

The background of the cover is a photograph of a football match at night. Several players are visible on a green field, illuminated by bright stadium lights. The sky is dark, and the lights create a strong contrast and long shadows on the grass.

Professional Footballers Australia (PFA)

Investigation and Legal Report on Players' Health and Safety (Lightning Events)

"Stefan's Law"

Foreword

“

Sport is life.

It is the most vivid form of being alive, at any rate in public. Sports triumphs and disasters, joys and sorrows, shame and glory have intensity impossible to find elsewhere on a regular basis and it acquires an added meaning and importance from sport's essential triviality. Sport may be said to be the precise opposite of death.

That is why deaths in sport are so profoundly shocking, so uniquely affecting. Death is not supposed to happen here.”

”

Written in *The Times* in the aftermath of the Munich Air Disaster, 1958

The loss of Stefan Petrovski in 2016 remains one of Australia's greatest ever football tragedies.

To lose someone so young and so talented is the very essence of tragedy. It is amplified by it happening in a place – the football field – where dreams are supposed to be made. Not nightmares spawned.

The sadness, however, makes way for despair and anger when we know how preventable Stefan's death could have been. How preventable the pain suffered by his family could have been. In football, a bolt of lightning is a metaphor for a moment of genius, not a death sentence.

In committing to this policy statement, it is the desire of the PFA that lightning strikes not take the life of one more footballer. Or

leave one more family grieving. Or one more father without his son. Through a shared commitment from the top of the football governance pyramid – FIFA – to working with the players and their clubs – we know that football has the regulatory capacity and resources to ensure the tragedy that befell Stefan is never repeated.

To ensure that Stefan can leave a legacy to football that he was denied in life, the PFA – inspired by his father Marco – will ensure it will tirelessly pursue reform to the management of athletes amid the risk of lightning strikes.

John Didulica

Melbourne, August 2019



**In loving memory of Stefan Petrovski
1997 to 2016**

Objectives

The objective of the Professional Footballers Australia Investigation and Legal Report on Players' Health and Safety (Lightning Events) (this **"Report"**) is three-fold: (1) To understand the current legal and policy framework on players' health and safety for lightning events; (2) To recognise the issues and gaps in the current legal and policy framework on players' health and safety for lightning events at the international and regional level; (3) To propose recommendations to effect positive changes to safeguard the players' health and safety for lightning events.

Commissioning of Report¹ by Professional Footballers Australia

This Report was undertaken at the initiative of Professional Football Australia (herein after known as **"PFA"**) on 21 May 2019 for the investigation into the health and safety of its football players around the world. PFA was compelled to commission further investigation into the safety of its players after the unfortunate death of an Australian-born goalkeeper, Stefan Petrovski, when he was struck by a lightning while on training with Melaka United Soccer Association in 2016 . This Report will provide a deeper analysis on the gaps in the current legal and policy framework, using the case study of Stefan.

The author of the Report is Chui Ling Goh LLB (Singapore) with the support of PFA Chief Executive John Didulica BA, LL.M (University of Melbourne)

¹ For avoidance of doubt, this Report shall be analysing the game of association football.

² Professional Football Australia, which was established in 1993, is a trade union, and the exclusive representative body and collective bargaining agent of Australia's elite professional footballers, which include the A-League, W-League, Socceroos, and Matildas players. PFA is a member of Fédération Internationale des Associations de Footballeurs

Professionnels, also known as FIFPro, which is the worldwide representative organisation of 65,000 professional football players.

³ 'Australian Goalkeeper Dies in Hospital after Being Struck by Lightning', ABC News (Text, 2 May 2016) <<https://www.abc.net.au/news/2016-05-02/australian-goalkeeper-stefan-petrovski-dies-struck-lightning/7374540>>.

Executive Summary

In essence, the recommendations as set out in this Report is summarised as follows:-

1

FIFA

- a. Supervise the incorporation of FIFA Regulations on health and safety of players for lightning events into legal and policy framework of Confederations, Member Associations, and Clubs.
- b. Educate and inform stakeholders on the motivation and principle behind the implementation of such policies on players' health and safety.

2

Confederations

- a. Incorporate FIFA Regulations on health and safety of players for lightning strikes into Confederations' Regulations.
- b. Educate and inform stakeholders on the motivation and principle behind the implementation of such policies on players' health and safety.
- c. To implement random checks or audit on the effectiveness of the implementation of players' health and safety measures, and to provide independent dispute resolution forums for such disputes.

3

Domestic football association / Member Associations

- a. Incorporate FIFA Regulations on health and safety of players for lightning strikes into Domestic Football and Member Association's Regulations and Club Licensing Framework.
- b. Educate and inform stakeholders on the motivation and principle behind the implementation of such policies on players' health and safety.
- c. To implement random checks or audit on the effectiveness of the implementation of players' health and safety measures, and to provide independent dispute resolution forums for such disputes.
- d. Recognise the role of player unions as a protector of the employment rights and fundamental human rights of footballers.

4

Clubs

- a. Ensure FIFA Regulations, Confederations' Regulations and Member Associations' Regulations on health and safety of players for lightning events are adhered to in training and matches.
- b. Legislation and/or regulations on health and safety of players (defined as workers) are adhered to in its training and matches.

5

State

- a. Establish legislation and/or regulations on health and safety which relate to workers and/or players (howsoever defined) in the event of lightning strikes.
- b. Recognise sports, where played professionally or for which any remuneration is payable, as a profession in any relevant legislation, instruments, and industry guidelines for health and safety.

6

Unions

- a. Expressly incorporate FIFA Regulations on health and safety of players for lightning strikes and legislation and/or regulations on health and safety of workers, during collective bargaining for players.
- b. In relation to any enterprise agreements, wherever available or applicable, FIFA regulations on health and safety of players for lightning strikes to be expressly incorporated.
- c. Educate and inform players in relation to health and safety provisions in the players' contracts, and relevant legislation, regulations and instruments.

Conclusion

This Report sets out the prevailing legal and policy framework for players' health and safety for lightning events and presents recommendations which various stakeholders can implement to further buttress the current framework for players' health and safety.



Lightning Safety

The National Weather Service reported that 17% of lightning deaths in the United States between 2006 and 2013 occurred during outdoor sports or recreational activity⁴. There is no certain protection against lightning because of its erratic and random nature, especially in football training and matches, which are almost always conducted in an outdoor field. There is, nonetheless, room for precautions to be taken when engaging in such sporting activities to prevent and minimize the risk of casualties or fatalities caused by lightning.

Injury or death caused by lightning strikes can be averted and minimized by taking measures to prevent lightning striking sports fields and sporting areas, such as by making structural and engineering upgrades. Furthermore, lightning strike-related injury or death can be averted by taking precautions in pre-empting a lightning strike, having in place clear guidelines prescribing prior weather enquiries and requiring timely evacuation and having medical protocols in place to allow for prompt on-site treatment of lightning strikes.

