

**Australind Basketball Association Incorporated**

# **Constitution**

**Adopted 18 July, 2018**

# Australind Basketball Association Incorporated Constitution

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# Australind Basketball Association Incorporated - Constitution

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## 1. NAME

The name of the incorporated Association is the Australind Basketball Association Incorporated (ASSOCIATION).

## 2. DEFINITIONS AND INTERPRETATIONS

### 2.1 Definitions

In this Constitution:

**Act** means the *Associations Incorporation Act 2015 (WA)*.

**Associate Member** means a member with the rights referred to in rule

**Association** means the incorporated Association to which these rules apply;

**AGM** means the Annual General Meeting of ASSOCIATION.

**Appointed Committee Member** means a Committee Member appointed under Rule 23.1.

**Basketball WA** means Western Australian Basketball Federation (Incorporated).

**Books**, of the Association, includes the following —

- (a) a register;
- (b) financial records, financial statements or financial reports, however compiled, recorded or stored;
- (c) a document;
- (d) any other record of information;

**By laws** means by-laws made by the Association under rule 31.

**Chairperson** means the Committee member holding office as the chairperson of the Association;

**Commissioner** means the person for the time being designated as the Commissioner under section 153 of the Act;

**Committee** means the management committee of Association:

**Committee meeting** means a meeting of the committee;

**Committee Member** means a member of the Committee.

**ASSOCIATION** means Australind Basketball Association (Inc).

**ASSOCIATION's Constitution means:**

- a) The Constitution of the Association; and
- b) Any by-laws of the Association, in each case as amended from time to time.

**ASSOCIATION's Objects** means the Objects of the Association as defined from time to time in the Association's Constitution.

**Elected Committee Member** means a Committee Member elected under Rule 22.2.

**Financial records** includes —

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and
- (b) documents of prime entry; and
- (c) working papers and other documents needed to explain —
  - (i) the methods by which financial statements are prepared; and
  - (ii) adjustments to be made in preparing financial statements;

**Financial report**, of a tier 2 Association or a tier 3 Associations, has the meaning given in section 63 of the Act;

**Financial statements** means the financial statements in relation to the Association required under Part 5 Division 3 of the Act;

**Financial year**, of the Association, has the meaning given in rule 6;

**General Meeting** of the Association, means a meeting of the Association that all members are entitled to receive notice of and to attend;

**Intellectual Property** means all rights or goodwill subsisting in copyright, business names, names, trademarks (or signs), logos, designs, patents or service marks (whether registered or registrable) relating to the Association or any event, competition or basketball activity of or conducted, promoted or administered by the Association.

**Life Member** means an individual upon whom life membership of the Association has been conferred under Rule 7.

**Member** means a person (including a body corporate) who is an ordinary member or an associate member of the Association;

**Ordinary committee member** means a committee member who is not an office holder of the Association under rule 22.3;

**Membership** means membership of Association.

**Objects** means Association Objects, as set out in Rule 3.

**President** means the person elected to that position under Rule 21.2.

**Register** of members means the register of members referred to in section 53 of the Act;

**Rules** means these rules of the Association, as in force for the time being;

**Secretary** means the committee member holding office as the Secretary of the Association:

**Seal** means the common seal of Association and includes any official seal of Association.

**Social Member** means an individual upon whom Social Member of Association has been conferred under Rule 7.1 (d).

**Special general meeting** means a general meeting of the Association other than the annual general meeting;

**Special resolution** means a resolution passed by the members at a general meeting in accordance with section 51 of the Act;

**Subcommittee** means a subcommittee appointed by the committee under rule 29

**Tier 1 Association** means an incorporated Association to which section 64(1) of the Act applies;

**Tier 2 Association** means an incorporated Association to which section 64(2) of the Act applies;

**Tier 3 Association** means an incorporated Association to which section 64(3) of the Act applies;

**Treasurer** means the committee member holding office as the treasurer of the Association.in Rule 21.5.

**Vice-President** means the Vice President referred to in Rule 21.3.

## **2.2 Interpretation**

In this Constitution:

- a) a reference to a function includes a reference to a power, authority and duty;
- b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty;
- c) words importing the singular include the plural and vice versa;
- d) words importing any gender include the other genders;
- e) references to persons include corporations and bodies politic;
- f) another grammatical form of a defined word or expression has a corresponding meaning;
- g) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- h) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any legislative authority having jurisdiction); and
- i) a reference to 'writing' will unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail.

## **2.3 Severance**

If any provision of this Constitution or any phrase contained in it is invalid or unenforceable in any jurisdiction, the phrase or provision is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable. If the Rule or phrase cannot be so read down it will be severed to the extent of the invalidity or unenforceability. Such severance will not affect the remaining provisions of this Constitution or affect the validity or enforceability of any provision in any other jurisdiction.

## **2.4 Expressions in Act**

Except where the contrary intention appears, in this Constitution, an expression that deals with a matter dealt with by a particular provision of the Act has the same meaning as that provision of the Act.

## 2.5 Lack of Provision or Reasonable Doubt

- a) If:
  - (i) any circumstances arise for which no provision is made by this Constitution;
  - (ii) there arises any reasonable doubt as to the interpretation of the Rules in any circumstances; or
  - (iii) there is any reasonable doubt as to the correct procedure to be adopted on any occasion,

then the Committee, having regard to this Constitution, may decide the matter and may direct what shall be done in each particular instance or may interpret the Constitution or direct what shall be done in a particular case.

- b) Such direction, interpretation or decision of the Committee shall be set out in the agenda for the next General Meeting and, until rescinded or amended by the Committee or disallowed by a resolution of a General Meeting, it shall have the same validity and effect as if specifically included in this Constitution.
- c) Any such decision, interpretation or direction may be considered at a General Meeting without any notice being given of the intention to consider it.

## 3. OBJECTS OF ASSOCIATION

The Objects for which the Association is established and maintained are to:

- a) regulate, encourage, administer, promote and advance basketball through participation, development, competition, facility development and commercial means;
- b) formulate and/or adopt and implement appropriate policies in relation to such matters as arise from time to time as issues to be addressed;
- c) adopt, formulate, issue, interpret, implement and amend from time to time such by-laws and regulations as are necessary for the administration and development of basketball;
- d) develop, administer and control the sport of basketball in accordance with and having regard to the Constitution and By-laws, policies and procedures of Basketball WA;
- e) undertake and/or do all such things or activities as are necessary, incidental or conducive to the advancement of the Objects.

## 4. POWERS OF ASSOCIATION

### 4.1 Powers of the Association

In addition to the rights, powers and privileges provided under the Act, the Association has power to do all such acts and things as are incidental, conducive or subsidiary to all or any of the Objects of the Association.

## **4.2 Not for Profit**

The property and income of the Association must be applied solely towards promoting the objects or purposes of the Association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to any Member, except in good faith in promoting those objects or purposes.

# **5. STATUS AND COMPLIANCE OF ASSOCIATION**

## **5.1 Recognition of Basketball WA**

- a) Basketball WA is recognised by the Government of Western Australia, Basketball Australia and other sporting organisations as the controlling body for the sport of basketball in Western Australia.
- b) Basketball WA is the only sporting body in Western Australia affiliated to Basketball Australia in respect of the sport of basketball.

## **5.2 Compliance of the Association**

The Members acknowledge and agree that the Association will:

- a) be or remain incorporated in Western Australia;
- b) use its best endeavours to comply with and be bound by the standards and technical requirements of Basketball WA; and
- c) to the best of its ability uphold and enforce the By-Laws, policies and procedures published from time to time by Basketball Australia and Basketball WA.

## **5.3 Operation of Rules**

- a) The Association and its Members acknowledge and agree that they are bound by these Rules and that these Rules operate to create uniformity in the way in which the Objects of the Association and basketball are conducted, promoted, encouraged and administered throughout the Association and its immediate surrounds.
- b) The Association acknowledges and agrees that upon applying for membership of Basketball WA, or any affiliated Association of Basketball WA, it consents to its Clubs and its Members being Members of Basketball WA and Basketball Australia and are bound by the Constitution of Basketball WA and the Constitution of Basketball Australia.

## 6. SOURCE OF FUNDS AND APPLICATION OF INCOME

### 6.1 Source of funds

The funds of the Association may be derived from entrance fees, annual subscriptions, donations, fund-raising activities, grants, interest and any other sources approved by the committee.

