 2018, made extensive submissions to the Committee. We record what we consider to be the more important contentions raised by them.

Expenditure on board members

1. The financial expenditure of monies on SASCOC board members was a repetitive theme in the hearings before the Committee. In respect of this matter, Mr Reddy raised the rationality of the following expenses incurred on board members:
	1. the costs incurred in respect of the trip undertaken by all board members in 2015 to Auckland in New Zealand for the announcement of the country that would be awarded the Commonwealth Games in 2022. These costs included business class airfare, accommodation, per diems, and suits, amongst other things;
	2. the costs incurred for all Board members to attend other international events such as the Commonwealth Games, the Olympics and the Paralympic Games;
	3. Mr Sam’s decision to increase the per diem allowances of board members at the Rio Olympic games, in contravention of the applicable SASCOC policy;
	4. several trips undertaken by Mr Jerry Segwaba (a member of the SASCOC Board) to accompany Mr Sam, to certain events, including but not limited to:
		1. the 2013 world games in Cali, Columbia;
		2. the 2022 Commonwealth Games Bid Lodgment in London in March 2015 even though he was not a member of the Bid Committee;
		3. the CISA Conference in Kigali, Rwanda in March 2015; and
		4. the Judo Grand Prix in Budapest in June 2015; and
	5. the excessive costs associated with changes made to flights for members of the Board, over the years.

Constitutionality of the appointment of certain members of the Board

1. This issue, like the one above, was a recurring theme in the hearings of the Committee. In light of the fact that we have dealt with this issue in the submissions of the members of the Board, we do not intend to repeat them here.
2. There is however one other issue that Mr Reddy raised that was not raised by others. That is the co-option of members of the Board above the maximum number of 14 and the process of removal of one of the Board members to comply with the SASCOC Constitution. Mr Reddy demonstrated how Mr Sam insisted on a re-vote to ensure a result that suited him. The initial vote resulted in the retention of co-opted member, Mr Aleck Skhosana. Pursuant thereto, Mr Sam called a Board meeting, and pursuant to a re-vote, the votes were tied and Mr Sam effected a casting vote that resulted in the retention of co-opted member Mr Segwaba and the removal of Mr Skhosana. The application of a casting vote is not provided for in the Constitution.

The appointment of and arrangements with service providers

1. Mr Reddy raised the issue of the appointment of service providers on the instruction of the President, Mr Gideon Sam. These included, amongst others:
	1. the appointment of Professor Mchunu, without consultation or any agreement on fees, for the purposes of the constitutional review process; and
	2. the continued contractual arrangements with Highbury Safika Media at the behest of Mr Sam, despite the less than satisfactory performance of their deliverables.
2. Mr Reddy also raised the issue of the appointment of service providers in violation of the applicable SASCOC policy, such as:
	1. the appointment of Norton Rose Fulbright for the purposes of the disciplinary process against him, Mr Maharaj and Ms Kelly, whose costs exceeded the threshold of R2 million rand and their appointment should therefore have been subject to a competitive tender process.

Breakdown in the relationship

1. Mr Reddy readily conceded that the relationship between him and Mr Sam had deteriorated rapidly in recent times. During his oral submissions he also accepted that there were two opposing factions in the Board largely made up of himself, Mr Maharaj, Ms Kajee, Mr Majeke and Mr Williams in the one faction; and Mr Sam, Mr Hendricks, Mr Segwaba and Mr Marais in the other faction.
2. Mr Reddy pointed out that Mr Sam rarely consulted the Board on key issues. For instance, he referred to three letters that Mr Sam received from the Minister, the first of which was dated 22 May 2017 and the last two were dated 30 June 2017. All three of these letters dealt with the issues involving Mr Reddy. None of these were provided to the Board, and whilst Mr Sam read out the first letter to the Board at a Board meeting, he did not consult them on his responses to any of them, even though the Minister requested the Board’s response to the issues that he had raised.

Griffin Report

1. Mr Reddy contended that –
	1. he contracted SS Griffin Risk Management Services (Pty) Ltd (“SS Griffin”) to check for bugging devices at SASCOC and at his home after it was reported to him that Mr Sam had informed staff that their conversations were being recorded. Mr Reddy did not assert that he obtained a quotation from this entity prior to their appointment to render such services, or that he obtained quotations from other service providers for a comparative analysis;
	2. upon receipt of the Griffin Report, he with the assistance of Ms Kelly, altered its contents by including a plethora of information relating to his version of events at SASCOC, and then provided it to the Minister without informing him that the overwhelming information in the report was inserted by him; and
	3. the cost of the services rendered by this entity was paid for by him and by Volleyball SA on his behalf.
2. Although the Committee requested both Mr Reddy and Mr Maharaj, on several occasions, to provide proof of the payment of such costs to SS Griffin, they did not provide the relevant documentation. According to Mr Maharaj, SS Griffin’s costs amounted to approximately R400 000, and that approximately half of that amount was paid by Mr Reddy, and the other half by VSA.
3. In the absence of such information, it is in our view strongly arguable that there was something untoward, inappropriate or irregular in the payment or payments made to SS Griffin. It is also the Committee’s view that Mr Reddy’s conduct in manipulating the Griffin Report, by adding substantial amounts of information in the report as if it was authored by SS Griffin, and passing it off to the Minister as the Griffin Report, constituted conduct that was highly unethical, it was dishonest, and it amounted to a fraudulent misrepresentation. For her part in this process, Ms Kelly too is culpable of such conduct.