There have been precautions taken by various stakeholders to minimize the risk of casualties and fatalities caused by lightning strikes, but the effectiveness of such precautions must be evaluated. In assessing the effectiveness of such precautions against casualties and fatalities in lightning events, thought has to be given to the rate of success in the activation of policies in developing countries. There are factors⁵ within developing countries which may inhibit policy implementation, such as lack of resources, insufficient control and direction from leaders, opposition to policy, weak management of professional clubs and tournaments and higher rates of corruption⁶.

Before delving into the effectiveness of the precautionary measures for lightning strikes and the rate of success in their activation, it is prudent to give an overview in relation to the roles of players and stakeholders in the game of football.

⁴ 'Lightning & Sports Safety: When Thunder Roars Go Indoors', HealthyChildren.org <<http://www.healthychildren.org/English/safety-prevention/at-play/Pages/Lightning-Sports-Safety-When-Thunder-Roars-Go-Indoors.aspx>> ('Lightning & Sports Safety').

⁵ Factors which may contribute to the emasculatation of any government policy is set out in

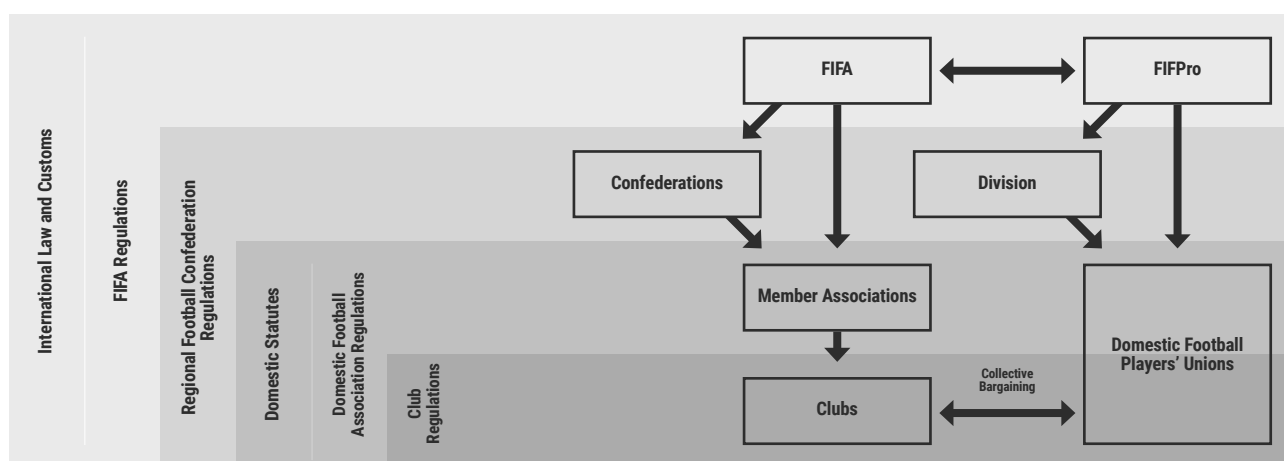
Thomas B Smith, 'The Policy Implementation Process' (1973) 4(2) Policy Sciences 197 at [199].

⁶ According to Transparency International: <https://www.transparency.org/country>.

Overview of Structure and Regulations Governing Players' Health and Safety in Football

The increasing professionalisation of football requires thought to be given to the health and safety of its players. With increasing commercialization of the game of football within international, regional and domestic football leagues, a corresponding level of attention must be afforded to the health and safety of players. Apart from the players and administrators in football, organisational stakeholders play important roles in ensuring and safeguarding the health and safety of football players, such as FIFA, regional Confederations, domestic football associations (or Member Associations⁷), clubs, state, as well as players' unions. More pertinently, the organisational structure provides the legal and policy framework for players' health and safety. An overview of the organisational stakeholders and its accompanying legal and policy framework is illustrated in Fig. 1 below.

FIG. 1



⁷ According to the FIFA Statutes, The FIFA Statutes and Regulations Governing the Application of the Statutes 2018.

Fédération Internationale de Football Association

The international governing body of association football is the Fédération Internationale de Football Association, also widely known as FIFA. Headquartered in Zurich, Switzerland, FIFA's role and responsibilities include the organization and promotion of several international tournaments including the World Cup. Notably, this involves the creation and enforcement of applicable health and safety protocols for players from around the world.

FIFA now comprises 211 Members, with one Member Association recognised in each country. The Member Association of the country under FIFA is responsible for organising and supervising football in all its form in its country. Member Associations are obliged⁸ to always comply with the Statutes, regulations and decisions of FIFA and of its Confederation, to comply with the Laws of the Game in force, and to recognise the Court of Arbitration of Sports, pursuant to FIFA Statutes. Member Associations are also obliged⁹ to ensure that their own members comply with the Statutes, regulations, directives and decisions of FIFA bodies.

FIFA Member countries can also be a member in one of the six (6) regional Confederations¹⁰, usually the Confederation within the same continent¹¹:

- a. Confédération Africaine de Football (CAF);
- b. Asian Football Confederation (AFC);
- c. Union des associations européennes de football (UEFA);
- d. Confederation of North, Central American and Caribbean Association Football (CONCACAF);
- e. Oceania Football Confederation (OFC); and
- f. Confederación Sudamericana de Fútbol (CONMEBOL).

Among other things, each Confederation has the obligation to comply with and enforce compliance with the Statutes, regulations and decisions of FIFA¹².

Through FIFA Statutes, and the obligations imposed on Member Associations and Confederations, FIFA Regulations are expected to be complied with, and assured to be complied with, by domestic football clubs.

Another means of influence that FIFA has pertains to events and infrastructure of its international tournaments, such as the FIFA

World Cup and FIFA Confederation Cup. As the sole organiser and promoter of international tournaments, FIFA has authority and autonomy to dictate terms of its involvement in the host countries.

For example, FIFA can mandate the standard of the football stadiums and sporting facilities at international tournaments, which include safety equipment and facilities. FIFA can enforce its Regulations in this respect, such as the *FIFA Football Stadiums: Technical Recommendations and Requirements*, and *FIFA Stadium Safety and Security Regulations*. FIFA can also mandate the standard of medical care provided to players during such international tournaments. FIFA can enforce its Regulations in this respect, such as *FIFA Pre-Competition Medical Assessment Forms*, *FIFA Football Emergency Medicine Manual*, *SCAT 5 Sports Concussion Assessment Tool*, and *FIFA First Aid Manual and Related Healthcare Issues for Football*.

Regional Confederations

Each domestic Member Association will join its regional Confederation as part of their participation in the regional competitions, as well as part of qualifying for FIFA World Cup, FIFA Confederation Cup, and FIFA Club World Cup. Pursuant to FIFA Statutes, regional Confederations have the obligation to enforce compliance with the Statutes, regulations and decisions of FIFA¹³, on each Member Association.