### 6.2 Control of funds

- a) The Association must open an account in the name of the Association with a financial institution from which all expenditure of the Association is made and into which all funds received by the Association are deposited.
- b) Subject to any restrictions imposed at a general meeting, the committee may approve expenditure on behalf of the Association.
- c) The committee may authorise the treasurer to expend funds on behalf of the Association up to a specified limit without requiring approval from the committee for each item on which the funds are expended.
- d) All cheques, bills of exchange, promissory notes and other negotiable instruments of the Association must be signed by —
  - (i) 2 committee members; or
  - (ii) one committee member and a person authorised by the committee.
- e) All funds of the Association must be deposited into the Association's account within 5 working days after their receipt.

### 6.3 Financial statements and financial reports

- a) The financial year of the Association will be 1 May to 31 April
- b) For each financial year, the committee must ensure that the requirements imposed on the Association under Part 5 of the Act relating to the financial statements or financial report of the Association are met.
- c) Without limiting sub-rule (a), those requirements include —
  - (i) if the Association is a tier 1 Association, the preparation of the financial statements; and
  - (ii) if the Association is a tier 2 Association or tier 3 Association, the preparation of the financial report; and
  - (iii) if required, the review or auditing of the financial statements or financial report, as applicable; and
  - (iv) the presentation to the annual general meeting of the financial statements or financial report, as applicable; and
  - (v) if required, the presentation to the annual general meeting of the copy of the report of the review or auditor's report, as applicable, on the financial statements or financial report.

## 7. MEMBER

### 7.1 Category of Member

The Members of the Association shall consist of:

- a) Ordinary / Affiliate Members - Membership shall be given to all financial Members eighteen (18) years of age and over. All Ordinary Members shall have one vote at the Annual General Meeting.
  - i) A nominal fee as determined by the Association will be payable by non-playing members in order to be eligible to vote at an Annual General Meeting.
  - ii) Appointed committee members must be a financial member
- b) Junior Members - Junior Members shall be all paying Members under eighteen (18) years of age. No Junior Member shall be entitled to vote at Special or General Meetings of the Association.
- c) Life Members
  - i) Life Membership may be considered or conferred by the Association where a Member has given a considerable length service to the Association and the Committee votes in favour of that person receiving Life Membership.
  - ii) The Committee may nominate a person who has rendered distinguished or special service to basketball in the Association for Life Membership of the Association. The nomination must be on the prescribed form (if any) and must be submitted to the Secretary at least twenty-one (21) days before the date set down for the next AGM.
  - iii) Conditions, obligations and privileges of Life Membership shall be as prescribed from time to time by the Committee.
  - vi) Life Member shall not be entitled to vote at Special and General Meetings.
- d) Social Member - A person may by application and paying of the prescribed fee become a Social Member of the Association. Such Membership will allow that person to avail themselves of the benefits of Ordinary Members with the exception of the power of voting.
- e) The Association may have any class of associate membership approved by resolution at a general meeting, including but not limited to junior membership, senior membership, honorary membership and life membership.

## 7.2 Creation of New Categories

The Committee has the right and power from time to time to create new categories of membership with such rights, privileges and obligations as are determined applicable (other than voting rights), even if the effect of creating a new category is to alter rights, privileges or obligations of an existing category of Members. No new category of membership may be granted voting rights unless the prior approval of the Members is first obtained by Special Resolution at a General Meeting.

# 8. REGISTER OF MEMBERS

## 8.1 Secretary to keep Register

The Secretary will keep and maintain:

- a) a register of all Members in which will be entered such information as is required under the Act from time to time, and

- b) a record of the names and residential or postal addresses of persons who hold office with the Association.

## **8.2 Inspection of Register**

- a) An extract of the register of any Members, or office bearers, will be available for inspection by Members upon request. A Member may copy but not remove the register of Members.
- b) The Committee may require a Member who requests a copy of the Register to provide a statutory declaration setting out the purpose of the request and declaring that the purpose is connected with the affairs of the Association.
- c) The Association may charge a reasonable fee to the Member for providing a copy of the Register, the amount to be determined by the Committee from time to time.

## **8.3 Use of Register**

The register may be used by the Association to further the Objects of the Association, as the Committee considers appropriate.

## **8.4 Right of Basketball WA to Access Register**

- a) Subject to the limitations contained in the Privacy Act 1988 (Cth) (if any), the Association shall provide a copy of the register to Basketball WA at a time and in a form acceptable to Basketball WA and shall provide regular updates of the register to Basketball WA. Basketball WA may use the information contained in the register and the register itself to further the Objects of Basketball WA, subject to reasonable confidentiality and privacy considerations.
- b) Basketball WA may enter into arrangements with the Association to manage the whole or parts of the register on its behalf, subject to the limitations contained in the Privacy Act 1988 (Cth) (if any).

# **9. MEMBERSHIP**

## **9.1 Membership Rules**

- a) All persons wishing to become Members of the Association must pay the fee as outlined in Rule 11(a) of this Constitution.
- b) All Members of the Association must complete a personal information form either by on-line registration or other means as necessary. The information on this form will be used by the Association only for purposes of record keeping and contact for the purpose of furthering the Objects of the Association or any activity incidental thereto.
- c) It is the responsibility of the member to advise the Secretary of any change in contact details.

## **9.2 Application for Membership**

An application for new membership by a Member must be:

- a) in writing or electronically forwarded on the forms prescribed by the Committee and lodged with the Secretary for Committee acceptance and

- b) accompanied by the appropriate fee.
- c) application forms will require applicant to disclose personal information, including whether they have undischarged bankrupts or criminal convictions, which would disqualify them from acting as a member of a management committee.

### **9.3 Discretion to Accept or Reject Application**

The Committee may accept or reject an application.

- a) Where the Association accepts an application, the applicant shall become a Member. Membership of the Association shall be deemed to commence upon acceptance of the application by the Committee.
- b) If an application is rejected, upon the request of the applicant, the reasons for the rejection of the Membership application shall be provided.
- c) Where the Association rejects an application, it shall refund any fees forwarded with the application and the application shall be deemed rejected by the Association.

### **9.4 Membership Renewal**

- a) Members shall:
  - (i) renew their Membership with the Association in accordance with the procedures applicable from time to time;
  - (ii) pay the annual fees prescribed by the Association and
  - (iii) pay any arrears (by way of agreement to a payment plan or otherwise) in accordance with the procedures applicable from time to time.

## **10. EFFECT OF MEMBERSHIP**

The Association and each of the Members acknowledge and agree that:

- a) this Constitution constitutes a contract between each of them and the Association and that they are bound by the Constitution and the By-Laws.
- b) they will comply with and observe the Constitution and the By-Laws;
- c) this Constitution is made in pursuit of a common object, namely the mutual and collective benefit of the Association, the Members and the sport of basketball; and
- d) the Constitution and By-Laws are necessary and reasonable for promoting the Objects of the Association and particularly the advancement and protection of the sport of basketball in the Association.

## **11. SUBSCRIPTIONS AND FEES**

- a) The annual Membership subscription (if any), and any other fees, levies, charges and other amounts payable by Members (or any category of

Members) to the Association, will be as determined by the Committee from time to time.

- b) Any Member who has not paid all monies due and payable by that Member to the Association will (subject to the Committee's discretion) have all rights under this Constitution immediately suspended from the expiry of the time prescribed for payment of those monies. Such rights will be suspended until such time as the monies are fully paid or otherwise in the Committee's discretion.

## **12. DISCONTINUANCE OF MEMBERSHIP**

### **12.1 Discontinuance of Membership**

For the purposes of this Constitution, the Committee may remove any Member of the Association for just cause.

### **12.2 Membership may be Reinstated**

A Member that has been removed under Rule 12.1 may be reinstated at the discretion of the Committee, on application in accordance with this Constitution and otherwise on such conditions as the Committee sees fit.

## **13. DISCIPLINARY ACTION, DISPUTES AND MEDIATION**

### **Division 1 — Term used**

Term used: member

In this Part —

member, in relation to a member who is expelled from the Association, includes former member.

