

Associations Incorporation Act 2009 (NSW) (Act)

Central Coast Waves Basketball Association Incorporated

ABN 84 261 371 774

Constitution

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ASSOCIATIONS INCORPORATION ACT 2009 (NSW)

CONSTITUTION

CENTRAL COAST WAVES BASKETBALL ASSOCIATION INCORPORATED

1. NAME OF ASSOCIATION

The name of the Association is Central Coast Waves Basketball Association Incorporated.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Constitution unless the contrary intention appears:

Act means the *Associations Incorporation Act 2009 (NSW)*.

Board means the body managing the Association and consisting of the Directors.

Constitution means this Constitution of the Association.

Chief Executive Officer (or the highest ranking employee) whose primary responsibilities include managing the overall operations of the association.

Director means a member of the Board and includes any person acting in that capacity from time to time appointed in accordance with this Constitution.

Financial Year means the year ending on the next 31 December following incorporation and thereafter a period of 12 months commencing on 1 January and ending on 31 December each year.

General Meeting means the annual or any special general meeting of the Association.

Incapacitated means unable to fulfil duties as required by this Constitution or the Act, including being able to:

- a) understand the information relevant to the decisions that will have to be made in the role of Director;
- b) retain that information to the extent necessary to make those decisions;
- c) use or weigh that information as part of the decision-making process; or
- d) communicate the decisions in some way.

Individual Member means a registered, financial Member of the Association who is at least 18 years of age.

Intellectual Property means all rights subsisting in copyright, business names, names, trademarks (or signs), logos, designs, equipment including computer software, images (including photographs, videos or films) or service marks relating to the Association or any activity of or conducted, promoted or administered by the Association.

Junior Member means a registered Member of the Association who is younger than 18 years of age.

Life Member means an individual appointed as a Life Member of the Association under clause c).

Local area means the geographical area for which the Association is responsible as recognised by Basketball NSW of which the Association is a Member.

Member means a Member of the Association for the time being under **clause 5**.

Membership Period means the start and end date issued to a Member (365-day period), generated after payment of fees has been received.

NSO means the National Sporting Organisation for the Sport being Basketball Australia.

Objects means the objects of the Association in **clause 3**.

Public Officer means the person appointed to be the public officer of the Association in accordance with the Act.

Register means a register of Members kept and maintained in accordance with **clause 7**.

Regulations means any rules, by-laws or regulations made by the Board under **clause 35**.

Seal means the common seal of the Association (if any).

Special Resolution means a "Special Resolution" as defined in the Act.

Sport means the sport of basketball.

SSO means the State Sport Organisation for the Sport being New South Wales Basketball Association Limited (Basketball NSW).

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) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- g) 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
- h) a reference to "writing" shall 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 transmission.

2.3 Severance

If any provision of this Constitution or any phrase contained in it is invalid or unenforceable, the phrase or provision is to be read down if possible, so as to be valid and enforceable, and otherwise shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Constitution.

2.4 The Act

Except where the contrary intention appears, in this Constitution, an expression that deals with a matter under the Act has the same meaning as that provision of the Act. The model constitution under the Act is expressly displaced by this Constitution.

3. OBJECTS OF THE ASSOCIATION

The Association is established solely for the Objects. The Objects of the Association are to:

- a) Conduct, encourage, promote, advance and administer basketball throughout the Local area;
- b) Act, at all times, on behalf of and in the interest of the Members and basketball in the Local area;
- c) Affiliate and otherwise liaise with Basketball NSW of which the Association is a member and adopt their rule and policy frameworks to further these Objects;
- d) Abide by, promulgate, enforce and secure uniformity in the application of the rules of basketball as may be determined from time to time by NSO and as may be necessary for the management and control of basketball and related activities in New South Wales;
- e) Advance the operations and activities of the Association throughout the local area;
- f) Have regard to the public interest in its operations; and
- g) Undertake and or do all such things or activities which are necessary, incidental or conducive to the advancement of these Objects.
- h) The ancillary objects of the Association, which are solely for the purpose of carrying out its Objects, include:
 - (i) To establish uniform regulations for the management and playing of basketball;
 - (ii) To hear and adjudicate upon appeals from the decisions of officials of either the Association or any other organisation involved with the sport of basketball in the State;
 - (iii) To suspend, impose and enforce penalties, disqualify or otherwise deal with any member or any of their employees;
 - (iv) To select and send teams, players and officials to represent the Association;
 - (v) To make rules or by-laws on matters authorised by or necessary or convenient to give effect to these Objects, but not rules or by-laws which are inconsistent with these objects;

- (vi) To call for, receive and deal with reports from the Board and other committees, other organisations involved with the sport of basketball in the State, officers and officials;
- (vii) To keep authentic records of all matters appertaining to basketball and to keep records of members;
- (viii) To hold or arrange competition and provide or contribute towards the provisions or prizes, awards or distinctions for them (but no member of the association may receive from the association any prize, award or distinction of monetary value except as a successful competitor at any competition held or promoted by the association); and
- (ix) To subscribe to, become a member of, and co-operate with or amalgamate with, any other association or organisation, whether incorporated or not, whose objects are similar to those of the Association, but the Association must not amalgamate with any association or organisation which does not prohibit the distribution of the income and property among its members to an extent at least as great as done by **clause 36**.

4. POWERS OF THE ASSOCIATION

Solely for furthering the Objects, the Association has, in addition to the rights, powers and privileges conferred on it under section 19 of the Act, the legal capacity and powers of a company limited by guarantee as set out under section 124 of the *Corporations Act 2001 (Cth)*.

