



Northern Suburbs Basketball Association

# Constitution

Adopted at the AGM on 1 December 2020

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## **PART 1 - PRELIMINARY**

### **1. Basis for this document**

- 1.1 This constitution replaces the previous Constitution of the NSBA, which took effect from 11 June 2014.

### **2. What do words mean?**

- 2.1 In this constitution:

Basketball NSW means New South Wales Basketball Association Limited (ABN 98 003 359 680)

Board member means a member of the board whether an office-bearer, appointed board member or an ordinary board member

Director-General means, the Director-General of the Department of Fair Trading or such other position from time to time authorised to oversee incorporated associations under the Act.

Life Member means a person appointed as a Life Member of NSBA under this Constitution

Member means a member of the association, whether a Life Member, an Ordinary Member and, unless specifically excluded, a Non-voting Member

Non-voting member means a person who has been accepted as a non-voting member in accordance with a by-law for so long as the by-law provides for such membership

NSBA means Northern Suburbs Basketball Association Inc (ABN 87 062 251 400)

Ordinary Member means a member of the association that is not a Life Member nor a Non-voting Member

Objects of the association means the strategic vision and objectives set by the Board and must include the advancement, development, growth and promotion of basketball

Personal information means a person's telephone number and email address or a person's name when provided in conjunction with a person's telephone number, email address and / or street address.

Special General Meeting means a general meeting of the association other than an annual general meeting

The Act means the Associations Incorporation Act 2009 (NSW)

The Regulation means the Associations Incorporation Regulation 2016 (NSW)

Written includes electronically created (eg email or Microsoft Word) or reproduced (eg saved in PDF)

- 2.2 In this constitution:
- (a) a reference to a function includes a reference to a power, authority and duty; and
  - (b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.
  - (c) words referring to the singular include the plural and vice versa;
  - (d) words referring to any gender include any other genders;
- 2.3 The provisions of the Interpretation Act 1987 (NSW) apply to and in respect of this constitution in the same manner as those provisions would apply if this constitution were an instrument made under that Act.
- 3. Commencement**
- 3.1 This Constitution takes effect from the day after the meeting at which it is adopted.

## **PART 2 – MEMBERSHIP**

### **4. Eligibility to be an Ordinary Member**

- 4.1 A person is eligible to be a member (not including a Non-voting Member) of the association if they:
- (a) are a natural person; and
  - (b) are not subject to any disqualification or suspension that is recognised by NSBA and/or Basketball NSW and precludes them from being a member.

### **5. Applying for Ordinary Membership**

- 5.1 An application to be an ordinary member of NSBA must:
- (a) be made in writing;
  - (b) include such personal details as is required on the registration form; and
  - (c) be accompanied with any joining fee or annual registration fee that has been prescribed by the association under clause 15.
- 5.2 A person who is eligible to be an ordinary member under clause 4, becomes an ordinary member of the association once they have complied with clause 5.1.

However, a person who is not eligible under clause 4 to be a member shall not become a member even if they comply with the requirements of clause 5.1.

### **6. NSBA Hall of Fame**

#### **What is the Hall of Fame?**

- 6.1 The NSBA Hall of Fame is dedicated to preserving and celebrating the history of the NSBA.

Through the Hall of Fame NSBA:

- (a) honours its members and volunteers;
- (b) celebrates its successes;
- (c) fosters sportsmanship as our highest priority; and
- (d) inspires our youth to participate in all aspects of basketball.

6.2 The Hall of Fame recognises and celebrates the outstanding and valuable contributions made by members of the NSBA community. The Hall of Fame enables us to model the spirit and behaviours that characterise Norths Basketball.

**Criteria for Induction to the Hall of Fame**

6.3 To be selected for induction into NSBA's Hall of Fame, a person must meet the following criteria, subject to the criteria of Clause 6.1:

- (1) Have made
  - (a) An outstanding contribution; or
  - (b) A valuable contribution over a minimum period of eight years

That is of a volunteer nature, toward one or more aspects of Association activity that could include, but are not limited to, playing, coaching, refereeing, committee or Board membership or sponsorship, but does not preclude a person who is paid for their services.

- (2) Be a positive role model of sportsmanship and exemplify strong support for the values of the Norths Community.

**Process for induction into the Hall of Fame**

6.4 Inductions into the Hall of Fame shall be conducted at least every two years, having commenced in 2011, therefore being odd, dated years (eg 2021, 2023 etc),

6.5 Nominations for a person to be considered for Hall of Fame Membership must be in writing and given to NSBA by 30 June of the proposed induction year.

6.6 A nomination must be endorsed by two members (not including Non-voting Members) of the association.

6.7 The NSBA Board shall designate a committee comprising Life Members and Board Members who will make recommendations to the NSBA Board as to who should be inducted to the Hall of Fame.

6.8 The NSBA Board shall, in its complete discretion, determine who shall be inducted into the Hall of Fame.

6.9 Inductees to the NSBA Hall of Fame are not automatically members of NSBA. If they wish to become a member they must apply to be either an ordinary or non-voting member.

## **7. Non-voting Members**

- 7.1 The Board may, by bylaw under clause 44, allow for one or more categories of Non-Voting Member, however such members have no entitlement to receive notice of, attend or vote at a meeting of the association.
- 7.2 Any by-law allowing for a Non-Voting Member category must set out:
- (a) any pre-condition for admission to the Non-voting membership;
  - (b) any right or benefits conferred on the Non-voting Member and the duration of those rights or benefits, provided that all rights or benefits may be rescinded at any time by Board resolution;
  - (c) duration of the Non-voting Membership;
  - (d) any fee payable by people wishing to apply for Non-voting Membership.
- 7.3 The Board may at any time vary or rescind one or more Non-Voting Member categories and such membership shall lapse at the time of the Board's decision, unless the Board determines some later date.