Some Confederations have comprehensive regulations which they expect their Member Associations to adhere to, which sit in addition to the incorporation of FIFA Regulations into their governing documents. For example, AFC has wide-ranging regulations from anti-doping to safety and security regulations.

Like FIFA, Confederations also organise Confederation tournaments and Cups, and sanction tournaments for the clubs and football association within their jurisdiction. As such, Confederations also have certain influence over the standard of football stadiums for training and competition grounds for the said tournaments, and standard of medical care during such tournaments.

⁸ Article 10, *Ibid*.

⁹ Article 13(d), *Ibid*.

¹⁰ Article 20(1), *Ibid*.

¹¹ Article 20(2), *Ibid*.

¹² Article 20(3)(a), *Ibid*.

¹³ Article 20(3)(a), *Ibid*.

Domestic Member Associations

Member Associations in each country are direct members of FIFA and their Regional Confederation. These Member Associations are required to adhere to and ensure compliance of the regulations mandated by the relevant Regional Confederation.

In order to regulate the football clubs under its jurisdiction, most Member Associations have a registration and/or licensing system for players and football clubs. Such a registration and/or licensing system allows Member Associations to impose certain terms and conditions on the players and clubs as criteria, which will either incorporate regulations from FIFA or the Regional Confederation, or include certain regulations of its own. Providing such parameters allows Member Associations to supervise and manage the conduct of football clubs and players, as part of the Member Associations' obligation to ensure compliance of the regulations mandated by FIFA and/or the Confederation. For example, the Football Association of Malaysia (**FAM**) sets out a FAM Club Licensing Regulation which features regulations which are similar to FIFA Regulations, and incorporates AFC Regulations.

Member Associations of host countries of FIFA-organised events also have additional obligations in relation to FIFA Regulations. For example, the governing football association of the host country is expected to be *"responsible for certifying the stadiums and other sporting facilities"*¹⁴ in the construction of the stadiums and other sporting facilities for the FIFA-organised international tournaments.

Member Associations often organise their own national club competitions, and are in the position to further set parameters for conduct of football clubs and players during the said competitions. For example, during every season of the English Premier League, the Football Association will release a *"Safeguarding Policy"*, which sets out expectations on all parties involved in the said League, on issues such as health and safety measures, and include reporting details on any lack thereof.

Football Clubs

Under the registration and/or licensing regime of the domestic Member Association, domestic football clubs have direct control

and authority over players and circumstances around the players, such as infrastructure and medical protocols. Most major football clubs operate as for-profit entities, and hire their own medical and administrative staff.

Certain major football clubs own or have control over the ownership of the infrastructure of the football stadiums and practice fields, and have greater control over its safety standards and protocols. For instance, some of the major English football clubs own or manage football stadiums, such as the Emirates Stadium for Arsenal, and Etihad Stadium for Manchester City FC. Such football clubs will generally have control over their safety standards of the stadium infrastructure, and medical protocols during practice and matches conducted within those stadiums. In any event, in most countries, the football club is subjected to safety regulations of football bodies or the state government.

Certain major football clubs also have extended influence over any franchise club they have around the world, such as youth football clubs, and therefore have control over the training, safety standards and medical protocols measures of the participants, during the practices and events.

Domestic Government

Domestic governments, at both federal and state levels, impose regulations on the operation and associated activities of football clubs, Member Associations, and unions, if any. Most governments also impose building regulations on the construction of football stadiums, and mandate medical protocols in the event of emergencies during football training or matches.

In certain states, governments may control and even own stadium and playing / training field infrastructure. For instance, the government in Singapore, through statutory boards, own every football stadium in the country, and lease each stadium out to various football clubs in Singapore. As such, there are uniform health and safety regulations to be adhered to within each football stadium and football club. In particular, the Singaporean government mandates that there be a real-time lightning warning alert system in each stadium, and that the lightning alarm is strictly adhered to and enforced by the stadium manager of each stadium. SportSingapore, as the governing statutory board for sports in Singapore, enforces the national legislation on lightning safety in football stadiums and other sporting locations.

¹⁴ Article 34, FIFA, 'FIFA Standard Cooperation Agreement' (FIFA) <<https://resources.fifa.com/image/upload/standard-cooperation-agreement-758123.pdf?cloudid=l3wxno7n-foa8egedmq>>.

Governments, as members of international governing bodies like the United Nations, are bound by international law and custom. Depending on the nature of the legal system, international law and custom may be incorporated into the local legal system upon ratification of treaties and declarations, such as the International Labour Organisation Declaration on Fundamental Principles and Rights at Work (the “ILO Declaration”), and the ILO Conventions¹⁵ on occupational health and safety.

Players’ Unions

Players’ unions play a fundamental role in the collective bargaining of the contractual rights of players in the players’ contract with the football club, which include or ought to include contractual obligations in relation to health and safety standards. This is intended to create a safe and fair working environment for the players as professionals. As a collective voice of players, it is imperative for players’ unions to negotiate for greater health and safety measures for players during training and matches.

The players’ union movement in football is arguably the strongest among all sports. With the establishment of FIFPro, the worldwide representative organisation for professional football players, together with the World Players’ Association, football players’ unions may even have greater collective influence on regulations pertaining to the health and safety of players in FIFA and the Regional Confederations. The domestic players’ union movement is also strong in certain jurisdictions, such as Europe and Australia.¹⁶

It is prudent to note here that the World Players’ Association launched the *Universal Declaration of Players’ Rights (UDPR)* in 2017 to “protect players from ongoing and systematic human rights violations in global sports”¹⁷, as a step towards its mandate to embed fundamental human rights of professional players in the delivery of sports. The UDPR makes reference to various international documents, such as the Universal Declaration of Human Rights (UDHR), the International Bill of Rights, and in particular, the ILO Declaration.

Like the UDHR and the International Bill of Rights, documents like the UDPR have normative value in establishing the fundamental rights of human beings in its field of employment, viz, sports. Article 8 of the UDPR provides that a fundamental right of professional athletes is to ensure that they have “fair and just working conditions”.



¹⁵ Convention concerning Occupational Safety and Health and the Working Environment, ILO Doc 155 (22 June 1982, adopted 11 Aug 1931); Convention concerning Occupational Health Services, ILO Doc 161 (25 Jun 1985, adopted 17 Feb 1988); Convention concerning the promotional framework for occupational safety and health, ILO Doc 187 (15 June 2006, adopted on 20 Feb 2009).

¹⁶ PFA has been critical in being the collective bargaining agent with the sports federations, such as Football Federation Australia. See Julius Ross, ‘FFA and PFA Announce Extension

of Collective Bargaining Agreements for Westfield W-League and Hyundai A-League’, Professional Footballers Australia (7 June 2019) <<http://pfa.net.au/news/ffa-and-pfa-announce-extension-of-collective-bargaining-agreements-for-westfield-w-league-and-hyundai-a-league/>>.

¹⁷ ‘World Players Association Launches Universal Declaration of Player Rights | UNI Global Union’ <<https://www.uniglobalunion.org/news/world-players-association-launches-universal-declaration-player-rights>>.

