

**Bunbury**

**Basketball Association Inc.**

**Constitution**

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# Bunbury Basketball Association (Inc) Constitution

## 1 Name

The name of the incorporated association is the Bunbury Basketball Association (Inc) (**Association**).

## 2 Definitions and Interpretations

### 2.1 Definitions

In this Constitution:

- (a) **Act** means the *Associations Incorporation Act 2015 (WA)*;
- (b) **AGM** means the Annual General Meeting of the Association;
- (c) **Appointed Board Member** means a Board Member appointed under Rule 13.1(g);
- (d) **Associate Member** means a member with the rights referred to in Rule 7.1(d);
- (e) **Association** means the incorporated association to which these rules apply;
- (f) **Basketball WA** means Western Australian Basketball Federation (Incorporated);
- (g) **Board** means a management committee of the Association;
- (h) **Board Meeting** means a meeting of the Board;
- (i) **Board Member** means a member of the Board;
- (j) **Books**, of the Association, includes the following:
  - (i) a register;
  - (ii) financial records, financial statements or financial reports, however compiled, recorded or stored;
  - (iii) a document;
  - (iv) any other record of information;
- (k) **By-Laws** means by-laws made by the Association under Rule 20.
- (l) **Chairperson** means the President or Vice President, or a Board member appointed to act as the chairperson in the absence of the President and the Vice President;
- (m) **Commissioner** means the person for the time being designated as the Commissioner under section 153 of the Act;
- (n) **Constitution** means:
  - (i) these Rules;
  - (ii) any By-Laws made in accordance with these Rules; andin each case as amended from time to time;
- (o) **Elected Board Member** means a Board Member elected under Rule 14
- (p) **Financial records** include:

- (i) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and
- (ii) documents of prime entry; and
- (iii) working papers and other documents needed to explain:
  - (A) the methods by which financial statements are prepared; and
  - (B) adjustments to be made in preparing financial statements;
- (q) **Financial Report**, of a Tier 2 association or a Tier 3 association, has the meaning given in section 63 of the Act;
- (r) **Financial Statements** means the financial statements in relation to the Association required under Part 5 Division 3 of the Act;
- (s) **Financial Year**, of the Association, shall be the 12-month period commencing on the 1 July in each year;
- (t) **General Meeting** of the Association, means a meeting of the Association that all members are entitled to receive notice of and to attend;
- (u) **Intellectual Property** means all rights or goodwill subsisting in copyright, business names, names, trademarks (or signs), logos, designs, patents or service marks (whether registered or registrable) relating to the Association or any event, competition or basketball activity of or conducted, promoted or administered by the Association.
- (v) **Life Member** means an individual upon whom life membership of the Association has been conferred under Rule 7;
- (w) **Member** means a person (including a body corporate) who is an ordinary member, life member an associate member or a social member of the Association;
- (x) **Membership Fees** means the fee determined in accordance with Rule 9.6;
- (y) **Membership** means membership of the Association;
- (z) **Objects** means the Association's Objects, as set out in Rule 3;
- (aa) **Ordinary Member** means a Member who is entitled to vote at General Meetings of the Association;
- (bb) **President** means the person elected to that position under these Rules;
- (cc) **Quorum** means in the case of a General Meeting 10 of the financial members of the Association voting in person or by proxy and in the case of a Board Meeting 50% of the Board Members;
- (dd) **Register of Members** means the register of members referred to in section 53 of the Act;
- (ee) **Rules** means these rules of the Association, as in force for the time being;
- (ff) **Secretary** means the person elected to that position under these Rules;
- (gg) **Seal** means the common seal of the Association;
- (hh) **Special General Meeting** means a general meeting of the Association other than the Annual General Meeting;

- (ii) **Special Resolution** means a resolution passed by the members at a general meeting in accordance with section 51 of the Act;
- (jj) **Subcommittee** means a subcommittee appointed by the Board under Rule 19;
- (kk) **Tier 1 association** means an incorporated association to which section 64(1) of the Act applies;
- (ll) **Tier 2 association** means an incorporated association to which section 64(2) of the Act applies;
- (mm) **Tier 3 association** means an incorporated association to which section 64(3) of the Act applies;
- (nn) **Treasurer** means the person elected to that position under these Rules; and
- (oo) **Vice-President** means the person elected to that position under these Rules.

## 2.2 Interpretation

In this Constitution, unless the context otherwise requires:

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

## 2.3 Lack of Provision or Reasonable Doubt

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

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

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

### **3 Objects of the Association**

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

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

### **4 Powers of the Association**

#### **4.1 Powers of the Association**

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

#### **4.2 Not for Profit**

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

#### **4.3 Payment to a Member**

- (a) A payment may be made to a Member out of the funds of the Association only if it is authorised under Rule 4.3(b).
- (b) A payment to a Member out of the funds of the Association is authorised if it is:



- (i) the payment in good faith to the Member as reasonable remuneration for any services provided to the Association, or for goods supplied to the Association, in the ordinary course of business; or
- (ii) the payment of interest, on money borrowed by the Association from the Member, at a rate not greater than the cash rate published from time to time by the Reserve Bank of Australia; or
- (iii) the payment of reasonable rent to the Member for premises leased by the Member to the Association; or
- (iv) the reimbursement of reasonable expenses properly incurred by the Member on behalf of the Association.

## **5 Status and Compliance of the Association**

### **5.1 Recognition of Basketball WA**

- (a) Basketball WA is recognised by the Association as the controlling body for the sport of basketball in Western Australia.
- (b) Basketball WA is the only sporting body in Western Australia affiliated to Basketball Australia in respect of the sport of basketball.

### **5.2 Compliance of the Association**

The Members acknowledge and agree that the Association will:

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

### **5.3 Operation of Rules**

- (a) The Association and its Members acknowledge and agree that they are bound by this Constitution and that these Rules operate to create uniformity in the way in which the Objects of the Association are achieved.
- (b) The Members acknowledge and agree that upon applying for Membership of the Association he/she agrees also to be bound by this Constitution of Basketball WA and this Constitution of Basketball Australia.

## **6 Source of Funds and Application of Income**

### **6.1 Source of Funds**

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

## **6.2 Control of Funds**

- (a) The Association must open an account in the name of the Association with a financial institution from which all expenditure of the Association is made and into which all funds received by the Association are deposited.
- (b) Subject to any restrictions imposed at a General Meeting, the Board may approve expenditure on behalf of the Association.
- (c) The Board may authorise the Treasurer 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.
- (d) All cheques, bills of exchange, promissory notes and other negotiable instruments of the Association must be signed by:
  - (i) two Board Members; or
  - (ii) one Board Member and a person authorised by the Board;
- (e) All funds of the Association must be deposited into the Association's account within 7 days after their receipt.

