

Constitution

Date: [TBA]

SOUTHERN BASKETBALL ASSOCIATION INCORPORATED
ABN 78 936 718 412
REG. NO. A0006052S

DRAFT

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Constitution of Southern Basketball Association Incorporated

1. NAME

The name of the incorporated association is Southern Basketball Association Incorporated (**Association**).

2. INCORPORATION

Associations shall incorporate under the Act and shall remain incorporated.

3. OBJECTS OF ASSOCIATION

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

- (a) participate as a member of Basketball Victoria (**BV**) and Basketball Australia (**BA**) through and by which Basketball can be conducted, encouraged, promoted, advanced and administered;
- (b) provide for the conduct, encouragement, promotion and administration of Basketball throughout the Bayside Region;
- (c) ensure the maintenance and enhancement of the Association and Basketball, its standards, quality and reputation for the benefit of the Members and Basketball;
- (d) at all times promote mutual trust and confidence between the Association, and the Members in pursuit of these objects;
- (e) at all times act on behalf of and in the interest of the Members and Basketball;
- (f) promote the economic and community service success, strength and stability of the Association and Basketball;
- (g) affiliate and otherwise liaise with BV and BA in the pursuit of these objects and Basketball;
- (h) conduct, encourage, promote and advance Basketball in the Bayside Region;
- (i) use and protect the Intellectual Property
- (j) apply the property and capacity of the Association towards the fulfilment and achievement of these Objects;
- (k) strive for Governmental, commercial and public recognition of the Association;
- (l) promulgate, and secure uniformity in, such rules as may be necessary for the management and control of Basketball and related activities;
- (m) review and/or determine any matters relating to Basketball which may arise, or be referred to it, by any Member;

- (n) pursue through itself or other such commercial arrangements, including sponsorship and marketing opportunities as are appropriate to further the interests of Basketball in the Bayside Region;
- (o) adopt and implement appropriate policies, including in relation to sexual harassment, equal opportunity, equity, drugs in sport, health, safety, junior and senior programs, infectious diseases and such other matters as arise from time to time as issues to be addressed in Basketball;
- (p) represent the interests of its Members and of Basketball generally in any appropriate forum in the Bayside Region;
- (q) have regard to the public interest in its operations;
- (r) do all that is reasonably necessary to enable these objects to be achieved and to enable the Members to receive the benefits which these objects are intended to achieve;
- (s) encourage and promote performance-enhancing drug free competition;
- (t) maintain, manage, seek and obtain improved facilities for playing Basketball in the Bayside Region;
- (u) undertake and or do all such things or activities which are necessary, incidental or conducive to the advancement of these objects.

4. POWERS OF ASSOCIATION

Solely for furthering the Objects set out above, the Association has in addition to the powers and functions under the Act, the legal capacity and powers of a company limited by guarantee as set out under section 124 of the *Corporations Act*.

5. INTERPRETATION AND DEFINITIONS

5.1 Definitions

In this Constitution, unless the contrary intention appears:

Act means the *Associations Incorporation Reform Act 2012 (Vic)*.

Affiliated Member Club means a Basketball club that has a minimum of five competing teams registered in the Associations Domestic Competition and is recognised and admitted as a Member of the Association.

Annual General Meeting or **AGM** means a meeting of Members convened under **rule 13**.

Annual Subscriptions means the annual fees payable by each category of Member as determined by the Board under **rule 8**.

Association means Southern Basketball Association Incorporated.

Board means the body managing the Association and consisting of the Directors under **rule 18.1(a)**.

BA means Basketball Australia Limited.

BV means the body recognised by BA as the peak body for and administering Basketball in Victoria.

By-Laws mean any by-laws made by the Board under **rule 25**.

Committee means any committee of the Board created under **rule 22.4** from time to time.

Constitution means this constitution of the Association as amended from time to time.

Director means a member of the Board elected or appointed under **rule 19**.

Financial Year means the year ending 31 August in each year.

General Meeting means the annual or any special general meeting of the Association convened under **rule 15**.

Intellectual Property means all rights subsisting in copyright, business names, names, trademarks (or signs), logos, designs, equipment, images (including photographs, television, videos or films) or service marks (whether registered or registrable) relating to the Association or any championship, competition, series or event or Basketball activity of, or conducted, promoted or administered by, the Association.

Life Member means an individual appointed as a Life Member of the Association under **rule 7.7**.

Member means any person recognised as a member of the Association by the Board under **rule 7** from time to time.

Objects means the objects of the Association under **rule 3**.

Participant means a person who is:

- (a) registered financial member of an Affiliated Member Club; or
- (b) an administrator, coach, official, player, parent or spectator involved in any Basketball competitions conducted by or under the auspices of the Association.

President means the President for the time being of the Association appointed in accordance with **rule 18.2(a)**.

Register means the register of Members kept in accordance with **rule 9.1**.

Relevant Documents means the records and other documents, however recorded compiled or stored, that relate to the Association and management of the Association and includes membership records, financial statements, financial records, and records and documents relating to transactions, dealings, business or property of the Association.

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

Special Resolution means a resolution passed in accordance with the Act.

State means and includes a State or Territory of Australia.

5.2 Interpretation

In this Constitution:

- (a) a reference to a rule, regulation, schedule or annexure is to a rule, regulation, schedule or annexure of, or made under, this Constitution;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing any gender include the other genders;
- (d) headings are for convenience only and shall not be used for interpretation;
- (e) words or expressions shall be interpreted in accordance with the provisions of the Act as they vary from time to time;
- (f) references to persons include natural persons, corporations and bodies politic, and any legal personal representatives, successors and permitted assigns of that person;
- (g) 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.
- (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) expressions referring to "writing" shall unless the contrary intention appears, be construed as including references to printing, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail.

5.3 Enforceability

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

6. STATUS AND COMPLIANCE OF ASSOCIATION

6.1 Recognition of Association

Subject to compliance with this Constitution and the BV constitution the Association shall be recognised as an Affiliate Member of BV and shall administer Basketball activities in the Bayside Region in accordance with the Objects.

6.2 Operation of Constitution

The Association and the Members acknowledge and agree:

- (a) that they are bound by this Constitution and that this Constitution, operates to create uniformity in the way in which the Objects and Basketball are to be

conducted, promoted, encouraged, advanced and administered throughout Bayside Region;

- (b) to ensure the maintenance and enhancement of Basketball, its standards, quality and reputation for the benefit of the Members and Basketball;
- (c) not to do or permit to be done any act or thing which might adversely affect or derogate from the standards, quality and reputation of Basketball and its maintenance and enhancement;
- (d) to promote the economic and community services success, strength and stability of each other and to act interdependently with each other in pursuit of their respective objects;
- (e) to act in the interests of Basketball and the Members;
- (f) where the Board considers or is advised that a Member or Participant has allegedly:
 - (i) breached, failed, refused or neglected to comply with a provision of this Constitution, the By Laws, or any resolution or determination of the Board, Association or any duly authorised Committee; or
 - (ii) acted in a manner prejudicial to the Objects and interests of the Association and/or Basketball; or
 - (iii) brought themselves, the Association, any other Affiliated Member Club or Basketball into disrepute;

the Board may after allowing the Member or Participant a reasonable opportunity to explain, adjudicate and if necessary penalise the Member or Participant with such penalty as it thinks appropriate.