## **8. Life Membership**

### **Eligibility for Life Membership**

- 8.1 A person is eligible to be awarded Life Membership of the association if they:
- (a) have been a member of the NSBA Hall of Fame for at least two years; and
  - (b) have displayed exceptional services to the Association for at least ten years.
  - (c) A person shall not be eligible for election as a Life Member unless they are, or have been, a member, although they do not have to be a current member

### **Process for awarding Life Membership**

- 8.2 Nominations for a person to be considered for Life Membership must be in writing and given to NSBA at least 21 days before the annual general meeting of the association.
- 8.3 A nomination must be endorsed by two members (not including Non-voting Members) of the association.
- 8.4 The existing Life Members shall consider any nominations received for Life Membership and at least 10 days before the annual general meeting of the association either endorse or decline to endorse each nomination.
- 8.5 The Board shall consider any nominations received for Life Membership and the recommendations of the existing Life Members and, in its absolute discretion, determine who shall, if anyone, be awarded Life Membership.
- 8.6 A decision by the Board to award Life Membership must be agreed by at least 75% of Board Members.
- 8.7 The Board may determine that none of the persons nominated shall be awarded Life Membership at that time.

8.8 If the Board endorses a person for election as a life member, the President must move to elect the person as a life member, as an ordinary resolution, at the next annual general meeting.

8.9 No more than two life members may be elected at any annual general meeting.

## **9. BNSW Membership**

9.1 The Board at its absolute discretion may require every member of the association to be registered by the association with Basketball NSW regardless of whether or not they are required to pay a registration fee to the association pursuant to clause 15.

## **10. Communication to Members**

10.1 Unless a member opts out in writing, a member agrees to receive communications from the association which promote:

- (a) association activities;
- (b) basketball activities;
- (c) partners of the association.

10.2 The association will provide personal information on members to Basketball NSW or Basketball Australia, as required by the association's affiliation with Basketball NSW.

10.3 The association will not provide a member's personal information to any other organisation, except as required by law.

## **11. Member entitlements**

11.1 A right, privilege or obligation which a person has by reason of being a member of the association:

- (a) is not capable of being transferred or transmitted to another person,  
and
- (b) terminates on cessation of their membership.

11.2 Where a person becomes a member (excluding Non-voting Members) of the association after a notice of a General or Special meeting of the association has been issued the person may attend, but may not vote, at that meeting.

## **12. Ceasing to be a Member**

12.1 A person ceases to be a member of the association if they:

- (a) die;
- (b) resign their membership;
- (c) are expelled from the association;
- (d) fail to pay the annual membership fee within 30 days of it falling due.



### **13. Resignation of membership**

- 13.1 A member of the association may resign by giving to the association at least one month's (or such other period as the Board determines) written notice of their intention to resign. The member ceases to be a member at the expiration of that period of notice.
- 13.2 A member of the association who has given written notice of their intention to resign cannot vote at any general or special meeting of the association that takes place during the period of notice given by that member.

### **14. Register of members**

- 14.1 The association must establish and maintain a register of members of the association, specifying the member's:
- (a) name;
  - (b) postal or residential address;
  - (c) date of becoming a member;
  - (d) date of ceasing to be a member (if applicable).
- 14.2 The register of members may be kept electronically and may be searched by a member of the association at the association's main premises.
- 14.3 When searching the register of members, a member of the association can only obtain information on the names of members, and their dates of registration or ceasing to be a member.

### **15. Member Fees**

- 15.1 A person applying to be a member of the association must pay to the association such fee as is determined from time to time.
- 15.2 An ordinary member of the association (that is not a life member) must pay a membership fee as determined from time to time.
- 15.3 The Association may set a fee that is payable by:
- (a) ordinary members; or
  - (b) Non-voting Members.
- 15.4 Life Members are not required to pay a membership fee to the association.

### **16. Members' Liabilities**

- 16.1 The liability of a member of the association to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of the winding up of the association is limited to the amount, if any, unpaid by the member in respect of membership of the association as required by clause 15.

## **PART 3 - DISPUTES**

### **17. Resolving Member Disputes**

- 17.1 The Board may make by-laws, including adopting by-laws of Basketball NSW, for the resolution of disputes between members.
- 17.2 Where a dispute occurs between a member and another member (in their capacity as members) of the association which is not covered by an applicable by-law or procedure, it may be referred to a community justice centre for mediation under the Community Justice Centres Act 1983. The association may, at its option, attend and participate in the mediation.
- 17.3 A dispute between a member or members and the association must be resolved pursuant to this constitution or any applicable by-law or procedure, including any appeal mechanisms provided.
- 17.4 A member or members that wish to raise a dispute with the association which is not provided for in this constitution or any by-law or procedure, must:
- (a) Raise the matter with the CEO, and
  - (b) If not satisfied with the CEO's handling or resolution of the matter, refer the matter to the Board who shall determine the matter.