***Vinesh Maharaj and Ms Jean Kelly***

1. Mr Maharaj, the erstwhile CFO of SASCOC and Ms Kelly, the erstwhile personal or executive assistant of Mr Reddy, in essence supported the contentions made by Mr Reddy.
2. Mr Maharaj’s services, and that of Ms Kelly, were also terminated by SASCOC during January 2018 pursuant to internal disciplinary proceedings. Their matter like that of Mr Reddy’s is currently the subject of arbitration proceedings at the Commission for Conciliation Mediation and Arbitration (“the CCMA”).
3. Mr Maharaj, in startling fashion, informed the Committee about his use of the current service providers of SASCOC to arrange personal favours for himself and other members of the Board.
4. For instance, and by way of example, he indicated that Fli-Africa, an entity that provides travel services to SASCOC, paid for the renovation to his house in the amount of approximately R90,000.00 and that he has not yet begun a process for the repayment of that debt. In fact, when we asked Mr Maharaj questions about the ethics and the “conflicts of interest” related to this conduct, it was apparent that he did not appreciate the gravity of his conduct and simply assigned it to ‘usual practice’ within SASCOC.
5. Apart from associating herself with the contentions raised by both Reddy and Maharaj, Ms Kelly raised the additional issue of an allegation of racial discrimination against Mr Sam because he stated during a Board meeting held during May 2015 that he would not, during his time as President of SASCOC, endorse or appoint Ms Kelly as the *Chef De Mission* of Team South Africa. In her representations, Ms Kelly informed the Committee that she had in fact referred this matter to the Human Rights Commission and the issue is accordingly, in our view, in another forum for resolution.

***Mr Gideon Sam***

1. The following broad issues appeared from Mr Sam’s submissions on the last day of the Committee’s hearings:
	1. He effectively confirmed that much of the Board’s time was spent resolving disputes between federations rather than dealing with the issues relevant to its mandate, and in particular, the development and support of high performance sport; and
	2. He agreed that the structure of South African sport, including the role and structure of SASCOC within that framework is problematic and has generated the problems that SASCOC now faces;
	3. He concurred that he rarely consulted with members of the Board in the decision making process at SASCOC, including but not limited to:
		1. his failure to disclose correspondence from the Minister to the Board, and from him to the Minister;
		2. his failure to discuss or consult with members of the Board about appropriate responses to the Minister;
		3. his appointment of attorneys in relation to the disciplinary process that was instituted against Mr Reddy, Mr Maharaj and Ms Kelly;
		4. his appointment of the legal team to oversee the review of the SASCOC Constitution;
		5. his approval of benefits to Board Members that contravened internal policy of SASCOC; and
		6. the reports to the relevant Portfolio Committee.
2. In the context of his concurrence of the matters referred to above, it was also apparent to the Committee that -
	1. Mr Sam had a contorted view about his role as the President of the organization. It was a view that was premised on his perception that in his role as President he was entitled to make unilateral decisions in relation to the affairs and business of SASCOC, that should in the context of the principle of transparency, accountability and good governance be made by the Board unless otherwise delegated to him;
	2. Mr Sam was aware of the factions within the Board, of the destructive effect of such factionalism on the operations of SASCOC, but did nothing about it; and
	3. his lack of leadership in considering the outcomes of investigations held at the behest of SASCOC, such as for instance the issues relevant to Karate SA and those relevant to the fitness industry in the form of the Pullinger Report, had a profound effect on the credibility of SASCOC and its role in the sporting world.
3. Mr Sam also confirmed that he sat on a number of Boards from which he received ‘a lot of commission’ without specifying the details thereof.

***Findings***

1. In relation to this category of individuals, we find that –
	1. the Board dealt with Ms Vardhan’s allegations of sexual harassment in a lackadaisical fashion;
	2. the management of SASCOC dealt with the ‘hacking’ of Ms Vardhan’s computer inadequately, and failed to undertake an enquiry or an investigation aimed at establishing the circumstances in which the hacking occurred; who was responsible or culpable for such conduct, and whether the organisation (and its systems or information) was at risk in consequence thereof;
	3. the number of hours spent by the Board in Board meetings, was wholly inadequate and was not conducive for the purposes of carrying out its statutory mandate;
	4. the CEO’s exercise of the function of awarding colours contrary to *the Act*, is not only open to manipulation, it was unlawful;
	5. the Board’s acceptance of the CEO’s exercise of the function of awarding colours contrary to *the Act*, constitutes a dereliction of the duty of the members of the Board;
	6. the expenditure of SASCOC’s finances on international trips[[30]](#footnote-30) for members of the Board[[31]](#footnote-31), and for members of the management of the SASCOC –
		1. constitutes a complete mismanagement of and an abuse of SASCOC’s financial resources; and
		2. in the absence of appropriate policies and procedures to govern the details and limitations of such expenditure, contravenes the principles of transparency, accountability, good governance, and efficient and effective expenditure that is required of public institutions;
	7. Mr Sam’s exercise of the casting vote in relation to the members co-opted onto the Board in 2016 was irrational, although the retention of Mr Segwaba as opposed to Mr Skhosana, as a member of the Board must be governed by the *Oudekraal principle[[32]](#footnote-32)*;
	8. Mr Reddy’s conduct in relation to –
		1. the appointment SS Griffin, his manipulation of the Griffin Report, and his submission thereof to the Minister constitutes: a contravention of the policies of SASCOC; unethical and dishonest conduct; and amounts to a fraudulent misrepresentation; and
		2. his allegations concerning payment to SS Griffin (from his monies and from VSA) for services rendered by that entity to SASCOC was not substantiated, and appears to be in appropriate and irregular.
	9. Mr Maharaj’s conduct in using SASCOC’s service providers for personal favours for himself and for other members of the Board, constitutes conduct akin to corruption;
	10. Ms Kelly’s conduct in relation to the Griffin Report is similar to that of Mr Reddy, and her conduct suffers the same fate as his;
	11. Mr Sam’s mode of operation as the President of SASCOC, and his leadership style and function are highly inappropriate and not suited for a public institution like SASCOC. His unilateral approach to the management of SASCOC is almost dictatorial in nature, lacks consultation, is not transparent and does not comply with the basic principles of accountability. Without derogating from the generality of this finding, we find in particular that –
		1. he refused and or failed to consult with Board members prior to making and effecting decisions on behalf of SASCOC;
		2. he refused and or failed to comply with the policies of SASCOC for the appointment of service providers, and this often resulted in astronomical costs for SASCOC;
		3. he approved benefits for members of the Board in contravention of SASCOC’s policies;
		4. his lack of leadership in considering the outcomes of investigations held at the behest of SASCOC was profound and resulted in irrational conduct; and
		5. his receipt of commissions from being on a number of Boards (the detail of which he claimed he did know at the hearing) raises worrying concerns about the principle of conflict of interests, and must be investigated.