7. MEMBERSHIP OF ASSOCIATION

7.1 Minimum number of Members

The Association must have at least five Members.

7.2 Categories of Member

The Members of the Association shall consist of:

- (a) **Affiliated Member Clubs**, which subject to this Constitution, shall have the right to notice of, and to be present and to debate and to vote via their appointed and authorised delegate, at General Meetings. Affiliated Member Clubs must advise the Association of their appointed delegate at least seven days prior to a General Meeting;
- (b) **Life Members**, who subject to this Constitution, shall have the right to notice of, and to be present and to debate and vote at General Meetings; and
- (c) such other categories of membership as may be admitted to membership by the Board so long as no such new category is granted voting rights.

7.3 Application for Membership

- (a) An application for membership as an Affiliated Member Club must be:
 - (i) in writing on the form prescribed from time to time by the Association, from the applicant or its nominated representative and lodged with the Association; and
 - (ii) accompanied by:
 - a) a copy of its constitution (whether incorporated or not); and
 - b) evidence that the applicant has a minimum of five competing teams that meet registration and participation requirements of the Associations' Domestic Competition By-Laws, and full details of player numbers; and
 - c) details of proposed club logo and uniform design; and
 - d) details of its management structure including its committee of management members' details; and
 - e) the appropriate fee, if any.
- (b) Where available, an application for membership by an individual must be:
 - (i) in writing on the form prescribed from time to time by the Association, from the applicant or its nominated representative and lodged with the Association; and
 - (ii) accompanied by the appropriate fee, if any.

7.4 Discretion to Accept or Reject Application

- (a) The Board may accept or reject an application whether the applicant has complied with the requirements in **rule 7.3** or not, and 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 be notified in such manner as is determined by the Board and shall become a Member.
- (c) Membership of the Association shall be deemed to commence upon acceptance of the application by the Board. The Register shall be updated accordingly as soon as practicable.
- (d) If the Board rejects an application, any fees forwarded with the application shall be refunded, and the application shall be deemed rejected. No reasons for rejection need be given.
- (e) There is no right of appeal where the Board rejects an application for membership, whether a new application or a renewal application.

7.5 Renewal of membership

- (a) Renewal of membership is automatic for Affiliated Member Clubs unless **rule 10.1(b)**, or **rule 10.2**, or **rule 10.3** applies.

- (b) Renewal of membership is automatic for Life Members unless **rule 10.2** has been applied, or the Life Member resigns as a Life Member, or the Life Member is deceased. Life Membership is non-transferrable.
- (c) All other Members, as determined, must apply for renewal of membership of the Association annually and otherwise in accordance with the procedures prescribed by the Board from time to time. Membership renewal in this category is not automatic.
- (d) Upon application for renewal a Member must provide details of any change in their personal details, and any other information reasonably required by the Association.
- (e) The Board may accept or reject a renewal application whether the applicant has complied with the requirements in **rules 7.3(a)** and **7.3(b)** or not, and shall not be required or compelled to provide any reason for such acceptance or rejection.
- (f) If the Board rejects a renewal application, any fees forwarded with the renewal application shall be refunded, and the renewal application shall be deemed rejected by the Association. No reasons for rejection need be given.
- (g) There is no right of appeal where the Board rejects an application for membership, whether a new application or a renewal application.

7.6 Membership Transitional Arrangements

Notwithstanding any other rule of this Constitution, the transitional arrangements set out at **rule 26** shall apply to the continuation of membership from the date of adoption of this Constitution.

7.7 Life Members

- (a) The Board may recommend to the Annual General Meeting that any natural person who has rendered distinguished service to the Association and Basketball, where such service is deemed to have assisted the advancement of the Association and Basketball in the Bayside Region be appointed as a Life Member.
- (b) A resolution of the Annual General Meeting to confer life membership on the recommendation of the Board must be a Special Resolution.
- (c) 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.
- (d) The Board shall determine such other rights and benefits of Life Membership as may apply from time to time.

7.8 Effect of Constitution

- (a) Members and Participants acknowledge and agree that:
 - (i) this Constitution constitutes a contract between each of them and the Association and that they are bound by this Constitution and the Regulations;

- (ii) they shall comply with and observe this Constitution and the Regulations;
 - (iii) by submitting to this Constitution and the Regulations they are subject to the jurisdiction of the Association;
 - (iv) this Constitution and Regulations are necessary and reasonable for promoting the Objects of the Association;
 - (v) neither membership of the Association nor this Constitution gives rise to:
 - (A) any proprietary right of Members in, to or over the Association or its property or assets;
 - (B) any automatic right of a Member to renewal of their membership of the Association;
 - (C) subject to the Act and the Board and/or Association acting in good faith, the right of Members to natural justice unless expressly provided for in this Constitution, are excluded; and
 - (vi) they will not become a party to any suit at law or equity, against the Association, any Director or any other Member or Participant, until all remedies and avenues of appeal allowed by this Constitution or the Regulations have been exhausted, save with the written consent of the Association;
 - (vii) they release and will release, the Association, any Director, any Member or any other person subject to this Constitution, from all actions they may have including any action under the Act; and
 - (viii) Members are entitled to all benefits, advantages, privileges and services of their membership as determined by the Board.
- (b) Members may, by virtue of membership of the Association, and subject to this Constitution:
- (i) express in writing or otherwise their views and opinions in any meeting in respect of which they are entitled to participate in accordance with this Constitution;
 - (ii) make proposals or submissions to the Board;
 - (iii) engage and participate in any activity approved, sponsored or recognised by the Association; and
 - (iv) conduct any activity approved by the Association.
- (c) 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.

7.9 Participants

Participants acknowledge and agree that notwithstanding anything in this Constitution or the Act they are not Members of the Association and have no membership rights in or of the Association and in particular have no standing to commence action against the Association under the Act. Participants:

- (a) will not become a party to any suit at law or equity, against the Association, any Director, any Member or any other person subject to this Constitution; and
- (b) release and will release, the Association, any Director, any Member or any other person subject to this Constitution, from all actions they may have including any action under the Act.

7.10 Liability of Members

The liability of the Members of the Association is limited.

8. SUBSCRIPTIONS AND FEES

- (a) The Annual Subscriptions and any other fees 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 of appeal where the Board exercises its power under this **rule 8(b)**.

9. REGISTERS

9.1 Association to Keep Register of Members

The Association shall keep and maintain the Register in which shall be entered:

- (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) whether the Member has voting rights;
- (e) any other information determined by the Board; and
- (f) for each former Member, the date of ceasing to be a Member.

9.2 Changes to Member details

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

9.3 Inspection of Register

Inspection of the Register will only be available as required by the Act and in accordance with **rule 37(b)**.

9.4 Use of Register

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

10. DISCONTINUANCE OF MEMBERSHIP

10.1 Discontinuance by Notice of Resignation

- (a) Subject to **rule 10.1(b)**, a Member having 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 resignation or withdrawal.
- (b) Where an Affiliated Member Club seeks to resign under **rule 10.1(a)** such resignation is not valid unless the notice under **rule 10.1(a)** is accompanied by a copy of a special resolution of the members of the Affiliated Member Club authorising the resignation of the Affiliated Member Club from the Association.

