

**A Company Limited by Guarantee**

**incorporated in New South Wales**

**CONSTITUTION**

**of**

**NEW SOUTH WALES BASKETBALL**

**ASSOCIATION LIMITED**

**(ABN 98 003 359 680)**



**Amended May, 2019**

**A Company Limited by Guarantee**

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**CONSTITUTION**

**of**

**NEW SOUTH WALES BASKETBALL ASSOCIATION LIMITED**

**(ABN 98 003 359 680)**

**1. NAME**

The name of the Company is New South Wales Basketball Association Limited.

**2. OBJECTS**

The objects for which the Company is established are:

- (a) to control, promote, integrate and foster participation and development at all levels of basketball in the State of New South Wales.
- (b) to promote recognition of basketball as a leading participative sport.
- (c) to encourage the provision of appropriate facilities for participation in basketball within the State of New South Wales.
- (d) to take over the funds and other assets and the liabilities of the previous unincorporated Association known as the New South Wales Basketball Association.

**3. ANCILLARY OBJECTS**

The ancillary objects of the Company, which are solely for the purpose of carrying out its objects, are:

- (a) to establish uniform regulations for the management and playing of basketball.
- (b) to hear and adjudicate upon appeals from the decisions of officials of either the Company or any other organisation involved with the sport of Basketball in the State.
- (c) to suspend, impose and enforce penalties, disqualify or otherwise deal with any other organisation involved with the sport of Basketball in the State, any Member or any of their officers.
- (d) to select and send teams, players and officials to represent the Company.
- (e) to make rules or by-laws on matters authorised by or necessary or convenient to give effect to these objects, but not rules or by-laws which are inconsistent with these objects.
- (f) to call for, receive and deal with reports from the Board and other committees, other organisations involved with the sport of Basketball in the State, officers and officials.
- (g) to keep authentic records of all matters appertaining to basketball and to keep records of Members.
- (h) to hold or arrange competitions and provide or contribute towards the provision or prizes, awards and distinctions for them (but no Member of the Company may receive from the Company any prize, award or distinction of monetary value except as a successful competitor at any competition held or promoted by the Company).

- (i) to subscribe to, become a member of, and co-operate with or amalgamate with, any other association or organisation, whether incorporated or not, whose objects are similar to those of the Company, but the Company must not amalgamate with any association or organisation which does not prohibit the distribution of its income and property among its members to an extent at least as great as done by clause 4.

#### **4. NO FINANCIAL BENEFITS FOR MEMBERS**

The income and property of the Company from whatever sources, must be applied solely towards the promotion of the objects of the Company set out in this Constitution. No part of it shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise, to the Members of the Company.

This clause does not prevent payment:

- (a) in good faith of remuneration to any officers or employees of the Company or to any Member of the Company in return for any services actually rendered to the Company;
- (b) for goods supplied in the ordinary and usual way of business;
- (c) of interest at a rate not exceeding the rate for the time being fixed by ordinary resolution of the Members (which is not to exceed the lowest rate paid for the time being by major commercial banks in the State for term deposits for one month) on money borrowed from any Members of the Company; or
- (d) of reasonable and proper rent for premises let by any Member to the Company.

#### **5. LIMITED LIABILITY OF MEMBERS**

- (a) The liability of Members is limited as set out in clause 5(b).

- (b) Every Member (excluding Life Members) of the Company undertakes to contribute to the property of the Company if it is wound up while they are a Member, or within one year after they cease to be a Member, any amount not exceeding \$100 required:
  - (i) for payment of the debts and liabilities of the Company (contracted before they ceased to be a Member) and of the costs, charges and expenses of winding up; and
  - (ii) for the adjustment of the rights of the contributories among themselves.