### **Division 2 — Disciplinary action**

#### **13.1 Suspension or expulsion**

- a) The committee may decide to suspend a member's membership or to expel a member from the Association if —
  - (i) the member contravenes any of these rules; or
  - (ii) the member acts detrimentally to the interests of the Association.
- b) The secretary must give the member written notice of the proposed suspension or expulsion at least 28 days before the committee meeting at which the proposal is to be considered by the committee.
- c) The notice given to the member must state —

- (i) when and where the committee meeting is to be held; and
- (ii) the grounds on which the proposed suspension or expulsion is based; and
- (iii) that the member, or the member's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the committee about the proposed suspension or expulsion;

d) At the committee meeting, the committee must —

- (i) give the member, or the member's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the committee about the proposed suspension or expulsion; and
- (ii) give due consideration to any submissions so made; and
- (iii) decide —
  - whether or not to suspend the member's membership and, if the decision is to suspend the membership, the period of suspension; or
  - whether or not to expel the member from the Association.

e) A decision of the committee to suspend the member's membership or to expel the member from the Association takes immediate effect.

f) The committee must give the member written notice of the committee's decision, and the reasons for the decision, within 7 days after the committee meeting at which the decision is made.

g) A member whose membership is suspended or who is expelled from the Association may, within 14 days after receiving notice of the Committee's decision under sub-rule (f), give written notice to the secretary requesting the appointment of a mediator under rule 28.1.

h) If notice is given under sub-rule (g), the member who gives the notice and the committee are the parties to the mediation.

### **13.2 Consequences of suspension**

a) During the period a member's membership is suspended, the member —

- (i) loses any rights (including voting rights) arising as a result of membership; and
- (ii) is not entitled to a refund, rebate, relief or credit for membership fees paid, or payable, to the Association.

b) When a member's membership is suspended, the secretary must record in the register of members —

- (i) that the member's membership is suspended; and
- (ii) the date on which the suspension takes effect; and
- (iii) the period of the suspension.

c) When the period of the suspension ends, the secretary must record in the register of members that the member's membership is no longer suspended.

## **14. DISCIPLINE OF MEMBERS**

### **14.1 Disciplinary Committee**

- a) Where the Committee is advised or considers that a Member has allegedly:
  - i. breached, failed, refused or neglected to comply with a provision of this Constitution, the By-Laws, policies and procedures or any resolution or determination of the Committee; or
  - ii. acted in a manner unbecoming of a Member or prejudicial to the Objects and interests of the Association and/or the sport of basketball; or
  - iii. brought the Association or the sport of basketball into disrepute;

the Committee may commence or cause to be commenced disciplinary proceedings against that Member, and that Member will be subject to, and submits unreservedly to the jurisdiction, disciplinary procedures, penalties and appeal mechanisms (if any) of the Association as determined from time to time.
- b) The Committee may appoint a disciplinary committee to deal with any disciplinary matter referred to it. Such a disciplinary committee shall operate under the principles expressed in the By-Laws and or policies and procedures.

## **15. GENERAL MEETINGS**

### **15.1 General Meetings of the Association**

- a) The committee must determine the date, time and place of the Annual General Meeting.
- b) If it is proposed to hold the annual general meeting more than 6 months after the end of the Association's financial year, the secretary must apply to the Commissioner for permission under section 50(3)(b) of the Act within 4 months after the end of the financial year.
- c) The ordinary business of the annual general meeting is as follows —
  - (i) to confirm the minutes of the previous annual general meeting and of any special general meeting held since then if the minutes of that meeting have not yet been confirmed;
  - (ii) to receive and consider —
    - the committee's annual report on the Association's activities during the preceding financial year; and
    - if the Association is a tier 1 Association, the financial statements of the Association for the preceding financial year presented under Part 5 of the Act; and
    - if the Association is a tier 2 Association or a tier 3 Association, the financial report of the Association for the preceding financial year presented under Part 5 of the Act;
    - if required to be presented for consideration under Part 5 of the Act, a copy of the report of the review or auditor's report on the financial statements or financial report;
  - (iii) to elect the office holders of the Association and other committee members;
  - (iv) if applicable, to appoint or remove a reviewer or auditor of the Association in accordance with the Act;

- (v) to confirm or vary the entrance fees, subscriptions and other amounts (if any) to be paid by members.
- d) Any other business of which notice has been given in accordance with these rules may be conducted at the annual general meeting.

**Note for this rule:** Unless the Commissioner allows otherwise, under section 50(3) of the Act the annual general meeting must be held within 6 months after the end of the Association's financial year. If it is the first annual general meeting, section 50(2) of the Act provides that it may be held at any time within 18 months after incorporation.

## 15.2 Special General Meetings

- a) The committee may convene a special general meeting.
- b) The committee must convene a special general meeting if at least 20% of the members require a special general meeting to be convened.
- c) The members requiring a special general meeting to be convened must —
  - i. make the requirement by written notice given to the secretary; and
  - ii. state in the notice the business to be considered at the meeting; and
  - iii. each sign the notice.
- d) The special general meeting must be convened within 28 days after notice is given under sub-rule (c)(ii).
- e) If the committee does not convene a special general meeting within that 28 day period, the members making the requirement (or any of them) may convene the special general meeting.
- f) A special general meeting convened by members under sub-rule (e) —
  - i. must be held within 3 months after the date the original requirement was made; and
  - ii. may only consider the business stated in the notice by which the requirement was made.
- g) The Association must reimburse any reasonable expenses incurred by the members convening a special general meeting under sub-rule (e).

## 15.3 Notice of general meetings

- a) The secretary or, in the case of a special general meeting convened under rule 15.2 (e), the members convening the meeting, must give to each member —
  - i. at least 21 days' notice of a general meeting if a special resolution is to be proposed at the meeting; or
  - ii. at least 14 days' notice of a general meeting in any other case.
- b) The notice must —
  - i. specify the date, time and place of the meeting; and
  - ii. indicate the general nature of each item of business to be considered at the meeting; and
  - iii. if the meeting is the annual general meeting, include the names of the members who have nominated for election to the committee under rule 14.1(d); and
  - iv. if a special resolution is proposed —
    - set out the wording of the proposed resolution as required by section 15.2(d) of the Act; and

- state that the resolution is intended to be proposed as a special resolution;
- and
- comply with rule 15.4(g).

**Note for this paragraph:** Section 51(1) of the Act states that a resolution is a special resolution if it is passed—

- a) at a general meeting of an incorporated Association; and
- b) by the votes of not less than three-fourths of the members of the Association who cast a vote at the meeting.

## 15.4 Proxies

- a) Subject to sub-rule (b), an ordinary member may appoint an individual who is an ordinary member as his or her proxy to vote and speak on his or her behalf at a general meeting.
- b) An ordinary member may be appointed the proxy for not more than 5 other members.
- c) The appointment of a proxy must be in writing and signed by the member making the appointment.
- d) The member appointing the proxy may give specific directions as to how the proxy is to vote on his or her behalf.
- e) If no instructions are given to the proxy, the proxy may vote on behalf of the member in any matter as the proxy sees fit.
- f) If the committee has approved a form for the appointment of a proxy, the member may use that form or any other form —
  - i. that clearly identifies the person appointed as the member's proxy; and
  - ii. that has been signed by the member.
- g) Notice of a general meeting given to an ordinary member under rule 15.4 (b) must —
  - i. state that the member may appoint an individual who is an ordinary member as a proxy for the meeting; and
  - ii. include a copy of any form that the committee has approved for the appointment of a proxy.
- h) A form appointing a proxy must be given to the secretary before the commencement of the general meeting for which the proxy is appointed.
- i) A form appointing a proxy sent by post or electronically is of no effect unless it is received by the Association not later than 24 hours before the commencement of the meeting.

## 15.5 Use of technology to be present at general meetings

- a) The presence of a member at a general meeting need not be by attendance in person but may be by that member and each other member at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.
- b) A member who participates in a general meeting as allowed under sub-rule (a) is taken to be present at the meeting and, if the member votes at the meeting, the member is taken to have voted in person.

## 15.6 Presiding member and quorum for general meetings

- a) The chairperson or, in the chairperson's absence, the deputy chairperson must preside as chairperson of each general meeting.

- b) If the chairperson and deputy chairperson are absent or are unwilling to act as chairperson of a general meeting, the committee members at the meeting must choose one of them to act as chairperson of the meeting.
- c) No business is to be conducted at a general meeting unless a quorum is present.
- d) If a quorum is not present within 30 minutes after the notified commencement time of a general meeting —
  - i. in the case of a special general meeting — the meeting lapses; or
  - ii. in the case of the annual general meeting — the meeting is adjourned to —
    - the same time and day in the following week; and
    - the same place, unless the chairperson specifies another place at the time of the adjournment or written notice of another place is given to the members before the day to which the meeting is adjourned.
- e) If a quorum is not present within 30 minutes after the commencement time of an annual general meeting held under sub-rule (d)(ii) and at least 2 ordinary members are present at the meeting, those members present are taken to constitute a quorum.