10.2 Discontinuance by Breach

- (a) Membership of the Association may be discontinued by the Board upon breach of any clause of this Constitution, including but not limited to the failure to pay any monies owed to the Association, failure to comply with the By Laws or any resolution or determination made or passed by the Board or any duly authorised Committee.
- (b) Membership shall not be discontinued by the Board under **rule 10.2(a)** without the Board first giving the accused Member the opportunity to explain the breach and/or remedy the breach.
- (c) Where a Member fails, in the Board's view to adequately explain or remedy the breach, that Member's membership shall be discontinued under **rule 10.2(a)** by the Board giving written notice of the discontinuance.

10.3 Discontinuance by Failure to Pay Subscription

- (a) A Member is taken to have resigned if:
 - (i) the Member's annual subscription is outstanding more than one month after the date on which subscription fees fall due and payable; or
 - (ii) if no annual subscription is payable:
 - (A) the secretary has made a written request to the Member to confirm that he or she wishes to remain a Member; and
 - (B) the Member has not, within three months after receiving that request, confirmed in writing that he or she wishes to remain a Member, or

- (b) Should a sufficient explanation be made to the Board for the failure to pay subscription or reason for not responding to a request, the Board may restore the Membership upon payment of the amount due (if any).

10.4 Resignation by failure to re-apply

If a Member has not re-applied for Membership with the Association within one month of re-application falling due, that Member's membership will be deemed to have lapsed from that time.

10.5 Amendment to the Register

Where a Member resigns in accordance with this **rule 10.5** an entry, recording the date on which the Member ceased to be a Member, shall be recorded in the Register as soon as practicable in accordance with **rule 9.1(f)**.

10.6 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 Basketball equipment or other 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.

10.7 Membership may be Reinstated

Membership which has been discontinued under this **rule 10.7** may be reinstated at the discretion of the Board, upon such conditions as it deems appropriate. The Board is not obliged to reinstate any former Member's membership.

10.8 Refund of Membership Fees

Membership fees or subscriptions paid by the discontinued Member may be refunded on a pro-rata basis to the Member upon discontinuance.

11. GRIEVANCES, JUDICIAL AND DISCIPLINE

11.1 Establishing a Disciplinary Committee

Where the Board is advised of an allegation (not being vexatious, trifling or frivolous) or considers that a Member or Participant has allegedly:

- (a) breached, failed, refused or neglected to comply with a provision of this Constitution, the By-Laws or any resolution or determination of the Board or any duly authorised committee; or
- (b) acted in a manner unbecoming of a Member, Participant or prejudicial to the Purposes and the interests of the Association and/or Basketball, or another Member; or
- (c) brought themselves, another Member or Participant, the Association or Basketball into disrepute;

the Board may by resolution and in accordance with **this rule 11.1**, establish a disciplinary committee to convene to hear a matter against any Member or Participant, and to determine what action, if any, to take against that Member (**Disciplinary Hearing**). That Member or Participant, will be subject to, and submits

unreservedly to the jurisdiction, disciplinary procedures and penalties and the appeal mechanisms (if any) in this Constitution.

11.2 Provisional Suspension

- (a) Upon establishing a disciplinary committee in accordance with **rule 11.1** the Board may by resolution provisionally suspend the Member or Participant subject to the Disciplinary Hearing until such time as the disciplinary committee makes a finding.
- (b) The disciplinary committee may lift a provisional suspension prior to making a finding at the Disciplinary Hearing.

11.3 Disciplinary Committee Members

The members of the disciplinary committee:

- (a) may be Members or anyone else; but
- (b) must not have any interest in the matter before the disciplinary committee, nor be biased against, or in favour of, the Member or Participant concerned.

11.4 Notice of Alleged Breach

- (a) Where a disciplinary committee is established the Association shall serve on the Member or Participant not earlier than 28 days and not later than 14 days before the Disciplinary Hearing is to be held, a notice in writing:
 - (i) setting out the alleged breach of the Member or Participant and the grounds on which it is based;
 - (ii) stating that the Member or Participant may address the disciplinary committee at the Disciplinary Hearing;
 - (iii) stating the date, place and time of that Disciplinary Hearing;
 - (iv) informing the Member or Participant that he or she may do one or more of the following:
 - (A) attend that Disciplinary Hearing; and
 - (B) give the disciplinary committee prior to or at that meeting a written statement regarding the alleged breach.

11.5 Determination of Disciplinary Committee

- (a) The disciplinary committee shall ensure that the Disciplinary Hearing accords with the principles of natural justice by ensuring that:
 - (i) the Member or Participant has the opportunity to be heard and to call witnesses; and
 - (ii) due consideration is given to any written statement submitted by the Member or Participant, or a witness,before determining whether the alleged breach occurred.

The Member or Participant is not entitled to legal representation at the Disciplinary Hearing.

- (b) If the disciplinary committee determines there was a breach under **rule 11.1**, it will determine what penalty (if any) shall be given to the Member or Participant, and give notice of this to the Board.
- (c) Penalties able to be imposed on the Member or Participant by the disciplinary committee include:
 - (i) expel a Member or Participant from the Association; or
 - (ii) suspend a Member or Participant from membership of the Association or accessing certain privileges of membership, or from participating in Association activities and competitions for a specified period; or
 - (iii) fine a Member or Participant; or
 - (iv) impose such other penalty, action or educative process as the disciplinary committee sees fit.

11.6 Appeal

- (a) Subject to **clause 11.6(b)**, an appeal tribunal may be appointed by the Board to hear and adjudicate on any appeal lodged by a Member or Participant against the decision of the disciplinary committee.
- (b) An appeal may only be lodged by a party directly affected by a decision (including the Association) and where such an appeal is based on the ground that new information or evidence can be presented that was not available at the time of the original decision being appealed against.

11.7 Appeal Tribunal

- (a) The Board will appoint an appeal tribunal to determine an appeal lodged in accordance with the provisions of **rule 11.6**. The composition of an appeal tribunal shall be:
 - (i) an individual with legal training or experience in dispute resolution; or
 - (ii) a panel of 2 or 3 persons deemed suitable by the Board including a chairperson with legal training or experience in dispute resolution.
- (b) No member of the appeal tribunal under **clauses 11.7(a)(i)** and **11.7(a)(ii)** may have been a party to, or directly interested in, the decision under appeal or the original matter brought for determination.

11.8 Appeals Process

- (a) A request for an appeal against a decision of the disciplinary committee must be forwarded to the Association in writing within 14 days of the relevant party being given notice of the disciplinary committee decision.

- (b) The lodgement of appeal must be accompanied by payment of an appeal fee as determined by the Board. The fee shall be fully refundable if the appeal is successful.
- (c) The Board shall determine whether the appeal falls within the grounds for appeal under **rule 11.6(b)**. If satisfied, an appeal tribunal will be appointed within 7 days of formal lodgement of the appeal.
- (d) The appeal tribunal will schedule a date and venue for a hearing as soon as possible and no later than 21 days after formal lodgement of the appeal.
- (e) If, as the circumstances may be, all parties are unable to be present at an appeal hearing, they may participate by teleconference or other medium as determined appropriate at the discretion of the appeal tribunal.
- (f) The parties will be advised of the grounds for appeal and invited to lodge written submissions which must be received by the Association no later than 2 business days prior to the scheduled appeal hearing. All written submissions will be distributed to all parties and the appeal tribunal in a timely manner prior to the hearing.
- (g) The appeal tribunal will consider the appeal in accordance with the principles of natural justice as broadly outlined in **rule 11.5**.
- (h) The appeal tribunal may adjourn a hearing to obtain further information or evidence.
- (i) At the conclusion of the hearing the appeal tribunal shall:
 - (i) uphold the appeal and rescind the original decision; or
 - (ii) dismiss the appeal; or
 - (iii) dismiss the appeal and review and/or vary the penalty within the provisions of **rule 11.5(c)**.
- (j) The decision of the appeal tribunal shall be final.
- (k) The appeal tribunal must forward to the Association a written report outlining their determination of the matter.