Players' Health and Safety: General Framework

In general, players in clubs around the world consist of domestic players, as well as players of other nationalities. Football clubs would exert control over their players over a term after a players' contract is signed with the clubs. With ownership over the players, football clubs can transfer or sell players to other clubs, but usually only within a certain period during the season according to the prevailing rules of transfer in the respective jurisdictions.

This term football contract is usually designed and drafted by the football clubs, and often negotiated with the players, if there is

equal bargaining power. In jurisdictions where the unionisation of players is strong, the players' union will collectively bargain with the football clubs on behalf of a group of players for certain terms and conditions in the contract, usually on wages, movement, and image rights.

Like any contract, the football contract will include both express and implied conditions and warranties, on the scope of duties of both parties, as well as applicable law and dispute resolution methods. Football contracts will also often expressly or impliedly incorporate relevant regulations, such as regulations from football sporting bodies and domestic regulations. The table below provides examples on the range of health and safety regulations from FIFA and Confederations.

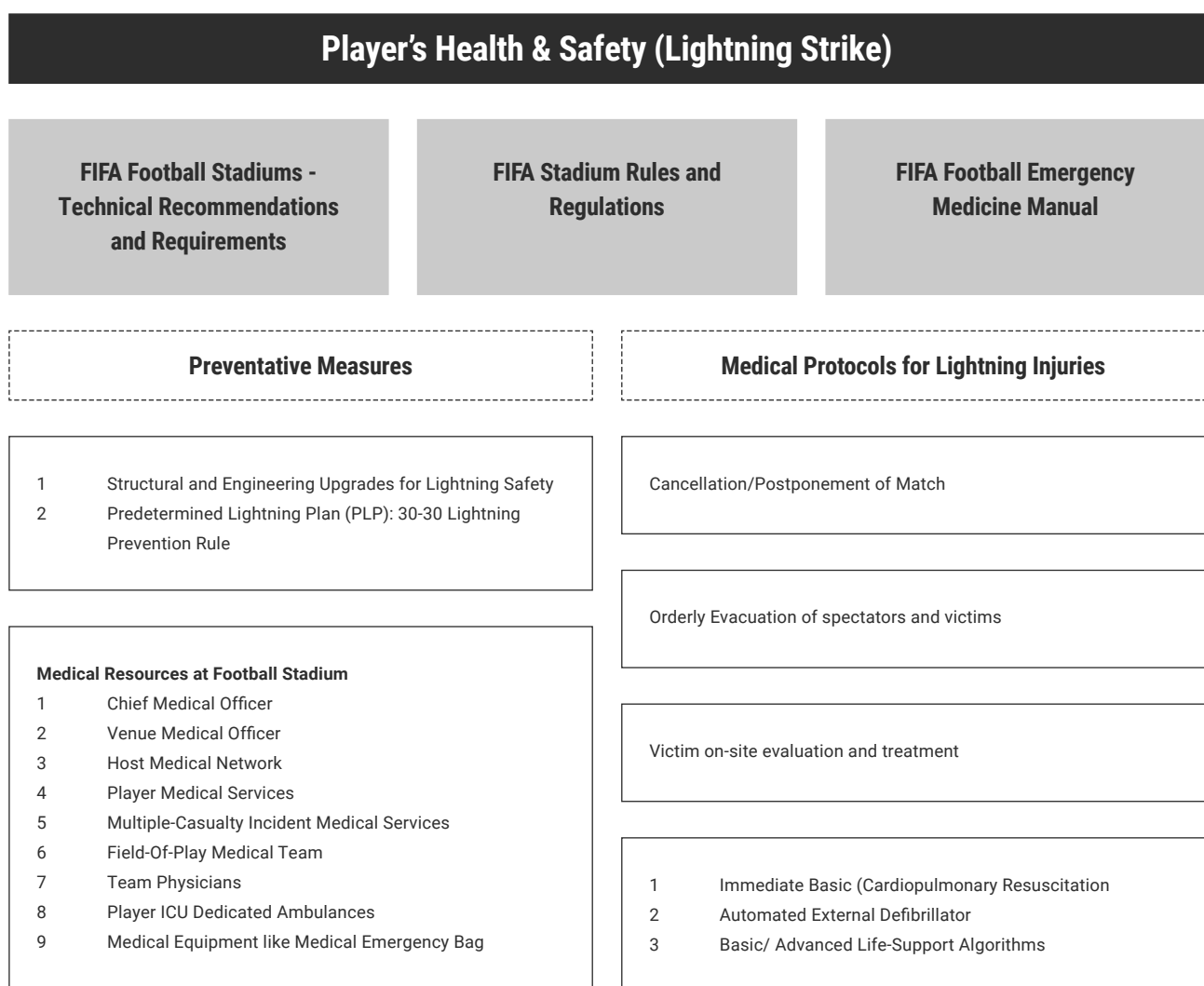
FIG. 2

FIFA		Confederations	
1	FIFA Football Emergency Medical Manual	1	UEFA Safety and Security Regulations
2	FIFA Pre-Competition Medical Assessment Forms	2	UEFA Medical Regulations
3	FIFA SCAT 5 Sports Concussion Assessment Tool	3	AFC Safety and Security Regulations
4	FIFA First Aid Manual and Related Healthcare Issues for Football	4	CONCACAF Safety and Security Regulations
5	FIFA Football Stadiums: Technical Recommendations and Requirements		
6	FIFA Stadium Safety and Security Regulations		

In particular, FIFA Regulations on health and safety provide an in-depth, comprehensive, instructive manual for measures against lightning events, from preventative measures in structural and

engineering upgrades to medical protocols in the event of lightning injuries, as illustrated in Fig. 3 below, which should equally be extended to training facilities of football clubs.

FIG. 3



As discussed, the FIFA regulations on players' health and safety are imposed on football clubs through the clubs' registration and/or license with the domestic Member Associations. Pursuant to the Member Associations' obligation to comply with FIFA Regulations on the health and safety of players, certain Member Associations

also impose similar standards for the health and safety of players, or incorporate FIFA Regulations into their registration and/or licensing regulations of the club. Should there be any inadequacy in the health and safety protocols of the players by the club, the Member Association ought to take action against the club, in light

of the Member Associations' obligation towards FIFA to ensure compliance with the FIFA Regulations, inter alia, the regulations on health and safety of players.

Prevailing domestic regulations and customs on health and safety are or ought to be incorporated into players' contracts, whether expressly or implicitly. The football clubs will have the obligation to ensure that the state or federal legislation on the health and safety of players is being complied with. For example, in Singapore, where there are frequent lightning incidents¹⁸, there is national legislation such as the Workplace Safety and Health Act¹⁹, Workplace Safety and Health (General Provisions) Regulations²⁰, Approved Code of Practice on Workplace Safety and Health Risk Management, and Singapore Standard SS 555 series - Code of practice for protection against lightning, that are incorporated into employment contracts. On top of contractual obligations to adhere to national standards on health and safety, each designated ministry in Singapore, such as the Ministry of Manpower and the Ministry of Culture, Community and Youth (including sports) releases its own recommendations and actions under its jurisdiction to ensure adherence to the principles set out in the national legislation for lightning safety.