## **6.3 Financial Statements and Financial Reports**

- (a) For each Financial Year, the Board must ensure that the requirements imposed on the Association under Part 5 of the Act relating to the Financial Statements or Financial Report of the Association are met.
- (b) Without limiting Rule 6.3(a), those requirements include:
  - (i) if the Association is a Tier 1 association, the preparation of the Financial Statements; and
  - (ii) if the Association is a Tier 2 association or Tier 3 association, the preparation of the Financial Report; and
  - (iii) if required, the review or auditing of the Financial Statements or Financial Report, as applicable; and
  - (iv) the presentation to the AGM of the Financial Statements or Financial Report, as applicable; and
  - (v) if required, the presentation to the AGM of the copy of the report of the review or auditor's report, as applicable, on the Financial Statements or Financial Report.

## **6.4 Payments to Board Members**

- (a) In this Rule:
  - (i) Board Member includes a member of a sub-committee;
  - (ii) Board Meeting includes a meeting of a sub-committee.
- (b) A Board Member is entitled to be paid out of the funds of the Association for any out-of-pocket expenses for travel and accommodation properly incurred:
  - (i) in attending a Board Meeting or
  - (ii) in attending a General Meeting; or
  - (iii) otherwise in connection with the Association's business.

## 7 Member

Any person who supports the objects of the Association and is eligible to apply to become a Member.

### 7.1 Category of Member

The Members of the Association shall consist of:

- (a) **Ordinary Members:** An Ordinary Member shall have full voting rights and any other rights conferred as Ordinary Members by these Rules or approved by a resolution at a General Meeting;
- (b) **Junior Members:** Junior Members shall be under 18 years of age. A Junior Member shall not be entitled to vote at General Meetings of the Association;
- (c) **Life Members:**
  - (i) Life Membership of the Association may be conferred on a Member who has given a minimum of 7 years' service to the Association and if the Board votes in favour of that person receiving Life Membership;
  - (ii) The Board may nominate a person who has rendered distinguished or special service to the Association or basketball for Life Membership of the Association. The nomination must be in writing on the form prescribed by the Board from time to time (if any) and must be submitted to the Secretary at least 21 days before the date set down for the next AGM;
  - (iii) A nomination for Life Membership will be considered by the Board and if successful, announced and minuted at the AGM;
  - (iv) Conditions, obligations and privileges of Life Membership shall be as prescribed from time to time by the Board;
  - (v) An Active Life Member is conferred the same rights and privileges including full voting rights. To be considered Active a Life Member must be or have been involved in Association activities within the 12 month period leading up to the time of meeting at which voting may take place. The granting of the status of Active Life Member shall be at the discretion of the Board.
  - (vi) A Life Member who is not an Active Life Member may attend and at the discretion of the chairperson, debate at General Meetings, but shall not be entitled to vote.
- (d) **Associate Member:** Associate Members are able to enjoy the benefits of Ordinary Members with the exception of the power of voting. For the purposes of the Liquor Licensing Act, an Associate Member shall be viewed as an Ordinary Member
- (e) Any other class of membership created in accordance with Rule 7.2.

### 7.2 Creation of New Categories

A General Meeting may by resolution, create new categories of membership with such rights, privileges and obligations as are determined applicable (other than voting rights), even if the effect of creating a new category is to alter rights, privileges or obligations of an existing

category of Members. No new category of Membership may be granted voting rights unless the prior approval of the Members is first obtained by Special Resolution at a General Meeting.

## **8 Register of Members**

### **8.1 Secretary to keep Register**

The Secretary will keep and maintain:

- (a) a Register of all Members in which will be entered such information as is required under the Act from time to time the class of Membership to which each Member belongs and the date upon which each Member became a Member, and
- (b) a record of the names and residential or postal addresses of persons who hold office with the Association.

### **8.2 Inspection of Register**

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

### **8.3 Use of Register**

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

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

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

## **9 Membership**

### **9.1 Membership Rules**

All applicants for Membership of the Association must complete a personal information form. The information on this form will be used by the Association only for purposes of record keeping and contact for the purpose of furthering the Objects of the Association or any activity incidental thereto.

## **9.2 Application for Membership**

An application for new Membership by a Member must be:

- (a) in writing in the form prescribed by the Board from time to time and lodged with the Secretary for Board acceptance; and
- (b) accompanied by the annual Membership Fees.

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

The Board may accept or reject an application.

- (a) Membership of the Association shall commence upon acceptance of the application by the Board.
- (b) If an application is rejected, the Board is not required to give the reasons for the rejection of the Membership application shall be provided.
- (c) Where the Board rejects an application, it shall refund any Membership Fees forwarded with the application.

## **9.4 Membership Renewal**

Members shall:

- (a) renew their Membership with the Association in accordance with the procedures applicable from time to time;
- (b) pay the annual Membership Fees determined by the Board; and
- (c) pay any arrears (by way of agreement to a payment plan or otherwise) in accordance with the procedures applicable from time to time.

## **9.5 Effect of Membership**

The Association and each Member acknowledge and agree that:

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

## **9.6 Subscriptions and Fees**

- (a) The annual Membership Fee (if any), and any other fees, levies, charges and other amounts payable by Members (or any category of Members) to the Association, will be as determined by the Board from time to time.
- (b) Any Member who has not paid all monies due and payable by that Member to the Association will (subject to the Board's discretion) have all rights under this Constitution immediately suspended from the expiry of the time prescribed for payment of those monies. Such rights will be suspended until such time as the monies are fully paid or otherwise in the Board's discretion.

- (c) If a Member has not paid the annual Membership Fees within the period of 3 months after the due date, the Member ceases to be a Member on the expiry of that period.

### **9.7 Resignation**

- (a) A Member may resign from Membership of the Association by giving written notice of the resignation to the secretary.
- (b) The resignation takes effect:
  - (i) when the Secretary receives the notice; or
  - (ii) if a later time is stated in the notice, at that later time.
- (c) A person who has resigned from Membership of the Association remains liable for any fees that are owed to the Association (**Owed Amount**) at the time of resignation.
- (d) The Owed Amount may be recovered by the Association in a court of competent jurisdiction as a debt due to the Association.

### **9.8 When Membership Ceases**

- (a) A person ceases to be a Member when any of the following takes place:
  - (i) for a Member who is an individual, the individual dies;
  - (ii) for a Member who is a body corporate, the body corporate is wound up;
  - (iii) the person resigns from the Association under Rule 9.7;
  - (iv) the person is expelled from the Association under Rule 10.1;
  - (v) the person ceases to be a Member under Rule 9.6(c).
- (b) The Secretary must keep a record, for at least one year after a person ceases to be a Member, of:
  - (i) the date on which the person ceased to be a Member; and
  - (ii) the reason why the person ceased to be a Member.

## **10 Disciplinary Action**

In this Rule 10, 'Member', in relation to a member who is expelled from the Association, includes a former member.

In this Rule 10 Suspension or Expulsion from the Association differs to Suspension from the Competition. Matters relating to Competition management are contained in the By-Laws.