12. GRIEVANCE PROCEDURE

- (a) A Member or Participant who is the subject of a disciplinary procedure must not initiate a grievance procedure in relation to a matter which is the subject of the disciplinary procedure until the disciplinary procedure has been completed.
- (b) The grievance procedure set out in this clause applies to disputes under this Constitution between a Member or Participant and:
 - (i) another Member or Participant; or
 - (ii) the Association.
- (c) The parties to the dispute must meet (which may, if agreed by the parties, take place by using any technology that allows the parties to clearly and

simultaneously communicate with each other) and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all parties.

- (d) 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 (but with no obligation), within 10 days, refer the dispute to the Dispute Settlement Centre of Victoria (Department of Justice) (or such other similar body in circumstances where the Dispute Settlement Centre of Victoria is no longer in existence) for resolution.
- (e) Where a Member or Participant has initiated a grievance under this **rule 12**, the Association must not take disciplinary action under **rule 11** against the Member or Participant initiating the grievance in relation to the matter which is subject of the grievance until the grievance procedure has been completed.
- (f) The Board may prescribe additional grievance procedures in By-Laws consistent with this **rule 12**.

13. ANNUAL GENERAL MEETINGS

13.1 Annual General Meeting to be Held

- (a) The Association shall convene and hold an Annual General Meeting of its Members annually within five months after the end of the financial year and in accordance with the Act.
- (b) The Annual General Meeting of the Association shall, subject to the Act and to **rule 13.1(a)**, be convened at a time, date and venue to be determined by the Board.

13.2 Business

In addition to any business required to be transacted at the Annual General Meeting under the Act, the business of the Annual General Meeting shall include the following:

- (a) confirmation of minutes from previous Annual General Meeting and of any special general meeting held since then;
- (b) receive and consider:
 - (i) reports of the Board;
 - (ii) reports of auditors (if any);
 - (iii) financial statements of the Association; and
 - (iv) any other reports as determined by the Board;
- (c) (if required) election of office bearers;
- (d) confirmation of annual subscription fees;
- (e) confirmation of the appointment and fixing of the remuneration of auditors (if an audit is required under the Act); and

- (f) any other business of which notice is given in accordance with this Constitution.

13.3 Additional Meetings

The Annual General Meeting shall be in addition to any other General Meetings that may be held in the same year. Any General Meeting other than an Annual General meeting is a special general meeting.

14. EXTRAORDINARY GENERAL MEETINGS

14.1 Extraordinary General Meetings May be Held

The Board may, whenever it thinks fit, convene an Extraordinary General Meeting of the Association and, where, but for this clause more than 15 months would elapse between Annual General Meetings, shall convene an Extraordinary General Meeting before the expiration of that period.

14.2 Request for Extraordinary General Meetings

- (a) The Secretary shall on the requisition in writing of 75% of voting Members convene an Extraordinary General Meeting.
- (b) The requisition for an Extraordinary General Meeting shall state the object(s) of the meeting, shall be signed by the Members making the requisition and be sent to the Association. The requisition may consist of several documents in a like form, each signed by one or more of the Members making the requisitions.
- (c) If the Board does not cause an Extraordinary General Meeting to be held within one month after the date on which the requisition is sent to the Association, the Members making the requisition, or any of them, may convene a Extraordinary General Meeting to be held not later than three months after that date.
- (d) An Extraordinary General Meeting convened by 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 Board.

15. GENERAL MEETINGS

15.1 Notice to be Given for General Meetings

- (a) Notice of every General Meeting shall be given to every Member entitled to receive notice under **rule 7.2**, at the address appearing in the Register kept by the Association. The auditor (if any) and Directors shall also be entitled to notice of every General Meeting, which shall be sent to their last notified address. No other person shall be entitled as of right to receive notices of General Meetings.
- (b) A notice of a General Meeting shall be in writing and shall specify the time, date and place of the meeting and shall state the business to be transacted at the meeting. Notice may be given in any form permitted under **rule 31**.
- (c) At least 21 days' notice of a General Meeting shall be given to those Members entitled to receive notice, together with:
 - (i) the draft agenda for the meeting;
 - (ii) any nominations for candidates to be elected to the Board received in accordance with **rule 19.1**;

- (iii) any notice of motion received from Members in accordance with **rule 15.2(b)**; and
- (iv) forms of authority in blank for proxy votes (if proxy votes are permitted).

15.2 Business of Meeting

- (a) No business other than that set out in the notice convening the meeting shall be transacted at the General Meeting.
- (b) A Member desiring to bring any business before a meeting shall give seven days' notice in writing of that business to the Association prior to the date of the General Meeting.

15.3 Quorum

- (a) 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 25% of Members who are afforded voting rights under **rule 7.2**.
- (b) If within half an hour after the appointed time for the commencement of a General Meeting, a quorum is not present, the meeting:
 - (i) if convened upon the requisition of Members, shall be dissolved; and
 - (ii) in any other case, shall stand adjourned to:
 - (A) the same day in the next week at the same time and (unless Members are notified of an alternate venue) at the same place; or
 - (B) any date, time and place determined by the chairperson;
 - (iii) and if at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the meeting shall stand adjourned to:
 - (A) the same day in the next week at the same time and (unless Members are notified of an alternate venue) at the same place; or
 - (B) any date, time and place determined by the chairperson;
 - (iv) and if at the further adjourned meeting a quorum of Members is not present within half an hour after the time appointed for the commencement of the meeting, a majority of the Board shall comprise a quorum for that meeting only. Each Director shall have one vote each at that meeting. There is no casting vote.

15.4 President to Chair

The President shall, subject to this Constitution, preside as chairperson at every General Meeting except:

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

If the President is not present, or is unwilling or unable to preside the Members who are afforded voting rights under **rule 7.2** shall appoint one of the Directors to preside as chairperson for that meeting only.

15.5 Chairperson May Adjourn Meeting

- (a) The chairperson 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 but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (b) When a meeting is adjourned for 30 days or more, a notice of the adjourned meeting shall be given as in the case of the original meeting.
- (c) Except as provided in **rule 15.5(b)** it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

15.6 Use of technology

- (a) A Member not physically present at a General Meeting can request to participate in the meeting by the use of technology that allows that Member and the other Members present at the meeting to clearly and simultaneously communicate with each other. A request is subject to Board discretion and the Chairperson shall on behalf of the Board determine whether the request is reasonable and whether the technology available enables the Member and the Members present to clearly and simultaneously communicate with each other.
- (b) A Member participating in a General Meeting as permitted under **rule 15.6(a)** is taken to be present at the meeting and, if the Member votes at the meeting, is taken to have voted in person.