5. MEMBERS ®

5.1 Members ®

The Members of the Association shall consist of:

- a) Life Members, who subject to this Constitution, shall have the right to receive notice of General Meetings and to be present, to debate and to vote at General Meetings
- b) Individual Members, who subject to this Constitution, shall have the right to receive notice of General Meetings and to be present, to debate and to vote at General Meetings; and
- c) Junior Members, who subject to this Constitution, shall have the right to receive notice of General Meetings and to be present, to debate but not vote. One parent or guardian of each Junior Member, subject to the parent or guardian not already being an Individual Member, shall subject to this Constitution, have the right to receive notice of General Meetings and to be present, to debate and to vote at General Meetings for and on behalf of the Junior Member they represent.

5.2 Life Members

- a) The Board may recommend to the annual General Meeting that any natural person who has rendered distinguished service to the Association be appointed as a Life Member.
- b) For the purposes of the Constitution, 'rendered distinguished service' shall be restricted to those who have contributed to the control, promotion, integration, or fostering of participation and development of basketball by their participation in the Association for a period of ten (10) years and who have never been charged and found guilty of an offence under and disciplinary process that warranted a suspension of greater than ten (10) weeks and are nominated by a member to the Board for election at an annual General Meeting of the Association.

- c) Names of nominees for Life Membership shall be submitted to the Secretary at least twenty-five (25) days prior to the annual General Meeting at which such nominees are proposed for election for Life Membership.
- d) A resolution of the annual General Meeting to confer life membership (subject to **clause c)**) on the recommendation of the Board must be a Special Resolution and must be passed by at least three fourths (75%) of those members attending and eligible to vote.
- e) No more than two (2) Life Members may be elected at any one annual General Meeting.
- f) A person must accept or reject the Association's resolution to confer life membership in writing. Upon written acceptance, the person's details shall be entered upon the Register, and from the time of entry on the Register the person shall be a Life Member.

6. MEMBERSHIP APPLICATION ®

6.1 Application for Membership

An application for membership must be:

- a) in writing on the form prescribed by Basketball NSW or on a form approved by Basketball NSW after discussion with the Association from time to time by the Board, and lodged with the Association; and
- b) accompanied by the appropriate fee(s).

By applying an applicant acknowledges and agrees that they voluntarily agree to be bound by the rules, regulations and policies of the Association (as well as those of Basketball NSW and Basketball Australia) including but not only this Constitution.

6.2 Discretion to Accept or Reject Application

- a) The Board, may acting in the best interests of the Association and in good faith, accept or reject an application whether the applicant has complied with the requirements in **clause 6.1** or not. The Association shall not be required or compelled to provide any reason for such acceptance or rejection.
- b) Where the Board accepts an application, the applicant shall become a Member. Membership shall be deemed to commence upon acceptance of the application by the Board. The Register shall be amended accordingly as soon as practicable.
- c) Where the Board rejects an application, it shall refund any fees forwarded with the application and the application shall be deemed rejected by the Association. No reasons for rejection need be given.
- d) There is no right of appeal where the Board rejects an application for membership, whether a new application or a renewal application.

6.3 Renewal

- a) Members (other than Life Members) must re-apply for membership annually in accordance with the timeframes and procedures set down by the Association from time to time. Members acknowledge and agree that membership renewal is not automatic. **Clause 6.2** applies to re-applications for membership.
- b) Upon re-application a Member must provide details of any change in their personal details, and any other information reasonably required by the Association.

6.4 Deemed Membership

- a) All persons who are, prior to the approval of this Constitution under the Act, Members of the Association shall be deemed Members from the time of approval of this Constitution under the Act.
- b) Any persons, prior to approval of this Constitution under the Act, who are not deemed Members under **clause 6.4a)** shall be entitled to carry on such functions analogous to their previous functions as are provided for under this Constitution.

7. REGISTER OF MEMBERS ®

7.1 Association to Keep Register

The Association must keep and maintain a Register of members, which is accessible by and uses the same platform as both Basketball NSW and Basketball Australia, within which shall be kept:

- a) the full name and address of the Member;
- b) the category of membership of the Member;
- c) the date on which the Member became a Member;
- d) any other information determined by the Board, Basketball NSW or Basketball Australia; and
- e) where applicable, the date of cessation of membership of any Member.

Members shall provide notice of any change and required details to the Association within one month of such change.

The Association shall adopt a privacy policy and procedures consistent with the Basketball NSW and Basketball Australia policies and procedures, for handling and securing personal information of Members.

7.2 Inspection of Register

Having regard to privacy and confidentiality considerations, inspection of the Register will only be available as required by the Act and under **clause 32.2 b)**. If permitted, only an extract of the Register, excluding the address or other direct contact details of any Member, shall be made available for inspection (but not copying) by Members.

7.3 Use of Register

Subject to the Act, confidentiality considerations and privacy laws, the Register may be used by the Association solely to further the Objects, as the Board considers appropriate.

8. EFFECT OF MEMBERSHIP

Members acknowledge and agree that:

- a) this Constitution forms a contract between each of them and the Association and that they are bound by this Constitution and the Regulations.
- b) they shall comply with and observe this Constitution and the Regulations and any determination, resolution or policy which may be made or passed by the Board or other entity with delegated authority;

- c) by submitting to this Constitution and the Regulations, they are subject to the jurisdiction of the Association, Basketball NSW and Basketball Australia;
- d) the Constitution and the Regulations are necessary and reasonable for promoting the Objects and particularly the advancement and protection of the Sport;
- e) neither membership of the Association nor this Constitution gives rise to:
 - (i) any proprietary right of Members in, to or over the Association or its property or assets;
 - (ii) any automatic right of a Member to renewal of their membership of the Association;
 - (iii) subject to the Act and the Association acting in good faith, the right of Members to natural justice, unless expressly provided for in this Constitution;
- a) they are entitled to all benefits, advantages, privileges and services of Association membership; and
- b) a right, privilege or obligation of a person by reason of their membership of the Association:
 - (i) is not capable of being transferred or transmitted to another person; and
 - (ii) terminates upon the cessation of membership whether by death, resignation or otherwise.