### **10.1 Suspension or Expulsion**

- (a) The Board may decide to suspend a Member's Membership or to expel a Member from the Association if:
  - (i) the Member contravenes this Constitution or the By-Laws, policies or procedures of the Association; or
  - (ii) the member acts detrimentally to the interests of the Association or the sport of basketball.

- (b) The Secretary must give the Member written notice of the proposed suspension or expulsion at least 28 days before the Board Meeting at which the proposal is to be considered by the Board.
- (c) The notice given to the Member must state:
  - (i) when and where the Board Meeting is to be held; and
  - (ii) the grounds on which the proposed suspension or expulsion is based; and
  - (iii) that the Member, or the Member's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the proposed suspension or expulsion;
- (d) At the Board Meeting, the Board must:
  - (i) give the Member, or the Member's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the proposed suspension or expulsion; and
  - (ii) give due consideration to any submissions so made; and
  - (iii) decide:
    - (A) whether or not to suspend the Member's Membership and, if the decision is to suspend the Membership, the period of suspension; or
    - (B) whether or not to expel the Member from the Association.
- (e) A decision of the Board to suspend the Member's Membership or to expel the Member from the Association takes immediate effect.
- (f) The Board must give the Member written notice of the Board's decision, and the reasons for the decision, within 7 days after the Board Meeting at which the decision is made.
- (g) A Member whose Membership is suspended or who is expelled from the Association may, within 14 days after receiving notice of the Board's decision under sub-Rule (f), give written notice to the Secretary requesting the appointment of a mediator under Rule 18.
- (h) If notice is given under sub-Rule (g), the Member who gives the notice and the Board are the parties to the Mediation.

## **10.2 Consequences of Suspension**

- (a) During the period a Member's Membership is suspended, the Member:
  - (i) loses any rights (including voting rights) arising as a result of Membership; and
  - (ii) is not entitled to a refund, rebate, relief or credit for Membership fees paid, or payable, to the Association.
- (b) When a Member's Membership is suspended, the Secretary must record in the Register of Members:
  - (i) that the Member's Membership is suspended; and
  - (ii) the date on which the suspension takes effect; and

- (iii) the period of the suspension.
- (c) When the period of the suspension ends, the Secretary must record in the Register of Members that the Member's Membership is no longer suspended.

## **11 General Meetings**

### **11.1 Annual General Meetings**

- (a) The Board must determine the date, time and place of the AGM.
- (b) If it is proposed to hold the AGM more than 6 months after the end of the Association's Financial Year, the Secretary must apply to the Commissioner for permission under section 50(3)(b) of the Act within 4 months after the end of the Financial Year.
- (c) The ordinary business of the AGM is as follows:
  - (i) to confirm the minutes of the previous AGM and of any Special General Meeting held since then if the minutes of that meeting have not yet been confirmed;
  - (ii) to receive and consider:
    - (A) the Board's annual report on the Association's activities during the preceding Financial Year; and
    - (B) if the Association is a Tier 1 association, the Financial Statements of the Association for the preceding Financial Year presented under Part 5 of the Act; and
    - (C) if the Association is a Tier 2 association or a Tier 3 association, the Financial Report of the Association for the preceding Financial Year presented under Part 5 of the Act;
    - (D) if required to be presented for consideration under Part 5 of the Act, a copy of the report of the review or auditor's report on the Financial Statements or Financial Report;
  - (iii) to elect the office holders of the Association and other Board Members;
  - (iv) if applicable, to appoint or remove a reviewer or auditor of the Association in accordance with the Act;
  - (v) to confirm or vary the entrance fees, subscriptions and other amounts (if any) to be paid by Members;
  - (vi) to consider any motion of which notice has been given.
- (d) Any other business of which notice has been given in accordance with these Rules may be conducted at the AGM.

### **11.2 Special General Meetings**

- (a) The Board may convene a Special General Meeting.
- (b) The Board must convene a Special General Meeting if at least 20% of the Members require a Special General Meeting to be convened.
- (c) The Members requiring a Special General Meeting to be convened must:



- (i) make the requirement by written notice given to the Secretary; and
  - (ii) state in the notice the business to be considered at the meeting; and
  - (iii) each sign the notice.
- (d) The Special General Meeting must be convened within 28 days after notice is given under sub-Rule 11.2(c)(ii).
- (e) If the Board does not convene a Special General Meeting within that 28-day period, the Members making the requirement (or any of them) may convene the Special General Meeting.
- (f) A Special General Meeting convened by Members under sub-Rule (e):
- (i) must be held within 3 months after the date the original requirement was made; and
  - (ii) may only consider the business stated in the notice by which the requirement was made.
- (g) No business other than that circulated in accordance with this Rule 11.2 will be transacted at the meeting.
- (h) The Association must reimburse any reasonable expenses incurred by the Members convening a Special general meeting under sub-Rule (e).

### **11.3 Notice of General Meetings**

- (a) The Secretary or, in the case of a Special General Meeting convened under Rule 11.2(e), the Members convening the meeting, must give to each Member:
- (i) at least 21 days' notice of a General Meeting if a Special Resolution is to be proposed at the meeting; or
  - (ii) at least 14 days' notice of a General Meeting in any other case.
- (b) The notice must:
- (i) specify the date, time and place of the meeting; and
  - (ii) indicate the general nature of each item of business to be considered at the meeting; and
  - (iii) if the meeting is the AGM, include the names of the Members who have nominated for election to the Board under Rule 14.2; and
  - (iv) if the meeting is the AGM, include notice of motions to be considered at the meeting;
  - (v) if a Special Resolution is proposed:
    - (A) set out the wording of the proposed resolution as required by section 51(4) of the Act; and
    - (B) state that the resolution is intended to be proposed as a Special Resolution; and
    - (C) comply with Rule 11.4(g).

**Note for this Rule 11.3:** Section 51(1) of the Act states that a resolution is a Special Resolution if it is passed:

- (a) *at a General Meeting of an incorporated association; and*
- (b) *by the votes of not less than three-fourths of the Members of the Association who cast a vote at the meeting.*

#### **11.4 Proxies**

- (a) Subject to sub-Rule 11.4(b), an Ordinary Member may appoint an individual who is an Ordinary Member as his or her proxy to vote and speak on his or her behalf at a General Meeting.
- (b) An Ordinary Member may be appointed the proxy for not more than 5 other Members.
- (c) The appointment of a proxy must be in writing and signed by the Member making the appointment.
- (d) The Member appointing the proxy may give specific directions as to how the proxy is to vote on his or her behalf.
- (e) If no instructions are given to the proxy, the proxy may vote on behalf of the Member in any matter as the proxy sees fit.
- (f) If the Board has approved a form for the appointment of a proxy, the Member may use that form or any other form:
  - (i) that clearly identifies the person appointed as the Member's proxy; and
  - (ii) that has been signed by the Member.
- (g) Notice of a General Meeting given to an Ordinary Member under Rule 11.3 must:
  - (i) state that the Member may appoint an individual who is an Ordinary Member as a proxy for the meeting; and
  - (ii) include a copy of any form that the Board has approved for the appointment of a proxy.
- (h) A form appointing a proxy must be given to the Secretary before the commencement of the General Meeting for which the proxy is appointed.
- (i) A form appointing a proxy sent by post or electronically is of no effect unless it is received by the Association not later than 24 hours before the commencement of the meeting.