16. VOTING AT GENERAL MEETINGS

16.1 Members entitled to Vote

- (a) Each Affiliated Member Club shall appoint a authorised delegate and have the number of votes set out in the table below depending on the number of teams that an Affiliated Member Club fields in competitions conducted by the Association
 - (i) Member Club with 5 and 10 teams (inclusive) = 4 votes
 - (ii) Member Club with 11 and 20 teams (inclusive) = 5 votes
 - (iii) Member Club with 21 and 30 teams (inclusive) = 6 votes
 - (iv) Member Club with 31 and 40 teams (inclusive) = 7 votes

- (v) Member Club with 41 and 50 teams (inclusive) = 8 votes
 - (vi) Member Club with 51 or more teams (inclusive) = 9 votes;
and
- (b) Life Members as a group shall appoint an authorised delegate and have the number of votes set out in the table below
- (i) *between 2 and 10 Life Members (inclusive) = 4 votes*
 - (ii) *between 11 and 20 Life Members (inclusive) = 5 votes*
 - (iii) *between 21 and 30 Life Members (inclusive) = 6 votes*
 - (iv) *with 31 or more Life Members = 7 votes*

All votes, subject to this Constitution, shall be exercised by the Member or a validly appointed authorised delegate. Subject to **rule 15.3(b)(iv)** the Directors shall have the right to attend and debate, but not vote, at General Meetings.

16.2 Voting Procedure

- (a) Subject to this **rule 16**, votes at a General Meeting shall be given in person by those present and entitled to vote on behalf of their Affiliated Member Club and Life Membership.
- (b) Subject to **rule 16.4**, all questions arising at a General Meeting shall be determined on a show of hands.

16.3 Recording of Determinations

Unless a poll is demanded under **rule 16.4**, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the Association shall be conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution.

16.4 Where Poll Demanded

A poll may be demanded for any resolution put to the vote of the meeting (before or on the declaration of the result of the show of hands) by:

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

If a poll is duly demanded under this **rule 16.4**, it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairperson directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

16.5 Casting Vote

Where voting at General Meetings is equal the chairperson may exercise a casting vote. The chairperson does not have a deliberative vote.

16.6 Proxy and Postal Voting

Unless otherwise determined by the Board, Life Members shall have the right to proxy voting and postal voting prior to the General Meeting. Proxy votes and postal votes are to be provided to the Life Members authorised delegate in prescribed format 7 days prior to a General meeting. Life Member proxy votes and postal votes must be kept by the authorised delegate in an auditable format. Otherwise there is no proxy voting or postal voting on any matter at General Meetings.

17. MINUTES OF GENERAL MEETINGS

- (a) The Board must ensure that minutes are taken and kept of each General Meeting.
- (b) The minutes must record:
 - (i) the business considered at the meeting;
 - (ii) any resolution on which a vote is taken and the result of the vote; and
 - (iii) the names of persons present at all meetings.
- (c) In addition, the minutes of each Annual General Meeting must include:
 - (i) any reports or financial statements submitted to the members at the Annual General Meeting; and
 - (ii) any audited accounts and auditor's report or report of a review accompanying the financial statements that are required under the Act.

18. BOARD

18.1 Powers of Board

- (a) The affairs of the Association shall be managed by the Board constituted under **rule 18.2.**
- (b) Subject to this Constitution and the Act, the Board:
 - (i) shall control and manage the business and affairs of the Association;
 - (ii) may exercise all such powers and functions as may be exercised by the Association other than those powers and functions that are required by this Constitution to be exercised by the Members in General Meeting; and
 - (iii) has power to perform all such acts and things as appear to the Board to be essential for the proper management of the business and affairs of the Association.

18.2 Composition of Board

The Board shall comprise:

- (a) seven Elected Directors (over the age of 18 years of age) and who shall be elected under **rules 19.1 and 19.2 (Elected Directors)**; and
- (b) up to three independent Directors who may be appointed by the Elected Directors under **rule 19.3 (Independent Directors)**.

18.3 Portfolios

- (a) The positions of President, Vice President, Treasurer and Secretary shall be appointed by the Board annually from amongst its number.
- (b) Directors may be re-appointed as President, Vice President, Treasurer or Secretary.
- (c) If the Board considers it appropriate, in order to further the Objects, it may allocate Directors to specific portfolios, with specific responsibilities, as determined at the discretion of the Board.

18.4 Right to Co-Opt

It is expressly acknowledged that the Board may co-opt any person with appropriate experience or expertise to assist the Board in respect of such matters and on such terms as the Board thinks fit. Any person so co-opted shall not be a Director, and shall not exercise the rights of a Director, but shall act in an advisory role only.

18.5 Appointment of Delegate

- (a) The Board shall, from amongst its members, appoint a delegate to attend general and other meetings of BV, and otherwise in accordance with the BV Constitution.
- (b) The Association must advise BV in writing of its Delegate.

18.6 Transitional Arrangements

Notwithstanding any other rule of this Constitution, the transitional arrangements set out at **rule 26(b)** shall apply from the date of adoption of this Constitution.

18.7 Term of Office of Directors

- (a) Subject to **rules 18.7(e) and 20**, a Director holds office for two years.
- (b) Subject to the Act and **rules 18.7(e) and 20**:
 - (i) at the first Annual General Meeting following the adoption of this Constitution, three Elected Directors will retire from office (and in the absence of agreement as to who will retire, those to retire will be determined by lot from the Elected Directors) and an election will be held to elect three Elected Directors. Those retiring Elected Directors will, subject to this Constitution, be eligible for re-election;
 - (ii) at the second Annual General Meeting following the adoption of this Constitution, four other Elected Directors will retire from office (and in the absence of agreement as to who will retire, those to retire will be determined by lot from the remaining Elected Directors) and an election will be held

to elect four Elected Directors. Those retiring Elected Directors will, subject to this Constitution, be eligible for re-election; and

(c) Subject to the Act and **rules 18.7(e)** and **20**:

- (i) at the first Annual General Meeting following the adoption of this Constitution, (if appointed) one Independent Director will retire from office (and in the absence of agreement as to who will retire, the retiree will be determined by lot from the Independent Directors). The retiring Independent Director may, subject to this Constitution, be re-appointed;
- (ii) at the second Annual General Meeting following the adoption of this Constitution, two other Independent Directors' will retire from office. The retiring Independent Directors' may, subject to this Constitution, be re-appointed; and

(d) The Board will take such action as is necessary to establish Board term rotations to ensure they are consistent with this Constitution.

(e) A Director can only be re-elected or re-appointed for three consecutive terms (so six consecutive years) after which time they are not eligible for election or appointment for a period of two years.

19. ELECTION AND APPOINTMENT OF DIRECTORS

19.1 Nominations of Candidates for Elected Directors

(a) The Association shall call for nominations for candidates to be elected to the Board as Elected Directors not less than 21 days prior to the Annual General Meeting. The Application process, including qualifications and job descriptions shall be as determined by the Board from time to time.

(b) Candidates must:

- (i) be aged 18 years or over; and
- (ii) reside in Australia; and
- (iii) hold a valid Victorian Working With Children Check; and
- (iv) not have a criminal record or history of financial misconduct, including being subject to the provisions of the Bankruptcy Act; and
- (v) relinquish any directorships, committee positions or employment with any other Basketball Association, or State and National basketball governing bodies (excluding any appointment made by the Board to such positions for the purpose of the Associations' membership Affiliation with BV or to act as a delegate on behalf of the Association); and

- (vi) Dissolve any commercial arrangements in which the candidate may have an interest with the Association, other Basketball Associations, BV or any other governing Basketball bodies.
 - (vii) relinquish any representative team coaching positions, any representative team official positions or refereeing roles.
- (c) Nominations of candidates for election as Elected Directors shall be:
- (i) made in writing, signed by two Authorised Affiliated Member Club Delegates, Life Members or Directors and accompanied by the written consent of the nominee (which may be endorsed on the form of nomination); and
 - (ii) is submitted with all additional information, forms and requirements as prescribed by the Board and changed from time to time; and
 - (iii) delivered to the Secretary or nominated person not less than seven days before the date fixed for the holding of the Annual General Meeting.