**PERTINENT ISSUES**

1. During the Committee’s hearings, there were in our view four pertinent themes that emanated from the submissions made by various individuals (“the four themes”), and two additional issues that emanate from a construction of *the Act* (“the two additional issues”).
2. *The four themes* include: a) the issues raised in the 2016 election of Board members; b) the perks provided to members of the Board and to select members of the management of SASCOC; c) the procurement of services or service providers by SASCOC; and d) the ‘conflict of interests’ raised by the position of certain members of the SASCOC Board who sit on other boards, and their receipt of commissions or dividends in consequence thereof. We deal with each of these issues below:

***The 2016 election of Board members***

1. During the 2016 elections which saw the appointment of a new Board for a period of 4 years, issues relating to the eligibility of membership of the Board were raised. We have dealt with the circumstances in which such issues were raised, and the agendas of the personalities involved in that saga. We raise this issue in this part of the report for two purposes: first, to highlight the legal issues raised by that event; and second to recommend an overhaul of the SASCOC constitution, despite its recent revision, to take into account amongst other things, a proposed new structure for the promotion and development of sport, to cater for advisory services, to emphasize the criteria for members, and co-opted members of the Board, and to provide for matters ancillary thereto for the effective, transparent and accountable management of the affairs of SASCOC. We will deal with these recommendations at the end of the report.
2. Prior to the 2016 elections, Mr Reddy raised the issue of the eligibility of certain members of the Board, particularly the appointment of Mr Marais, and the withdrawal or the release of one of the co-opted members of the Board, Mr Skhosana. These issues were raised in the circumstances of a Board plagued by factionalism, and in our view, it was aimed at achieving a desired result. Be that as it may, it is necessary to turn to the provisions of the SASCOC constitution[[33]](#footnote-33) that deal with the issues of eligibility.
3. The relevant provisions of the previous SASCOC Constitution which governs the nomination and eligibility of members for the SASCOC Board provide as follows:

*12.2:*

 *Only nominees of Members in good standing and who are citizens and permanent residents of the Republic shall be eligible for election as a member of the Board.*

*12.8:*

 *Any Member in good standing shall be entitled to submit the names of nominees from any federation for the positions of President, Deputy President, Vice President and the Board members referred to in articles 11.2.1.1, 11.2.1.2 and 11.2.1.3. It is recorded that no more than one person per Federation shall be entitled to be elected to serve as a Board member as contemplated in articles 11.2.1. and 11.2.2.*

*4.3.5:*

 *“Member” means a National Sports Federation, an Associate Member, Special Organisational Member, IOC Member and Ex Officio Member, Provincial Sports Confederation and an Athletes’ Commission and Honorary members.*

*4.3.8:*

 *“National Sports Federation” means a national governing body of a code of sport or recreational activity in the Republic recognised by the relevant international controlling body as the only authority for the administration and control of the relative code of sport or recreational activity in the Republic and which successfully applies for recognition as the sole governing body of that sport in the Republic in terms of the Constitution of SASCOC. The National Sports Federation is the only body with the authority to sanction national or international events relevant to their sports code, to be held in the Republic with the proviso that the Bidding and Hosting regulations are adhered to.*

1. In light of these provisions of the SASCOC constitution, Mr Reddy sought advice from two senior advocates from the Johannesburg Bar as to whether members of the Board could be constituted from national federations only, or from both national federations and provincial confederations.
2. In an opinion dated 27 October 2016, Advocate D N Beasley SC, concluded, with reference to the SASCOC Constitution that:

 *“Whilst every member has the right to put forward nominees for the various positions, such nominees are limited to members of a sporting federation. In other words, associate members, special organisational members, IOC members etc are not eligible to stand for election to the SASCOC Board”.*

1. In a further opinion dated 14 November 2016, Advocate Matthew Chaskalson SC opined as follows:

 *“In terms of Article 12.8 any member may nominate a person for election to the Board under that article, but the person so nominated cannot be drawn from any member of SASCOC, they must be drawn only from Federations.*

 *This requirement of Article 12.8 applies to the election of President, the Deputy President, the Vice President and the five additional Board members contemplated by Article 11.2.1.4.”*

1. Despite these opinions, and at the SASCOC QGM in 2016, members of the Board were appointed pursuant to an election process which included nominations from national federations and provincial confederations. The issue that was raised by Mr Reddy and certain members of the Board that were effectively in his faction, was that the 2016 election should be declared null and void as it contravened the provisions of the SASCOC Constitution. It is the Committee’s view that despite the interpretation of the two senior advocates, the Council of the QGM decided otherwise and the question is whether the appointment of the Board in November 2016 must in the circumstances be regarded as unlawful and invalid? Put another way should the appointment of the Board in November 2016 be disregarded? The answer to that question is ‘no’ and the appointment of the Board must be regarded as a factual consequence. In light of the *Oudekraal principle* established by the Supreme Court of Appeal in *Oudekraal Estates (Pty) Limited v City of Cape Town and Others* [2004] 3 ALL SA 1 (SCA) at para 26 where a similar question was asked and was answered as follows:

 *“…….. But the question that arises is what consequences flow from the conclusion that the Administrator acted unlawfully. Is the permission that was granted by the Administrator simply to be disregarded as if it had never existed? In other words, was the Cape Metropolitan Council entitled to disregard the Administrator’s approval and all its consequences merely because it believed that they were invalid provided that its belief was correct? In our view it was not. Until the Administrator’s approval (and thus also the consequences of the approval) is set aside by a court in proceedings with judicial review it exists in fact and it has legal consequences that cannot simply be overlooked. The proper functioning of a modern State would be considerably comprised if all administrative acts could be given effect to or ignored depending upon the view the subjects take of the validity of the act in question. No doubt it is for this reason that our law has always recognised that even an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set aside”.*

1. The same principle must also then be applied to any allegations of invalidity or unlawfulness in relation to the appointment of the co-opted members of the Board and the reversal of that decision in relation to Mr Skhosana.
2. As indicated earlier in this Report, SASCOC undertook a revision of its constitution and adopted a revised constitution whilst the investigative work of the Committee was still on going. The revised versions of the relevant articles are as follows:
	1. Article 12.2:

*Only nominees of* ***who are*** *in good standing* ***with both SASCOC and their National Sport Federation*** *and who are citizens and permanent residents of the Republic shall be eligible for election as a member of the Board.* ***Such National Sports Federations shall also be in good standing.***

[The amendments are highlighted and underlined]

* 1. Article 12.8

*Any Member in good standing shall be entitled to submit the names of nominees from any* ***National*** *federation for the positions of President, Deputy President, Vice President and the Board members referred to in articles 11.2.1.1, 11.2.1.2 and 11.2.1.3. It is recorded that no more than one person per Federation shall be entitled to be elected to serve as a Board member as contemplated in articles 11.2.1. and 11.2.2.* ***Such nominee must be endorsed by the relevant National Sports Federation****.*

* 1. The definition of ‘Member’ which was article 4.3.5 in the previous Constitution, and is article 2.40 in the revised Constitution has not been amended, and the definition of ‘National Sports Federation’ which was article 4.3.8 of the previous Constitution and article 2.43 of the revised Constitution remains essentially the same except for the addition of the following sentence at the end of the definition:

***An approved Composite Federation for such a sport shall be regarded as a National Federation for the purposes of SASCOC membership, privileges and obligations.***

1. At a cursory glance of these revisions, it is apparent that –
	1. the deletion of the term ‘members’ in article 12.2 in the revised Constitution and the substitution in its stead of the word ‘who’ does not achieve the consequence that representatives of confederations can also be members of the Board, because the balance of the article requires a nominee to be –

*in good standing* ***with both SASCOC and their National Sport Federation*** *and who are citizens and permanent residents of the Republic shall be eligible for election as a member of the Board.* ***Such National Sports Federations shall also be in good standing;***

* 1. the link between the nominee for a position on the Board and a National Federation is reinforced in the latter part of that article; and
	2. both Adv Beasley SC and Chaskalson SC also relied on the provisions of article 12.8 to reach the conclusion that only members of National Federations may be members of the SASCOC Board, and that provision has not been altered in the revised Constitution.
1. It is necessary, despite the *Oudekraal principle*, to point out that there are numerous other sections of the revised SASCOC constitution that requires revision. Amongst others, the provisions dealing with the co-option of members of the Board, the decision-making process in the event that there are more members co-opted than anticipated by the Constitution, the appointment of a specialist advisory Board and their inter-relationship with the members of the Board[[34]](#footnote-34), as well as the criteria for the eligibility of the Board requires careful and thorough scrutiny. In addition thereto, it is our view that the provisions in the Constitution that deal with SASCOC’s powers and duties, such as its ability to inquire into the administrative and or financial affairs of members, and other similar provisions, are highly intrusive, questionable and require statutory alignment and or regulation[[35]](#footnote-35).

Policies

1. During the course of the Committee’s hearings, we received evidence of the application of and sometimes the transgression of the SASCOC policy with respect to two main themes: a) the benefits that members of the Board receive, including travel perks and excessive stipends; and b) the procurement of services by SASCOC without any adherence to its policies. It is necessary therefore to look at the relevant policies in relation to these matters:

 ***Travel perks for Board members***

1. We have referred to the relevant policy and clauses thereof in the section that summarises the submissions from Ms Kajee. For convenience, we repeat that information here.
2. In relation to these perks, various policies were applicable over the years. For instance, for the period October 2014 to sometime in 2016, the Policy and Procedure Manual (‘the 2014 Policy’) was applicable, and for the period 2016 to date, the Financial Policy and Procedure (‘the 2016 Policy’) was and still is applicable.

*The 2014 Policy*

1. The 2014 Policy provided that:
	1. board members, the CEO and the CFO were entitled to travel business class on local and international travel[[36]](#footnote-36);
	2. only the President was entitled to be accompanied by his or her spouse who also travelled business class at SASCOC’s expense[[37]](#footnote-37);
	3. other board members were entitled to travel with their spouses at their own cost or they could both travel economy class at SASCOC’s expense[[38]](#footnote-38);
	4. the personal assistants of the President and the CEO were entitled to economy class flights for local travel and business class flights for international travel[[39]](#footnote-39);
	5. the President was entitled to US $500 per day as a stipend[[40]](#footnote-40) for ‘international duty’, and the Deputy and Vice Presidents were entitled to US $350 per day for the same purpose. The amount of the stipend for other officials decreased depending upon where the particular post was located on the hierarchy. For instance, other board members, the CEO and the CFO were entitled to US $200 per day, and if the need arose for other staff to travel, their entitlement would range from US $50 to US $100 per day; and
	6. accommodation costs would be covered by SASCOC and included ‘*three meals where such is not catered for by the organisers or multi-coded events*’[[41]](#footnote-41).