## **15.7 Adjournment of general meeting**

- a) The chairperson of a general meeting at which a quorum is present may, with the consent of a majority of the ordinary members present at the meeting, adjourn the meeting to another time at the same place or at another place.
- b) Without limiting sub-rule (a), a meeting may be adjourned —
  - i. if there is insufficient time to deal with the business at hand; or
  - ii. to give the members more time to consider an item of business.
- c) No business may be conducted on the resumption of an adjourned meeting other than the business that remained unfinished when the meeting was adjourned.
- d) Notice of the adjournment of a meeting under this rule is not required unless the meeting is adjourned for 14 days or more, in which case notice of the meeting must be given in accordance with rule 15.3.

## **15.8 Voting at general meeting**

- a) On any question arising at a general meeting —
  - i. subject to sub-rule (e), each ordinary member has one vote; and
  - ii. ordinary members may vote personally or by proxy.
- b) A copy of the document by which the appointment is made must be given to the secretary before any general meeting to which the appointment applies.
- c) The appointment has effect until —
  - i. the end of any general meeting to which the appointment applies; or
  - ii. the appointment is revoked by the body corporate and written notice of the revocation is given to the secretary.
- d) Except in the case of a special resolution, a motion is carried if a majority of the ordinary members present at a general meeting vote in favour of the motion.
- e) If votes are divided equally on a question, the chairperson of the meeting has a second or casting vote.

- f) If the question is whether or not to confirm the minutes of a previous general meeting, only members who were present at that meeting may vote.
- g) For a person to be eligible to vote at a general meeting as an ordinary member, the ordinary member —
  - i. must have been an ordinary member at the time notice of the meeting was given under rule 15.3; and
  - ii. must have paid any fee or other money payable to the Association by the member.

## 15.9 When special resolutions are required

- a) A special resolution is required if it is proposed at a general meeting —
  - i. to affiliate the Association with another body; or
  - ii. to request the Commissioner to apply to the State Administrative Tribunal under section 109 of the Act for the appointment of a statutory manager.
- b) Sub-rule (a) does not limit the matters in relation to which a special resolution may be proposed.

**Note for this rule:** Under the Act, a special resolution is required if an incorporated Association proposes to do any of the following —

- i. to adopt these model rules (section 29(1));
- ii. to alter its rules, including changing the name of the Association (section 30(1));
- iii. to decide to apply for registration or incorporation as a prescribed body corporate (section 93(1));
- iv. to approve the terms of an amalgamation with one or more other incorporated Associations (section 102(4));
- v. to be wound up voluntarily (section 121(2)) or by the Supreme Court (section 124(a) and Schedule 4 item 9);
- vi. to cancel its incorporation (section 129).

## 15.10 Determining whether resolution carried

- a) In this rule —

**poll** means the process of voting in relation to a matter that is conducted in writing.

- b) Subject to sub-rule (d), the chairperson of a general meeting may, on the basis of general agreement or disagreement or by a show of hands, declare that a resolution has been —
  - i. carried; or
  - ii. carried unanimously; or
  - iii. carried by a particular majority; or
  - iv. lost.
- c) If the resolution is a special resolution, the declaration under sub-rule (b) must identify the resolution as a special resolution.
- d) If a poll is demanded on any question by the chairperson of the meeting or by at least 3 other ordinary members present in person or by proxy —
  - i. the poll must be taken at the meeting in the manner determined by the chairperson;
  - ii. the chairperson must declare the determination of the resolution on the basis of the poll.
- e) If a poll is demanded on the election of the chairperson or on a question of an adjournment, the poll must be taken immediately.
- f) If a poll is demanded on any other question, the poll must be taken before the close of the meeting at a time determined by the chairperson.

g) A declaration under sub-rule (b) or (d) must be entered in the minutes of the meeting, and the entry is, without proof of the voting in relation to the resolution, evidence of how the resolution was determined.

### **15.11 Minutes of General Meeting**

- a) The secretary, or a person authorised by the committee from time to time, must take and keep minutes of each general meeting.
- b) The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.
- c) In addition, the minutes of each annual general meeting must record —
  - i. the names of the ordinary members attending the meeting; and
  - ii. any proxy forms given to the chairperson of the meeting under rule 15.4 (h); and
  - iii. the financial statements or financial report presented at the meeting, as referred to in rule 15.1(c) (i) (ii) or (iii); and
  - iv. any report of the review or auditor's report on the financial statements or financial report presented at the meeting, as referred to in rule 15.1 (c) (b) (iv).
- d) The minutes of a general meeting must be entered in the Association's minute book within 30 days after the meeting is held.
- e) The chairperson must ensure that the minutes of a general meeting are reviewed and signed as correct by —
  - i. the chairperson of the meeting; or
  - ii. the chairperson of the next general meeting.
- f) When the minutes of a general meeting have been signed as correct they are, in the absence of evidence to the contrary, taken to be proof that —
  - i. the meeting to which the minutes relate was duly convened and held; and
  - ii. the matters recorded as having taken place at the meeting took place as recorded; and any election or appointment purportedly made at the meeting was validly made.

### **15.12 Notice of Meeting**

- a) Notice of every General Meeting will be given to every Member.
- b) At least fourteen (14) days written notice (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) must be given of any General Meeting. The notice must:
  - i. set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this); and
  - ii. state the general nature of the meeting's business;
  - iii. if a Special Resolution is to be proposed at the meeting, set out an intention to propose the Special Resolution and that resolution;

### **15.13 Place of Meeting**

A General Meeting may be held at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

# 16. BUSINESS

## 16.1 Business of General Meetings

- a) The business to be transacted at the AGM includes the consideration of accounts and the reports of the Committee and announcement of new Life Members (if any).
- b) All business transacted at a General Meeting, and at an AGM, with the exception of those matters referred to in Rule 16.1 (a) will be special business.

## 16.2 Business Transacted

No business other than that stated on the notice of meeting will be transacted at that meeting.

# 16. NOTICE OF MOTION

## Notices of Motion

Notice in writing of all motions for consideration at a General Meeting must be received by the Secretary at least fourteen (14) days prior to the date of the meeting. Notices received within this time shall be placed on the agenda for the relevant meeting. A copy of all notices of motion received by the Secretary will be communicated to each Member and Committee Member at least ten (10) days prior to the General Meeting concerned, using any technology that gives the Members as a whole a reasonable opportunity of notice.

# 17. SPECIAL GENERAL MEETINGS

## 17.1 Special General Meetings May be Held

The Committee may, whenever it thinks fit, convene a Special General Meeting and, where, but for this Rule more than fifteen (15) months would elapse between AGM's, shall convene a Special General Meeting before the expiration of that period.

## 17.2 Request for Special General Meetings

- a) The Committee shall on the request in writing of 15% of the Members convene a Special General Meeting.
- b) The request for a Special General Meeting shall state the Object(s) of the meeting; be signed by the Members making the request under Rule 17.2 (a) and be sent to the Association. The request may consist of several documents in a like form, each signed by one or more of the Members making the request.
- c) If the Committee does not cause a Special General Meeting to be held within six (6) weeks after the date on which the request is sent to the Association, the

Members making the request, or any of them, may convene a Special General Meeting to be held not later than six (6) weeks after that date.

- d) A Special General Meeting convened by the Members under this Constitution shall be convened in the same manner, or as nearly as possible as that, in which meetings are convened by the Committee.
- e) If the Committee receives a written request to convene a Special General Meeting under these Rules within the sixty (60) day period before the AGM, the Association may deal with the matters set out in the request or notice at the AGM.

### **17.3 Alteration of rules**

If the Association wants to alter or rescind any of these rules, or to make additional rules, the Association may do so only by special resolution and by otherwise complying with Part 3 Division 2 of the Act.

**Note for this rule:** *Section 31 of the Act requires an incorporated Association to obtain the Commissioner's approval if the alteration of its rules has effect to change the name of the Association.*

*Section 33 of the Act requires an incorporated Association to obtain the Commissioner's approval if the alteration of its rules has effect to alter the objects or purposes of the Association or the manner in which surplus property of the Association must be distributed or dealt with if the Association is wound up or its incorporation is cancelled.*

## **18. PROCEEDINGS AT GENERAL MEETINGS**

### **18.1 Quorum**

The quorum for a General Meeting shall be five (5) Ordinary Members. The quorum must be present at all times during the meeting.

### **18.2 Chair of General Meeting**

The President will chair every General Meeting. If the President is unavailable, the Vice President shall be the Chair. If both are unavailable within fifteen (15) minutes of the start time of the meeting, then the Members present may elect a Chair from those present.

### **18.3 Adjournment for lack of Quorum**

If a General Meeting does not have a quorum present within thirty (30) minutes after the time for the meeting set out in the notice of meeting, the meeting is adjourned to the date, time and place the Chair specifies. If the Chair does not specify one or more of these things, then the meeting is adjourned to:

- a) if the date is not specified - the same day in the following week; and
- b) if the time is not specified - the same time; and
- c) if the place is not specified - the same place.