9. DISCONTINUANCE OF MEMBERSHIP

9.1 Notice of Resignation

- a) A Member who has paid all arrears of fees payable to the Association may resign or withdraw from membership of the Association by giving notice in writing to the Association of such withdrawal or resignation.
- b) When the Association receives a notice given under **clause 9.1a)**, it must make an entry in the Register that records the date on which the Member ceased to be a Member.

9.2 Discontinuance for Breach

Notwithstanding anything in the Act or this Constitution:

- a) membership of the Association may be discontinued by the Board upon breach of any clause of this Constitution or the Regulations, including, but not limited to, the failure to pay any monies owed to the Association, failure to comply with the Regulations or any resolutions or determinations made or passed by the Board or any duly authorised committee;
- b) membership shall not be discontinued by the Board under **clause 9.2a)** without the Board first giving the accused Member the opportunity to explain the breach and/or remedy the breach; and
- c) where a Member fails, in the Board's view to adequately explain the breach, that Member's membership shall be discontinued under **clause 9.2a)** by the Board giving written notice of the discontinuance to the Member. The Register shall be amended to reflect any discontinuance of membership under this **clause 9.2** as soon as practicable.

9.3 Member to Re-Apply

A Member whose membership has ceased or been discontinued under **clauses 9.1 or 9.2**:

- a) must seek renewal and re-apply for membership in accordance with this Constitution; and
- b) may be re-admitted at the discretion of the Board. There is no right of appeal where the Board refuses to re-admit a former Member under this clause.

9.4 Forfeiture of Rights

A Member who ceases to be a Member, for whatever reason, shall forfeit all rights in and claims upon the Association and its property and shall not use any property of the Association including Intellectual Property. Any Association documents, records or other property in the possession, custody or control of that Member shall be returned to the Association immediately.

9.5 Membership may be Reinstated

Membership which has been discontinued under this **clause 9** may be reinstated at the discretion of the Board, with such conditions as it deems appropriate.

9.6 Refund of Membership Fees

- a) Membership fees or subscriptions paid by the discontinued Member may be refunded in accordance with this **clause 9.6**.
- b) The Association component of any fee or subscription paid by a discontinued Member may be refunded at the discretion of the Association, and may be on a pro-rata basis.
- c) The Basketball NSW component of any fee or subscription paid by a discontinued Member will not be refunded if the discontinued Member has participated in a basketball activity (game or training) prior to discontinuance.

10. DISCIPLINE ®

10.1 Disciplinary proceedings

The Board may commence or cause to be commenced disciplinary proceedings against a Member who has allegedly:

- a) breached, failed, refused or neglected to comply with a provision of this Constitution, the Regulations or any resolution or determination of the Board or any duly authorised committee;
- b) acted in a manner unbecoming of a Member, or prejudicial to the purposes and interests of the Association and/or basketball; or
- c) brought themselves, the Association, any other Member or basketball into disrepute.

10.2 Procedure

- a) That Member will be subject to and submits unreservedly to the jurisdiction, procedures, penalties and the appeal mechanisms of the Association set out in the Regulations or as otherwise determined by the Board.
- b) Without limiting the operation of **clause 10.2(a)** the Board may appoint a Judiciary Committee to deal with any disciplinary matter referred to it. Such a Judiciary Committee

shall operate in accordance with the procedures expressed in the Regulations or as otherwise determined by the Board but subject always to the Act.

11. SUBSCRIPTIONS AND FEES ®

- a) The annual membership subscription and any other fees or levies payable by Members or categories of Members to the Association, the benefits which apply, the time for, and manner of payment, shall be determined by the Board from time to time.
- b) The Board is empowered to prevent any Member whose annual subscription or any other fees are in arrears from exercising the whole or any of the rights or privileges of membership of the Association, including but not limited to the right to vote at General Meetings. There is no right to natural justice or any right of appeal where the Board exercises its power under this **clause 11(b)**.

12. EXISTING DIRECTORS

The Members of the Board of the Association in office immediately prior to approval of this Constitution under the Act shall continue in those positions until the next annual General Meeting following such adoption of this Constitution. After this General Meeting the positions of Directors shall be filled, vacated and otherwise dealt with in accordance with this Constitution.

13. POWERS OF THE BOARD

Subject to the Act and this Constitution, the business of the Association shall be managed, and the powers of the Association shall be exercised by the Board. In particular, the Board shall act in accordance with the Objects and shall operate for the benefit of the Members and the Sport and community throughout the Local area.

14. COMPOSITION OF THE BOARD

14.1 Composition of the Board

The Board shall comprise up to:

- a) five (5) elected Directors who must all be Members and who shall be elected under **clause 15**; and
- b) two (2) appointed Directors who need not be Members and who may be appointed by the Directors under **clause 16**.

14.2 Election and Appointment of Directors ®

- a) The elected Directors shall be elected under **clause 15**.
- b) The appointed Directors may be appointed under **clause 16**.

14.3 Portfolios ®

The Board may allocate portfolios and/or titles to Directors. Subject to this Constitution and any properly passed resolution of the Board, the allocation of portfolios or titles does not effect the powers and duties of Directors.

15. ELECTED DIRECTORS

15.1 Nomination for Board ®

- a) Nominations for elected Director positions shall be called for thirty-five (35) days prior to the annual General Meeting. When calling for nominations, details of the necessary qualifications and job descriptions for the positions shall also be provided. Qualifications and job descriptions may be determined by the Board from time to time.
- b) Nominees for elected Director positions must declare any position they hold in Basketball NSW or Basketball Australia.