It is prudent to note here the impact of any incorporation of national legislation on health and safety into players' contract depends on two (2) factors:

- a. whether the state recognises professional sport as a profession under its national legislation and healthcare scheme, and

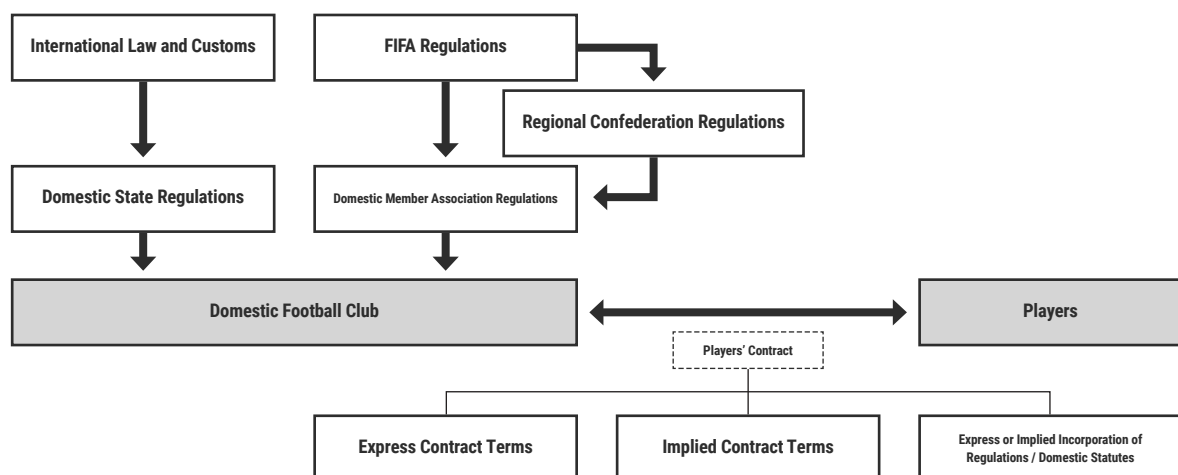
- b. whether the state has any laws on lightning strikes.

In states that do not recognise professional sport as a profession under its national legislation and healthcare scheme, the football club may not be required to adhere to any workplace-related national health and safety standards. Notably, few states around the world have specifically incorporated lightning-related health and safety measures into their legislation. To that extent, many jurisdictions rely on enforcement and adherence to safety standards by peak bodies, such as FIFA, Regional Confederations and Member Associations.

In terms of the forum for dispute resolution, many players' contracts provide for an independent dispute resolution tribunal to resolve any disputes pertaining to the said contracts. Contracts may also provide an avenue of appeal either by convening another independent appeal tribunal, or a higher tribunal for dispute resolution, usually the Court of Arbitration for Sports, as mandated by FIFA²¹.

A player's health and safety as governed by the various contractual and regulatory documents governing the relationship between the football club and its players is illustrated in Fig. 4 below.

FIG. 4



18 TC Chao, JE Pakiam and J Chia, 'A Study Of Lightning Deaths In Singapore' (1981) 22(3) Singapore Medical Journal 8. HH Tan, 'Lightning Injury: Changi Hospital Experience' (2003) 10 10.

19 (Cap 354A, 2009 Rev Ed)

20 (Cap 354A, R1, 2009 Rev Ed)

21 Article 10(4) FIFA Statutes

Apart from contractual and regulatory obligations imposed upon football clubs, clubs also have a duty of care in tort to take reasonable steps to ensure the health and safety of players. The duty of care arises from the general law, wherein by virtue of the proximity of the relationship between the players and the football club, the club's failure to take reasonable steps to ensure the health and safety of players may constitute a breach of the club's duty of care to the player. In certain jurisdictions, football clubs as an employer bear this onus as a non-delegable duty (ie they cannot contract out this responsibility),²² and breaches by clubs may even amount to criminal negligence²³. In establishing the appropriate standard of care owed to the players, contractual and regulatory obligations will be taken into consideration.

It is also prudent to mention that medical service providers who work with or in relation to sporting injuries and incidents also have a duty of care to the players,²⁴ which is not dealt with in detail by this paper but should be noted.

Players' Health and Safety: Case Study of Malaysia

Football clubs in Malaysia are members of, and governed by the Football Association of Malaysia ("FAM"). These clubs employ players from the various states in Malaysia, as well as players of other nationalities. Each player signs a players' contract designed and drafted by the respective clubs, contain different terms.

There are more than 300 football clubs in Malaysia, and they compete in various football leagues in the country, ranging from the top-tier men's football league, Liga Super, to second-tier Liga Premier, and third-tier Malaysia FAM League. The winner of Liga Super will be invited to compete at the AFC Champions League, the premier club tournament in Asia (which includes Australia).

FAM has jurisdiction over the football clubs in Malaysia under the FAM Club Licensing Scheme, within which football clubs have to satisfy basic and minimum criteria in categories ranging from infrastructure to financial and business, in order to obtain a club

license under FAM. Only by having a club license under FAM can football clubs be eligible to compete in AFC Club competitions and National Club competitions. The application for a club license with FAM includes completion of a Venue Safety Questionnaire and Stadium Safety Checklist, and the undergoing of an assessment with the First Instance Body, which is an independent decision-making body appointed by FAM. Should a licensed club subsequently fail to meet any of the conditions for the issue of the said license, *inter alia*, the criteria set out in the prevailing FAM Club Licensing Regulation, or violate any obligations under national regulations, FAM may withdraw the said license under the FAM Club Licensing Scheme, denying the said club from participating in AFC Club competitions or National Club competitions.

Players' contracts in Malaysia either expressly or impliedly incorporate various regulations governing the health and safety of players, *inter alia*, the *FAM Club Licensing Regulation 2019*, *AFC Safety and Security Regulations*, and *FIFA Football Emergency Medicine Manual*.



22 See *Australia, Burnie Port Authority v. General Jones Pty Ltd* (1994), 120 A.L.R. 42 at 62, *Mason C.J.C., Deane, Dawson, Toohey and Gaudron JJ (H.C.A.)*, t. *John (City) v. Donald*, [1926] S.C.R. 371 at 383, and *Gilbert Plains (Rural Municipality) v. Rohl Construction Ltd.* (1999), 140 Man. R. (2d) 102 at para. 38 (C.A.); See *Singapore, Management Corporation Strata Title Plan No 3322 v Mer Vue Developments Pte Ltd and others (King Wan Construction Pte Ltd and others, third parties)* [2016] 2 SLR 793, *Ng Huat Seng and another v Munib Mohammad Madni and another* [2016] 4 SLR 373.