## **6. SURPLUS IN WINDING UP**

If upon the winding up or dissolution of the Company, there remains, after satisfaction of all its debts and liabilities, any property whatever, it shall not be paid to or distributed among the Members of the Company, but shall be given or transferred to some other institution or institutions:

- (a) whose constitution prohibits the distribution of its or their income and property among its or their Members to an extent at least as great as done by clause 4; and
- (b) which have been chosen by ordinary resolution of the Members of the Company at or before the time of the dissolution and failing that by the Supreme Court.

## **7. SUBSCRIBERS**

The subscribers to the memorandum of association retired as Members at the first annual general meeting of the Company and are not now entitled to membership in their capacity as subscribers.

## 8. REPLACEABLE RULES

All provisions of sections and sub-sections of the Act which apply to the Company as replaceable rules are displaced by this Constitution.

## 9. DEFINITIONS AND INTERPRETATIONS

### 9.1 Definitions

In this Constitution:

"**Act**" means the *Corporations Act 2001* (Cth).

"**Association**" means an association duly incorporated under the Act, the *Associations Incorporation Act 1984* (NSW) or statutes relating to co-operatives, which has objects relating to the control, promotion, integration and fostering of participation and development of basketball in the State consistent with the objects set out in this Constitution.

"**Board**" means the directors acting collectively under this constitution.

"**Chief Executive Officer**" means the employee appointed by the Board to manage the Company on a day to day basis.

"**Company**" means New South Wales Basketball Association Limited.

"**Conference Association**" has the meaning set out in clause 10(c) of this Constitution.

"**Director**" means a person who is, for the time being, a director of the Company.

"**Life Member**" means an individual elected to Membership in accordance with clause 14.

"**Member**" means a member of the Company as described in clause 10.

**ordinary resolution** means a resolution passed at a meeting of members by a majority of the votes cast by members entitled to vote on the resolution.

**"Registered Adult"** means for an Association which is a Member of the Company or part of a Conference Association, an adult registered with the Company in respect of that Association as at the last 31 December, but does not include a Secondary Participant Registration.

**"Registered Participant"** means a Registered Adult, a referee, game official, selector, coach, trainer, manager or other team official, an individual involved in an Association which is a Member of the Company or part of a Conference Association, including a director, other officer or employee of the Association, or any person associated with basketball registered with the Company.

**"Representative"** means an individual appointed to act as a Member's representative at meetings of members as permitted by section 250D of the Act.

**"Seal"** means the common seal of the Company.

**"Secondary Participant Registration"** means registration of a participant with a second or subsequent Association with payment of an administration fee only.

**"Secretary"** means any secretary appointed under clause 23.

**"State"** means the State of New South Wales.

**"Term"** means the period from the end of one annual general meeting to the end of the next annual general meeting.

## **9.2 Interpretation of this document**

Headings and marginal notes are for convenience only, and do not affect interpretation.

The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests 1 gender includes the other gender.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

- (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) A power to do something includes a power, exercisable in the like circumstances, to revoke or undo it.
- (h) A reference to a power is also a reference to authority or discretion.
- (i) A reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form.
- (j) A word (other than a word defined in clause 9.1 which is defined by the Act has the same meaning in this document where it relates to the same matters as the matters for which it is defined in the Act.
- (k) A reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Act.

## 10. CATEGORIES OF MEMBERS

The following may be Members of the Company:

- (a) an Association;
- (b) a Life Member; and
- (c) an Association that is currently a Member that was formed to represent a number of Associations (**Conference Association**) until the earlier of:
  - (i) all Associations in the Conference Association becoming Members; and
  - (ii) 31 December 2008.

## **11. ASSOCIATIONS**

- 11.1 An Association applying for membership must complete, duly execute and deliver to the Secretary an application for membership in the form of schedule 1.
- 11.2 The Board must, at its next meeting after receipt of any application for membership, consider and determine the application in accordance with this Constitution. The Board need not give any reason for rejecting any applicant.
- 11.3 The Secretary must send to each applicant approved by the Board written notice of acceptance and a request for payment of the entrance fee (which includes the first annual subscription).
- 11.4 Upon payment of the entrance fee (which includes the first annual subscription) the applicant becomes a Member of the Company.
- 11.5 If payment is not made within two months after the date of the notice, the Board may in its discretion cancel its acceptance of the applicant.