15.2 Form of Nomination

Nominations must be:

- a) in writing on the prescribed form; and
- b) signed by two (2) Individual Members whose membership period end date is greater than the date of the annual General Meeting; and
- c) certified by the nominee (who must be an Individual Member and their membership period end date is greater than the date of the annual General Meeting) expressing their willingness to accept the position for which they are nominated; and
- d) delivered to the Association not less than twenty-five (25) days before the date fixed for the annual General Meeting.

15.3 Elections ®

- a) If the number of nominations received is equal to the number of vacancies to be filled or if there are insufficient nominations received to fill all vacancies on the Board, then those nominated may be declared elected only if approved by a majority of Members present and entitled to vote.
- b) If there are insufficient nominations received to fill all vacancies on the Board, or if a person is not approved by the majority of Members under **clause 15.3a**), the positions will be deemed casual vacancies under **clause 17.1**.
- c) If the number of nominations exceeds the number of vacancies to be filled, voting papers shall be prepared containing the names of the candidates in alphabetical order for each vacancy on the Board.
- d) Voting shall be conducted in such a manner and by such a method as determined by the Board from time to time.

15.4 Term of Appointment for Elected Directors

- a) Directors elected under **clause 15** shall be elected for a term of two (2) years. Subject to provisions in this Constitution relating to early retirement or removal of Directors, elected Directors shall remain in office from the conclusion of the annual General Meeting at which the election occurred until the conclusion of the second annual General Meeting following.

- b) Three (3) elected Directors shall retire in each even year and two (2) elected Directors shall retire in each odd year until, after two (2) years, the five (5) original elected Directors have retired, after which those elected Directors (or their replacements) who first retired, shall retire and so on.
- c) The sequence of retirements under **clause 15.4b)** to ensure rotational terms shall be determined by the Board. If the Board cannot agree it will be determined by lot.
- d) Following the adoption of this Constitution, no person who has served as an elected Director for a period of four (4) consecutive full terms (eight (8) years) shall be eligible for election as an elected Director until the next annual general meeting following the date of conclusion of their last term as an elected Director.

16. APPOINTED DIRECTORS

16.1 Appointment of Directors

The elected Directors may appoint up to two (2) appointed Directors.

16.2 Qualifications for Appointed Directors

The appointed Directors may have specific skills in commerce, finance, marketing, law or business generally or such other skills which complement the Board composition. They do not need to be Members.

16.3 Term of Appointment

- a) Appointed Directors may be appointed by the elected Directors under this Constitution for a term of two years (2), which shall commence from the first Board meeting after the annual General Meeting until after the conclusion of the second annual General Meeting that follows.
- b) Appointed Directors should be appointed to ensure rotational terms that coincide with the elected Directors' rotational terms.
- c) Any adjustment to the term of appointed Directors appointed under this Constitution necessary to ensure rotational terms under this Constitution shall be determined by the Board.
- d) Following the adoption of this Constitution, no person who has served as an appointed Director for a period of four (4) consecutive full terms (eight (8) years) shall be eligible for appointment as an appointed Director until the next annual General Meeting following the date of conclusion of their last term as an appointed Director.

17. VACANCIES ON THE BOARD

17.1 Casual Vacancies

Any casual vacancy occurring in the position of Director may be filled by the remaining Directors from among appropriately qualified persons. Any casual vacancy may only be filled for the remainder of the Director's term under this Constitution.

17.2 Grounds for Termination of Director

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act, the office of a Director becomes vacant if the Director:

- a) dies;

- b) becomes bankrupt or makes any arrangement or composition with their creditors generally;
- c) after reasonable consideration by the Board, is determined by the Board to have become Incapacitated and the Board reasonably expects the Director will remain Incapacitated for a period exceeding 3 months, provided always that:
 - (i) the Director is first given the opportunity to make written or oral submissions to the Board before a determination is made; and
 - (ii) any determination made under this **clause 17.2** shall be made with the Directors acting reasonably;
- d) resigns their office in writing to the Association;
- e) is absent without the consent of the Board from meetings of the Board held during a period of six (6) months;
- f) holds any office of employment with the Association without the approval of the Board;
- g) is directly or indirectly interested in any contract or proposed contract with the Association and fails to declare the nature of that interest;
- h) in the reasonable opinion of the Board (but subject always to this Constitution) has:
 - (iii) acted in a manner unbecoming or prejudicial to the Objects and interests of the Association;
 - (iv) brought themselves or the Association into disrepute;
- i) is removed by Special Resolution; or
- j) would otherwise be prohibited from being a director of a corporation under the *Corporations Act 2001 (Cth.)*.

17.3 Board May Act

If a casual vacancy or vacancies arises in the office of a Director or Directors, the remaining Directors may act. If the number of remaining Directors is not sufficient to constitute a quorum at a meeting of the Board however, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute a quorum.

18. MEETINGS OF THE BOARD

18.1 Board to Meet

The Board shall meet as often as is deemed necessary in every calendar year for the dispatch of business (and shall be at least as often as is required under the Act). Subject to this Constitution, it may adjourn and otherwise regulate its meetings as it thinks fit. A Director may at any time convene a meeting of the Board within a reasonable time.

18.2 Decisions of Board

Subject to this Constitution, questions arising at any meeting of the Board shall be decided by a majority of votes and a determination of a majority of Directors shall for all purposes be deemed a determination of the Board. All Directors shall have one (1) vote on any question. Where voting is equal, the chair may exercise a casting vote. If the chair does not exercise a casting vote, the motion will be lost.