23 *Eric Colvin, 'Recklessness and Criminal Negligence'* [1982] (3) *University of Toronto Law Journal* 345; *Kenneth M Koprowicz, 'Corporate Criminal Liability for Workplace Hazards:*

A Viable Option for Enforcing Workplace Safety' (1986) 52 *Brooklyn Law Review* 183 ('Corporate Criminal Liability for Workplace Hazards'); *Nancy Frank, 'From Criminal to Civil Penalties in the History of Health and Safety Laws Thematic Issue on Justice: Civil Justice'* [1982] (5) *Social Problems* 532 ('From Criminal to Civil Penalties in the History of Health and Safety Laws Thematic Issue on Justice').

24 See *Australia, Rogers v Whitaker* (1992) 175 CLR 479, at 483-90, *Breen v Williams* (1996) 186 CLR 71, *Chappel v Hart* (1998) 195 CLR 232; 'Code of Ethics' (FIMS - International Federation of Sports Medicine) <<https://www.fims.org/files/8214/1933/5848/FIM-SCodeOfEthics.pdf>>.

Stefan Petrovski

It is important here to discuss the case study of Stefan Petrovski, an 18-year-old Australian-born goalkeeper, who was struck by lightning during a training session with Melaka United Soccer Association (MUSA) in Melaka, Malaysia, and subsequently passed away on 1 May 2016. Amongst other things, there were no lightning warning systems or safety precautions taken by MUSA. In consequence, the heightened seasonal dangers of lightning strike were not properly mitigated. Stefan was exposed to and ultimately struck by lightning. There were no proper, medical protocols in place or executed by MUSA to ensure that, once Stefan had been struck by lightning, he would receive prompt and correct medical attention and care.

Stefan had signed a standard form players' contract with MUSA on 1 February 2016, which was drafted by MUSA, and contained the following terms:-

- i. MUSA undertook to purchase personal accident, medical/hospitalization and term life insurance policies for Stefan, and
- ii. MUSA undertook to observe the terms and conditions contained in any Match Rules and Regulations or otherwise in any football leagues and/or matches and/or tournaments and/or competitions organized by FAM, AFC, or FIFA.

The contract between Stefan and MUSA also contained or would be deemed to have contained an implied term that MUSA, as the employer, was required to take all reasonable care, precautions, and/or steps to ensure *inter alia* that Stefan was reasonably safe from physical and/or environmental hazard in his working environment, which included MUSA's Stadium, MUSA training facilities, and/or all locations at which any football leagues, matches, tournaments and/or competitions were held at or participated in by MUSA. To this end, it is noted that the current FAM licensing scheme was introduced in 2017.

MUSA is also bound by the regulations and supervision of FAM in accordance with the FAM Club Licensing Scheme, as well as AFC Safety and Security Regulations and FIFA Football Emergency Medicine Manual, as a member of AFC and FIFA. The FAM Club Licensing Regulations²⁵ contain certain mandatory criteria which domestic football clubs such as MUSA must adhere to. These include:

- i. Provide comprehensive medical support and insurance coverage for contracted players (Regulation 7.2 (S.03));
- ii. Provide suitable training facilities for its players at all times throughout the season (Regulation 8.1(b));
- iii. Ensure that its stadium is equipped with appropriate safety devices to protect *inter alia* those on the field from lightning strikes (Regulation 8.2 (I.05)(e));
- iv. Provide medical rooms or direct access to first aid at the training site (Regulation 8.2 (I.06)(d)); and
- v. Appoint at least 1 doctor responsible for medical support during matches and training (Regulation 9.2 (P.06)(2)).

The FIFA Football Emergency Medicine Manual²⁶ also imposes certain duties upon football clubs in relation to the health and safety of their players. These include:

- i. Implement a predetermined lightning plan to protect those on the field from lightning strikes (Page 66); and
- ii. Treat players falling victim to lightning strikes with *inter alia* immediate and prolonged basic Cardiopulmonary Resuscitation (CPR) and/or an Automated External Defibrillator (AED) for at least a minimum period of 30 minutes, until the victim is diagnosed with ventricular asystole as shown by a cardiac monitor (Page 68).

Despite its legal and regulatory obligations, MUSA failed to ensure that there was a proper or appropriate lightning plan in place. It also failed to ensure there were any or any appropriate safety devices *in situ* to protect players from lightning strikes. MUSA also did not ensure that appropriate equipment (such as Automated External Defibrillators) and prompt medical care were provided to Stefan after he was struck by lightning, and even failed to call an ambulance.

Furthermore, despite Malaysia being one of the most lightning-prone countries²⁷ in the world, there is still no federal or state law on lightning protection nor industry codes that impose regulatory obligations on clubs. No known action was taken by the federal or state authorities on the negligence by MUSA and/or FAM, neither disciplinary nor criminal. The estate of Stefan Petrovski commenced a civil action against the officers of MUSA and FAM²⁸.

In any event, the Professional Football Association Malaysia is currently in negotiations with FAM to develop a Collective Bargaining Agreement for players to incorporate certain terms for the benefit of the players, *inter alia*, the mandatory requirement for players to be covered under insurance, pursuant to FAM Club Licensing Regulations.

²⁵ 2007/2019

²⁶ Ref to 1st Ed, not 2nd Ed

²⁷ Clarissa Chung, 'Malaysians Unprepared for Lightning Strikes - Nation | The Star Online' <<https://www.thestar.com.my/news/nation/2018/11/10/msians-unprepared-for-lightning-strikes-expert-many-lack-awareness-and-safety-measures/>>.

²⁸ 'A Grieving Father Seeks Justice | New Straits Times | Malaysia General Business Sports and Lifestyle News' <<https://www.nst.com.my/sports/football/2019/04/476326/>>

grieving-father-seeks-justice'; 'They Failed' My Son — Aussie Dad's Grief, *NewsComAu* (10 May 2019) <<https://www.news.com.au/sport/football/marco-petrovski-suicide-malaysian-football-club-melaka-united-over-sons-death/news-story/73c584c7689a93f67d-dcbad153367545#.ww0hs->>; The Jakarta Post, 'Soccer Corner: Father Seeks Justice after Goalkeeper Son Killed by Lightning in Malaysia', *The Jakarta Post* <<https://www.thejakartapost.com/news/2019/05/03/soccer-corner-father-seeks-justice-after-goalkeeper-son-killed-lightning-malaysia.html>> ('Soccer Corner').

Identifying Gaps in the Current Legal and Policy Framework for Players' Health and Safety

From the analysis of the prevailing legal and policy framework for players' health and safety, there are certain gaps in the current framework which ought to be plugged progressively to better safeguard players' health and safety in the professional sport of football.

At the outset, it is worth considering the amount of attention which is attributed to the issue of players' health and safety for events of lightning strikes. In general, there is not much being written on it, even within a relatively mature sports industry like Australia²⁹. Perhaps this could be due to the relatively less common occurrence of lightning strikes on ground in Australia, compared to other countries like Malaysia, Singapore³⁰ and Congo³¹, but its prevalence and impact on players' health and safety should not be discounted.