### **18. Disciplining of members**

- 18.1 The Board may make by-laws, including adopting by-laws of Basketball NSW, for the investigation of matters and discipline of members.
- 18.2 Where the Board believes, or receives a complaint that, a member of the association may have:
- (a) refused or neglected to comply with a provision or provisions of this constitution;
  - (b) wilfully acted in a manner prejudicial to the interests or image of the association;
  - (c) made public statements, including statements made through social media platforms or electronic forums, which the Board believe are damaging to the reputation of the Association, the Board or another member of the association; the Board may, in its discretion, investigate the matter to determine if it believes there is a reasonable case to answer.
- 18.3 The Board does not have to notify a member before undertaking an investigation under clause 18.2.
- 18.4 Where the Board believes that a member of the association has a reasonable case to answer where they may have contravened any or all of Clause 18.2 the Board must:
- (a) appoint a sub-committee of at least three people to conduct a hearing.  
The sub-committee is to be chaired by a Board Member, but no other Board Members may be on the sub-committee;

- (b) provide written notice to the member that it has appointed a subcommittee to consider whether or not disciplinary action should be taken against the member;
- (c) provide the member with a summary of the alleged conduct that is to be considered at the hearing and identify any witnesses that may be asked to give evidence at the hearing;
- (d) give the member at least seven (7) days from the time the notice is sent within which to make submissions in connection with allegations;
- (e) advise the member of when the hearing will take place and that the member has a right to attend the hearing.

18.5 Having given notice to a member under clause 18.4, the appointed sub-committee shall consider the result of any investigation conducted, any submissions made by the member and any other evidence it has received, and if satisfied that the facts alleged have been proven on the balance of probabilities (ie more probable than not) may determine penalty from the following actions:

- (a) expel the member;
- (b) suspend the member from membership of the association for such time as it considers reasonable;
- (c) impose a fine on the member and determine, whether or not their membership is suspended during any period the fine is unpaid;
- (d) impose other conditions on the person's membership and suspend their membership during any period that these conditions are not met

18.6 A sub-committee appointed under clause 18.4 may conduct its hearing in the absence of the member provided that it has reasonable evidence that clauses 18.4(b) –(e) inclusive were complied with.

18.7 At a hearing conducted under clause 18.5 the member has a right to attend and:

- (a) may hear the evidence of any witnesses and may, at the absolute discretion of the chair, question witnesses;
- (b) may put forward people to give evidence. It is the chair's absolute discretion whether or not those people are asked to give evidence;
- (c) may be present when any written material is considered and, at the chair's absolute discretion, may question or make comment about that material;
- (d) is not to be present when the sub-committee deliberates its finding.

18.8 Following a hearing conducted under clause 18.5, the sub-committee shall provide to the CEO within three days of the hearing:

- (a) copies of any written material that it considered;
- (b) list of the names of any witnesses that gave evidence;
- (c) a statement of whether or not it is satisfied that the facts alleged have been proven on the balance of probabilities (ie more probable than not);
- (d) any penalty that it has determined under clause 18.5.

- 18.9 Within three days of receiving documentation under clause 18.8 the CEO must provide written notice to the member of the decision taken, the material and witnesses taken into consideration and the member's right of appeal under clause 19.
- 18.10 The action which the sub-committee resolved to take under clause 18.5 does not take effect:
- (a) until the period within which the member may appeal has expired; or
  - (b) if the member appeals within the appeal period, unless and until the action is confirmed in the course of that appeal, whichever is the latter.

## **19. Right of appeal of disciplined member**

- 19.1 A member may appeal to Board against the decision of the sub-committee made under clause 18.5, within 7 days of being notified of the resolution, by lodging with the CEO a notice to that effect.
- 19.2 A notice under clause 19.1 must be accompanied by a statement of the grounds on which the member intends to rely for the purposes of the appeal.
- 19.3 Upon receiving the notice the CEO must provide to the Board:
- (a) any material that the sub-committee took into consideration in reaching its decision;
  - (b) the notice of appeal provided by the member;
  - (c) any other information requested by the Board prior to its determination of the appeal.
- 19.4 The Board, in its absolute discretion, may conduct a hearing into the matter or may determine the matter based upon material provided to it under clause 19.3.
- 19.5 Within 7 days of an appeal being lodged, the Board must notify the member:
- (a) whether or not a hearing will be conducted;
  - (b) the date upon which the Board shall meet to determine the matter.
- 19.6 The member has the right to address the Board if a hearing is conducted.
- 19.7 The board member that chaired the sub-committee may present to the other board members a summary of the reasons for the sub-committee's decision, however they must not be present when the Board deliberates to make its decision.
- 19.8 The Board may make such decision as it believes is warranted.

## **20. Disciplining of non-members**

- 20.1 Where the Board believes, or receives a complaint, that a person who is not a member of the association may have:

- (a) acted in an aggressive, unsportsmanlike, discriminatory or undesirable manner at or near a competition, training, program or event conducted by the association or in which the association, or teams of the association, are participating; or
- (b) refused or neglected to comply with a provision or provisions of this constitution or any by-law or procedure of the association; or
- (c) acted in an aggressive, unsportsmanlike, discriminatory or undesirable manner toward a member of the association in connection with their involvement in the association

The Board may investigate the matter in such manner as the Board sees fit and by resolution:

- (a) ban or suspend the person from being eligible for membership of the association; or
- (b) ban or suspend the person from attending any venue where the association is conducting a competition, training, program or event; or
- (c) impose such other conditions as the Board considers reasonable and warranted.

20.2 Prior to making a resolution under clause 20.1, the Board does not have to notify the person of its intention to take action nor provide the person with the opportunity to make a submission to the Board.

## **PART 4 – THE BOARD**

### **21. Powers of the Board**

21.1 Subject to the Act, the Regulation and this constitution and to any resolution passed by the association in general meeting, the Board:

- (a) is to control and manage the affairs of the association; and
- (b) may exercise all such functions as may be exercised by the association, other than those functions that are required by this constitution to be exercised by a general meeting of members of the association; and
- (c) has power to perform all such acts and do all such things as appear to the Board to be necessary or desirable for the proper management of the affairs of the association.

### **22. Membership of the Board**

#### **Who is on the board?**

22.1 The Board has up to eight members, consisting of:

- (a) the office-bearers of the association, each of whom is elected under clause 23 at an annual general meeting of the association;
- (b) three ordinary board members, each of whom is elected under clause 24 at an annual general meeting of the association;
- (c) up to two board members, appointed by the office bearers and ordinary board members under clause 25.