*The 2016 Policy*

1. The 2016 Policy provides for similar benefits with some amendments thereto, including the following:
	1. the personal assistant is no longer entitled to business class travel on international flights, only economy class travel[[42]](#footnote-42);
	2. the range of the daily stipend for staff on ‘international duty’ has been increased from US $75 to US $150[[43]](#footnote-43); and
	3. the entitlement to meals when on ‘international duty’ has been removed.
2. Both the 2014 and the 2016 policies do not indicate when travel on the relevant class will be permitted, nor does it provide for any limit on the duration of the trip. And although both policies indicate that the *per diem* benefit is applicable for ‘international duty’, it does not define that term. However, it appears from both policies that the term ‘international duty’ is associated with ‘multi-coded games’. That term is also not defined and one must assume that these benefits, particularly the *per diem* benefit is applicable for attendance at international sporting events.
3. In the context of these provisions we were informed that it has been practice at SASCOC in relation to international sporting events, that SASCOC covers the costs of travel and accommodation for all Board members usually for the duration of the event or otherwise for half of the period of the event, whether or not such Board members are involved in high performance sport which are usually showcased at such events.
4. These perks are in our view excessive by any standard that applies in the public service. In addition thereto, both the 2014 and the 2016 policies are wholly inadequate in setting out the parameters and the limitations of such benefits.

***Procurement of services***

1. In terms of the 2014 policy, the procurement of services for SASCOC is subject to the following basic principles:
	1. First, that the procurement of services for SASCOC must be undertaken strictly in terms of the policy, and provided that the expense is within an approved budget[[44]](#footnote-44);
	2. Second, that a minimum of three quotes must be obtained for any procurement of goods or services over R100 000[[45]](#footnote-45), and that any contracts concluded for such expense must be approved by the CEO and the CFO[[46]](#footnote-46); and
	3. Third, that any procurement of services that is over R10 million is subject to a competitive bidding or tender process[[47]](#footnote-47), and that any recommendation in that regard must be referred to the board for approval[[48]](#footnote-48).
2. In terms of the 2016 Policy, the procurement of services is subject to the following basic principles:
	1. First, as long as the expense is budgeted, a minimum of three quotes must be obtained for the procurement of services, which must be signed off by the CEO and the CFO[[49]](#footnote-49);
	2. Second, where an expense is not budgeted but does not exceed the threshold of R5 million, a minimum of three quotes must be obtained and any procurement of services is subject to the approval of the finance committee[[50]](#footnote-50); and
	3. Third, where an expense is not budgeted and exceeds the amount of R5 million, the procurement of services is subject to a tender process[[51]](#footnote-51).
3. Even on a cursory glance of these provisions, it is clear that the policies are woefully inadequate. Since it is relevant to deal with the current policy in place, we focus now on the 2016 Policy. This policy envisages that -
	1. any expenses incurred by the CEO within an approved budget, for whatever amount, is only subject to a three-quotation system; and
	2. any expenses incurred for non-budgeted items, depending upon whether it meets the threshold of R5 million or exceeds it will be subject to either the approval of the finance committee, or no approval at all as long as it is subject to a tender process.
4. This means that the CEO ultimately determines when expenses are incurred and there are no explicit checks or balances for his decisions, in this regard. In fact, it seems that the ‘checks’ or ‘limitations’ for expenditure that is not budgeted are more stringent than those that are budgeted.
5. It is our view that the 2016 Policy, much like that of the 2014 Policy is extremely sparse in content or detail. It does not provide for appropriate checks and balances, the threshold for expenditure is too high and the limitations are too weak. In short, the 2016 Policy does not provide for clear, simple and comprehensive processes which are aimed at ensuring that those who spend SASCOC monies are accountable, and those who are appointed as SASCOC’s service providers are appointed equitably, transparently and objectively, in circumstances where SASCOC’s interests are protected.
6. It is not surprising then, that Mr Sam’s appointment of the legal teams that rendered services to SASCOC for the purposes of the disciplinary proceedings and for the constitutional review process did not meet these basic principles. It is also not surprising that Mr Reddy’s appointment of SS Griffin for the debugging process was done in the absence of any Board knowledge and without securing three quotations. It is in these circumstances that we recommend a thorough analysis of all of SASCOC policies with the view to ensuring that any future policies are compliant with the requirements of the Public Finance Management Act 29 of 1999, the treasury regulations, and labour legislation, amongst others.

***Conflict of Interest***

1. During the course of the Committee’s hearings, we were informed that several members of the SASCOC Board sat on the boards of other entities, some of whom were invariably linked with the interests of SASCOC. In this regard, it was brought to our attention that one or more members of the SASCOC Board were at one stage or another –
	1. members or trustees of the NLDTF Distributing Agency or the NLDTF Fund, and the Thoroughbred Horseracing Trust;
	2. members of Boards of other entities including but not limited to Grinde Investments (Pty) Ltd and Phumelela Gaming and Leisure Limited; and
	3. in consequence of such external appointments received commissions and or dividends.
2. Although the committee requested further information in relation to these matters, none was forthcoming. These issues, in our view, give rise to potential conflicts of interest and warrant a separate and forensically audited investigation.

***The two additional issues***

1. There are in our view two additional issues that emanate from the provisions of *the Act*. The first is whether the respective roles of the Department and SASCOC are clearly delineated in *the Act* in respect of the administration, management and promotion of sport in South Africa. The second issue is whether *the Act* provides for appropriate dispute resolution processes for disputes between: member federations; a federation and an association or entity involved in sport; between these parties especially in circumstances where the conduct or the decisions of SASCOC are pertinent matters.