Players' Health and Safety Regulations in Football

FIFA's regulations on health and safety are instructive and comprehensive, but its influence and application on domestic clubs may be limited. Domestic football clubs which do not compete at the regional level or international level may not see the need to adhere to FIFA's regulations on health and safety, or even the regulations on players' health and safety from regional confederations. Whilst the contracting and regulatory framework will nominally impose FIFA obligations on all clubs, officials and players through their contractual architecture, the absence of auditing, enforcement and access to remedy at a local level can undermine the implementation of those standards.

While football clubs like MUSA stand a chance to compete at the AFC Cup, most clubs like MUSA are still predominantly competing at the national level of competition for football. In such cases, regulations on players' health and safety from FIFA or regional

confederations have little influence or teeth. In such cases, the governing football association in the country which administers the registration and/or licensing systems would have to enforce either the prevailing regulations on players' health and safety, or enforce its own. For example, FAM Club Licensing Regulations incorporates AFC's minimum requirements for AFC Club Competitions, and includes its own standards for players' health and safety to be administered by each football club.

FIFA Regulations on the health and safety of players, viz, the FIFA Football Emergency Medicine Manual contains an instructive manual on preventative measures and medical protocols which clubs can take in the event of lightning strikes, and should be enforced upon Member Associations and by extension, football clubs. This may come in the form of the adoption of preventative measures and medical protocols for lightning strike events into the registration or licensing regulations of Member Associations, or the full incorporation of FIFA Emergency Medicine Manual into the registration or licensing regulations of Member Associations.

Nonetheless, it is worth mentioning that most confederations' regulations do not contain any specific regulation on preventative measures or medical protocols on lightning strikes and associated injuries. Given that the Confederations have obligations under FIFA Statutes to ensure compliance with FIFA Regulations, and more Members Associations and football clubs are inclined to incorporate the regulations of Confederations if they aspire to participate in the Confederation competitions, it may be prudent to ensure that the regulations of the Confederation adapts the preventative measures and medical protocols of lightning strike events or incorporate FIFA Emergency Medicine Manual.

Domestic football associations can also take proactive measures to ensure that its regulations include an express provision for players' health and safety in the event of lightning strikes, to be implemented and enforced through the club licensing scheme. Enforcement, in particular, ought to be more pre-emptive (rather than reactive) to ensure that players' health and safety measures are in place, during competitions and trainings. This can come in the form of licensing or certifying the fitness of local training venues for club training and local competition grounds for football games, to ensure that players' health and safety measures are in place, just like how domestic football associations is responsible for certifying the football stadium and other sporting facilities for FIFA-sanctioned games under Article 34 of the FIFA Standard Cooperation Agreement. Pursuant to the said Article, the football

²⁹ Caroline Finch, 'Sports Injury Prevention Research in Australia – Are We Doing Enough?' (2007) 25(3) *SportHealth* 9.

³⁰ Chao, Pakiam and Chia (n 17); Tan (n 17).

³¹ 'Lightning Kills an Entire Football Team | The Independent' <<https://www.independent.co.uk/news/lightning-kills-an-entire-football-team-1181336.html>>.

association shall set up a “*certification committee*” to certify the standards of the stadium and other sporting facilities to be used during a FIFA-sanctioned event. Domestic football association can take on the same roles and responsibilities to certify the safety measures available at each local training and competition ground used for football.

Domestic football association can also do random checks or audit on the implementation of players’ health and safety measures on football clubs, or convene a “whistle-blowing” or complaint mechanism wherein players can make anonymous feedback to the domestic football association should there be any gaps in the measures for players’ health and safety. Accordingly, the domestic football association should also ensure that there is independent investigation to be conducted, as well as independent dispute resolution forums constituted for any related disputes to be adjudicated, if any.

Apart from implementing and enforcing players’ health and safety regulations, FIFA, Confederations, or the domestic football association can also take steps to educate football clubs, managers, players, and administrators on the various measures and implications. This can take place in annual conferences, or coaches or players education seminars and/or workshops.

Domestic Regulations on Health and Safety

For football clubs which are not participating at the higher domestic leagues or regional competitions, there may be little incentive to establish or incorporate such stringent measures of players’ health and safety for lightning events, unless the Member Associations are diligent with the implementation and enforcement of its policies on it. There are also Member Associations which are generally weak in the supervision and enforcement of policies on players’ health and safety. In such situations, the domestic legislation on players’ health and safety may play a bigger role and have greater influence over the football club, than the incorporation of certain measures mandated by higher sports governing bodies.

As discussed above, there is generally a lack of specific legal framework in domestic legislation on players’ health and safety lightning events. There are currently only general guidelines pertaining to lightning events in most states or countries³², with

limited enforcement measures, usually only in situations wherein the state owns the infrastructure and imposes its standards and measures on lightning strikes³³. It is admitted that not all countries experience lightnings in the region, and there may not be a need for such countries to develop such state legislation.

Nevertheless, countries which are prone to lightning strikes ought to develop lightning safety measures for the health and safety of its residents. State Parties which have rectified the ILO Declaration and the respective ILO treaties are also obliged to ensure that proper minimum workplace safety standards are being upheld, especially for outdoor employment (which is not necessarily only sports), by formulating “*national policies*” to “*promote a safe and healthy environment*”³⁴. Singapore, as one of the world’s most lightning-prone countries, have developed state legislation and practice on the health and safety for lightning events.

Apart from the Health and Safety Regulations in Football, work can be done within federal or state legislation to impose safety standards for lightning events and other extreme weather conditions. This will be especially crucial for countries which are lightning-prone.



32 Canadian Centre for Occupational Health and Safety Government of Canada, ‘Weather - Lightning : OSH Answers’ (5 July 2019) <<http://www.ccohs.ca/>> (‘Weather - Lightning’). ‘Preparation and Safety’ <<http://www.bom.gov.au/weather-services/severe-weather-knowledge-centre/safety.shtml>>.

33 See case study of Singapore, at Domestic Government and Players’ Health and Safety: General Framework herein.

34 ‘Promotional Framework for Occupational Safety and Health Convention (C187)’ (International Labour Organisation, 2006).

Players' Contract and Collective Bargaining

Apart from Health and Safety Regulation in Football and Domestic Legislation on Health and Safety for lightning events, there is space for greater focus to be afforded to the health and safety of players for lightning events, on an operational level, and more specifically, within the players' contract. The players' agreement is the main contractual obligation binding the player to the club, and with certain adjustments to the contract and emphasis on the health and safety of the players for lightning events, the players may have greater bargaining power in demanding a safe working environment in football.

A specific standard clause on the health and safety of players for lightning events can be included in players' contract, on top of general health and safety of the players, to impose a positive but compelling obligation on clubs to ensure steps are taken to avoid lightning strikes and/or alleviate lightning risks, as well as proper medical protocol in place. This clause can be structured as a condition of the contract, and any breach of this condition will put the club at risk for damages and termination of the players' contract by the player. This provides the player a specific ground for termination, and the accompanying bargaining power for a safer workplace.