## **18.4     Adjournment Generally**

The Chair of a General Meeting may, in accordance with the Act, at any meeting at which a quorum is present (and will if so directed by the meeting), adjourn the General Meeting from time to time and from place to place. No business will be transacted at any adjourned General Meeting other than the business left unfinished at the meeting from which the adjournment took place. When a General Meeting is adjourned for one month or more, notice of the adjourned meeting must be given as in the case of an original meeting, otherwise it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

## **18.5     Lack of Quorum at Adjourned Meeting**

If no quorum is present at the resumed meeting within thirty (30) minutes after the time for the meeting, then:

- a) if the meeting was called as a consequence of a request of Members, the meeting is dissolved;
- b) in all other cases, the Members present are a quorum.

## **18.6     Voting Procedure**

- a) Unless a General Meeting is being held electronically, a resolution put to the vote at a General Meeting must be decided on a show of hands or in the case of an electronic meeting, verbally unless a poll is demanded.
- b) A poll may be demanded by:
  - i) at least three Members present and entitled to vote on the resolution; or
  - ii) the Chair of the General Meeting.

The poll may be demanded before a vote is taken or before the voting results on a show of hands are declared or immediately after the voting results on a show of hands are declared.

## **18.7     Recording of Determinations**

Unless a poll is demanded under Rule 18.8, a declaration by the Chair of the General Meeting that a resolution has, on a show of hands or in the case of an electronic meeting verbally, been carried or carried unanimously or lost is conclusive evidence of the result provided that the declaration reflects the show of hands or verbal determination. Neither the Chair nor the minutes need state the number or proportion of the votes recorded in favour or against.

## **18.8     Demand for poll**

Subject to Rule 18.6, a poll may be demanded on any resolution. A poll demanded on a matter must be taken when and in the manner the Chair directs. A demand for a poll may be withdrawn.

## **19. VOTING AT GENERAL MEETINGS AND FOR THE COMMITTEE**

### **19.1 Voting**

- a) Every Ordinary Member will have one vote.
- b) On the election of the Committee, the votes of Ordinary Member's will be counted on the basis that each Member entitled to vote has one vote in accordance with Rule 19.1(a).
- c) On a poll at a General Meeting the votes of Ordinary Member's will be counted on the basis that each Member entitled to vote has one vote in accordance with Rule 19.1(a).

### **19.2 Entitlement to vote**

- a) No Ordinary Member is entitled to vote at any General Meeting if that Member is un-financial.
- b) Life Members may attend and at the discretion of the President, debate at General Meetings, but shall not be entitled to vote.

### **19.3 Postal Voting**

Should an issue arise between General Meetings which requires a decision or ratification, the Committee may determine that the matter be dealt with by a postal vote or other remote voting method. The President will notify all Members of the proposition to be answered 'for' or 'against', and set the time for such voting to be considered. After the time fixed has elapsed, votes from Members will be counted by the President and the Vice President and the proposition resolved. The result of a postal vote will be conveyed to all Members by the President.

## **20. ROLE OF THE COMMITTEE**

Subject to the Act and this Constitution, the Committee will manage the business of the Association and exercise the powers of the Association. In particular, the Committee will:

- a) Act on all issues in accordance with the Objects and shall operate for the collective and mutual benefit of the Association, and the sport of basketball throughout the Association;
- b) Administer the sport of basketball in the Association in accordance with the Objects;
- c) Develop a strategic plan.
- d) Review the Association performance in achieving its strategic plan objectives;
- e) Ensure an appropriate risk management framework is in place.

# 21. COMPOSITION OF COMMITTEE AND DUTIES OF MEMBERS

## 21.1 Committee members

a) The Association Committee will consist of four (4) Elected Committee Members and up to 7 Appointed Committee Members. The Committee will be elected by a ballot of Members present at the AGM, with the chair of the AGM announcing the result of the election of the incoming Committee.

b) The Elected Committee Members shall be:

President

Vice President

Treasurer

Secretary

c) Subject to clause 21.1(a) all Elected Committee Members positions shall be for a two (2) year term.

d) The committee must determine the maximum number of members who may be ordinary committee members as outlined in 21.1(a).

e) A person may be a committee member if the person is —

- i. an individual who has reached 18 years of age; or
- ii. is a financial ordinary member.

f) A person must not hold 2 or more of the offices mentioned in sub-rule (c) at the same time.

## 21.2 President

a) The President shall be elected at an AGM by the Members of the Association. This person shall represent the Association and chair all meetings but shall have the right to nominate a substitute to attend such meetings from time to time.

b) In the absence of the President at a General Meeting or a Committee Meeting, and no nominated substitute is in attendance, the Vice President will chair the meetings.

c) In the event that both the President and the Vice President are absent and no substitute was nominated prior to the meeting starting, then a Member present will chair the Meeting.

## 21.3 The Vice President

The Vice President is prepared to assist the President and may be interested in being considered as a future President.

The roles of the Vice President should include:

- Attend Management Committee meetings of the organisation
- Provide assistance to the President as necessary
- Assume the duties of the President in his/her absence and assist the President in carrying out his/her duties
- Spend some time with each committee member to maintain a sound understanding of the running of the organisation and assist other committee members with their duties as required
- Have a good working knowledge of the organisation's constitution, rules, policies and procedures and the duties of all office holders
- Be aware of the future direction and plans of the organisation and act as a planning coordinator

#### **21.4      Secretary**

The Secretary must co-ordinate the correspondence of the Association and keep full and correct minutes of the proceedings of the Committee and comply on behalf of the Association with:

- a) dealing with the Association's correspondence;
- b) consulting with the chairperson regarding the business to be conducted at each committee meeting and general meeting;
- c) preparing the notices required for meetings and for the business to be conducted at meetings;
- d) unless another member is authorised by the committee to do so, maintaining on behalf of the Association the register of members, and recording in the register any changes in the membership, as required under section 53(1) of the Act;
- e) maintaining on behalf of the Association an up-to-date copy of these rules, as required under section 35(1) of the Act;
- f) unless another member is authorised by the committee to do so, maintaining on behalf of the Association a record of committee members and other persons authorised to act on behalf of the Association, as required under section 58(2) of the Act;
- g) ensuring the safe custody of the books of the Association, other than the financial records, financial statements and financial reports, as applicable to the Association;
- h) maintaining full and accurate minutes of committee meetings and general meetings;
- i) carrying out any other duty given to the secretary under these rules or by the committee.
- k) keep proper accounting and other records in accordance with the Act, generally accepted accounting principles and/or any applicable code of conduct.

#### **21.5      Treasurer**

The Treasurer shall;

- a) ensuring that any amounts payable to the Association are collected and issuing receipts for those amounts in the Association's name;

- b) ensuring that any amounts paid to the Association are credited to the appropriate account of the Association, as directed by the committee;
- c) ensuring that any payments to be made by the Association that have been authorised by the committee or at a general meeting are made on time;
- d) ensuring that the Association complies with the relevant requirements of Part 5 of the Act;
- e) ensuring the safe custody of the Association's financial records, financial statements and financial reports, as applicable to the Association;
- f) determine if the Association is a tier 1 Association, coordinating the preparation of the Association's financial statements before their submission to the Association's annual general meeting;
- g) determine if the Association is a tier 2 Association or tier 3 Association, coordinating the preparation of the Association's financial report before its submission to the Association's annual general meeting;
- h) provide any assistance required by an auditor or reviewer conducting an audit or review of the Association's financial statements or financial report under Part 5 Division 5 of the Act;
- i) carrying out any other duty given to the treasurer under these rules or by the committee.

## Division 3 — Election of committee members and tenure of office

# 22. HOW MEMBERS BECOME COMMITTEE MEMBERS

A person becomes a committee member if —

- a) elected to the committee at an Annual General meeting; or
- b) appointed to the committee by the committee to fill a casual vacancy under rule 23.5.

### 22.1 Nomination of committee members

- a) At least 42 days before an annual general meeting, the secretary must send written notice to all the members —
  - (i) calling for nominations for election to the committee; and
  - (ii) stating the date by which nominations must be received by the secretary to comply with sub-rule (b).
- b) A member who wishes to be considered for election to the committee at the annual general meeting must nominate for election by sending written notice of the nomination to the secretary at least 28 days before the annual general meeting.
- c) The written notice must include a statement by another member in support of the nomination.