## **12. AUDITING OF ASSOCIATION ACCOUNTS**

The Board may by written notice require an Association to prepare financial statements, have them audited by a person qualified to do so (with the Company to pay the reasonable costs of such audit), and present copies of the financial statements to the Board for review.

## **13. SPECIAL VOTING RIGHTS**

- 13.1 An Association is entitled on a poll to exercise one vote and also one vote for each Registered Adult of the Association. A Registered Adult must not be counted in the votes of more than one Association.

- 13.2 A Conference Association is entitled to exercise one vote and also one vote for each Registered Adult of the Associations it represents. A Registered Adult must not be counted in the votes of more than one Association it represents.

#### **14. LIFE MEMBERS**

- 14.1 Life membership is restricted to those who have contributed to the control, promotion, integration, or fostering of participation and development of basketball by their participation in the activities of the New South Wales Basketball Association or in the activities of the Company for a total period of 15 years and who are, with the approval of the Board, nominated by a Member for election at an annual general meeting of the Company.
- 14.2 The Board may at least 21 days before the annual general meeting call for Members to nominate nominees for Life Membership. Each nomination for Life Membership and a history of the service of the nominee must be lodged with the Secretary (to be submitted to the Board by the Secretary for approval) at least 14 days prior to the annual general meeting. The Board must consider all nominations received within that time, and may approve or decline to approve any nomination in its absolute discretion without giving any reason for its decision. The Board must forward to Members any approved nominations for Life Membership with a copy of the history of service of the nominee at least 7 days before the annual general meeting.
- 14.3 To be elected, a nominee for election as a Life Member must obtain at least three-fourths of the votes cast on a poll by those Members eligible to vote on the election. No more than two Life Members may be elected at any one annual general meeting. If more than two nominees receive a three-fourths vote, the two receiving the highest numbers of votes are

elected. If nominees receive equal numbers of votes, the issue between them is to be determined by lot.

14.4 A Life Member is to be awarded a badge of a design approved by the Board.

**14.5 A Life Member is entitled to attend, speak and vote at all general meetings of the Company.**

## **15. DISCIPLINING MEMBERS**

### **15.1 Disciplining a Member**

- (a) The Board may by ordinary resolution censure, fine, suspend or expel from the Company any Member who:
- (i) wilfully refuses, or neglects, to comply with the provisions of this Constitution and by-laws of the Company;
  - (ii) is guilty of any conduct which in the opinion of the Board is unbecoming of a Member or prejudicial to the interests, image or welfare of the Company or of basketball;
  - (iii) makes public statements which in the opinion of the Board are damaging to the reputation of the Company or the Board;
  - (iv) amends its constitution so it conflicts with the Constitution, rules and regulations or resolutions of the Company;
  - (v) fails to pay to the Company any moneys due by the Member to the Company after due notice has been given;
  - (vi) fails to discipline a Registered Participant who in the opinion of the Board:

- (A) has engaged in any conduct unbecoming or prejudicial to the interests, image or welfare of the Company or of basketball either prior to or after becoming a member of an Association; or
  - (B) has made public statements which in the opinion of the Board are damaging to the reputation of the Company; or
  - (C) has not complied with their financial obligations in relation to the Company; or
  - (D) wilfully refused or neglected to register with the Company all of their participants; or
  - (E) fail to comply with clause 12 (concerning auditing of accounts).
- (b) The Board must give a Member at least one week's notice of the meeting of the Board at which such a resolution is proposed and of what is alleged against them and of the intended resolution and that they shall at such meeting and before the passing of such resolution have an opportunity of giving orally or in writing any explanation or defence they may think fit, and the Board must not pass such a resolution unless the Member has been given that opportunity.