*Delineation of roles between the Department and SASCOC*

* 1. We have, at the commencement of this report dealt with the relevant provisions of the *Act* that set out the respective roles of the Department and SASCOC. What emerges from that brief analysis is the Department’s profound role in determining the general policy to be pursued with regard to sport and recreation, and SASCOC’s obligations (as well as those of the national federations) in implementing and complying with such policy.
	2. What is less clear in the *Act* are the details of the parameters of the obligations assigned to the Department on the one hand, and SASCOC on the other hand. One must therefore ask the obvious question: where do the obligations of the Department and the Minister start and end, and where precisely do the obligations of SASCOC begin and end? Put differently, *the Act* is less clear on precisely what the nature of the oversight role is of: the Department and of the Minister in relation to SASCOC, and the other entities involved in sport; and of SASCOC in relation to the federations and the other entities involved in sport.
	3. In order to demonstrate this lack of clarity, regard must be had to certain provisions in *the Act*:
		1. Section 2(1) requires the Minister to recognize SASCOC which will be the ‘*national co-ordinating macro-body for the promotion and development of high performance sport in the Republic*’; For this purpose, SASCOC may, in terms of section 2(2) develop guidelines for the promotion and development of high performance sport;
		2. The Minister, on the other hand, is entitled in terms of section 4(3) to ‘*determine general policy to be pursued with regard to sport and recreation*’, and in the event that there is non-compliance by a federation, or the federation fails to develop its sport or recreation activity, then it is the Minister and not SASCOC who must advise the Minister of Finance thereof;
		3. In order to ensure compliance with its statutory obligations, section 3A requires that SASCOC and the national federations must enter into service level agreements with the Department, and it is possible therefore that the Department may enforce such contractual obligations in appropriate circumstances; and
		4. Whilst the Minister determines the general policy in respect of most aspects of the administration and management of sport, both SASCOC and the Department are empowered to address the education and training needs of high performance sports[[52]](#footnote-52).
	4. These and other provisions in *the Act* are less clear of the parameters of the oversight role played respectively by the Department and SASCOC.

*Dispute resolution processes in the Act*

* 1. Section 13 of *the Act*, provides as follows:

 (1)

(a) Every sport or recreation body must, in accordance with its internal procedure and remedies provided for in its constitution resolve any dispute arising among its members or with its governing body.

(b) The sport or recreation body must notify the Minister in writing of any dispute contemplated in paragraph (a) as soon as it become aware of such dispute.

(2)

(a) Where the dispute cannot be resolved in terms of subsection (1), any member of the sport or recreation body in question who feels aggrieved, or the sport or recreation body itself, may submit the dispute to the Sports Confederation.

(b) The Sports Confederation must notify the Minister in writing of any dispute submitted to it in terms of paragraph (a)

(3) The Sports Confederation must, in relation to any dispute referred to in subsection (1) or (2) –

(a) notify the relevant parties of the allegations;

(b) invite the parties to make representations to it;

(c) convene where necessary an inquiry into the dispute; and

(d) in accordance with the provisions of the Promotion of Administrative Justice Act, 2000 …. Notify the parties of the decision.

(4) The Sports Confederation may, at any time, of its own accord, cause an investigation to be undertaken to ascertain the truth within a sport or recreation body, where allegations of –

(a) any malpractice of any kind, including corruption, in the administration;

(b) any serious or disruptive divisions between factions of the membership of the sport or recreation body; or

(c) continuation or maintenance of any institutionalized system or practice of discrimination based on gender, race, religion or creed, or violation of the rights and freedoms of individuals or any law,

have been made, and may ask the Minister to approach the President of the Republic to appoint a commission of inquiry referred to in section 84(2) of the Constitution.

* 1. These provisions demonstrate, in our view, that section 13 only provides for SASCOC’s involvement in the resolution of disputes that emanate between members of a sport and recreation body (such as a federation), or between such members and the governing body of such an entity. Section 13 accordingly does not give SASCOC the power to resolve disputes between federations or between a federation and SASCOC.
1. In addition to this weakness, it is the view of the Committee, that in light of the public nature of the functions assigned to both the Department and SASCOC, *the Act* must at the very least provide for –
	1. the establishment of SASCOC as an entity, accountable for its functions and obligations to the Department, and for its financial obligations to the Minister or the Department of Finance[[53]](#footnote-53);
	2. clarity of the precise roles of the Department and SASCOC in the administration and management of sport;
	3. an external and independent dispute resolution process for disputes between: member federations[[54]](#footnote-54); federations and other entities involved in sport; and such parties in relation to the conduct and decisions of SASCOC; and
	4. criteria for membership, and composition of the Board of SASCOC, including an independent specialist advisory body made up of experts in sport; law, marketing and fundraising to be accessible to the Board and to the Department.

**RECOMMENDATIONS**

1. In the light of our findings we make the following recommendations, in the interest of sport:
2. *The Act*:
	1. We recommend that *the Act* should be amended to include:
		1. the details of a revised structure of SASCOC, which is set out in detail in paragraph 166 below;
		2. clarity about the roles of the Department, SASCOC and the entities that fall into the definition of a ‘sport and recreation body’, as well as their respective oversight roles;
		3. SASCOC’s powers and duties, and its obligations to the Department, and to each and every *sport and recreation body*;
		4. an external and independent dispute resolution body in terms of *the Act*, for disputes: between sport and recreation bodies and between the latter and SASCOC; and
		5. the details of what should be contained in SASCOC’s Constitution, including: criteria for the eligibility of members to the Board; a prohibition on the receipt of commissions from other entities in prescribed circumstances, as well as other issues relevant to the principle of ‘conflict of interest’;
3. SASCOC, the revised structure and mode of operation:
	1. In the light of our findings it is our view that there should be an organizational structural and strategic review and change management process in order to ensure that SASCOC –
		1. understands its vision, its mission and its role in the development of sport in South Africa;
		2. delineates clearly its strategy for sport in general, and high performance sport in particular; and
		3. understands its obligations in relation to corporate governance, financial governance and responsibility, and the development and administration of sport.