The Association shall send the nominations to the Members entitled to receive notice in accordance with **rule 15.1**.

- (d) If insufficient nominations are received to fill all available vacancies on the Board:
- (i) the candidates nominated shall, subject to declaration by the chairperson, be deemed to be elected; and
 - (ii) the remaining positions will be deemed casual vacancies under **rule 20.3**.
- (e) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated shall, subject to declaration by the chairperson, be deemed to be elected.
- (f) 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.

19.2 Voting procedures

Elections shall be conducted by such means as is prescribed by the Board.

19.3 Independent Directors

The Elected Directors elected under rules 19.1 and 19.2 may appoint up to three persons as Independent Directors. A person is entitled to be appointed as an Independent Director if the person:

- (a) is 18 years or over; and
- (b) is appointed by the Board; and

- (c) has skills in commerce, finance, marketing, law or business generally or such other skills as will complement the Board; and
- (d) meets such other eligibility and/or qualification requirements as are determined by the Board from time to time.

20. VACANCY ON THE BOARD

20.1 Grounds for Termination of Director

For the purposes of this Constitution, the office of a Director becomes vacant if the Director:

- (a) dies;
- (b) breaches, fails, refuses or neglects to comply with a provision of this Constitution, the By Laws, or any resolution or determination of the Board, Association or any duly authorised Committee;
- (c) acts in a manner prejudicial to the Objects and interests of the Association and/or Basketball;
- (d) is investigated by law enforcement authorities in relation to a criminal offence, is arrested for, or is convicted of a criminal offence;
- (e) brings themselves, the Association, any other Affiliated Member Club, Participant or Basketball into disrepute;
- (f) becomes bankrupt or makes any arrangement or composition with their creditors generally;
- (g) becomes of unsound mind or a person whose person or estate is liable to be dealt with in anyway under the law relating to mental health;
- (h) resigns their office in writing to the Association;
- (i) is absent from meetings of the Board held during a period of three months without having previously obtained leave of absence in accordance with **rule 21.5** or provided reasonable excuse for such absence;
- (j) without the prior consent or later ratification of the Members in General Meeting holds any office of profit under the Association;
- (k) is directly or indirectly interested in any contract or proposed contract with the Association and fails to declare the nature of that interest;
- (l) refuses or is unable to relinquish any directorships, committee positions or employment with any other Basketball Association, or State and National basketball governing bodies (excluding any appointment made by the Board to such positions for the purpose of the Associations' membership Affiliation with BV or to act as a delegate on behalf of the Association);
- (m) refuses or is unable to relinquish any representative team coaching positions or any representative team official positions or refereeing roles.
- (n) is removed from office in accordance with this Constitution;

- (o) has been expelled or suspended from membership; or
- (p) would otherwise be prohibited from being a director of a corporation under the *Corporations Act*.

20.2 Removal of Director

- (a) The Association in a General Meeting may by Special Resolution remove any Director, before the expiration of their term of office and appoint another Member in their place to hold office until the expiration of the term of the first mentioned Director.
- (b) Where the Director to whom a proposed resolution referred to in **rule 20.2(a)** makes representations in writing to the President and requests that such representations be notified to the Members, the President may send a copy of the representations to each Member or, if they are not so sent, the Director may require that they be read out at the meeting, and the representations shall be so read.

20.3 Casual Vacancy

If a casual vacancy occurs in the office of any Director, the Board may appoint a Member to the vacant office and the person so appointed may continue in office up to the conclusion of the Annual General Meeting at which the term of the previous appointee would have expired.

21. QUORUM AND PROCEDURE AT BOARD MEETINGS

21.1 Convening a Board Meeting

- (a) The Board shall meet as a minimum six times in a financial year and thereafter as often as is deemed necessary for the dispatch of business. Subject to this Constitution the Board may adjourn and otherwise regulate its meetings as it thinks fit.
- (b) Unless all Directors agree to hold a meeting at shorter notice either by agreement that is sufficiently evidenced in writing or by their presence, or in accordance with **rule 21.2**, not less than seven days' written notice of Board meeting shall be given to each Director.
- (c) Written notice of each Board meeting, specifying the general nature of the time, date and place of the Board meeting and the business to be transacted, shall be served on each Director by:
 - (i) delivering it to that Director personally; or
 - (ii) sending it in writing, by facsimile or other means of electronic communication (subject to receiving appropriate confirmation that the notice has been effectively dispatched);in accordance with the Director's last notified contact details.
- (d) Notice may be given of more than one Board meeting at the same time.

21.2 Urgent Board Meetings

- (a) In cases of urgency, a meeting can be held without notice being given in accordance with **rule 21.1** provided that as much notice as practicable is given to each Director by the quickest means practicable.
- (b) Any resolution made at an urgent Board meeting must be passed by a resolution of three quarters of the Board.

21.3 Quorum

- (a) At meetings of the Board the number of Directors whose presence is required to constitute a quorum is a majority of the Directors.
- (b) No business shall be transacted unless a quorum is present and if within half an hour of the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to the same place and at the same hour of the same day in the following week, or any date, time and place determined by the President.
- (c) The Board may act notwithstanding any casual vacancy. However, if there are casual vacancies in the office of a Director such that the number of remaining Directors is not sufficient to constitute a quorum at a meeting of the Board, those Directors may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum.

21.4 Procedures at Board meetings

- (a) At meetings of the Board, the President shall chair the meeting. If the President is absent or unwilling to act, the Vice President will chair the meeting. If the Vice President is absent or unwilling to act the Board shall appoint one of its members to chair the meeting.
- (b) Questions arising at any meeting of the Board shall be determined on a show of hands, or if demanded by a Director, by a poll taken in such manner as the person presiding at the meeting may determine.
- (c) 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 be deemed a determination of the Board. All Directors shall have one vote on any question. The chairman may exercise a casting vote where voting is equal.
- (d) Voting by proxy at Board meetings is not permitted.
- (e) A resolution in writing signed or assented to by facsimile or other form of electronic communication by all the voting Directors, shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more of the Directors.
- (f) Without limiting the power of the Board to regulate its meetings as it thinks fit, a meeting of the Directors 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;
- (iii) in the event that a failure in communications prevents **rule 21.4(f)(i)** from being satisfied by that 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 rule to be held then the meeting shall be suspended until **rule 21.4(f)(i)** is satisfied again. If such condition is not satisfied within fifteen minutes from the interruption the meeting shall be deemed to have terminated; 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 meeting provided a Director is there present and if no Director is there present the meeting shall be deemed to be held at the place where the chairperson of the meeting is located.

21.5 Leave of absence

- (a) The Board may grant a Director leave of absence from Board meetings for a period not exceeding three months.
- (b) The Board must not grant leave of absence retrospectively unless it is satisfied that it was not feasible for the Director to seek the leave in advance.