22.2 The office-bearers of the association are:

- (a) President;
- (b) Vice President;
- (c) Finance Director.

**How long is a person on the board?**

22.3 An office-bearer and an ordinary board member is, subject to this constitution, to hold office until the conclusion of the second annual general meeting following the date of their election but is eligible for re-election.

22.4 Appointed board members, subject to this constitution, hold office until the start of the first board meeting that is held following an annual general meeting, but are eligible for re-appointment.

## **23. Election of the Office Bearers**

**Who is eligible to be nominated as President, Vice President or Finance Director?**

23.1 A member who is aged 18 years or older, at the date of their nomination, may be nominated as candidates for election as office-bearers of the association, if:

- (a) they have been a member of the association in three consecutive years (at the date of their nomination) or five years in total; and
- (b) they have been a director of NSBA for at least two years (not necessarily the preceding two years); or
- (c) they have been the director for at least two years of another organisation that is incorporated under the Act or a public organisation incorporated under the Corporations Law.

**How is a person nominated to be an office bearer?**

23.2 Nominations of candidates for election as office-bearers of the association must be:

- (a) made in writing, signed by two members (excluding Non-voting Members) of the association that are aged 18 years or older and be accompanied with the written consent of the candidate; and
- (b) must be delivered to the association's CEO at least 21 days before the date of the annual general meeting

**How are elections for office bearers carried out?**

23.3 If only one nomination is received for a position the person nominated shall be declared as elected at the annual general meeting.

23.4 If more than one nomination is received for a position as office bearer an electronic ballot shall be conducted as follows:

- (a) at least 14 days prior to the annual general meeting members (excluding Non-voting Members) aged 18 or older as at the date the annual general meeting was called shall be invited to vote;

- (b) the ballot shall close at midnight, two days before the annual general meeting. For the avoidance of doubt, if the annual general meeting is to be held at 7pm on 30 March, the ballot closes at midnight on 27 March;
- (c) voting shall be done through electronic means as approved by the board, which provides:
  - (i) measures to ensure a member may only vote once;
  - (ii) confidentiality of the vote cast by each member;
  - (iii) automatic calculation of the results of the election, with the winner being the candidate that receives the most votes, whether or not they receive a majority of votes.
- (d) The result of the poll, including the number of votes cast for each candidate, shall be announced by the CEO (or their nominee if the CEO is unable to attend the meeting) at the annual general meeting and the winning candidate shall be declared elected;
- (e) If candidates receive an equal number of votes a further vote, only involving those candidates, will be held at the annual general meeting in such usual and proper manner as the chair of the meeting directs.

23.5 If no nomination is received for a position as office-bearer, further nominations may be received at the annual general meeting and:

- (a) if one nomination is received at the annual general meeting that person is elected;
- (b) if more than one nomination is received at the annual general meeting a ballot for the election of that position shall be conducted in such usual and proper manner as the chair of the meeting directs;
- (c) if no nomination is received at the annual general meeting the position is taken to be a casual vacancy.

**When are office-bearers to be elected?**

23.6 Subject to this constitution, the positions of President and Finance Director are to be elected in even years (2020, 2022 etc) and the position of Vice President is to be elected in odd years (2021, 2023 etc).

23.7 Where an election for the position of President or Finance Director needs to be held in an odd year, or for the position of Vice President needs to be held in an even year, the candidate elected shall hold the position for only one year, so that the next election for that position accords with clause 23.6.

## **24 Election of Ordinary Board Members**

**Who is eligible to be nominated as an Ordinary Board Member?**

24.1 A member (excluding Non-voting Members) who is aged 18 years or older, at the date of their nomination, may be nominated as candidates for election as an ordinary board member of the association provided that they have been a member of the association in three consecutive years (at the date of their nomination) or five years in total.

**How is a person nominated to be an ordinary board member?**

24.2 Nominations of candidates for election as an ordinary board member of the association must be:

- (a) made in writing, signed by two members (excluding Non-voting Members) of the association that are aged 18 years or older and be accompanied with the written consent of the candidate; and
- (b) must be delivered to the association's CEO at least 21 days before the date of the annual general meeting

**How are elections for ordinary board members carried out?**

24.3 If the number of nominations is received is equal to the number of vacancies to be filled, the persons nominated shall be declared as elected at the annual general meeting.

24.4 If the number of nominations received exceeds the number of vacancies to be filled an

- (a) at least 14 days prior to the annual general meeting members (excluding Non-voting Members) aged 18 or older as at the date the annual general meeting was called shall be invited to vote;
- (b) the ballot shall close at midnight, two days before the annual general meeting. For the avoidance of doubt, if the annual general meeting is to be held at 7pm on 30 March, the ballot closes at midnight on 27 March;
- (c) voting shall be done through electronic means as approved by the board, which provides:
  - (i) measures to ensure a member may only vote once;
  - (ii) confidentiality of the vote cast by each member;
  - (iii) automatic calculation of the results of the election, with the number of votes cast for each candidate being recorded
  - (iv) any other reasonable measures recommended by the external auditors to protect the integrity of the ballot
- (d) The result of the poll, including the number of votes cast for each candidate, shall be announced by the CEO (or their nominee if the CEO is unable to attend) at the annual general meeting. The candidate with the most number of votes shall be declared elected to the first position vacant, the candidate with the second most votes being elected to the next position vacant (if any) and so on until all positions are filled;
- (e) If candidates receive an equal number of votes a further vote, only involving those candidates, will be held at the annual general meeting in such usual and proper manner as the chair of the meeting directs.