18.3 Resolutions Not in Meeting

- a) A resolution in writing that has been signed or assented to by any form of visible or other electronic communication by all the Directors for the time being present in Australia shall be as valid and effectual as if it had been passed at a meeting of Directors duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more of the Directors.
- b) Without limiting the power of the Board to regulate its meetings as it thinks fit, a meeting of the Board may be held where one or more of the Directors is not physically present at the meeting, provided that:
 - (i) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously whether by means of telephone or other form of communication;
 - (ii) notice of the meeting is given to all the Directors entitled to notice in accordance with the usual procedures agreed upon or laid down from time to time by the Board or this Constitution. The notice will specify that Directors are not required to be present in person;
 - (iii) if a failure in communications prevents **clause 18.3b)(i)** from being satisfied by the number of Directors which constitutes a quorum, and none of such Directors are present at the place where the meeting is deemed by virtue of the further provisions of this clause to be held, then the meeting shall be suspended until **clause 18.3b)(i)** is satisfied again. If such condition is not satisfied within fifteen (15) minutes from the interruption, the meeting shall be deemed to have been terminated or adjourned; and
 - (iv) any meeting held where one or more of the Directors is not physically present shall be deemed to be held at the place specified in the notice of the meeting, provided a Director is there present. If no Director is there present, the meeting shall be deemed to be held at the place where the chair of the meeting is located.

18.4 Quorum

At meetings of the Board the number of Directors whose presence is required to constitute a quorum is four (4). A quorum must remain present throughout the meeting.

18.5 Notice of Board Meetings

Unless all Directors agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their apology or presence) not less than fourteen (14) days written notice of the meeting of the Board shall be given to each Director. The agenda shall be forwarded to each Director not less than four (4) days prior to such meeting.

18.6 Chair

Following the General Meeting, the Board shall appoint a chair from among its number. The chair shall be the nominal head of the Association and will act as chair of any Board meeting or General Meeting at which they are present. If the chair is not present or is unwilling or unable to preside at a Board meeting the remaining Directors shall appoint another Director to preside as chair for that meeting only.

18.7 Conflict of Interest ®

A Director shall declare their interest in any contractual, selection, disciplinary, or financial matter in which a conflict of interest arises or may arise. They shall, unless otherwise

determined by the Board, absent them self from discussions of such matters and shall not be entitled to vote in respect of such matters. If the Director casts a vote, the vote shall not be counted. If there is any uncertainty as to whether it is necessary for a Director to absent them self from discussions and refrain from voting, the issue should be immediately determined by the Board. If this is not possible, the matter shall be adjourned or deferred.

18.8 Disclosure of Interests

- a) The nature of the interest of a Director must be declared at the meeting of the Board at which the relevant matter is first taken into consideration, if the interest then exists. In any other case, the interest should be disclosed to the Board at the next meeting of the Board. If a Director becomes interested in a matter after it is made or entered into, the declaration of the interest must be made at the first meeting of the Board held after the Director interest has arisen.
- b) All disclosed interests must also be disclosed to each annual General Meeting.

18.9 General Disclosure

A general notice stating that a Director is a member of any specified firm or Association and that they are 'interested' in all transactions with that firm or Association is sufficient declaration under **clause 18.8**. After such general notice, it is not necessary for the Director to give a special notice regarding any particular transaction with that firm or Association.

18.10 Recording Disclosures ®

Any declaration made, any disclosure or any general notice given by a Director under **clauses 18.7, 18.8 and/or 18.9** must be recorded in the minutes of the relevant meeting and otherwise in accordance with the Act.

19. POWERS AND DUTIES OF THE BOARD

- a) The business of the association shall be managed by the Board who may exercise all powers of the Association except any power which the Act or this Constitution require the Association to exercise in general meeting. The Board may make, amend or delete regulations or by-laws regulating the conduct of Members or the activities of the Association.
- b) All cheques, promissory notes, drafts, bills or exchange and other negotiable instruments, and all receipts for money paid to the Association, must be signed by any two Directors, or in such other way as the Board decides from time-to-time.
- c) The Board must cause minutes to be made:
 - i. Of all appointments of officers and employees;
 - ii. Of names of Directors present at each meeting of the Association and of the Board;
 - iii. Of all proceedings at all meetings of the Association and of the Board.

19.1 Board May Delegate Functions

The Board may, by instrument in writing, create, establish or appoint special committees, individual officers and consultants to carry out specific duties and functions.

The Board will determine what powers these committees are given. In exercising its power under this clause, the Board should take into account broad stakeholder involvement.

19.2 Delegation by Instrument

In the establishing instrument, the Board may delegate such functions as are specified in the instrument, other than:

- a) this power of delegation; and
- b) a function imposed on the Board by the Act, any other law or this Constitution.

19.3 Delegated Function Exercised in Accordance with Terms

A function, the exercise of which has been delegated under this clause, may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.

19.4 Procedure of Delegated Entity

The procedures for any entity exercising delegated power shall, subject to this Constitution and with any necessary or incidental amendment, be the same as that applicable to meetings of the Board under **clause 18**. The entity exercising delegated powers shall make decisions in accordance with the Objects, and it shall promptly provide the Board with details of all material decisions. The entity shall also provide any other reports, minutes and information as required by the Board from time to time.

19.5 Delegation May Be Conditional

A delegation under this clause may be made subject to certain conditions or limitations regarding the exercise of any function. These may be specified in the delegation.

19.6 Revocation of Delegation

The Board may by resolution and/or instrument in writing, at any time revoke wholly or in part any delegation made under this clause. The Board may also amend or repeal any decision made by a body or person under this **clause 19**.

20. SEAL

- a) The Association may have a Seal upon which its corporate name shall appear in legible characters.
- b) The Seal shall not be used without the express authorisation of the Board. Every use of the Seal shall be recorded in the Association's minute book. Two (2) Directors must witness every use of the Seal, unless the Board determines otherwise.