21.6 Material Personal Interests

- (a) A Director who has a material personal interest in a matter being considered at a Board meeting must disclose the nature and extent of that interest to the Board.
- (b) A Director with such a material personal interest must not:
 - (i) be present while the matter is being considered at the meeting; and
 - (ii) must not vote on the matter.
- (c) This **rule 21.6** does not apply to a material personal interest that:
 - (i) exists only because the Director belongs to a class of persons for whose benefit the Association is established; or
 - (ii) that the Director has in common with all, or a substantial proportion of the Members.
- (d) A general notice that a Director is to be regarded as having a material personal interest in a matter being considered is sufficient declaration for such Director and the said matter. After such general notice it is not necessary for such Director to give a special notice relating to the said matter.
- (e) It is the duty of the Secretary to record in the minutes any declaration made or any general notice as aforesaid given by a Director in accordance with this **rule 21.6**.

- (f) If a Director fails to declare a material personal interest as outlined in this **rule 21.6, rule 20.1(b)** will apply.

21.7 Financial Interest

- (a) A Director is disqualified from:
 - (i) 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 or otherwise interested; or
 - (ii) profiting or contracting with the Association either as vendor, purchaser or otherwise;except with express resolution of approval of the Board.
- (b) Any contract or arrangement in which any Director is in any way interested which is entered into by or on behalf of the Association without the express resolution of approval of the Board, will be voided for such reason.
- (c) The nature of the financial interest of such Director must be declared by the Director at the meeting of the Board at which the contract or arrangement is first taken into consideration if the interest then exists, or in any other case at the first meeting of the Board after the acquisition of the interest.
- (d) A general notice that a Director 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 21.7(c)** for such Director and the said transactions. After such general notice it is not necessary for such Director to give a special notice relating to any particular transaction with that firm or company.
- (e) It is the duty of the Secretary to record in the minutes any declaration made or any general notice as aforesaid given by a Director in accordance with **rule 21.7**.
- (f) If a Director fails to declare a financial interest as outlined in this **rule 21.7, rule 20.1(b)** will apply.

21.8 Conflicts

A Director, notwithstanding the interest, may be counted in the quorum present at any meeting but cannot vote in respect of any contract or arrangement in which the Director is interested. If the Director votes, the vote shall not be counted.

22. DELEGATED POWERS

22.1 Board May Delegate Functions

- (a) The Board may, by instrument in writing, create, establish or appoint from amongst its own members, or otherwise, special committees, sub-committees, individual officers and consultants to carry out such duties and functions, and with such powers, as the Board determines.
- (b) The Board may in the establishing instrument delegate such functions as are specified in the instrument, other than:

- (i) this power of delegation; and
 - (ii) a function imposed on the Board by the Act or any other law, or this Constitution or by resolution of the Association in General Meeting.
- (c) At any time the Board may by instrument in writing, revoke wholly or in part any delegation made under this clause, and may amend or repeal any decision made by such body or person under this clause.

22.2 Exercise of Delegated Functions

- (a) A function, the exercise of which has been delegated under this clause, may whilst the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.
- (b) A delegation under this clause may be made subject to such conditions or limitations as to the exercise of any function or at the time or circumstances as may be specified in the delegation.

22.3 Procedure of Delegated Entity

- (a) 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 **rule 21**. This includes those rules governing conflicts of interest.
- (b) 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.
- (c) The entity shall also provide any other reports, minutes and information required by the Board.

22.4 Committees

- (a) As set out in **rule 22.1**, the Board may establish and delegate any of its functions, powers or duties (except this power to delegate) to such committees as it thinks fit. The Board may recall or revoke any such delegation or appointment and may amend or repeal any decision made by such committee.
- (b) The Board may establish an unrestricted number of Committees.
- (c) The Board shall determine in writing the duties and powers afforded to any committee and the committee shall, in the exercise of such delegated powers, conform to any directions or By Laws that may be prescribed by the Board.
- (d) A Director shall be an ex-officio member of any committee so appointed.

23. DUTIES

23.1 General Duties

- (a) As soon as practicable after being elected or appointed to the Board, each Director must become familiar with this Constitution and the Act.

- (b) The Board is collectively responsible for ensuring that the Association complies with the Act and that individual Directors comply with this Constitution.
- (c) In addition to any duties imposed by this Constitution, a Director must perform any other duties imposed from time to time by resolution at a General Meeting.
- (d) The Board must ensure that the Association complies with all requirements in the Act regarding financial statements.

23.2 Secretary

- (a) The Board will determine from time to time which person acts as the Association's secretary under the Act. Such person shall be appointed by the Board for such term and upon such conditions as the Board thinks fit.
- (b) The Secretary must give the registrar notice of their appointment within 14 days after the appointment.
- (c) If the position of Secretary becomes vacant, the Board must appoint a person to the position within 14 days after the vacancy arises.

23.3 Financial Duties

- (a) The Board must:
 - (i) receive all moneys paid to or received by the Association and issue receipts for those moneys in the name of the Association; and
 - (ii) ensure that all moneys received are paid into the account of the Association within 5 working days after receipt;
 - (iii) make any payments authorised by the Association or by a General Meeting of the Association from the Association's funds;
 - (iv) ensure that the financial records of the Association are kept in accordance with the Act;
 - (v) coordinate the preparation of the financial statements of the Association and their submission to the Annual General Meeting of the Association;
 - (vi) ensure that at least two Directors have access to the accounts and financial records of the Association; and
 - (vii) keep in their custody or under their control:
 - (A) the financial records for the current financial year; and
 - (B) any other financial records as authorised by the Board.
- (b) The Board may allocate responsibility for the financial duties described at **rule 23.3(a)** to a portfolio or Director in accordance with **rule 18.3(c)**.

24. MINUTES OF BOARD MEETINGS

- (a) The Board must ensure that formal minutes of each Board meeting are taken, are appropriately filed and are made available to members.
- (b) As a minimum, the minutes must record:
 - (i) the business considered at the meeting;
 - (ii) any resolution on which a vote is taken and the result of the vote; and
 - (iii) any interest declared under **rules 21.6 or 21.7**.

25. BY LAWS

25.1 Board to Formulate By-Laws

The Board may formulate, issue, adopt, interpret and amend such By-Laws for the proper advancement, management and administration of the Association, the advancement of the Objects and Basketball in the Bayside Region as it thinks necessary or desirable. Such By-Laws must be consistent with the Constitution, the BV constitution and any regulations or by laws made by BV.

25.2 By Laws Binding

All By-Laws made under this clause shall be binding on the Association, and its Members and Participants of the Association.

25.3 Transitional Arrangements

Notwithstanding any other rule of this Constitution, the transitional arrangements set out at **rule 26(c)** shall apply from the date of adoption of this Constitution.

25.4 Notices Binding on Members

Amendments, alterations, interpretations or other changes to By Laws shall be advised to Members of the Association by means of Notices approved and issued by the Board.

26. TRANSITIONAL ARRANGEMENTS

- (a) Notwithstanding any other Rule of this Constitution, the transitional arrangements set out in this **rule 26** shall apply from the date of adoption of this Constitution.
- (b) The members of the governing or managing body (by whatever name it is called) of the Association in place immediately prior to approval of this Constitution under the Act shall continue in those positions until the next Annual General Meeting following such approval, and thereafter the positions of the President and other Directors shall be filled, vacated and otherwise dealt with in accordance with this Constitution.
- (c) All clauses, rules, By Laws and regulations of the Association in force at the date of the approval of this Constitution insofar as such clauses, rules, By Laws and regulations are not inconsistent with, or have been replaced by this Constitution, shall be deemed to be By Laws under **rule 25**.