- d) A member may nominate for one specified position of office holder of the Association or to be an ordinary committee member.
- e) A member whose nomination does not comply with this rule is not eligible for election to the committee unless the member is nominated under rule 22.1 (b) or 22.2 (b).

## **22.2 Election of office holders**

- a) At the annual general meeting, a separate election must be held for each position of office holder of the Association.
- b) If there is no nomination for a position, the chairperson of the meeting may call for nominations from the ordinary members at the meeting.
- c) If only one member has nominated for a position, the chairperson of the meeting must declare the Member elected to the position.
- d) If more than one member has nominated for a position, the ordinary members at the meeting must vote in accordance with procedures that have been determined by the committee to decide who is to be elected to the position.
- e) Each ordinary member present at the meeting may vote for one member who has nominated for the position.
- f) A member who has nominated for the position may vote for himself or herself.
- g) On the member's election, the new chairperson of the Association may take over as the chairperson of the meeting.

## **22.3 Election of ordinary committee members**

- a) At the annual general meeting, the Association must decide by resolution the number of ordinary committee members (if any) to hold office for the next year.
- b) If the number of members nominating for the position of ordinary committee member is not greater than the number to be elected, the chairperson of the meeting —
  - i. must declare each of those members to be elected to the position; and
  - ii. may call for further nominations from the ordinary members at the meeting to fill any positions remaining unfilled after the elections under paragraph (a).
- c) If —
  - i. the number of members nominating for the position of ordinary committee member is greater than the number to be elected; or
  - ii. the number of members nominating under sub-rule (b)(ii) is greater than the number of positions remaining unfilled,

the ordinary members at the meeting must vote in accordance with procedures that have been determined by the committee to decide the members who are to be elected to the position of ordinary committee member.

- d) A member who has nominated for the position of ordinary committee member may vote in accordance with that nomination.

## 23. TERM OF OFFICE

- a) The term of office of a committee member begins when the member —
  - i. is elected at an annual general meeting or under sub-rule 22.3 (b) (ii) or
  - ii. is appointed to fill a casual vacancy under rule 24.5.
- b) Subject to rule 22.3, a committee member holds office until the positions on the committee are declared vacant at the next annual general meeting.
- c) A committee member may be re-elected

### 23.1 Appointed Committee Members

- a) Appointment - The Committee may appoint up to two (2) Appointed Committee Members.
- b) Qualifications for an Appointed Committee Member - An Appointed Committee Member must be a minimum of eighteen (18) years of age and may have specific skills in commerce, finance, marketing, law or business generally or such other skills which complement the Board composition but need not have experience in or exposure to basketball.
- c) The term of office of a committee member begins when the member —
  - i. is elected at an annual general meeting or under sub-rule 24.2 (c) (ii); or
  - ii. is appointed to fill a casual vacancy under rule 24.5.
- d) Subject to rule 24.3, a committee member holds office until the positions on the committee are declared vacant at the next annual general meeting.
- e) A committee member may be re-elected.

## 24. VACANCIES OF COMMITTEE MEMBERS

### 24.1 Grounds for Termination of Committee Member

In addition to the circumstances (if any) in which the office of a position becomes vacant by virtue of the Act, the office of a Committee Member becomes vacant if the Committee Member:

- a) dies;
- b) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- d) resigns his or her office in writing to the Association;
- e) is absent without the consent of the Committee from three (3) consecutive meetings of the Committee;
- f) holds any office of employment of the Association;
- g) without the prior consent or later ratification of the Committee holds, any office of profit under the Association;

- h) breaches the Association Committee Members code of conduct or fails to declare a conflict of interest;
- i) is removed from office by a Special Resolution of the Committee under Rule 22.2; or
- j) would otherwise be prohibited from being a director of a corporation under the *Corporations Law* or is disqualified from office under the Act.

## **24.2 Resignation and removal from office**

- a) A committee member may resign from the committee by written notice given to the secretary or, if the resigning member is the secretary, given to the chairperson.
- b) The resignation takes effect —
  - i. when the notice is received by the secretary or chairperson; or
  - ii. if a later time is stated in the notice, at the later time.
- c) At a general meeting, the Association may by resolution —
  - i. remove a committee member from office; and
  - ii. elect a member who is eligible under rule 22(1) to fill the vacant position.
- d) A committee member who is the subject of a proposed resolution under sub rule (c)(i) may make written representations (of a reasonable length) to the secretary or chairperson and may ask that the representations be provided to the members.
- e) The secretary or chairperson may give a copy of the representations to each member or, if they are not so given, the committee member may require them to be read out at the general meeting at which the resolution is to be considered.
- f) The secretary or chairperson may give a copy of the representations to each member or, if they are not so given, the committee member may require them to be read out at the general meeting at which the resolution is to be considered.

## **24.3 When membership of committee ceases**

A person ceases to be a committee member if the person —

- (a) dies or otherwise ceases to be a member; or
- (b) resigns from the committee or is removed from office under rule 23; or
- (c) becomes ineligible to accept an appointment or act as a committee member under section 39 of the Act;
- (d) becomes permanently unable to act as a committee member because of a mental or physical disability; or
- (e) fails to attend 3 consecutive Committee meetings, of which the person has been given notice, without having notified the Committee that the person will be unable to attend.

## **24.4 Removal of a Committee Member**

A Committee Member, before the expiration of his or her term of office may be removed by Special Resolution at a General Meeting. If a Committee Member is so removed, the office of the Committee Member becomes vacant and shall be filled in accordance with the procedure set out in Rule 24.5.

## **24.5 Filling casual vacancies**

- a) The committee may appoint a member who is eligible under rule 22 to fill a position on the committee that —
  - i. has become vacant under rule 24.2; or

- ii. was not filled by election at the most recent annual general meeting or under rule 24.1.
- b) If the position of secretary becomes vacant, the committee must appoint a member who is eligible under rule 22 to fill the position within 14 days after the vacancy arises.
- c) Subject to the requirement for a quorum under rule 25.5, the committee may continue to act despite any vacancy in its membership.
- d) If there are fewer committee members than required for a quorum under rule 25.5, the committee may act only for the purpose of —
  - i. appointing committee members under this rule; or
  - ii. convening a general meeting.

## **25. MEETINGS OF THE COMMITTEE**

### **25.1 Committee to Meet**

The Committee shall meet as often as is deemed necessary in each calendar year for the dispatch of business and will meet on at least six (6) occasions per year or at least as often as is required under the Act, (whichever is the greater), and subject to these Rules may adjourn and otherwise regulate their meetings as they think fit. The President shall, upon the request of three (3) Committee Members, convene a meeting of the Committee within twenty-one (21) days.

### **25.2 Decisions of Committee**

A resolution of the Committee must be passed by a majority of votes of the Committee Members present at the meeting and entitled to vote on the resolution. In the case of an equality of votes, the Chair shall have a casting vote.

### **25.3 Validity of Committee Members' Acts**

All acts done by any meeting of the Committee or by any person acting as a Committee Member are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Committee Member or person so acting, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Committee Member.

### **25.4 Use of technology to be present at committee meetings**

- a) The presence of a committee member at a committee meeting need not be by attendance in person but may be by that committee member and each other committee member at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.
- b) A member who participates in a committee meeting as allowed under sub rule (a) is taken to be present at the meeting and, if the member votes at the meeting, the member is taken to have voted in person.

## **25.5 Quorum**

- a) Subject to rule 24.5 (d), no business is to be conducted at a committee meeting unless a quorum is present.
- b) If a quorum is not present within 30 minutes after the notified commencement time of a committee meeting —
  - i. in the case of a special meeting — the meeting lapses; or
  - ii. otherwise, the meeting is adjourned to the same time, day and place in the following week.
- c) If —
  - i. a quorum is not present within 30 minutes after the commencement time of a committee meeting held under sub-rule (b)(ii); and
  - ii. at least 2 committee members are present at the meeting,

those members present are taken to constitute a quorum.

## **25.6 Notice of Committee Meetings**

Unless all Committee Members agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their presence) not less than seven (7) days' oral or written notice of the meeting of the Committee shall be given to each Committee Member by the Secretary. The agenda shall be forwarded to each Committee Member not less than three (3) days prior to such meeting.

## **25.7 Validity of Committee Decisions**

A procedural defect in decisions taken by the Committee shall not result in such decision being invalidated.

## **25.8 Chair of Committee Meeting**

The President will chair Committee meetings. If the President is not available, and has not appointed a substitute, the Vice President will chair the meeting. If the President and the Vice President are not available, the Committee must elect a Committee Member present to chair the meeting or part of it.