## **15.2 Cessation of Membership**

A Member ceases to be a Member of the Company:

- (a) if the Member dies;
- (b) if the Member resigns by notice in writing to the Company; or
- (c) if the Member is expelled from the Company in accordance with clause 15.1.

## **16. FEES**

The amount of the entrance fee and annual subscription payable by Members of the Company is to be determined at the discretion of the Board.

## **17. GENERAL MEETINGS**

### **17.1 Annual general meeting**

An annual general meeting of the Company must be held in accordance with the Act.

### **17.2 Calling meeting of members**

Any Director may whenever he or she thinks fit convene a general meeting of Members.

### **17.3 Notice of meeting**

Subject to the provisions of the Act for agreeing to shorter notice, 21 days notice (excluding of the day on which the notice is given or taken to be served, and excluding the day of the meeting) of a general meeting must be given, specifying the place, the day and the hour of meeting. In addition to the notice of meeting required by the Act, a preliminary notice giving advance notice of the place, the day and the hour of the meeting and the general nature of the meeting must be given unless it is waived by agreement of Members with at least 95% of the votes which may be cast at the meeting.

A notice of a general meeting must state the general nature of each item of business, but for an annual general meeting, no notice need be given of:

- (a) receipt and consideration of the annual financial report and the report of the auditors.
- (b) receipt and consideration of reports of the Board.
- (c) election of Directors in the place of those retiring.
- (d) appointment or remuneration of auditors.

### **17.4 Certificate**

Before each general meeting the Secretary must obtain a certificate duly executed by an authorised officer of the Company stating the number of votes exercisable by or on behalf of each Member for Registered Adults of the Association (or Associations it represents), and must forward a true copy of the certificate to each Member with the notice convening the general meeting. The certificate is, in the absence of manifest error, to be conclusive evidence of what it certifies.

## **18. PROCEEDINGS AT GENERAL MEETING**

- 18.1 No business may be transacted at any general meeting unless a quorum of 5 Members is present in person, Representative or proxy.
- 18.2 A Member may only vote at a general meeting of the Company by Representative or a substitute Representative appointed pursuant to the Act or by proxy appointed by it in accordance with the Act and its constitution. A proxy has no power to act for a Member at a meeting at which the Member is present by Representative.
- 18.3 Each Member must immediately notify the Company in writing in the form of Schedule 3 each time it appoints, or revokes the appointment of, a Representative or substitute Representative. If the instrument making the appointment or revocation of the Representative or substitute Representative is signed by a person on behalf of the appointer then the authority under which the appointment was signed or a certified copy of the authority must be provided to the Company at the same time the appointment or revocation instrument is given to the Company. The Company in its dealings with the Representative, appointed in accordance with this clause 18.3, is entitled to make, without further enquiry, in relation to these dealings the assumption that:

- (i) the appointment of the Representative has not been terminated, suspended or made subject to conditions;
- (ii) the Representative is authorised to:
  - (A) exercise the voting rights of the Member under this constitution; and
  - (B) receive communications on behalf of the Member.

18.4 If within half an hour from the time for a general meeting a quorum is not present, the meeting, if convened by Members or at the request of Members, is dissolved; and in any other case it stands adjourned either to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Board may decide. At the adjourned meeting a quorum of 3 members in person, Representative or proxy will suffice, but if such a quorum is not present within half an hour from the time for the meeting, the meeting is dissolved.

18.5 If the Board has appointed a Director to chair Board meetings, that Director may also chair meetings of Members. If:

- (a) there is no Director who the Board has appointed to chair Board meetings for the time being; or
- (b) the Director appointed to chair Board meetings is not present at the time for which a meeting of members is called or is not willing to chair the meeting,

the members present must elect a member or Director present to chair the meeting.

18.6 The Chairman may, with the consent of any meeting at which a quorum is present (and must if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the

unfinished business. No notice of an adjournment or the business to be transacted at an adjourned meeting need be given, except where the meeting is adjourned for 30 days or more.