24.5 If insufficient nominations are received to fill all vacancies on the Board, the candidates nominated are taken to be elected and further nominations may be received at the annual general meeting and:

- (a) if the number of nominations received at the annual general meeting equals the number of vacancies those candidates are elected;



- (b) if the number of nominations received exceeds the number of vacancies a ballot for the election of that position shall be conducted in such usual and proper manner as the chair of the meeting directs;
- (c) if no nomination is received at the annual general meeting the position is taken to be a casual vacancy.

**When are ordinary board members to be elected?**

- 24.6 Subject to this constitution, one position of ordinary board member is elected in even years (2020, 2022 etc) and two positions of ordinary board member are to be elected in odd years (2021, 2023 etc).
- 24.7 Where the number of ordinary board members to be elected in a year exceeds the number indicated in clause 24.7, the elected candidate who receives the lowest number of votes shall hold the position for only one year, so that the next election for that position accords with clause 24.7.

**25. Appointment of Board Members**

**Who may be appointed as a board member?**

- 25.1 The office-bearers and ordinary board members may appoint a person as a director on the basis that they have skills or experience that the board believes will be of value to the association, up to the number as specified in Clause 22.1(c).
- 25.2 Any person(s) appointed under clause 25.1 does not have to be, but may be, a member of the association.
- 25.3 The decision of the board to appoint a director under clause 25.1 must be agreed by at least 75% of the office bearers and ordinary board members.
- 25.4 The board may, at any time, revoke the appointment of an appointed board member.

**26. Casual Vacancy**

- 26.1 In the event of a casual vacancy for the position of an office-bearer or ordinary board member, the Board may appoint a member (excluding a Non-voting Member) of the association to fill the vacancy and the member so appointed is to hold office, subject to this constitution, until the conclusion of the annual general meeting next following the date of the appointment.
- 26.2 An appointment under clause 26.1 must be agreed by at least 75% of the office bearers and ordinary board members.
- 26.3 The Board do not have to fill a casual vacancy, provided that the number of office bearers and ordinary board members does not fall below four.
- 26.4 A casual vacancy in the office of an office-bearer or ordinary board member occurs if they:
- (a) die; or
  - (b) cease to meet the requirements of clause 23.1 or 24.1 as relevant; or

- (c) are or become an insolvent under administration within the meaning of the Corporations Act 2001 of the Commonwealth; or
- (d) resign office by notice in writing given to the President or CEO; or
- (e) are removed from office under clause 27; or
- (f) is or becomes a mentally incapacitated person, or
- (g) are absent without the consent of the Board from three consecutive meetings of the Board; or
- (h) are or have been convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than 3 months; or
- (i) are prohibited from being a director of a company under Part 2D.6 (Disqualification from managing corporations) of the Corporations Act 2001 of the Commonwealth; or
- (j) The board by a 75% majority (not including the board member concerned) passes a motion of no confidence in the board member

26.5 The appointment of a board member under clause 25 shall cease immediately if they:

- (a) die; or
- (b) are or become an insolvent under administration within the meaning of the Corporations Act 2001 of the Commonwealth; or
- (d) resign office by notice in writing given to the President or CEO; or
- (e) are removed from office under clause 27; or
- (f) is or becomes a mentally incapacitated person, or
- (g) are absent without the consent of the Board from three consecutive meetings of the Board; or
- (h) are or have been convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than 3 months; or
- (i) are prohibited from being a director of a company under Part 2D.6 (Disqualification from managing corporations) of the Corporations Act 2001 of the Commonwealth; or
- (j) The board revoke the appointment of an appointed board member.

## **27. Removal of Board Members**

27.1 The association in general meeting may by resolution remove any board member before the expiration of their term of office and may by resolution appoint another person to hold office until the expiration of the term of office of the member so removed.

27.2 The association may only pass a resolution under clause 27.2 if notice in writing is provided to the board member at least 7 days before the general meeting which:

- (a) states that it is proposed to consider the removal of the board member at the general meeting; and
- (b) states the date, place and time of the meeting; and

(c) indicates the grounds relied upon for the removal of the board member.

27.3 Upon receiving a notice under clause 27.3, a board member to whom a proposed resolution in clause 27.2 is to be made, may:

- (a) make written representations (not exceeding a reasonable length) to the President, Vice President or CEO; and
- (b) request that their representations be provided to members either before the meeting or read out at the meeting.

## **28. Board meetings and quorum**

### **When and how does the board meet?**

- 28.1 The Board must meet at least six times in each period of 12 months at such place and time as the Board determines.
- 28.2 Meetings may be held using any technology that gives each board member a reasonable opportunity to participate.
- 28.3 The Board may make decisions outside of board meetings by written resolution, which is agreed to by a majority of board members.

### **Notice for board meetings**

- 28.4 Oral or written notice of a board meeting must be given by the CEO or President at least 48 hours (or such other period as board members unanimously agree) before the meeting is to commence.
- 28.5 The notice of meeting given under clause 29.1 must specify the general nature of the business to be transacted at that meeting and no business other than that shall be transacted except matters which the board members present unanimously agree to deal with.

### **Meeting quorum**

- 28.6 At least four (4) elected members who are office-bearers or ordinary board members, must be present to constitute a quorum for a board meeting.
- 28.7 No business is to be transacted by the board unless a quorum is present. Where a quorum is not present:
  - (a) the meeting may be adjourned to another time;
  - (b) a matter may be postponed to be dealt with by written resolution under clause 28.3.

### **Chair of Meeting**

- 28.8 The President, or in the President's absence, the Vice-President, is to chair board meetings.
- 28.9 Where the President and the Vice-President are absent or unwilling to chair the meeting, the remaining members of the board present at the meeting may choose who is to chair the meeting.