#### **11.5 Use of Technology to be Present at General Meetings**

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

#### **11.6 Presiding Member and Quorum for General Meetings**

- (a) The President or, in the President's absence, the Vice President must preside as Chairperson of each General Meeting.

- (b) If the President and Vice President are absent or are unwilling to act as Chairperson of a General Meeting, the Board Members at the meeting must choose one of them to act as Chairperson of the meeting.
- (c) No business is to be conducted at a General Meeting unless a Quorum is present.
- (d) If a Quorum is not present within 30 minutes after the notified commencement time of a General Meeting:
  - (i) in the case of a Special General Meeting, the meeting lapses; or
  - (ii) in the case of the AGM, the meeting is adjourned to:
    - (A) the same time and day in the following week; and
    - (B) the same place, unless the President specifies another place at the time of the adjournment or written notice of another place is given to the Members before the day to which the meeting is adjourned.
- (e) If:
  - (i) a quorum is not present within 30 minutes after the commencement time of an AGM held under sub-Rule (d)(ii); and
  - (ii) at least two ordinary Members are present at the meeting, those Members present are taken to constitute a quorum.

#### **11.7 Adjournment of General Meeting**

- (a) The chairperson of a general meeting at which a Quorum is present may, with the consent of a majority of the ordinary members present at the meeting, adjourn the meeting to another time at the same place or at another place.
- (b) Without limiting sub-Rule (a), a meeting may be adjourned:
  - (i) if there is insufficient time to deal with the business at hand; or
  - (ii) to give the Members more time to consider an item of business.
- (c) No business may be conducted on the resumption of an adjourned meeting other than the business that remained unfinished when the meeting was adjourned.
- (d) Notice of the adjournment of a meeting under this Rule is not required unless the meeting is adjourned for 14 days or more, in which case notice of the meeting must be given in accordance with Rule 11.12.

#### **11.8 Voting at General Meeting**

- (a) On any question arising at a General Meeting:
  - (i) each financial Ordinary Member has one vote unless the Member may also vote on behalf of a body corporate under rule 11.8(b); and
  - (ii) Ordinary Members may vote personally or by proxy.
- (b) An Ordinary Member that is a body corporate may, in writing, appoint an individual, whether or not the individual is a Member, to vote on behalf of the body corporate on any question at a particular General Meeting or at any General Meeting, as specified in the document by which the appointment is made.

- (i) A copy of the document by which the appointment is made must be given to the Secretary before any General Meeting to which the appointment applies.
- (ii) The appointment has effect until —
  - (A) the end of any General Meeting to which the appointment applies; or
  - (B) the appointment is revoked by the body corporate and written notice of the revocation is given to the Secretary.
- (c) Except in the case of a Special Resolution, a motion is carried if a majority of the Ordinary Members present at a General Meeting vote in favour of the motion.
- (d) If votes are divided equally on a question, the President of the meeting has a second or casting vote.
- (e) If the question is whether or not to confirm the minutes of a previous General Meeting, only Members who were present at that meeting may vote.
- (f) For a person to be eligible to vote at a General Meeting as an Ordinary Member, or on behalf of an Ordinary Member that is a body corporate under sub-Rule (b), the Ordinary Member:
  - (i) must have been an Ordinary Member at the time notice of the meeting was given under Rule 11.3; and
  - (ii) must have paid any fee or other money payable to the Association by the Member.

### **11.9 When Special Resolutions are required**

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

**Note for this Rule 11.9:** *Under the Act, a Special Resolution is required if an incorporated association proposes to do any act authorised by Sections 30(1), 93(i), 102(4), 121(2) and 129:*

### **11.10 Determining whether resolution carried**

- (a) In this Rule 11.10, 'poll' means the process of voting in relation to a matter that is conducted in writing.
- (b) Subject to sub-Rule (d), the President of a General Meeting may, on the basis of general agreement or disagreement or by a show of hands, declare that a resolution has been:
  - (i) carried; or
  - (ii) carried unanimously; or
  - (iii) carried by a particular majority; or iv. lost.

- (c) If the resolution is a Special Resolution, the declaration under sub-Rule (b) must identify the resolution as a Special Resolution.
- (d) If a poll is demanded on any question by the chairperson of the meeting or by at least three Ordinary Members present in person or by proxy:
  - (i) the poll must be taken at the meeting in the manner determined by the Chairperson; and
  - (ii) the Chairperson must declare the determination of the resolution on the basis of the poll.
- (e) If a poll is demanded on the election of an officer of the Association or on a question of an adjournment, the poll must be taken immediately.
- (f) If a poll is demanded on any other question, the poll must be taken before the close of the meeting at a time determined by the Chairperson.
- (g) A declaration under sub-Rule (b) or (d) must be entered in the minutes of the meeting, and the entry is, without proof of the voting in relation to the resolution, evidence of how the resolution was determined.

#### **11.11 Minutes of General Meeting**

- (a) The Secretary, or a person authorised by the Board from time to time, must take and keep minutes of each General Meeting.
- (b) The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.
- (c) In addition, the minutes of each AGM must record:
  - (i) the names of the Ordinary Members attending the meeting; and
  - (ii) any proxy forms given to the Secretary under Rule 11.4(h); and
  - (iii) the Financial Statements or Financial Report presented at the meeting, as referred to in Rule 11.1(c)(ii)(B) or 11.1(c)(ii)(C); and
  - (iv) any report of the review or auditor's report on the Financial Statements or Financial Report presented at the meeting, as referred to in Rule 11.1(c)(ii)(D).
- (d) The minutes of a General Meeting must be entered in the Association's minute book within 30 days after the meeting is held.
- (e) The Chairperson must ensure that the minutes of a General Meeting are reviewed and signed as correct by:
  - (i) the Chairperson of the meeting; or
  - (ii) the Chairperson of the next General Meeting.
- (f) When the minutes of a General Meeting have been signed as correct, they are, in the absence of evidence to the contrary, taken to be proof that:
  - (i) the meeting to which the minutes relate was duly convened and held; and
  - (ii) the matters recorded as having taken place at the meeting took place as recorded; and any election or appointment purportedly made at the meeting was validly made.