# **26. CONFLICTS**

## **26.1 Committee Members' Interests**

A Committee Member is disqualified from:

- a) holding any place of profit or position of employment in the Association or in any company or incorporated Association in which the Association is a shareholder.
- b) Any contract or arrangement entered into by or on behalf of the Association in which any Committee Member is in any way interested will be voided for such reason.

## **26.2 Conflict of Interest**

A Committee Member must declare his or her interest in any:

- a) contractual matter;
- b) selection matter;
- c) disciplinary matter; or
- d) other financial matter;

in which a conflict of interest arises or may arise, and shall, unless otherwise determined by the Committee, absent himself/herself from discussions of such matter and shall not be entitled to vote in respect of such matter. If the Committee Member does vote, the vote shall not be counted. In the event of any uncertainty as to whether it is necessary for a Committee Member to absent himself/herself from discussions and refrain from voting, the issue should be immediately determined by vote of the Committee, or if this is not possible, the matter shall be adjourned or deferred.

## **26.3 Disclosure of Interests**

The nature of the interest of such Committee Member must be declared by the Committee Member at the meeting of the Committee at which the contract or other matter is first taken into consideration if the interest then exists or in any other case at the first meeting of the Committee after the acquisition of the interest. If a Committee Member becomes interested in a contract or other matter after it is made or entered into, the declaration of the interest must be made at the first meeting of the Committee held after the Committee Member becomes so interested.

## **26.4 General Disclosure**

A general notice that a Committee Member is a member of any specified firm or company and is to be regarded as interested in all transactions with that firm or company is sufficient declaration under Rule 25.3 as regards such Committee Member and the said transactions. After such general notice it is not necessary for such Committee Member to give a special notice relating to any particular transaction with that firm or company.

## **26.5 Recording Disclosures**

It is the duty of the Secretary to record in the minutes any declaration made or any general notice as aforesaid given by a Committee Member in accordance with Rule 24.3.

# 27 DISPUTES AND MEDIATION

## 27.1 Division 3 — Resolving disputes

Terms used

In this Division — grievance procedure means the procedures set out in this Division;

party to a dispute includes a person —

- (a) who is a party to the dispute; and
- (b) who ceases to be a member within 6 months before the dispute has come to the attention of each party to the dispute.

### Guidance Note - Resolving disputes

- For the purposes of rules 26 and 26.2 the term this Division relates to rules 26.3 to 27.1.

## 27.2 Application of Division

The procedure set out in this Division (the grievance procedure) applies to disputes —

- (a) between members; or
- (b) between one or more members and the Association.

## 27.3 Parties to attempt to resolve dispute

The parties to a dispute must attempt to resolve the dispute between themselves within 14 days after the dispute has come to the attention of each party.

## 27.4 How grievance procedure is started

- a) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 26.3, any party to the dispute may start the grievance procedure by giving written notice to the secretary of —
  - i. the parties to the dispute; and
  - ii. the matters that are the subject of the dispute.
- b) Within 28 days after the secretary is given the notice, a committee meeting must be convened to consider and determine the dispute.
- c) The secretary must give each party to the dispute written notice of the committee meeting at which the dispute is to be considered and determined at least 7 days before the meeting is held.
- d) The notice given to each party to the dispute must state —
  - i. when and where the committee meeting is to be held; and
  - ii. that the party, or the party's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the committee about the dispute.
- e) If —
  - i. the dispute is between one or more members and the Association; and
  - ii. any party to the dispute gives written notice to the secretary stating that the party —
    - does not agree to the dispute being determined by the committee; and
    - requests the appointment of a mediator under rule 28,

the committee must not determine the dispute.

## 28. GRIEVANCE PROCEDURE

- a) The grievance procedure set out in this Rule applies to disputes under these Rules between:
  - (i) a Member and another Member; or
  - (ii) a Member and the Association; or
  - (iii) if the Association provides services to non-members, those non-members who receive services from the Association.
- b) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within fourteen (14) days after the dispute comes to the attention of all of the parties
- c) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within ten (10) days, hold a meeting in the presence of a mediator.
- d) The mediator must be-
  - (i) a person chosen by agreement between the parties; or
  - (ii) in the absence of agreement-
    - in the case of a dispute between a Member and another Member, a person appointed by the CEO of Basketball WA;
    - in the case of a dispute between a Member or relevant Non-Member (as defined by Rule 28 (a) and the Association, a person who is a mediator appointed to, or employed with, a not for profit organisation.
- e) A Member of the Association and Basketball WA can be a mediator.
- f) The mediator cannot be a Member who is a party to the dispute.
- g) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- h) The mediator, in conducting the mediation, must-
  - (i) give the parties to the mediation process every opportunity to be heard;
  - (ii) allow due consideration by all parties of any written statement submitted by any party; and
  - (iii) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- i) The mediator must not determine the dispute.
- j) The mediation must be confidential and without prejudice.
- k) If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

### 28.1 Determination of dispute by committee

- a) At the committee meeting at which a dispute is to be considered and determined, the committee must —
  - i. give each party to the dispute, or the party's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the committee about the dispute; and
  - ii. give due consideration to any submissions so made; and

- iii. determine the dispute.
- b) The committee must give each party to the dispute written notice of the committee's determination, and the reasons for the determination, within 7 days after the committee meeting at which the determination is made.
- c) A party to the dispute may, within 14 days after receiving notice of the committee's determination under sub-rule (a)(iii), give written notice to the secretary requesting the appointment of a mediator under rule 28.1.
- d) If notice is given under sub-rule (c), each party to the dispute is a party to the mediation.

## 29 DIVISION 4 — MEDIATION

### 29.1 Application of Division

- a) This Division applies if written notice has been given to the secretary requesting the appointment of a mediator —
  - i. by a member under rule 12.4 (g); or
  - ii. by a party to a dispute under rule 26.4(e) (ii) or 27 (iii).
- b) If this Division applies, a mediator must be chosen or appointed under rule 28.2.

### 29.2 Appointment of Mediator

- a) The mediator must be a person chosen —
  - i. if the appointment of a mediator was requested by a member under rule 34 — by agreement between the Member and the committee; or
  - ii. if the appointment of a mediator was requested by a party to a dispute under rule 26.4 (e) (iii) or 27 (iii) — by agreement between the parties to the dispute.
- b) If there is no agreement for the purposes of sub-rule (1)(a) or (b), then, subject to sub-rules (3) and (4), the committee must appoint the mediator.
- c) The person appointed as mediator by the committee must be a person who acts as a mediator for another not-for-profit body, such as a community legal centre, if the appointment of a mediator was requested by —
  - i. a member under rule 12.4(g); or
  - ii. a party to a dispute under rule 26.3(e)(ii); or
  - iii. a party to a dispute under rule 27.1 (c) and the dispute is between one or more members and the Association.
- d) The person appointed as mediator by the committee may be a member or former member of the Association but must not —
  - i. have a personal interest in the matter that is the subject of the mediation; or
  - ii. be biased in favour of or against any party to the mediation.

### 29.3 Mediation Process

- a) The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.
- b) Each party to the mediation must give the mediator a written statement of the issues that need to be considered at the mediation at least 5 days before the mediation takes place.

- c) In conducting the mediation, the mediator must —
  - i. give each party to the mediation every opportunity to be heard; and
  - ii. allow each party to the mediation to give due consideration to any written statement given by another party; and
  - iii. ensure that natural justice is given to the parties to the mediation throughout the mediation process.
- d) The mediator cannot determine the matter that is the subject of the mediation.
- e) The mediation must be confidential, and any information given at the mediation cannot be used in any other proceedings that take place in relation to the matter that is the subject of the mediation.
- f) The costs of the mediation are to be paid by the party or parties to the mediation that requested the appointment of the mediator.

#### **29.4 If mediation results in decision to suspend or expel being revoked**

If —

- (a) mediation takes place because a member whose membership is suspended or who is expelled from the Association gives notice under rule 13.1 (g); and
- (b) as the result of the mediation, the decision to suspend the member's membership or expel the member is revoked,

that revocation does not affect the validity of any decision made at a committee meeting or general meeting during the period of suspension or expulsion.

### **30 SUBCOMMITTEES AND SUBSIDIARY OFFICES**

#### **30.1 Subcommittees and subsidiary offices**

- a) To help the committee in the conduct of the Association's business, the committee may, in writing, do either or both of the following —
  - i. appoint one or more subcommittees;
  - ii. create one or more subsidiary offices and appoint people to those offices.
- b) A subcommittee may consist of the number of people, whether or not members, that the committee considers appropriate.
- c) A person may be appointed to a subsidiary office whether or not the person is a member.
- d) Subject to any directions given by the committee —
  - i. a subcommittee may meet and conduct business as it considers appropriate; and
  - ii. the holder of a subsidiary office may carry out the functions given to the holder as the holder considers appropriate.