**Conflict of Interest**

- 28.10 Where any member of the board, at a board meeting, has a declared conflict of interest or other reason for not participating in discussion on a particular matter, they may remove themselves from the meeting during that discussion.

**29. Delegation by Board to Sub-committees**

- 29.1 The Board may delegate in writing to one or more sub-committees the exercise of functions, other than:
- (a) this power of delegation; and
  - (b) a function which is a duty imposed on the Board by the Act or by any other law.
- 29.2 A delegation under this clause may be made subject to such conditions or limitations as to the exercise of any function or as to time or circumstances, as may be specified in the instrument of delegation.
- 29.3 A function delegated to a sub-committee may, while the delegation remains unrevoked, be exercised from time to time by the sub-committee in accordance with the terms of the delegation.
- 29.4 Despite any delegation under this clause, the Board may continue to exercise any function that has been delegated.
- 29.5 The Board may, at any time, in writing, revoke wholly or in part any delegation made under this clause.

**Who can be on a sub-committee**

- 29.6 The Board may appoint any person to be a member on a sub-committee, whether or not they are a member of the association.

**Charter for sub-committee**

- 29.7 In making a delegation under clause 29.1, the Board must:
- (a) explicitly state whether or not the sub-committee has the power to make a decision or is an advisory body. In this regard a sub-committee may, at the discretion of the Board, be advisory on some matters and able to make decisions on other matters;
  - (b) where the sub-committee is advisory, state whether it makes recommendations to management or to the Board directly or through the CEO;
  - (c) state when the sub-committee is to finish, which may be a specific date or at the completion of specified tasks/events;
  - (d) state what quorum applies to meetings of the sub-committee;
  - (e) state who is to chair over the meetings of the sub-committee.
- 29.8 The Board by resolution may extend the finish date of a sub-committee prior to the finish date.

**How sub-committees operate**

- 29.9 A sub-committee may meet and adjourn as it thinks proper or as the Board require.
- 29.10 Any act or thing done or suffered by a sub-committee acting in the exercise of a delegation under this clause has the same force and effect as it would have if it had been done or suffered by the Board.

**30. Voting and Decisions**

- 30.1 Questions arising at a meeting of the Board or a sub-committee appointed by the Board are determined by a majority of the votes of the members present at the meeting.
- 30.2 Each member present at a meeting of the Board or a sub-committee appointed by the Board (including the person chairing the meeting) is entitled to one vote. In the event of an equality of votes on any question the motion is lost.
- 30.3 Subject to clause 28.6, the Board may act despite any vacancy on the Board.
- 30.4 Any act or thing done or suffered, or purporting to have been done or suffered, by the Board or a sub-committee appointed by the Board is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the Board or sub-committee.

**31. Chief Executive Officer**

- 31.1 The Board must appoint a CEO.

**Powers, duties and authorities of CEO**

- 31.2 The CEO holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, determined by the Board.
- 31.3 The exercise by the CEO of their powers and authorities, and the performance of their duties, is subject at all times to the control of the Board.
- 31.4 The CEO's role is to implement the strategies, plans and policies approved by the Board and they will be responsible for the management and direction of the association and its finances.
- 31.5 The CEO cannot be a director of the association.

**Suspension and removal of CEO**

- 31.6 Subject to the terms and conditions of the appointment of the CEO, the Directors may suspend or remove the CEO. CEO to attend meetings
- 31.7 The CEO is entitled, subject to a determination otherwise by the Board, to attend all meetings of the association, all meetings of the Board and any appointed subcommittees and may speak on any matter, but does not have a vote at a meeting of the association or a Board meeting, whether or not the CEO is also a member of the association.

## **PART 4 – GENERAL MEETINGS OF THE ASSOCIATION**

### **32. AGM - When is it held?**

- 32.1 The association must hold it's annual general meeting:
- (a) at least once in each calendar year;
  - (b) within 6 months after the close of the association's financial year; or
  - (c) within such later time as may be allowed by the Director-General or prescribed by the Regulation.

### **33. AGM: Calling of the Annual General Meeting**

- 33.1 The notice convening the annual general meeting must specify that the meeting is the annual general meeting of the association and must be conveyed to the members at least 35 days prior to the annual general meeting.
- 33.2 The business of the annual general meeting must include:
- (a) confirming of the minutes of the last preceding annual general meeting and of any special general meeting held since that meeting;
  - (b) to receive from the Board reports on the activities of the association during the last preceding financial year;
  - (c) to elect office-bearers of the association and ordinary board members, as required under this constitution;
  - (d) to receive and consider any financial statement or report required to be submitted to members under the Act;
  - (e) any matter requested in writing by a member provided that request is received by the CEO at least 21 days prior to the AGM.
- 33.3 The business of the annual general meeting may include such other matters as determined by the Board and set out in the notice convening the meeting.

### **34. Special General Meetings**

#### **When can the Board convene a Special General Meeting**

- 34.1 The Board may, whenever it thinks fit, convene a special general meeting of the association.

#### **How can Members convene a Special General Meeting**

- 34.2 The Board must, on receiving a requisition that complies with clauses 34.3 and 34.4, convene a special general meeting of the association.
- 34.3 A requisition by members (excluding Non-voting Members) of the association for a special general meeting must:
- (a) state the purpose or purposes of the meeting, including the specific resolutions proposed;

- (b) be signed by the members (excluding Non-voting Members) making the requisition who each must be aged 18 years or older and be current members as at the date the requisition is submitted;
- (c) be lodged with the CEO;
- (d) be signed by at least 5% of the number of members (excluding Non-voting Members) who are aged 18 years or older.

34.4 A requisition by members of the association for a special general meeting may consist of any number of documents in a similar form provided that each document is signed by one or more of the members making the requisition.