## **11.12 Notice of Motion**

### **Notices of Motion**

Notice in writing of all motions for consideration at a General Meeting (not being a Special General Meeting) must be received by the Secretary at least 28 days prior to the date of the meeting. Notices received within this time shall be placed on the agenda for the relevant meeting. A copy of all notices of motion received by the Secretary will be communicated to each Member and Board Member at least 14 days prior to the General Meeting concerned, using any technology that gives the Members as a whole a reasonable opportunity to consider the motion in advance of the meeting.

## **12 Role of the Board**

Subject to the Act, this Constitution, the By-Laws (if any) and any resolution passed at a General Meeting, the Board has the power to do all things necessary or convenient to be done for the proper management of the Association. The Board:

- (a) will manage the Association for the collective and mutual benefit of the Members, and the sport of basketball;
- (b) will administer the Association in accordance with the Objects;
- (c) will develop a strategic plan for the Association;
- (d) will review the Association's performance in achieving its strategic plan objectives;
- (e) will ensure an appropriate risk management framework is in place; and
- (f) will take all reasonable steps to ensure that the Association complies with the Act, and this Constitution.

## **13 Composition of Board and Duties of Members**

### **13.1 Board Members**

- (a) The Board will consist of 4 Elected Board Members and not less than 1 and not more than 7 Appointed Board Members.
- (b) The Elected Board Members will be elected by the Members present at the AGM in accordance with Rule 14.3.
- (c) The Elected Board Members shall be:
  - (i) President
  - (ii) Vice President
  - (iii) Treasurer
  - (iv) Secretary
- (d) Subject to Rule 13.1(e) all Elected Board Members' positions shall expire when the position is declared vacant at the second AGM convened after the date of his/her election.
- (e) At the first Board Meeting after the adoption of this Constitution the Board must determine those Board Members whose term will expire after one year to the intent

of ensuring that the terms of Elected Board Members do not all expire at the same time.

- (f) Subject to section 39 of the Act, a person may be an Elected Board Member if the person is:
  - (i) an individual who has reached 18 years of age; and
  - (ii) a financial Ordinary Member.
- (g) The Board must appoint at least 1 Appointed Board Member and may appoint up to a maximum of 7 Appointed Board Members whose term will expire at the conclusion of the next AGM convened after his/her appointment. An Appointed Board Member need not be a Member. An Appointed Board Member must be a minimum of 18 years of age and may have specific skills in commerce, finance, marketing, law or business generally or such other skills which complement the Board composition but need not have experience in or exposure to basketball.
- (h) A person must not hold more than one position on the Elected Board mentioned in Rule 13.1(c) at the same time.

### **13.2 President**

The President shall:

- (a) represent the Association and chair all General Meetings and Board Meetings and perform all duties as ordinarily pertain to the office of President;
- (b) be well informed of all the Association's activities;
- (c) be knowledgeable of the future directions and plans of Members;
- (d) foster a strong working relationship with local government, affiliated associations; Basketball WA and other sporting clubs;
- (e) have a good working knowledge of this Constitution, the policies of the Association and the duties of all office holders and sub-committees;
- (f) represent the Association at local, regional and state level;
- (g) be a supportive leader for all Members;
- (h) act as a facilitator for Association activities;
- (i) ensure the planning and budgeting for the future is carried out in accordance with the wishes of the Members.
- (j)

### **13.3 Vice President**

The Vice President shall:

- (a) attend Board meetings;
- (b) assist the President in carrying out his or her duties;
- (c) assume the duties of the President in his/her absence;
- (d) devote time with each Board Member to maintain a sound understanding of the running of the Association and assist other Board Members with their duties as required;

- (e) have a good working knowledge of this Constitution, By-Laws (if any), policies of the Association and the duties of all office holders and sub-committees;
- (f) be aware of the future direction and plans of the Association and act as a planning coordinator; and
- (g) perform other duties as may be prescribed by the President or the Board for the role of Vice President.

#### **13.4 Secretary**

The Secretary has the following duties:

- (a) dealing with the Association's correspondence;
- (b) consulting with the President regarding the business to be conducted at each Board Meeting and General Meeting;
- (c) preparing the notices required for meetings and for the business to be conducted at meetings;
- (d) unless another Member is authorised by the Board to do so, maintaining on behalf of the Association the Register of Members, and recording in the Register any changes in the Membership, as required under section 53(1) of the Act;
- (e) maintaining on behalf of the Association an up-to-date copy of this Constitution, as required under section 35(1) of the Act;
- (f) unless another Member is authorised by the Board to do so, maintaining on behalf of the Association a record of Board Members and other persons authorised to act on behalf of the Association, as required under section 58(2) of the Act;
- (g) ensuring the safe custody of the books of the Association, other than the Financial Records, Financial Statements and Financial Reports, as applicable to the Association;
- (h) maintaining full and accurate minutes of Board Meetings and General Meetings;
- (i) keep proper accounting and other records in accordance with the Act, generally accepted accounting principles and/or any applicable code of conduct; and
- (j) carrying out any other duty given to the Secretary under this Constitution or by the Board.

#### **13.5 Treasurer**

The Treasurer has the following duties:

- (a) ensuring that any amounts payable to the Association are collected and issuing receipts for those amounts in the Association's name;
- (b) ensuring that any amounts paid to the Association are credited to the appropriate account of the Association, as directed by the Board;
- (c) ensuring that any payments to be made by the Association that have been authorised by the Board or at a General Meeting are made on time;
- (d) ensuring that the Association complies with the relevant requirements of Part 5 of the Act;
- (e) ensuring the safe custody of the Association's Financial Records, Financial Statements and Financial Reports, as applicable to the Association;



- (f) if the Association is a Tier 1 association, coordinating the preparation of the Association's Financial Statements before their submission to the Association's AGM;
- (g) if the Association is a Tier 2 association or Tier 3 association, coordinating the preparation of the Association's Financial Report before its submission to the Association's AGM;
- (h) providing any assistance required by an auditor or reviewer conducting an audit or review of the Association's Financial Statements or Financial Report under Part 5 Division 5 of the Act; and
- (i) carrying out any other duty given to him or her under this Constitution or by the Board.

## **14 Election of Board Members**

### **14.1 How Members become Board Members**

A Member becomes a Board Member if the member:

- (a) is elected to the Board at a General Meeting under Rule 14.3;
- (b) is appointed to the Board to fill a casual vacancy under Rule 14.6; or
- (c) is appointed to the Board under Rule 13.1(g).

### **14.2 Nomination of Elected Board Members**

- (a) At least 42 days before an AGM, the Secretary must send written notice to all the Members:
  - (i) calling for nominations for election to the Board; and
  - (ii) stating the date by which nominations must be received by the Secretary to comply with sub-Rule (b).
- (b) A Member who wishes to be considered for election to the Board at the AGM must nominate for election by sending written notice of the nomination to the Secretary at least 28 days before the AGM.
- (c) The written notice must include a statement by another Member in support of the nomination.
- (d) A Member whose nomination does not comply with this Rule is not eligible for election to the Board unless the Member is nominated under Rule 14.3(b).