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

(a) by the Chairman, or

(b) by any Member present in person, Representative or proxy.

The demand for a poll may be withdrawn.

18.8 Unless a poll is so demanded a declaration by the Chairman that a resolution has on show of hands been carried or carried unanimously, or by a particular majority, or lost, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

18.9 On a show of hands every person present who is a Member, Representative or proxy of a Member shall have one vote.

18.10 If a poll is duly demanded on the election of a Chairman or on a question of adjournment, the poll must be taken immediately. Any other poll must be taken in the manner the Chairman directs (either at once or after an interval or adjournment or otherwise).

18.11 On a poll a Member present by a Representative or proxy, is entitled to one vote for each Registered Adult of the Association (or Associations it represents).

- 18.12 Voting on the election of Directors must always be by secret ballot and the candidates receiving the greatest number of votes having regard to the number of positions available shall be elected. Each Member may exercise in favour of (or against) each candidate the same number of votes that the Member is entitled to exercise on a poll.
- 18.13 Where votes on a show of hands or on a poll are equal, the Chairman of the meeting is entitled to a casting vote in addition to any vote he or she has as a Member.
- 18.14 A Member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote, whether on a show of hands or on a poll, by his or her Committee or by his or her trustee or by such other person as properly has the management of his or her estate and any such committee, trustee or other person may vote by proxy or attorney.
- 18.15 No Member is entitled to vote at any general meeting unless:
- (a) their subscription is current at least 24 hours prior to the general meeting;
  - (b) where a proxy is received, the proxy is received in accordance with clauses 18.16 and 18.17; and
  - (c) there is no outstanding breach of by-laws of the Company by that Member.
- 18.16 The instrument appointing a proxy must be in writing signed by or on behalf of the Member and be in the form of schedule 2 to this Constitution.
- 18.17 For an instrument appointing a proxy for a general meeting to be effective, the following documents must be received by the Company at least 24 hours before the meeting:
- (a) the instrument appointing the proxy; and

- (b) if the instrument is signed by the appointer's attorney - the authority under which the appointment was signed or a certified copy of the authority.

18.18 The Board may make rules or establish procedures for the authentication of instruments of proxy and signatures on instruments of proxy which are received by the Company by fax or at an electronic address.

## **19. DIRECTORS**

19.1 The Company must have at least 3 Directors and, until otherwise decided by ordinary resolution, not more than 7 Directors.

**19.2 At any time only 1 Board Member or employee of an Association or Conference Association may be a Director. Neither the auditor of the Company nor any partner, director or employee of the auditor is eligible to act as a Director.**

19.3 This clause 19.3 applies to Directors elected at the 2008 Annual General Meeting only:

- (a) 5 Directors will be elected;
- (b) the 2 candidates receiving the highest number of votes must retire from office at the third annual general meeting after the Directors were elected;
- (c) the 2 candidates receiving the next highest number of votes must retire from office at the second annual general meeting after the Directors were elected; and
- (d) the 1 candidate receiving the next highest number of votes must retire from office at the first annual general meeting after the Director was elected.
- (e) If candidates receive equal numbers of votes, the issue between them is to be determined by lot.

19.4 Subject to this Constitution, section 201E of the Act and to the number of Directors for the time being fixed under clause 19.1 not being exceeded, the Board may appoint a person to be a Director at any time except during a general meeting. Any Director so appointed automatically retires at the second annual general meeting and is eligible for election by that general meeting.

For clarity in the first rotation up on implementation the Board may appoint one director until the next annual general meeting and a second Director until the second general meeting.

19.5 Subject to this Constitution, section 201E of the Act and to the number of Directors for the time being fixed under clause 19.1 not being exceeded, the Company may elect a Director by ordinary resolution. A Director appointed to replace one removed from office under clause 19.11 must retire when the Director replaced would have been required to retire if not removed and is eligible for re-election.