**What if the Board fails to convene a meeting on a requisition by the members?**

34.5 If the Board fails to convene a special general meeting within 5 weeks of the CEO receiving the requisition, any one or more of the members who made the requisition may convene a special general meeting to be held not later than 15 weeks after the CEO received the requisition.

34.6 A special general meeting convened by a member or members as referred to in clause 34.7 must be convened as nearly as practicable in the same manner as general meetings that are convened by the Board.

## **35. Notice for General Meeting**

**Where there are no special resolutions**

35.1 Except if the nature of the business proposed to be dealt with at a general meeting requires a special resolution, the CEO must, at least 14 days before the date of the meeting:

- (a) where possible, send notice of the meeting by e-mail to each member (excluding Non-voting Members) who is aged 18 years or over at the date the notice is sent out;
- (b) place notice of the meeting prominently on the association's website; and
- (c) where possible place notice of the meeting at venues where the association is conducting competition.

**If there are special resolutions**

35.2 If the nature of the business proposed to be dealt with at a general meeting requires a special resolution, the CEO must, at least 21 days before the date of the meeting:

- (a) where possible, send notice of the meeting by e-mail to each member (excluding Non-voting Members) who is aged 18 years or over at the date the notice is sent out; and
- (b) place notice of the meeting prominently on the association's website;
- (c) where possible place notice of the meeting at venues where the association is conducting competition.

**What is in the notice of the meeting**

- 35.3 A notice sent to members or posted on the association's website pursuant to clause 35.1 or 35.2 must:
- (a) specify the place, date and time of the meeting;
  - (b) state whether or not the meeting is the annual general meeting of the association;
  - (c) where there are elections for office bearers or ordinary board members, provide details of how the member can vote in that election prior to the meeting;
  - (d) where the Board has determined that a matter will be voted by a poll prior to the meeting, with the result to be declared at the meeting, provide details of how the member can vote in that poll prior to the meeting;
  - (e) the nature of business proposed to be transacted at the meeting, including any specific resolutions to be voted on and identifying whether or not they are special resolutions.
- 35.4 In addition to requisitioning a special general meeting under clause 34.2, members (excluding Non-voting Members) wanting to bring any business before a general meeting of the association may provide written notice to the CEO who must include that business in the notice for the next general meeting after receiving it from the member.

**Business at the General Meeting**

- 35.5 No business other than that specified in the notice convening a general meeting is to be transacted at the meeting

**36. Procedure at General Meetings**

**Quorum required**

- 36.1 No item of business is to be transacted at a general meeting unless a quorum of members entitled under this constitution to vote is present during the time the meeting is considering that item.
- 36.2 Five members that are entitled to vote at a general meeting and are not directors of the association constitute a quorum for the transaction of the business of a general meeting.

**What happens if there is no quorum?**

- 36.3 If within half an hour after the appointed time for the commencement of a general meeting a quorum is not present:
- (a) if the meeting was convened on the requisition of members pursuant to clause 34.2, it is to be dissolved; and
  - (b) in any other case, the meeting is adjourned to the same day the following week at the same time and at the same place.
- 36.4 If during the course of the meeting there ceases to be a quorum for a continuous period of 15 minutes:



- (a) if the meeting was convened on the requisition of members pursuant to clause 34.2, it is to be dissolved; and
- (b) in any other case, the meeting is adjourned to the same day the following week at the same time and at the same place.

36.5 Where a meeting is adjourned pursuant to clauses 36.3 or 36.4, the only business that can be transacted at the adjourned meeting is business that was stated on the notice convening the initial meeting.

36.6 If at a meeting adjourned pursuant to clauses 36.3(b) or 36.4(b) a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members present and are not directors of the association (being at least three) shall constitute a quorum.

### **37. Chairperson of General Meetings**

37.1 The President, or in the President's absence, the Vice-President, shall preside as chairperson at each general meeting of the association.

37.2 If the President and the Vice-President are absent or unwilling to act, the members present must elect one of their number to chair the meeting.

37.3 Where the person chairing a meeting pursuant to clause 37.1 or 37.2 has a conflict of interest or otherwise does not wish to chair the meeting in relation to a particular item of business, they:

- (a) shall appoint a person to chair the meeting for that particular matter ("the temporary chair");
- (b) shall not speak or vote in relation to that matter, however at the discretion of the temporary chair may remain present at the meeting;
- (c) shall resume chairing the meeting once the particular matter has been concluded.

### **38. Adjournment of a General Meeting**

38.1 The chairperson of a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting to another time and place, but no business is to be transacted at the adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.

38.2 If a general meeting is adjourned for 14 days or more, the CEO must as soon as practicable after the initial meeting:

- (a) where possible, send notice of the meeting by e-mail to each member (excluding Non-voting Members) who is aged 18 years or over at the date the notice is sent out; and
- (b) place notice of the meeting prominently on the association's website.

38.3 If a general meeting is adjourned for less than 14 days, notice of the adjourned meeting must be placed on the association's website however no other notice of the adjourned meeting need be given.

### **39. Making decisions at a General Meeting**

39.1 Where the Board determines that a matter, including election of office-bearers and ordinary board members, is to be determined by a poll conducted by electronic means prior to the meeting, the result of that poll shall be declared at the meeting and shall be effective from the date of the meeting.

39.2 Subject to clause 39.3, a question to be determined at a general meeting shall be determined, at the discretion of the chair, by either:

- (a) a show of hands; or
- (b) a written ballot.

39.3 A written ballot must be used to determine a question at a general meeting of the association if five members eligible to vote on the question and present at the meeting request it.