### **14.3 Election of Board Members**

- (a) At the AGM, a separate election must be held for each Elected Board Member.
- (b) If there is no nomination for a position, the Chairperson of the meeting may call for nominations from the Ordinary Members at the meeting.
- (c) If only one Member has nominated for a position, the Chairperson of the meeting must declare the Member elected to the position.
- (d) If more than one Member has nominated for a position, the Ordinary Members at the meeting must vote in accordance with procedures that have been determined by the Board to decide who is to be elected to the position.

- (e) Each Ordinary Member present at the meeting may vote for one Member who has nominated for the position.
- (f) A Member who has nominated for the position may vote for himself or herself.
- (g) An Elected Board Member's term will commence at the conclusion of the AGM at which he/she is elected.

#### **14.4 Resignation and Removal from Office**

- (a) A Board Member may resign from the Board by written notice given to the Secretary or, if the resigning Member is the Secretary, given to the President.
- (b) b) The resignation takes effect:
  - (i) when the notice is received by the Secretary or President; or
  - (ii) if a later time is stated in the notice, at the later time.
- (c) At a General Meeting, the Association may by resolution:
  - (i) remove a Board Member from office; and
  - (ii) elect a Member who is eligible under Rule 13.1(f) to fill the vacant position.
- (d) A Board Member who is the subject of a proposed resolution under sub-Rule (c)(i) may make written representations (of a reasonable length) to the Secretary or Chairperson and may ask that the representations be provided to the Members.
- (e) The Secretary or Chairperson may give a copy of the representations to each Member or, if they are not so given, the Board Member may require them to be read out at the General Meeting at which the resolution is to be considered.

#### **14.5 When Membership of Board Ceases**

A person ceases to be a Board Member if the person:

- (a) dies or otherwise ceases to be a Member; or
- (b) resigns from the Board or is removed from office under Rule 14.4(c)(i); or
- (c) becomes ineligible to accept an appointment or act as a Board Member under section 39 of the Act;
- (d) becomes permanently unable to act as a Board Member because of a mental or physical disability; or
- (e) fails to attend 3 consecutive Board Meetings, of which the person has been given notice, without having notified the Board that the person will be unable to attend.

**Note for this Rule 14.5** - Section 41 of the Act imposes requirements, arising when a person ceases to be a Member of the management committee of an incorporated association, that relate to returning documents and records.

#### **14.6 Filling casual vacancies**

- (a) The Board may appoint a Member who is eligible under Rule 13.1(f) to fill a position on the Board that:
  - (i) has become vacant; or
  - (ii) was not filled by election at the most recent AGM.

- (b) If the position of Secretary becomes vacant, the Board must appoint a Member who is eligible under Rule 13.1(f) to fill the position within 14 days after the vacancy arises.
- (c) Subject to the requirement for a Quorum under Rule 15.5, the Board may continue to act despite any vacancy in its Membership.
- (d) If there are fewer Board Members than required for a Quorum under Rule 15.5, the Board may act only for the purpose of:
  - (i) appointing Board Members under this Rule; or
  - (ii) convening a General Meeting.
- (e) The term of office of a person appointed to fill a casual vacancy shall expire at the conclusion of the AGM next following the appointment.

## **15 Meetings of the Board**

### **15.1 Board to Meet**

The Board shall meet as often as is deemed necessary in each calendar year for the dispatch of business and will meet on at least 6 occasions per year on the dates and at the times and place determined by the Board. The Board may adjourn and otherwise regulate their meetings as it thinks fit. The President shall, upon the request of 2 Board Members, convene a meeting of the Board within 14 days.

### **15.2 Decisions of Board**

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

### **15.3 Validity of Board Members' Acts**

The acts of a Board or subcommittee, or of a Board Member or member of a subcommittee, are valid despite any defect that may afterwards be discovered in the election, appointment or qualification of a Board Member or member of a subcommittee.

### **15.4 Use of Technology to be Present at Board Meetings**

- (a) The presence of a Board Member at a Board Meeting need not be by attendance in person but may be by that Board Member and each other Board Member at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.
- (b) A Member who participates in a Board Meeting as allowed under Rule 15.4(a) is taken to be present at the meeting and, if the Member votes at the meeting, the Member is taken to have voted in person.

### **15.5 Quorum**

- (a) Subject to Rule 14.6(d), no business is to be conducted at a Board Meeting unless a Quorum is present.
- (b) If a Quorum is not present within 30 minutes after the notified commencement time of a Board Meeting:
  - (i) in the case of a Special Meeting - the meeting lapses; or

- (ii) otherwise, the meeting is adjourned to the same time, day and place in the following week.
- (c) If:
  - (i) a Quorum is not present within 30 minutes after the commencement time of a Board Meeting held under Rule 15.5(b)(ii); and
  - (ii) at least 2 Board Members are present at the meeting, those Members present are taken to constitute a Quorum.

### **15.6 Notice of Board Meetings**

- (a) Unless all Board Members agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their presence) not less than 7 days' oral or written notice of the meeting of the Board shall be given to each Board Member by the Secretary.
- (b) The notice must state the date, time and place of the meeting and must describe the general nature of the business to be conducted at the meeting.
- (c) Unless sub-Rule (d) applies, the only business that may be conducted at the meeting is the business described in the notice.
- (d) Urgent business that has not been described in the notice may be conducted at the meeting if the Board Members at the meeting unanimously agree to treat that business as urgent.

### **15.7 Chair of Board Meeting**

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

### **15.8 Voting at Board Meetings**

- (a) Each Board Member present at a Board Meeting has one vote on any question arising at the meeting.
- (b) A motion is carried if a majority of the Board Members present at the Board Meeting vote in favour of the motion.
- (c) If the votes are divided equally on a question, the Chairperson of the meeting has a second or casting vote.
- (d) A vote may take place by the Board Members present indicating their agreement or disagreement or by a show of hands, unless the Board decides that a secret ballot is needed to determine a particular question.
- (e) If a secret ballot is needed, the chairperson of the meeting must decide how the ballot is to be conducted.

### **15.9 Minutes of Board Meetings**

- (a) The Board must ensure that minutes are taken and kept of each Board Meeting.
- (b) The minutes must record the following:
  - (i) the names of the Board Members present at the meeting;
  - (ii) the name of any person attending the meeting by invitation;

- (iii) the business considered at the meeting;
  - (iv) any motion on which a vote is taken at the meeting and the result of the vote.
- (c) The minutes of a Board Meeting must be entered in the Association's minute book within 30 days after the meeting is held.
- (d) The Chairperson must ensure that the minutes of a Board Meeting are reviewed and signed as correct by:
  - (i) the Chairperson of the meeting; or
  - (ii) the Chairperson of the next Board Meeting.
- (e) When the minutes of a Board Meeting have been signed as correct, they are, until the contrary is proved, evidence that:
  - (i) the meeting to which the minutes relate was duly convened and held; and
  - (ii) the matters recorded as having taken place at the meeting took place as recorded; and
  - (iii) any appointment purportedly made at the meeting was validly made.