21. ANNUAL GENERAL MEETING

- a) The Association's annual General Meeting shall be held in accordance with the Act and this Constitution. It should be held on a date and at a venue determined by the Board.
- b) All General Meetings other than the annual General Meeting shall be special General Meetings and shall be held in accordance with this Constitution.

22. SPECIAL GENERAL MEETINGS

22.1 Special General Meetings May be Held

The Board may, whenever it thinks fit, convene a special General Meeting. When, but for this clause, more than fifteen (15) months elapses between annual General Meetings, the Board shall convene a special General Meeting before the expiration of that period.

22.2 Requisition of Special General Meetings

- a) The secretary will convene a special General Meeting when, subject to **clause 22.2(b)**, fifteen (15) Members entitled to vote submit a requisition in writing.
 - (i) The requisition for a special General Meeting shall state the object(s) of the meeting, be signed by the Members making the requisition and be sent to the Association. The requisition may consist of several like documents, each page signed by all of the Members making the requisition.
 - (ii) Subject to **clause 22.2(b)**, if the Board does not cause a special General Meeting to be held one (1) month after the date in which the requisition is sent to the Association, the Members making the requisition, or any of them, may convene a special General Meeting to be held no later than three (3) months after that date.
 - (iii) A special General Meeting convened by Members under this Constitution shall be convened in the same manner, or as close as possible, as those convened by the Board.
- b) Where a special General Meeting is requisitioned, in part or in full, to remove one or more Directors under **clause 17.2(i)**, the requisitioning Members and the applicable Director(s) must first undertake that part of the grievance procedure outlined in clauses **31(a)** and **(b)**, For the avoidance of doubt, the Board is not required to give notice of, or convene, a special General Meeting falling within this **clause 22.2(b)**, until such requirement is met.

23. NOTICE OF GENERAL MEETING

- a) Notice of every General Meeting shall be given to every Life Member and Individual Member entitled to receive notice. Notices shall be sent to the email addresses appearing in the Association's Register. The auditor and Directors shall also be entitled to receive notice of every General Meeting. No other person shall be entitled, as of right, to receive notices of General Meetings.
- b) A notice of a General Meeting shall specify the place, day and hour of the meeting and shall state the business to be transacted at the meeting.
- c) At least twenty-one (21) days' notice of a General Meeting shall be given to those Members entitled to receive notice, together with:
 - (i) the agenda for the meeting; and
 - (ii) any notice of motion received from Members entitled to vote.
- d) Notice of every General Meeting shall be given in the manner in **clause 40**.

24. BUSINESS

- a) The business to be transacted at the annual General Meeting includes the consideration of accounts and the reports of the Board and auditors, the election of Directors under this Constitution and subject to the requirements of the Act, the appointment of the auditors.
- b) All business that is transacted at a General Meeting and at an annual General Meeting, with the exception of those matters set down in **clause 24a)**, shall be special business.
- c) No business other than that stated on the notice for a General Meeting shall be transacted at that meeting.

25. NOTICES OF MOTION

Members entitled to vote may submit notices of motion for inclusion as special business at a general meeting. All notices of motion must be submitted in writing on the prescribed form to the Association no less than twenty-five (25) days (excluding receiving date and meeting date) prior to the General Meeting.

26. PROCEEDINGS AT GENERAL MEETINGS

26.1 Quorum

No business shall be transacted at any general meeting unless a quorum is present at the time when the meeting proceeds to business. A quorum for General Meetings of the Association shall be fifteen (15) Members entitled to vote.

26.2 Chair to Preside

The chair of the Board shall, subject to this Constitution, preside as chair at every General Meeting except:

- a) in relation to any election for which the chair is a nominee; or
- b) where a conflict of interest exists.

If the chair is not present, or is unwilling or unable to preside, the Member present shall appoint another Director to preside as chair for that meeting only, or if no Director is present or willing to act, an individual approved by a majority of the Members entitled to vote.

26.3 Adjournment of Meeting

- a) If within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall be adjourned until the same day in the next week at the same time and place or to a date, time or place determined by the chair. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the meeting will lapse.
- b) The chair may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place. No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- c) When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- d) Except as provided in **clause 26.3c)** it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

26.4 Voting Procedure

At any meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by:

- a) the chair; or
- b) a simple majority of the Members.

26.5 Recording of Determinations

Unless a poll is demanded under **clause 26.4**, the chair's declaration shall be conclusive evidence of the result of a resolution decided by a show of hands. The declaration does not need to record the number of votes in favour of or against the resolution; the result of the resolution must be recorded in the minutes.

26.6 Where Poll Demanded

If a poll is duly demanded under **clause 26.4** it shall be taken in such a manner and either at once or after an interval or adjournment or otherwise as the chair directs. The result of the poll shall be the resolution of the meeting.

26.7 Procedural irregularities

- a) No decision of the Association, the Board or any Board authorised entity shall be invalid merely because of a failure to give proper notice under this Constitution or the Regulations or other irregularity in procedure required by this Constitution or the Regulations unless a person suffers substantial prejudice as a result of that failure to give proper notice or irregularity in procedure.
- b) The Association, the Board or other Board authorised entity may confirm an earlier decision which may have been otherwise invalid because of a failure to give proper notice or other irregularity in procedure and the decision shall be deemed to be valid from the time it was originally made.

27. VOTING AT GENERAL MEETINGS ®

27.1 Members Entitled to Vote

Each Individual Member (whose membership period end date is greater than the date of the General Meeting) shall be entitled to one (1) vote at General Meetings. No other Member shall be entitled to vote but shall, subject to this Constitution, have and be entitled to exercise those rights set out in **clause 5.1**.

27.2 Chair May Not Exercise Casting Vote

Where voting at General Meetings is equal, the motion will be lost.

27.3 Proxy Voting

Proxy voting is not permitted at any General Meeting.