19.6 The Company in general meeting cannot validly elect a person as a Director unless:

- (a) the person retires under clause 19.4, 19.5 or 19.7 and seeks re-election;
- (b) the Board recommends the appointment; or
- (c) at least 14 days (or any other period fixed by the Board) before the date of the meeting at which election is to occur, the Company receives both:
  - (i) a nomination of the person by a Member (other than the person); and
  - (ii) a consent to act as a Director signed by the person.

The Company must notify Members of every candidate for election as a Director at least

7 days before the relevant general meeting.

#### 19.7 Retirement of Directors

- (a) Subject to clause 19.3, a Director must retire from office at the third annual general meeting after the Director was elected or last re-elected.
- (b) A Director may elect to retire and seek re-election at an annual general meeting before the time required by clause 19.7(a), provided at least 14 days (or any other period as the Board may determine) before the annual general meeting the Director has given the Board notice of their intention to do so. If the Director gives such a notice, the Director must then retire from office at the relevant annual general meeting.
- (c) An election of Directors must be held at each annual general meeting. If no election of Directors is scheduled to occur at an annual general meeting under clause 19.4, 19.7(a) or 19.7(b), then 1 Director must retire from office at the annual general meeting.
- (d) A Director who retires under this clause 19.7 is eligible for re-election.

#### 19.8 Selection of Directors to retire

Subject to clause 19.5, the Director who retires under clause 19.7(c) is the Director who has held office the longest since last being elected or appointed. If 2 or more Directors have been in office for the same period, those Directors may agree which of them will retire. If they do not agree, they must draw lots to decide which of them must retire.

#### 19.9 Time of retirement

A Director's retirement under clause 19.4 or 19.7 takes effect at the end of the relevant annual general meeting unless the Director is re-elected at that meeting.

#### 19.10 Cessation of Director's appointment

A person automatically ceases, effective immediately and non-conditionally, to be a Director if the person:

- (a) is not permitted by the Act (or an order made under the Act) to be a director;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G of the Act;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to attend (either personally or by an Alternate) 3 consecutive Board meetings (not including meetings of a committee of the Board) without leave of absence from the Board;
- (e) resigns by notice in writing to the Company;
- (f) is removed from office under clause 19.11; or
- (g) ceases to be eligible to act as a Director under clause 19.2.

#### 19.11 Removal from office

Whether or not a Director's appointment was expressed to be for a specified period, the Company by ordinary resolution may remove a Director from office. The power to remove a Director under this rule is in addition to section 203D of the Act.

#### 19.12 Too few Directors

If the number of Directors is reduced below the minimum required by clause 19.1, the continuing Directors may act as the Board only:

- (a) to appoint Directors up to that minimum number;
- (b) to convene a meeting of members; and
- (c) in emergencies.

## **20. POWERS AND DUTIES OF THE BOARD**

20.1 Subject to clause 20.2 the business of the Company shall be managed by the Board who may exercise all powers of the Company except any power which the Act or this Constitution require the Company to exercise in general meeting. The Board may make, amend or delete regulations or by-laws regulating the conduct of Members or the activities of the Company.

20.2 The Company in general meeting may disallow any regulation or by-law of the Company made by the Board. The Company in general meeting may pass resolutions or prescribe regulations for the conduct of the Board but no such resolution or regulation made by the Company in general meeting must invalidate any prior act of the Board which would have been valid if that resolution or regulation had not been passed or made.

20.3 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, must be signed by any two Directors, or in such other way as the Board decides from time to time.

20.4 The Board must cause minutes to be made:

- (a) of all appointments of officers and employees;

(b) of names of Directors present at each meeting of the Company and of the Board;  
and

(c) of all proceedings at all meetings of the Company and of the Board.

20.5 The minutes must be signed by the Chairman of the meeting at which the proceedings took place or by the Chairman of the next succeeding meeting.