*The Board*

* 1. We recommend that the Board must be representative of sport and recreation bodies, and must include specialists in the field of corporate governance; company and commercial law; sports law; finance, accountancy and auditing; amongst others (‘the specialist members’). In particular:
		1. the following three positions on the Board[[55]](#footnote-55) must be occupied by persons who are independent and who have no affiliation to any sport and recreation body:
			1. the President of SASCOC;
			2. an accountant; and
			3. a commercial lawyer;

[Collectively referred to as the ‘independent and specialist members’]

* + 1. the *independent and specialist members* of the Board should:
			1. be appointed by an independent committee, pursuant to a fair and transparent process;
			2. be persons of high stature and impeccable reputation; with appropriate experience and qualifications; and should demonstrate a passion or a love of sport;
			3. be representative of the different genders and peoples of the country
		2. members of the Board who are appointed in consequence of their membership or affiliation with any *sport and recreation body*, must relinquish such membership or affiliation upon their appointment;
		3. members of the Board must serve no more than two 4 year terms in their respective posts on the Board; and
		4. the President of the Board, because of the expected increase in responsibility should be paid a monthly retainer, and all other members of the Board should be paid for meetings that they attend, including Board and subcommittee meetings.

*The Management Structure*

* 1. The management structure of SASCOC, should consist of, amongst other things: a CEO, a CFO, a COO and a Director of Communications. In particular –
		1. each of these posts must be advertised and must be filled pursuant to a fair and equitable recruitment process by an independent committee;
		2. the appointees must not have any links with a *sport or recreation body*, or must relinquish such links, if any,upon appointment; and
		3. the appointments must be confirmed in a contract of employment, on a fixed term basis and subject to a probationary period, job description and key performance areas;

CEO (Chief Executive Officer)

* + 1. the CEO must be subject to the direction and control of the President of the Board and the chairperson of the Finance Committee;

CFO (Chief Financial Officer)

* + 1. the CFO must be subject to the direction and control of the CEO and the chairperson of the Finance Committee;

COO (Chief Operations Officer)

* + 1. the COO must report to the CEO; and

Director of Communications

* + 1. the Director of Communications must report to the President of the Board and to the CEO.
	1. At the first meeting of the Board –
		1. a process for the revision of all policies and procedures must be determined; and
		2. travel benefits and allowances for the President, the members of the Board and the CEO should be discussed, and a process for the determination of such benefits should be decided, subject to the approval of an independent external auditor.
	2. Administrative matters related to the operation of the Board, including the holding of meetings, agendas, the distribution of minutes and matters ancillary to the functioning of the Board should be determined on an urgent basis.
1. Pending the implementation of the above recommendations, we make the following further recommendations:
	1. SASCOC must, pending the process set out above:
		1. read and consider the Pullinger Report, and any other Reports received pursuant to investigations conducted at its behest, and determine the appropriateness and the rationality of implementing some or all of its recommendations;
		2. appoint a National Colours Board in terms of *the Act*, its Constitution and internal regulations, for the purposes of determining any and all issues relevant to the awarding of national colours to athletes;
		3. ensure that there is complete transparency, accountability and consultation in relation to all decision making processes;
		4. ensure that international travel is limited and in line with a revised interim policy, and that the procurement of services is approved by a sub-committee of members of the Board specially constituted for this purpose;
		5. undertake a complete and thorough audit of its financial transactions for at least the last five years, including travel and other benefits and the procurement of services, and that any irregular or wasteful and fruitless expenditure is dealt with, and if possible, recovered;
		6. investigate the payments made to SS Griffin; and
		7. ensure that all members of the Board, who receive commissions payable to them from other entities, declare the details thereof to the Board for further investigation.