## **16 Conflicts**

### **16.1 Board Members' Interests**

A Board Member is disqualified from:

- (a) holding any place of profit or position of employment in the Association or in any company or incorporated association in which the Association is a shareholder; and
- (b) Any contract or arrangement entered into by or on behalf of the Association in which any Board Member has a material personal interest will be voided for such reason unless the Board Member has declared his/her material personal interest prior to the making of the contract or arrangement.

### **16.2 Conflict of Interest**

A Board Member must declare any material personal interest he or she has in any:

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

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

### **16.3 Disclosure of Interests**

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

### **16.4 General Disclosure**

A general notice that a Board Member is a member of any specified firm or company and is to be regarded as interested in all transactions with that firm or company is sufficient declaration under Rule 16.3 as regards such Board Member and the said transactions. After such general notice it is not necessary for such Board Member to give a special notice relating to any particular transaction with that firm or company.

### **16.5 Recording Disclosures**

It is the duty of the Secretary to record in the minutes any declaration made or any general notice as aforesaid given by a Board Member in accordance with Rule 16.3.

## **17 Disputes**

### **17.1 In this Rule 17:**

- (a) 'grievance procedure' means the procedures set out in this Rule 17;
- (b) 'party to a dispute' includes a person
  - (i) who is a party to the dispute; and
  - (ii) who ceased to be a Member within 6 months before the dispute has come to the attention of each party to the dispute.

### **17.2 Application**

The procedure set out in this Rule 17 (the grievance procedure) applies to disputes:

- (a) between Members; or
- (b) between one or more Members and the Association.
- (c) despite Rules 17 and 18, where the dispute or actions involves Members and the result of the dispute or action could affect the eligibility of a Member or Members to participate in a competition of and/or as a representative of the Association, the Board and parties involved will adhere to the procedures as set out in the By-Laws.

### **17.3 Parties to Attempt to Resolve Dispute**

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

### **17.4 How Grievance Procedure is Started**

- (a) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by Rule 17.3, any party to the dispute may start the grievance procedure by giving written notice to the Secretary of:
  - (i) the parties to the dispute; and

- (ii) the matters that are the subject of the dispute.
- (b) Within 28 days after the Secretary is given the notice, a Board Meeting must be convened to consider and determine the dispute.
- (c) The Secretary must give each party to the dispute written notice of the Board Meeting at which the dispute is to be considered and determined at least 7 days before the meeting is held.
- (d) The notice given to each party to the dispute must state:
  - (i) when and where the Board Meeting is to be held; and
  - (ii) that the party, or the party's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the dispute.
- (e) If:
  - (i) the dispute is between one or more Members and the Association; and
  - (ii) any party to the dispute gives written notice to the Secretary stating that the party:
    - (A) does not agree to the dispute being determined by the Board; and
    - (B) requests the appointment of a mediator under Rule 18;
 the Board must not determine the dispute.

## **17.5 Determination of dispute by Board**

- (a) At the Board Meeting at which a dispute is to be considered and determined, the Board must:
  - (i) give each party to the dispute, or the party's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the dispute; and
  - (ii) give due consideration to any submissions so made; and
  - (iii) determine the dispute.
- (b) The Board must give each party to the dispute written notice of the Board's determination, and the reasons for the determination, within 7 days after the Board Meeting at which the determination is made.
- (c) A party to the dispute may, within 14 days after receiving notice of the Board's determination under Rule 17.5(b), give written notice to the Secretary requesting the appointment of a mediator under Rule 18.
- (d) If notice is given under Rule 17.5(c), each party to the dispute is a party to the mediation.

## **18 Mediation**

### **18.1 Application of Rule**

- (a) This Rule applies if written notice has been given to the Secretary requesting the appointment of a mediator:

- (i) by a member under Rule 10.1(g); or
  - (ii) by a party to a dispute under Rule 21.
- (b) If this Rule applies, a mediator must be chosen or appointed under Rule 18.2.

### **18.2 Appointment of mediator**

- (a) The mediator must be a person chosen:
- (i) if the appointment of a mediator was requested by a member under Rule 10.1(g);
  - (ii) by agreement between the Member and the Board; or
  - (iii) if the appointment of a mediator was requested by a party to a dispute under Rule 17.5(c) by agreement between the parties to the dispute.
- (b) If there is no agreement for the purposes of Rule 18.2(a)(ii) or 18.2(a)(iii) then, subject to Rule 18.2(c) or (d), the Board must appoint the mediator.
- (c) The person appointed as mediator by the Board must be a person who acts as a mediator for another not-for-profit body, such as a community legal centre, if the appointment of a mediator was requested by:
- (i) a Member under Rule 10.1(g); or
  - (ii) a party to a dispute under Rule 17.5(c).
- (d) The person appointed as mediator by the Board may be a Member or former member of the Association but must not:
- (i) have a personal interest in the matter that is the subject of the mediation; or
  - (ii) be biased in favour of or against any party to the mediation.

### **18.3 Mediation Process**

- (a) The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.
- (b) Each party to the mediation must give the mediator a written statement of the issues that need to be considered at the mediation at least 5 days before the mediation takes place.
- (c) In conducting the mediation, the mediator must:
- (i) give each party to the mediation every opportunity to be heard; and
  - (ii) allow each party to the mediation to give due consideration to any written statement given by another party; and
  - (iii) ensure that natural justice is given to the parties to the mediation throughout the mediation process.
- (d) The mediator cannot determine the matter that is the subject of the mediation.
- (e) The mediation must be confidential, and any information given at the mediation cannot be used in any other proceedings that take place in relation to the matter that is the subject of the mediation.



- (f) The costs of the mediation are to be paid by the party or parties to the mediation that requested the appointment of the mediator.

#### **18.4 If Mediation Results in Decision to Suspend or Expel being Revoked**

If:

- (a) mediation takes place because a Member whose Membership is suspended or who is expelled from the Association gives notice under Rule 10.1(g); and
- (b) as the result of the mediation, the decision to suspend the Member's Membership or expel the member is revoked,

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

### **19 Sub-committees and Subsidiary Offices**

#### **19.1 Sub-committees and subsidiary offices**

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

#### **19.2 Delegation to Sub-committees**

- (a) In this Rule 19.2:  
**'non-delegable duty'** means a duty imposed on the Board by the Act or another written law.
- (b) The Board may, in writing, delegate to a sub-committee or the holder of a subsidiary office the exercise of any power or the performance of any duty of the Board other than:
  - (i) the power to delegate; and
  - (ii) a non-delegable duty.
- (c) A power or duty, the exercise or performance of which has been delegated to a sub-committee or the holder of a subsidiary office under this rule, may be exercised or performed by the sub-committee or holder in accordance with the terms of the delegation.