27.4 Postal or Electronic Voting

No motion shall be determined by a postal or electronic ballot unless determined by the Board. If the Board so determines, the postal or electronic ballot shall be conducted under procedures determined by the Board from time to time.

28. PROCEEDINGS OF THE BOARD

- a) The Board may meet for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A Director may at any time and the Secretary shall on request of a Director summon a meeting of the Board.
- b) A meeting of the Board may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other manner permitted by the Act. A meeting of the Board held solely or partly by technology is treated as held at the place at which the

greatest number of Directors present at the meeting is located or, if an equal number of Directors is located in each of two or more places, at the place where the Chair of the meeting is located.

- c) Questions arising at any meeting of the Board are to be decided by a majority of votes and a determination by a majority of the Directors is for all purposes taken to be a determination of the Board. If votes are equal the Chair of the meeting is to have a second or casting vote.
- d) The quorum necessary for the transaction of business by the Board is a majority of the Directors holding office from time to time, or any greater number as may be fixed by Board.
- e) The continuing Directors may act despite any vacancy in the Board, but if and as long as their number is reduced below the minimum number of Directors fixed by or in accordance with this Constitution, the continuing Director or Directors may act for the purpose of increasing the number of Directors to that number or of summoning a general meeting of the Association, but for no other purpose.
- f) The Board must elect a Director to chair its meetings for a maximum period of 12 months. If there is no chairman of Directors or the chairman is not present within 15 minutes after the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.
- g) The Board may delegate any of its powers and or functions (not being duties imposed on the Board as the directors of the Association by the Act or the general law) to one or more sub-committees which may comprise either or both a Director (or Directors) or such Member (or Members) of the Association or such other persons as the Board thinks fit. Any sub-committee so formed must conform to any regulation that may be imposed by the Board. Unless prohibited by regulation of the Board a sub-committee may co-opt any person. All members of a sub-committee are to have one vote.
- h) The Board may appoint one or more advisory boards consisting of such Director or Directors or such Member (or Members) of the Association or such other persons as the Board thinks fit. Such advisory boards shall act in an advisory capacity only. They must conform to any regulations that may be imposed by the Board and subject to those regulations shall have the power to co-opt any person. All members of such advisory boards shall have one vote.
- i) A sub-committee may meet and adjourn as it thinks proper and may choose one of their number to act as chairman of their meetings. Questions arising at any meeting shall be determined by a majority of votes of the members of the sub-committee present, and if votes are equal the chair shall have a second or casting vote.
- j) All acts done by any meeting of the Board or of a sub-committee or by any person acting as a Director shall, even if it is afterwards discovered that there was some defect in the appointment of any Director or person acting as a Director, or that the Director or any of them were disqualified, be as valid as if every person had been duly appointed and was qualified to be a Director.
- k) If a document (which may be separate documents in identical terms) containing a statement that the signatories to it are in favour of a resolution in the terms set out or otherwise identified in the document has been signed by all the Directors (excluding any Director, who would not be entitled to vote on that resolution at a meeting of the Board), a resolution in those terms shall be taken to have been passed at a meeting of the Board held on the day on which and at the time at which the document was last signed by a Director. Such a statement contained in an unsigned email or other electronic transmission which is received by the Association and is expressed to have been sent by a Director is taken to be a document signed by that Director at the time of receipt by the Association.

29. CHIEF EXECUTIVE OFFICER

The Board may appoint any person other than a Director to be Chief Executive Officer. The Chief Executive Officer is entitled to attend (but not vote at) meetings of the Board, but only for as long as he or she holds that office.

30. SECRETARY

The Board may appoint the Secretary for such term, and upon such conditions (including remuneration), as it thinks fit, and may remove any Secretary so appointed. A Member of the Association may be honorary Secretary. If the Secretary is not already a Director, the Secretary is entitled to attend (but not vote at) meetings of the Board. Whether or not a Member, he or she shall be subject to the provisions of clause 4.

31. GRIEVANCE PROCEDURE ®

a) The grievance procedure set out in this clause applies to disputes arising under this Constitution between a Member and:

- i. another Member; or
- ii. the Association.

It does not, however, apply to any appeal by a Member against a decision made in accordance with the disciplinary proceedings described in **clause 10**.

b) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within fourteen days after the dispute comes to the attention of all 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 may refer the dispute to:

- I. any independent tribunal established by the SSO in accordance with the procedures determined by the SSO from time to time; or
- II. a community justice centre for mediation under the *Community Justice Centres Act 1983 (NSW)*.

d) The Board may prescribe additional grievance procedures in Regulations consistent with this **clause 31**.

e) If the dispute is not resolved the Board may take whatever steps it considers appropriate in regard to the dispute in the best interests of the Association and the Members concerned.

32. RECORDS AND ACCOUNTS

32.1 Records

The Association shall establish and maintain proper records and minutes concerning all of its transactions, business, meetings and dealings (including those of the Association and the Board).

32.2 Records Kept in Accordance with the Act

a) Proper accounting and other records of the Association including books, minutes, documents and securities shall be kept in accordance with the Act and otherwise shall be kept in the care and control of the secretary.

- b) Subject to the Act and paragraph (c), the Board may determine whether and to what extent, and at what times and places and under what conditions, the financial records, accounts, books, securities, minutes of General Meetings or Board meetings or other relevant documents of the Association will be open for inspection by the Members.
- c) Subject to the Act and without limiting (b) above, the Board may refuse to permit a member to inspect records of the Association, including minutes of Board meetings, which relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the Association.

32.3 Board to Submit Accounts

The Board shall submit the Association's statements of account to the Members at the annual General Meeting in accordance with this Constitution and the Act.

32.4 Accounts Conclusive

The statements of account, when approved or adopted by an annual General Meeting, shall be conclusive except when errors have been discovered within three (3) months after such approval or adoption.