- (d) All members which or who are, prior to the approval of this Constitution, Members of the Association shall be deemed Members of the Association from the time of approval of this Constitution under the Act. All such Members shall provide the Association with such details as may be required by the Association under this Constitution within one month of the approval of this Constitution under the Act.

27. FUNDS, RECORDS AND ACCOUNTS

27.1 Sources of Funds

Subject always to this Constitution the Board will determine:

- (a) the sources from which the funds of the Association are to be, or may be, derived; and
- (b) the manner in which such funds are to be managed.

27.2 Management of funds

- (a) The Association must open an account with a financial institution from which all expenditure of the Association is made and into which all of the Association's revenue is deposited.
- (b) The Board may authorise one Director to expend funds on behalf of the Association up to a specified limit without requiring approval from the Board for each item on which the funds are expended. This may be as a part of a designated portfolio in accordance with **rule 18.3(c)**.
- (c) All funds of the Association must be deposited into the financial account of the Association no later than five working days after the receipt.
- (d) With the approval of the Board, one Director may maintain a cash float provided that all money paid from or paid into the float is accurately recorded at the time of the transaction. This may be as a part of a designated portfolio in accordance with **rule 18.3(c)**.

27.3 Association to Keep Records

- (a) The Association shall establish and maintain, in accordance with the Act and this Constitution, proper accounting and other records and minutes concerning all transactions, business, meetings and dealings of the Association and the Board. These records and minutes shall be produce as appropriate at each Board or General Meeting.
- (b) All records and minutes kept under **rule 27.3(a)** shall be kept in the care and control of the Board in accordance with **rule 23**.

27.4 Board to Submit Accounts

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

27.5 Accounts Conclusive

The statements of account when approved or adopted by an Annual General Meeting shall be conclusive except as regards any error discovered in them within three months after such approval or adoption.

27.6 Accounts to be Sent to Members

The Board shall cause to be sent to all persons entitled to receive notice of Annual General Meetings in accordance with this Constitution, a copy of the statements of account, the Board's report, the auditor's report (if any) and every other document required under the Act (if any).

28. APPLICATION OF INCOME

- (a) The income and property of the Association shall be applied solely towards the promotion of the purposes of the Association as set out in this Constitution.
- (b) 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.
- (c) Nothing in this **rule 28** shall preclude payment to a Member in good faith for expenses incurred or services rendered, including, but not limited to:
 - (i) any services actually rendered to the Association whether as an employee 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 the 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.

29. NEGOTIABLE INSTRUMENTS

All cheques, promissory notes, banker's drafts, bills of exchange and other negotiable instruments, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two duly authorised Directors or in such other manner as the Board determines.

30. AUDITOR

- (a) A properly qualified auditor or auditors shall be appointed. The auditor's duties shall be regulated in accordance with the Act, or if no relevant provisions exist under the Act, in accordance with the *Corporations Act* and generally accepted

principles, and/or any applicable code of conduct. The auditor may be removed by the Association in General Meeting.

- (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.

31. SERVICE OF NOTICES

- (a) Notices may be given to any person entitled under this Constitution to receive any notice by sending the notice by post or facsimile transmission or where available, by electronic mail, to the Member's registered address or facsimile number or electronic mail address.
- (b) Where a notice is sent by post, service of the notice shall be deemed to be effected at the time the letter would have been delivered in the ordinary course of post.
- (c) Where a notice is sent by facsimile transmission, service of the notice shall be deemed to be effected upon receipt of a confirmation report confirming the facsimile was sent to/or received at the facsimile number to which it was sent.
- (d) Where a notice is sent by electronic mail, service of the notice shall be deemed to be effected by upon receipt of a confirmation report confirming the electronic mail message was received at the electronic mail address to which it was sent.

32. COMMON 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 directors must witness every use of the Seal, unless the Board determines otherwise.

33. REGISTERED ADDRESS

The registered address of the Association is:

- (a) the address determined from time to time by resolution of the Board; or
- (b) if the Board has not determined an address to be the registered address, the postal address of the secretary.

34. ALTERATION OF CONSTITUTION

The Constitution of the Association shall not be altered except by Special Resolution in accordance with the Act, and in compliance with all other procedures under the Act (if any).

35. INDEMNITY

- (a) Every Director, officer, auditor, manager, employee or agent of the Association shall be indemnified out of the property or assets of the Association against any liability incurred by him/her in his/her capacity as Director, officer, auditor, manager, employee or agent in defending any proceedings, whether civil or

criminal, in which judgement is given in his favour or in which he is acquitted or in connection with any application in relation to any such proceedings in which relief is, under the Act, granted to him by the Court.

- (b) The Association shall indemnify its Directors, officers, managers and employees against all damages and costs (including legal costs) for which any such Director, officer, manager 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 or officer, performed or made whilst acting on behalf of and with the authority, express or implied of the Association; and
 - (ii) in the case of an employee, performed or made in the course of, and within the scope of his employment by the Association.

36. DISSOLUTION

- (a) The Association may be wound up voluntarily by Special Resolution.
- (b) If the Association is wound up, the liability of the Member shall be limited to any outstanding monies due and payable to the Association, including the amount of the Annual Subscription payable in respect of the current Financial Year. No other amount shall be payable by the Member.
- (c) If upon winding up or dissolution of the Association or upon revocation of its endorsement as a deductible gift recipient (whichever occurs first), there remains after satisfaction of all its debts and liabilities any surplus assets or property as follows:
 - (i) gifts of money or property for the objects of the organisation;
 - (ii) contributions made in relation to an eligible fundraising event held for the objects of the organisation; or
 - (iii) money received by the organisation because of such gifts and contributions; thensuch surplus assets or property shall not be paid to or distributed amongst the Members but shall be given or transferred to some organisation(s):
 - (iv) having objects similar to the Objects; and
 - (v) which prohibits the distribution of its or their income and property among its or their Members to an extent at least as great as is imposed on the Association by this Constitution; and
 - (vi) which is charitable at law and to which income tax deductible gifts can be made.

Such organisations(s) will be determined by the Members at or before the time of dissolution, and in default thereof by such judge of the Supreme Court of Victoria or other Court as may have or acquire jurisdiction in the matter.

37. CUSTODY OF BOOKS AND OTHER DOCUMENTS

- (a) Except as otherwise provided in this Constitution, the Board shall designate a Director to keep in his or her custody or control all books, minutes, documents and securities of the Association.
- (b) If requested by a Member, the Board must permit such Member to inspect:
 - (i) the rules of the Association;
 - (ii) the minutes of each General Meeting.
- (c) Upon written request and payment of a fee determined by the Board from time to time, a Member may obtain a copy of the documents listed at **rule 37(b)**.
- (d) If requested by a Member and subject to the Act, the Board must permit such Member to inspect the register of members.
- (e) Subject to the Act and **rules 37(b)** and **37(d)**, no Member is entitled to inspect the financial records, accounts, books, securities, minutes of Board meetings or other Relevant Documents of the Association, unless authorised in writing by the Board.

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