**21 August 2018**

**R Zulman**

**A Bacher**

**S Gaibie**

1. In excess of 40 individuals. [↑](#footnote-ref-1)
2. The definitions are in section 1 of the Act. [↑](#footnote-ref-2)
3. Section 1 of the Act. [↑](#footnote-ref-3)
4. Section 4(2). [↑](#footnote-ref-4)
5. Section 4 read with section 7. [↑](#footnote-ref-5)
6. Section 8 [↑](#footnote-ref-6)
7. Section 9(1) [↑](#footnote-ref-7)
8. See generally in this regard for a more comprehensive analysis of the law on sport by Clive Plaskett, The fundamental principles of justice and legal vacuums: The regulatory powers of national sporting bodies, 2016 SALJ 569. [↑](#footnote-ref-8)
9. See also sections 13(3)(d) and 13(8) of the Act which refer to PAJA, in relation to disputes between members and or with the relevant sporting or recreation body’s governing structure. [↑](#footnote-ref-9)
10. We use the terms ‘sporting codes’ and or ‘disciplines’ interchangeably to refer to a specific discipline within a specific sport. For instance, ‘horse racing’ is a sporting code or discipline within equestrian sport. [↑](#footnote-ref-10)
11. The term ‘athletes’ is used in this report as a convenience to refer to all sportsmen and sportswomen or sports participants irrespective of the nature of the sports that they are involved in. In this context, the term ‘athletes’ has a much wider meaning than someone who is involved in athletics or related sporting codes. [↑](#footnote-ref-11)
12. In terms of section 1 of the Act, the term “national federation” is defined as a ‘national governing body of a code of sport or recreational activity in the Republic recognised by the relevant international controlling body as the only authority for the administration and control of the relative code of sport or recreational activity in the Republic’. The term ‘relative code of sport’ is not defined in the Act or in the SASCOC constitution. In terms of clause 4.38 of the SACOC Constitution, SASCOC is entitled to only recognise national federations who are recognised internationally as the only authority for the administration and control of the relative code of sport or recreational activity in the Republic. In other words, national federations must first seek recognition internationally in order to be recognised by SASCOC locally. [↑](#footnote-ref-12)
13. The Constitution that was applicable at the time, as well as the revised Constitution that was adopted sometime in June 2018. [↑](#footnote-ref-13)
14. It is not clear on what legal basis SASCOC imposed the requirement of one federation for one sport irrespective of the various disciplines within a sport. There is no such limitation in the Act, and the language in the Act generally refers to a ‘relative code of sport or recreational activity’, without limiting it to a sport. See in this regard, the definition of “national federation” in section 1 of the Act. In fact, the Act on numerous occasions draws a distinction between high performance sport and other sports codes. In contra-distinction to the Act, the SASCOC constitution in clause 8.1.6 specifically provides that it ‘shall not recognise more than one national sports federation for each sport governed by an International Federation’. But even this provision, contextually, is dependent upon the basis on which international recognition is premised. The real question is whether international recognition makes a distinction between high performance sports and other sports or whether it ring fences each sport, like SASCOC, irrespective of the requirements of high performance disciplines within a sport. [↑](#footnote-ref-14)
15. Section 13 of the Act provides that where a sport or recreation body is unable to deal with disputes between its members, the dispute must be elevated to SASCOC for resolution. Section 13, in our view, deals with disputes between members of a federation, and not with disputes between member federations or associations on the same level as national federations. Consequentially, the Act does not envisage that SASCOC is entitled to deal with disputes between: a) member federations; b) a member federation and associations or entities not affiliated to SASCOC; and c) a member federation and SASCOC or between an association that is not affiliated to SASCOC and SASCOC, including the circumstances in which SASCOC’s conduct or decisions are pertinent issues in the dispute. [↑](#footnote-ref-15)
16. We deal with the relevance of SS Griffin and the Griffin Report later in this report. [↑](#footnote-ref-16)
17. This involvement is articulated (in the documents presented by Ms Kema) as Mr Sam’s role as one of several trustees in the Trust. [↑](#footnote-ref-17)
18. Oudekraal Estates (Pty) Ltd v City of Cape Town 2004 (6) SA 222 at para [26]. [↑](#footnote-ref-18)
19. The details of these allegations are dealt with later in this report, to the extent that they are relevant to the mandate of the Committee. [↑](#footnote-ref-19)
20. Clause 2.8 [↑](#footnote-ref-20)
21. Clause 2.9 [↑](#footnote-ref-21)
22. Clause 2.9 [↑](#footnote-ref-22)
23. Clause 2.9 [↑](#footnote-ref-23)
24. Otherwise known as a ‘per diem’ – clause 2.9 [↑](#footnote-ref-24)
25. Clause 2.9 [↑](#footnote-ref-25)
26. Clause 2.9.1 [↑](#footnote-ref-26)
27. Clause 2.9.3 [↑](#footnote-ref-27)
28. A member of the public whose daughter is involved in an Olympic sport. [↑](#footnote-ref-28)
29. 2004 (6) SA 222 (SCA) at para [26]. [↑](#footnote-ref-29)
30. Including attendance at international events and other more general international trips. [↑](#footnote-ref-30)
31. Including but not limited to flight and related costs, changes in flights, accommodation and per diem expenditure etc [↑](#footnote-ref-31)
32. The principle is dealt with more fully in paragraph 141 of this Report. [↑](#footnote-ref-32)
33. We understand that at the time of the production of this report, and while this investigation was taking place, the SASCOC Board adopted a new Constitution, without the knowledge of or any notice to the Committee. [↑](#footnote-ref-33)
34. This is a recommendation which is dealt with at the end of the report. [↑](#footnote-ref-34)
35. See in particular article 11 to the revised Constitution. [↑](#footnote-ref-35)
36. Clause 2.8 [↑](#footnote-ref-36)
37. Clause 2.9 [↑](#footnote-ref-37)
38. Clause 2.9 [↑](#footnote-ref-38)
39. Clause 2.9 [↑](#footnote-ref-39)
40. Otherwise known as a ‘per diem’ – clause 2.9 [↑](#footnote-ref-40)
41. Clause 2.9 [↑](#footnote-ref-41)
42. Clause 2.9.1 [↑](#footnote-ref-42)
43. Clause 2.9.3 [↑](#footnote-ref-43)
44. Page 9 of the 2014 policy. [↑](#footnote-ref-44)
45. Page 10 of the 2014 policy. [↑](#footnote-ref-45)
46. Page 11 of the 2014 policy. [↑](#footnote-ref-46)
47. The CEO and the CFO determine the composition of the Tender Committee for this purpose. [↑](#footnote-ref-47)
48. Page 12 of the 2014 policy [↑](#footnote-ref-48)
49. Page 10 of the 2016 policy. [↑](#footnote-ref-49)
50. Page 10 of the 2016 policy. [↑](#footnote-ref-50)
51. Page 10 of the 2016 policy. [↑](#footnote-ref-51)
52. Section 4 read with section 7 of the Act. [↑](#footnote-ref-52)
53. A comparison can for instance be drawn between the obligations of a Municipal entity and the relevant Municipality in terms of the Local Government: Municipal Systems Act 32 of 2000 (the MSA). In terms of the MSA, although the Municipal entity is an independent entity, it has certain defined obligations to the Municipality particularly in respect of financial matters. [↑](#footnote-ref-53)
54. And similar entities that fall within the definition of a sport and recreation body in terms of the Act. [↑](#footnote-ref-54)
55. These positions will be in addition to those that already exist in the SASCOC Constitution. [↑](#footnote-ref-55)