### **31. DELEGATION TO SUBCOMMITTEES AND HOLDERS OF SUBSIDIARY OFFICES**

- a) In this rule —

**non-delegable duty** means a duty imposed on the committee by the Act or another written law.

- b) The committee may, in writing, delegate to a subcommittee or the holder of a subsidiary office the exercise of any power or the performance of any duty of the committee other than —
  - i. the power to delegate; and
  - ii. a non-delegable duty.
- c) A power or duty, the exercise or performance of which has been delegated to a subcommittee or the holder of a subsidiary office under this rule, may be exercised or performed by the subcommittee or holder in accordance with the terms of the delegation.
- d) The delegation may be made subject to any conditions, qualifications, limitations or exceptions that the committee specifies in the document by which the delegation is made.
- e) The delegation does not prevent the committee from exercising or performing at any time the power or duty delegated.
- f) Any act or thing done by a subcommittee or by the holder of a subsidiary office, under the delegation has the same force and effect as if it had been done by the committee.
- g) The committee may, in writing, amend or revoke the delegation.

## 32. BY-LAWS

The Association may, by resolution at a general meeting, make, amend or revoke by-laws.

- a) By-laws may —
  - i. provide for the rights and obligations that apply to any classes of associate membership approved under rule 7.1; and
  - ii. impose restrictions on the committee's powers, including the power to dispose of the Association's assets; and
  - iii. impose requirements relating to the financial reporting and financial accountability of the Association and the auditing of the Association's accounts; and
  - iv. provide for any other matter the Association considers necessary or convenient to be dealt with in the by-laws.
- b) A by-law is of no effect to the extent that it is inconsistent with the Act, the regulations or these rules.
- c) Without limiting sub rule (b), a by-law made for the purposes of sub rule (a) (ii) may only impose requirements on the Association that are additional to, and do not restrict, a requirement imposed on the Association under Part 5 of the Act.

At the request of a member, the Association must make a copy of the by-laws available for inspection by the member.

# 33. RECORDS AND ACCOUNTS

## 33.1 Custody of books and securities

- a) Subject to sub rule (b), the books and any securities of the Association must be kept in the secretary's custody or under the secretary's control.
- b) The financial records and, as applicable, the financial statements or financial reports of the Association must be kept in the treasurer's custody or under the treasurer's control.
- c) Sub rules (a) and (b) have effect except as otherwise decided by the committee.
- d) The books of the Association must be retained for at least 7 years.

## 33.2 Record of office holders

The record of committee members and other persons authorised to act on behalf of the Association that is required to be maintained under section 58(2) of the Act must be kept in the secretary's custody or under the secretary's control.

**Note for this rule:** Section 58 of the Act —

- (a) *sets out the details of the record that an incorporated Association must maintain of the committee members and certain others; and*
- (b) *provides for members to inspect, make a copy of or take an extract from the record; and*
- (c) *prohibits a person from disclosing information in the record except for authorised purposes.*

## 33.3 Inspection of records and documents

- a) Sub-rule (b) applies to a member who wants to inspect —
  - i. the register of members under section 54(1) of the Act; or
  - ii. the record of the names and addresses of committee members, and other persons authorised to act on behalf of the Association, under section 58(3) of the Act; or
  - iii. any other record or document of the Association.
- b) The member must contact the secretary in writing to make the necessary arrangements for the inspection.
- c) The inspection must be free of charge.
- d) If the member wants to inspect a document that records the minutes of a committee meeting, the right to inspect that document is subject to any decision the committee has made about minutes of committee meetings generally, or the minutes of a specific committee meeting, being available for inspection by members.
- e) The member may make a copy of or take an extract from a record or document referred to in sub rule (a)(iii) but does not have a right to remove the record or document for that purpose.

**Note for this sub rule:** Sections 54(2) and 58(4) of the Act provide for the making of copies of, or the taking of extracts from, the register referred to in sub rule (a)(i) and the record referred to in sub rule (a)(ii).

- f) The member must not use or disclose information in a record or document referred to in sub rule (a)(iii) except for a purpose —
  - i. that is directly connected with the affairs of the Association; or
  - ii. that is related to complying with a requirement of the Act.

**Note for this sub rule:** Sections 57(1) and 58(5) of the Act impose restrictions on the use or disclosure of information in the register referred to in sub rule (a)(i) and the record referred to in sub rule (a)(ii).

### **33.4 Publication by committee members of statements about Association business prohibited**

A committee member must not publish, or cause to be published, any statement about the business conducted by the Association at a general meeting or committee meeting unless

- 
- (a) the committee member has been authorised to do so at a committee meeting; and
- (b) the authority given to the committee member has been recorded in the minutes of the committee meeting at which it was given.

## **34. NEGOTIABLE INSTRUMENTS**

All cheques, promissory notes, bankers, bills of exchange and other negotiable instruments, and all receipts for money paid to the Association, must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by two Committee Members or a Committee Member, unless otherwise approved by the Committee.

## **35. AUDITOR**

The Committee can appoint a properly qualified auditor or auditors and fix the remuneration of such auditor or auditors. The auditor's duties will be regulated in accordance with the Act, or if no relevant provisions exist under the Act, in accordance with generally accepted principles, or any applicable code of conduct.

## **36. NOTICE**

### **36.1 Giving of Notices**

- a) In this rule —

**recorded** means recorded in the register of members.

- b) A notice or other document that is to be given to a member under these rules is taken not to have been given to the member unless it is in writing and —
  - i. delivered by hand to the recorded address of the member; or
  - ii. sent by prepaid post to the recorded postal address of the member; or
  - iii. sent by facsimile or electronic transmission to an appropriate recorded number or recorded electronic address of the member.

## **36.2 Entitlement to Notices**

Notice of every General Meeting will be given in any manner authorised by this Constitution to:

- a) every Member, except those who have not supplied to the Secretary an address for the giving of notices to them;
- b) the Committee Members;
- c) the auditor for the time being of the Association; and
- d) Life Members whose address is known to the Secretary.
- e) No other person is entitled to receive notices of General Meetings.

## **37. EXECUTING DOCUMENTS AND COMMON SEAL**

- a) The Association may execute a document without using a common seal if the document is signed by —
  - i. 2 committee members; or
  - ii. one committee member and a person authorised by the committee.
- b) If the Association has a common seal —
  - i. the name of the Association must appear in legible characters on the common seal; and
  - ii. a document may only be sealed with the common seal by the authority of the committee and in the presence of —
    - (i) 2 committee members; or
    - (ii) one committee member and a person authorised by the committee,

and each of them is to sign the document to attest that the document was sealed in their presence.
- c) The secretary must make a written record of each use of the common seal.
- d) The common seal must be kept in the custody of the secretary or another committee member authorised by the committee.

## **38. AMENDMENTS TO CONSTITUTION**

- a) the Association will take reasonable steps to ensure that this Constitution is amended from time to time so as to be generally in conformity with amendments made to Basketball WA's Constitution, subject to such variations as the Committee consider being necessary or appropriate.
- b) This Constitution must not be altered except by Special Resolution in accordance with the Act and in compliance with all other procedures under the Act (if any).

## **39. INDEMNITY**

The Association will indemnify (either directly or through one or more interposed entities) any person who is or has been a Committee Member and, if so resolved by the Committee, the Association auditor, out of the Association funds against the following:

- a) any liability to another person (other than ASSOCIATION or a related body corporate) unless the liability arises out of conduct involving a lack of good faith;
- b) any liability for costs and expenses incurred by that person strictly in their capacity as a Committee Member:
  - i. in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
  - ii. in connection with an application, in relation to such proceedings, in which the court grants relief to the person under the Act or the Corporations Act.

## **40. DISTRIBUTION OF SURPLUS PROPERTY ON CANCELLATION OF INCORPORATION OR WINDING UP**

- a. In this rule —

***surplus property***, in relation to the Association, means property remaining after satisfaction of —

- i. the debts and liabilities of the Association; and
- ii. the costs, charges and expenses of winding up or cancelling the incorporation of the Association,

but does not include books relating to the management of the Association.

- b. On the cancellation of the incorporation or the winding up of the Association, its surplus property must be distributed as determined by special resolution by reference to the persons mentioned in section 24(1) of the Act.

## **41. EFFECT OF THESE RULES**

These Rules come into effect and will supersede and replace any previously existing constitutions, rules and orders of the Association, unless otherwise provided for in this Constitution and will remain in force until amended.