32.5 Accounts to be available to Members

The Secretary shall ensure all persons entitled to receive notice of General Meetings under this Constitution, receive or have access to a copy of the statements of account, the Board's report, the auditor's report and other document required under the Act (if any).

32.6 Negotiable Instruments

All cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Association, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two (2) duly authorised directors or in such other manner as the Board determines.

33. AUDITOR

- a) A properly qualified auditor or auditors shall be appointed by the Association in General Meeting. The auditor's duties shall be regulated in accordance with the Act, the *Corporations Act 2001 (Cth.)* and generally accepted principles and/or any applicable code of conduct. The auditor may be removed by the Board.
- b) The accounts of the Association shall be examined, and the correctness of the profit and loss accounts and balance sheets ascertained by an auditor or auditors at the conclusion of each Financial Year.
- c) The Association's financial year end will be 1st January through to the 31st of December.

34. INCOME

- a) Income and property of the Association shall be:

- i. derived from such sources; and
- ii. managed in such manner;

as the Board determines from time to time subject always to the Act and this Constitution.

- b) The income and property of the Association shall be applied solely towards the promotion of the Objects.
- c) Except as prescribed in this Constitution or the Act:
 - i. no portion of the income or property of the Association shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise to any Member or Director; and
 - ii. no remuneration or other benefit in money or money's worth shall be paid or given by the Association to any Member who holds any office of the Association.
- d) Nothing in **clauses b) or c)** shall prevent payment in good faith to any Member for:
 - i. any services actually rendered to the Association whether as an employee, director or otherwise;
 - ii. goods supplied to the Association in the ordinary and usual course of operation;
 - iii. interest on money borrowed from any Member;
 - iv. rent for premises demised or let by any Member to the Association; or
 - v. any out-of-pocket expenses incurred by a Member on behalf of the Association,

provided that any such payment shall not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction.

35. WINDING UP

- a) Subject to this Constitution the Association may be wound up or cancelled in accordance with the Act.
- b) The liability of the Members of the Association is limited.
- c) Every Individual Member undertakes to contribute to the assets of the Association if it is wound up or cancelled while they are a Member, or within one year after ceasing to be a Member, for payment of the debts and liabilities of the Association contracted before the time at which they ceased to be a Member and towards the costs, charges and expenses of winding up or cancelling the registration of the Association, such an amount not exceeding one dollar (\$1.00).

36. DISTRIBUTION OF PROPERTY ON WINDING UP

If upon winding up or cancellation of the Association there remains, after satisfaction of all its debts and liabilities, any assets or property, they shall not be paid to or distributed among the Members. Instead, the assets or property shall be given or transferred to an organisation or organisations with objects similar to the Objects. Such organisation(s) must prohibit the distribution of its income and property among its members to an extent at least as great as that imposed on the Association by this Constitution. Such organisation(s) will be determined by the Members in a General Meeting at or before the time of winding up or cancellation. If this does not occur, the decision is to be made by a judge of the Supreme Court of New South Wales or other Court as may have or acquire jurisdiction in the matter.

37. ALTERATION OF CONSTITUTION

This Constitution shall not be altered except by Special Resolution.

38. REGULATIONS

38.1 Board to Formulate Regulations

The Board may formulate, issue, adopt, interpret and amend Regulations (sometimes referred to as by-laws) for the proper advancement, management and administration of the Association, the advancement of the Objects and the Sport in the Local area. Such Regulations must be consistent with this Constitution and any policy directives of the Board.

38.2 Regulations Binding

All Regulations are binding on the Association and all Members.

38.3 Regulations Deemed Applicable

All clauses, rules, by-laws and regulations of the Association (by whatever name) in force at the date of the approval of this Constitution (as long as such clauses, rules, by-laws or regulations are not inconsistent with or have been replaced by, this Constitution) shall be deemed to be Regulations and shall continue to apply and be in operation.

38.4 Changes Binding on Members

Amendments, alterations, interpretations or other changes to Regulations shall be advised to Members by such means as are determined and approved by the Board from time to time. The Association shall take reasonable steps to distribute such changes to Members. All changes are binding on all Members.

39. STATUS AND COMPLIANCE OF ASSOCIATION

39.1 Recognition of Association

The Association is a Member of Basketball NSW and is recognised by those bodies as the entity responsible for the delivery of the Sport in the Local area in accordance with the Objects but subject always to compliance with this Constitution and Basketball NSW constitution.

39.2 Constitution of the Association

This Constitution will clearly reflect the objects of Basketball NSW and will generally conform to their Constitution, subject always to the Act.

39.3 SSO

The Association may not resign, disaffiliate or otherwise seek to withdraw from Basketball NSW without approval by Special Resolution.

40. NOTICE

a) Notices may be given by the Association to any person entitled under this Constitution to receive any notice. The notice can be:

- i. sent by email to the Member's email address; or
- ii. prominently posted on the Association's website.

- b) Where a notice is sent by electronic mail or on the Association's website, service of the notice shall be deemed to be effected the next business day after it was sent or posted.

41. INDEMNITY

- a) Every Director and employee of the Association will be indemnified out of the property and assets of the Association against any liability incurred by them in their capacity as Director or employee in defending any proceedings, civil or criminal, in which judgement is given in their favour or in which they are acquitted or connected with any application in relation to any such proceedings in which relief is granted by the Court.
- b) The Association shall indemnify its Directors and employees against all damages and losses (including legal costs) for which any such Director or employee may be or become liable to any third party in consequence of any act or omission, except wilful misconduct:
 - i. in the case of a Director, performed or made while acting on behalf of and with the authority, express or implied, of the Association; or
 - ii. in the case of an employee, performed or made in the course of, and within the scope of, their employment by the Association.