- (d) The delegation may be made subject to any conditions, qualifications, limitations or exceptions that the Board specifies in the document by which the delegation is made.
- (e) The delegation does not prevent the Board from exercising or performing at any time the power or duty delegated.
- (f) Any act or thing done by a sub-committee or by the holder of a subsidiary office, under the delegation has the same force and effect as if it had been done by the Board.
- (g) The Board may, in writing, amend or revoke the delegation.

## **20 By-Laws**

The Association may, by resolution at a Board meeting, after reasonable consultation, make, amend or revoke By-Laws.

*In reference to Rule 20 **Reasonable Consultation** means the Board has taken reasonable steps to consult with members regarding By-Law changes. Consultation may take the form of a general meeting, electronic communication or other such method as the Board deems appropriate. The method(s) of consultation and any outcomes are to be documented in the Minutes of the meeting relevant to the resolution which seeks to alter the By-Laws.*

- (a) By-Laws may:
  - (i) provide for the rights and obligations that apply to any classes of Associate Members approved under Rule 7.2; and
  - (ii) impose restrictions on the Board's powers, including the power to dispose of the Association's assets; and
  - (iii) impose requirements relating to the Financial Reporting and financial accountability of the association and the auditing of the Association's accounts; and
  - (iv) provide for any other matter the Association considers necessary or convenient to be dealt with in the By-Laws.
- (b) A By-Law is of no effect to the extent that it is inconsistent with the Act, the regulations or these Rules.
- (c) Without limiting Rule 20(b), a by-law made for the purposes of Rule 20(a)(ii) may only impose requirements on the Association that are additional to, and do not restrict, a requirement imposed on the Association under Part 5 of the Act.
- (d) At the request of a Member, the Association must make a copy of the By-Laws available for inspection by the Member.

## **21 Records and Accounts**

### **21.1 Custody of Books and Securities**

- (a) Subject to Rule 21.1(b), the books and any securities of the Association must be kept in the Secretary's custody or under the Secretary's control.

- (b) The Financial Records and, as applicable, the Financial Statements or Financial Reports of the Association must be kept in the Treasurer's custody or under the Treasurer's control.
- (c) Rule 21.1(a) and 21.1(b) have effect except as otherwise decided by the Board.
- (d) The books of the Association must be retained for at least 7 years.

## **21.2 Record of Office Holders**

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

*Note for this Rule 21.2: Section 58 of the Act:*

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

## **21.3 Inspection of Records and Documents**

- (a) This Rule 21.3 applies to a Member who wants to inspect:
  - (i) the Register of Members under section 54(1) of the Act; or
  - (ii) the record of the names and addresses of Board Members, and other persons authorised to act on behalf of the Association, under section 58(3) of the Act; or
  - (iii) any other record or document of the Association.
- (b) The Member must contact the Secretary to make the necessary arrangements for the inspection.
- (c) The inspection must be free of charge.
- (d) If the Member wants to inspect a document that records the minutes of a Board Meeting, the right to inspect that document is subject to any decision the Board has made about minutes of Board Meetings generally, or the minutes of a specific Board Meeting, being available for inspection by Members.
- (e) The Member may make a copy of or take an extract from a record or document referred to in Rule 21.3(a)(iii) but does not have a right to remove the record or document for that purpose.

**Note for this sub-Rule:** *Sections 54(2) and 58(4) of the Act provide for the making of copies of, or the taking of extracts from, the register referred to in sub rule (a)(i) and the record referred to in Rule 21.3(a)(ii).*

- (f) The Member must not use or disclose information in a record or document referred to in Rule 21.3(a)(iii) except for a purpose:
  - (i) that is directly connected with the affairs of the Association; or
  - (ii) that is related to complying with a requirement of the Act.

#### **21.4 Publication by Board Members of Statements about Association Business Prohibited**

A Board Member must not publish, or cause to be published, any statement about the business conducted by the Association at a General Meeting or Board meeting unless:

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

### **22 Auditor**

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

### **23 Notice**

#### **23.1 Giving of Notices**

- (a) In this Rule 23, '**recorded**' means recorded in the register of Members.
- (b) A notice or other document that is to be given to a Member under these Rules is taken not to have been given to the Member unless it is in writing and:
  - (i) delivered by hand to the recorded address of the Member; or
  - (ii) sent by prepaid post to the recorded postal address of the Member; or
  - (iii) sent by facsimile or electronic transmission to an appropriate recorded number or recorded electronic address of the Member.

#### **23.2 Entitlement to Notices**

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

- (a) every Member, except those who have not supplied to the Secretary an address for the giving of notices to them;
- (b) the Board Members;
- (c) the auditor for the time being of the Association; and
- (d) Life Members whose address is known to the Secretary.

No other person is entitled to receive notices of General Meetings.

### **24 Executing Documents and Common Seal**

- (a) The Association may execute a document without using a common seal if the document is signed by:
  - (i) two Board Members; or

- (ii) one Board Member and a person authorised by the Board.
- (b) If the Association has a common seal:
  - (i) the name of the Association must appear in legible characters on the common seal; and
  - (ii) a document may only be sealed with the common seal by the authority of the Board and in the presence of:
    - (A) two Board Members; or
    - (B) one Board Member and a person authorised by the Board,
 and each of them is to sign the document to attest that the document was sealed in their presence.
- (c) The Secretary must make a written record of each use of the common seal.
- (d) The common seal must be kept in the custody of the Secretary or another Board Member authorised by the Board.

## **25 Amendments to this Constitution**

- (a) The Association will take reasonable steps to ensure that this Constitution is amended from time to time so as to be generally in conformity with amendments made to Basketball WA's constitution from time to time, subject to such variations as the Board consider being necessary or appropriate.
- (b) If the Association wants to alter or rescind any of these Rules, or to make additional Rules, the Association may do so only by Special Resolution and by otherwise complying with Part 3 Division 2 of the Act.

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

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

## **26 Indemnity**

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

- (a) any liability to another person (other than the Association or a related body corporate) unless the liability arises out of conduct involving a lack of good faith;
- (b) any liability for costs and expenses incurred by that person strictly in their capacity as a Board Member:
  - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or

- (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the person under the Act or the Corporations Act.

## **27 Distribution of Surplus Property on Cancellation of Incorporation or Winding Up**

- (a) In this Rule 27 '**surplus property**', in relation to the Association, means property remaining after satisfaction of:
  - (i) the debts and liabilities of the Association; and
  - (ii) the costs, charges and expenses of winding up or cancelling the incorporation of the Association,

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

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

**Note for this Rule 27:** *Section 24(1) of the Act sets out a provision that is implied in these Rules describing the entities to which the surplus property of an incorporated association may be distributed on the cancellation of the incorporation or the winding up of the association. Part 9 of the Act deals with the winding up of incorporated associations, and Part 10 of the Act deals with the cancellation of the incorporation of incorporated associations.*

## **28 Effect of these Rules**

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