A sample clause on the players' health and safety for lightning events which can be included as follows:-

"The Club shall ensure the Player's health and safety during all training and matches, wherein the Player participates, within the employment of the Club. The Club shall adhere to regulations on health and safety of players set out by FIFA, Confederations, and [to insert domestic Member Association's name], inter alia, FIFA Football Emergency Medical Manual and [to insert regulation on players' health and safety in Club's Licensing Scheme, if any]. The Club shall also adhere to [to add domestic/state legislation on health and safety of players, if any] during the term of this Contract.

In particular, the Club shall ensure the Player's health and safety during extreme weather, including but not limited to lightning events, howsoever defined, by taking preventative measures and ensuring medical protocols for any injury and/or death resulting from any such extreme weather, inter alia:

- a. *Stadium grounds are fitted with proper structural and engineering upgrades for lightning safety,*
- b. *Cancellation or Postponement of training or*

matches during extreme weathers, and

- c. *Provision of basic, minimum medical care during training or matches, such as the presence of medical staff and availability of medical equipment (such as AED) for immediate usage.*

For avoidance of any doubt, this provision is a condition to this Contract, and any breach constitutes ground for damages and termination by the Player."

In the event of such a breach, under the players' contract, there ought to also be a system in place wherein parties have access to affordable dispute resolution forums, which mostly come in the form of a sports or workplace dispute resolution forum set up by the domestic sporting body or football association.

In a football context, the Dispute Resolution Chamber (DRC) is FIFA's deciding body that provides arbitration and dispute resolution for employment disputes of an international nature on the basis of equal representation of players and clubs and an independent chairman. The DRC adjudicates on a regular basis in the presence of a varying composition of members.

Alternatively, unless and until such dispute resolution forums are established in every national jurisdiction, parties ought to have access to the domestic courts for adjudication.

Unionisation

In cases wherein football unions are collectively bargaining for the players, there is greater bargaining power for such specific clauses to be included within the players contract. Nonetheless, to address the lack of such football unions and collective bargaining practices in certain jurisdiction, it may be prudent for FIFA or the Confederations to impose either "Best Practices" or standardised clauses for health and safety of players for lightning events (such as expressed above), into players contracts. Such interventionist measures are crucial in the interim, until players and agents are aware of the risks of lightning strikes and clubs, of their responsibility to ensure the health and safety of the players.

It is noted that most standard collective bargaining agreement do not contain a specific clause on health and safety of player for lightning events. It is admitted that in certain jurisdiction where lightning strikes are almost absent, there is no apparent need for it. But often clubs move to different sites and countries for training camps and competitions, and players often move to different clubs to play. A standard health and safety clause for lightning events would, nonetheless, be essential to safeguard the health and safety of the players.

In any event, unionisation of players is still a catalyst for the improvement of such health and safety measures for players, and there ought to be continued efforts to unionise football players in every country. On top of collective bargaining, unions also provide awareness and education of players of their inherent rights and freedom as illustrated in the Universal Declaration of Players' Rights, especially on the minimum health and safety standards they should bargain more. Through collective bargaining, parties can then demand for greater measures to be taken to ensure their health and safety during lightning events, if the club is lacking in its measures.

Nonetheless, while unionisation in professional sports is necessary and beneficial³⁵, it is prudent to note here that unionisation is not readily available in certain countries, especially in the developing countries and countries with strict labour union laws. In developing countries where either (or both) the sports industry and labour industry are underdeveloped, there is no room for sports unions to be formed or established to safeguard the rights and freedom of professional players. In such cases, there is little room for individual players to have the bargaining power to negotiate for his or her rights and freedom in the professional sport. In countries where labour unions are restricted, there is no free market for sports unions to be established. For example, in Singapore, while there are labour unions, these unions have little teeth or influence over the working conditions of the labour market, given that there is strict criminal legislation³⁶ on strikes. To-date, there is no sports union in Singapore. In such countries, there is little space for sports unions to be established or have impact on the working condition of players.

Policy Implementation

Even with proper players' health and safety measures in place by way of regulations or legislation in place, there is generally an issue of policy implementation in developing countries. There are numerous environmental factors which can affect the implementation of any policies, from the lack of control from political leaders to corruption, or the lack of qualified personnel. Prominently, policies in developing countries are generally ambitious and sweeping, imposed without the benefit of *"incremental policymaking"*³⁷. Certain steps can be taken to buttress the implementation of the measures for players' health and safety from FIFA, Confederations, domestic football association, and domestic state legislation.

A direct method is to find platforms and forums to inform implementing agents or organisations of the intention and principle behind the implementation of regulations on players' health and safety for lightning events. It has been proffered by academics to improve on the cognitive framework³⁸ of implementation, in order to buttress the implementation of policies by the implementing agent. This comes in the form of design challenge for policymakers to represent ideas about instruction in ways that will allow implementing agents to make sense of the said policies, to avoid misunderstanding of new ideas and focus on deeper principles within the said policies. Understanding the target group and implementing organisation³⁹ of policies may also be crux to ensure effective policy implementation. Perhaps regulations on players' health and safety for lightning events can be specifically *"designed"* to allow implementing agents or organisations to understand the intention and principle behind the said regulation, encouraging support and implementation.

Another means to buttress the implementation of regulation on players' health and safety for lightning events is to eliminate or alleviate the impact of environmental factors on the implementation of policies. Every policy is impacted by differing environmental factors, such as cultural, social, political and economic conditions⁴⁰. For instance, there can be little impact for policy implementation in domestic football associations which may be riddled with poor governance, and possibly, corruption within its administration. Every domestic football federation and Confederation would have to take into consideration and address unique local or regional conditions in the implementation measures for players' health and safety for lightning events.

It is also admitted that policy implementation is an ongoing process, often a long one. In such a process, feedback on the effectiveness of certain policy implementation can be provided, to refine the process of policy implementation and improve the effectiveness of the said policy. In this regard, this paper can be considered a paper on feedback on the effectiveness of the prevailing regulation on players' health and safety for lightning events, providing recommendations for further improvement which can be made to improve and refine its effectiveness, especially in developing, lightning-prone countries.

35 Erwin G Krasnow and Herman M Levy, 'Unionization and Professional Sports' [1962] (4) Georgetown Law Journal 749.

36 Criminal Law (Temporary Provisions) Act (Cap 67, 2000 Rev Ed), Part III

37 Yehezkel Dror, *Public Policy Making Reexamined* (Routledge, 2017), Pages 109 to 110

38 James P Spillane, Brian J Reiser and Todd Reimer, 'Policy Implementation and Cognition:

Reframing and Refocusing Implementation Research' (2002) 72(3) Review of educational research 387 ('Policy Implementation and Cognition').

39 Smith (n 5).

40 Ibid, Page 205.