39.4 Where a question is to be determined by a show of hands, a declaration by the chair that a resolution has on a show of hands been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minutes of the meeting, is evidence of the fact without proof of the number or proportion of the votes recorded in favour or against that resolution.

39.5 Where a question is to be determined by a written ballot the ballot is to be conducted as directed by the chair and a declaration by the chair as to the result of the ballot, or an entry to that effect in the minutes of the meeting is evidence of the fact without proof of the number or proportion of the votes recorded in favour or against that resolution.

39.6 Where a written ballot is conducted the ballot papers shall be destroyed once the result has been declared.

### **40. Special Resolutions**

40.1 A special resolution may only be passed by the association in accordance with section 39 of the Act.

### **41. Voting at General Meetings**

#### **Who can vote**

41.1 A member (excluding Non-voting Members) of the association is eligible to vote on a question arising at a general meeting (including a matter determined by electronic poll prior to the day of the meeting) if they:

- (a) were aged 18 years or older on the day the notice for the meeting was published;
- (b) have paid all money due and payable to the association up to the day the notice for the meeting was published.

**Members have one vote**

- 41.2 On any question arising at a general meeting of the association a member that is eligible to vote at a general meeting of the association has one vote only.

**Board members can vote**

- 41.3 A board member who is also a member of the association may vote at the meeting provided they are eligible to do pursuant to clause 41.1.

**What if the vote is equal?**

- 41.4 In the case of an equality of votes on a question at a general meeting (other than the election of an office-bearer or ordinary board member) the vote is lost.

**42. Proxy votes not permitted**

- 42.1 Proxy voting must not be undertaken at a general meeting.

**43. Postal or Electronic Ballots**

- 43.1 The Board may direct that any issue or proposal be determined by electronic ballot and the voting on such matter shall be done through electronic means as approved by the board, which provides:

- (i) measures to ensure a member may only vote once;
- (ii) confidentiality of the vote cast by each member;
- (iii) automatic calculation of the results of the election;
- (iv) any other reasonable measures recommended by the external auditors to protect the integrity of the ballot.

- 43.2 The Board may direct that any issue or proposal be determined by a postal ballot which is to be conducted in accordance with Schedule 3 of the Regulation.

## **PART 5 – MISCELLANEOUS**

**44. Making of By-laws**

- 44.1 In addition to the powers set out in clause 18.1, the Board may at any time make or adopt by-laws for the purpose of achieving the objects of the association.
- 44.2 Any by-law made by the Board must not be inconsistent with this Constitution and in the event of any inconsistency the provision of this Constitution shall prevail to the extent of the inconsistency.

**Notification of by-laws**

- 44.3 The CEO must as soon as is practicable after the Board has made or varied a by-law:
- (a) post a notice on the Association's website about the new or varied bylaw;
  - (b) notify team contacts likely to be subject to it of the of the new or varied by law.

**When do by-laws commence?**

- 44.4 The by-laws take effect within 14 days of the Board's decision or at such later time as the Board directs provided that notice pursuant to clause 44.3 has in fact been given at least seven days before that date.

**Members must comply**

- 44.5 Members must comply with the provision of by-laws made by the Board. Insurance

**45. Insurance**

- 45.1 The association may effect and maintain insurance, including Directors and Officers insurance.

**46. Funds – source**

- 46.1 The funds of the association are to be derived from:
- (a) registration fees, game fees and other monies related to the conduct of competitions;
  - (b) entrance fees;
  - (c) donations;
  - (d) sales of drinks, merchandise and other products whether or not specifically basketball related;
  - (e) court hire and professional services;
  - (f) such other sources as the Board determines.

- 46.2 The Association must specifically account for all money received by the association, whether or not it is deposited in the association's bank accounts.

**47. Funds – management**

- 47.1 The funds of the association are to be used to achieve the objectives of the association in such manner as the Board determines.
- 47.2 All payments including cheques, drafts, bills of exchange, promissory notes, electronic funds transfers and other negotiable instruments must be approved as per the delegated authority limits set by the board from time to time.

**48. Change of name or alternation of constitution**

- 48.1 This Constitution may be altered, rescinded or added to only by Special Resolution of the association.
- 48.2 Any application to the Director-General for registration of a change in the association's name or constitution in accordance with section 10 of the Act is to be made by the CEO.

#### **49. Custody of books and records**

49.1 Except as otherwise provided by this Constitution, all records, books and other documents relating to the association must be kept at the principal office of the association and the CEO is responsible for the custody of them.

#### **50. Inspection of books and records**

50.1 A member (excluding a Non-voting Member) of the association may inspect, by prior appointment with the CEO, the following documents:

- (a) minutes of general meetings of the association;
- (b) audited annual financial accounts of the association (including auditor's report);
- (c) this constitution;
- (d) register of members pursuant to clause 14.2;
- (e) such other record or books of the association provided that:
  - (i) no access to personal information is given;
  - (ii) no confidential or commercially sensitive information is disclosed.

#### **51. Service of notices**

51.1 For the purpose of this constitution, a notice may be served on or given to a person by:

- (a) delivering it to the person personally; or
- (b) sending it by pre-paid post to the address of the person, as listed in the association's register of members; or
- (c) sending it by facsimile transmission; or
- (d) sending it by electronic transmission to an address specified by the person.

51.2 For the purpose of this constitution, a notice is taken, unless the contrary is proved, to have been given or served:

- (a) if delivered personally, on the date on which it was given;
- (b) if sent by pre-paid post, on the date when it would have been delivered in the ordinary course of post;
- (c) if sent by facsimile transmission or other electronic transmission, on the date it was sent.

#### **52. Financial Year**

52.1 The financial year of the association is each period of 12 months after the expiration of the previous financial year of the association, commencing on 1 January and ending on 31 December.