## **21. PROCEEDINGS OF THE BOARD**

21.1 The Board may meet for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A Director may at any time and the Secretary shall on request of a Director summon a meeting of the Board.

21.2 A meeting of the Board may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other manner permitted by the Act. A meeting of the Board held solely or partly by technology is treated as held at the place at which the greatest number of Directors present at the meeting is located or, if an equal number of Directors is located in each of two or more places, at the place where the Chairman of the meeting is located.

21.3 Questions arising at any meeting of the Board are to be decided by a majority of votes and a determination by a majority of the Directors is for all purposes taken to be a determination of the Board. If votes are equal the Chairman of the meeting is to have a second or casting vote.

- 21.4 The quorum necessary for the transaction of business by the Board is a majority of the Directors holding office from time to time, or any greater number as may be fixed by Board.
- 21.5 The continuing Directors may act despite any vacancy in the Board, but if and so long as their number is reduced below the minimum number of Directors fixed by or in accordance with this Constitution, the continuing Director or Directors may act for the purpose of increasing the number of Directors to that number or of summoning a general meeting of the Company, but for no other purpose.
- 21.6 The Board must elect a Director to chair its meetings for a maximum period of 12 months. If there is no chairman of Directors or the chairman is not present within 15 minutes after the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.
- 21.7 The Board may delegate any of its powers and or functions (not being duties imposed on the Board as the directors of the Company by the Act or the general law) to one or more sub-committees which may comprise either or both a Director (or Directors) or such Member (or Members) of the Company or such other persons as the Board thinks fit. Any sub-committee so formed must conform to any regulation that may be imposed by the Board. Unless prohibited by regulation of the Board a sub-committee may co-opt any person. All members of a sub-committee are to have one vote.
- 21.8 The Board may appoint one or more advisory boards consisting of such Director or Directors or such Member (or Members) of the Company or such other persons as the Board thinks fit. Such advisory boards shall act in an advisory capacity only. They must conform to any regulations that may be imposed by the Board and subject to those

regulations shall have the power to co-opt any person. All members of such advisory boards shall have one vote.

- 21.9 A sub-committee may meet and adjourn as it thinks proper and may choose one of their number to act as chairman of their meetings. Questions arising at any meeting shall be determined by a majority of votes of the members of the sub-committee present, and if votes are equal the chairman shall have a second or casting vote.
- 21.10 All acts done by any meeting of the Board or of a sub-committee or by any person acting as a Director shall, even if it is afterwards discovered that there was some defect in the appointment of any Director or person acting as a Director, or that the Director or any of them were disqualified, be as valid as if every person had been duly appointed and was qualified to be a Director.
- 21.11 If a document (which may be separate documents in identical terms) containing a statement that the signatories to it are in favour of a resolution in the terms set out or otherwise identified in the document has been signed by all the Directors (excluding any Director, who would not be entitled to vote on that resolution at a meeting of the Board), a resolution in those terms shall be taken to have been passed at a meeting of the Board held on the day on which and at the time at which the document was last signed by a Director. Such a statement contained in an unsigned telex, telegram or facsimile message which is received by the Company and is expressed to have been sent by a Director is taken to be a document signed by that Director at the time of receipt by the Company.

## **22. CHIEF EXECUTIVE OFFICER**

The Board may appoint any person other than a Director to be Chief Executive Officer.

The Chief Executive Officer is entitled to attend (but not vote at) meetings of the Board, but only for so long as he or she holds that office.

## **23. SECRETARY**

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

## **24. OFFICER'S INDEMNITY AND INSURANCE**

### **24.1 Indemnity**

Subject to and so far as permitted by Act, the *Trade Practices Act 1974* (Cth) and any other applicable law:

- (a) the Company must, to the extent the person is not otherwise indemnified, indemnify every officer of the Company and its wholly owned subsidiaries and may indemnify its auditor against a Liability incurred as such an officer or auditor to a person (other than the Company or a related body corporate) including a Liability incurred as a result of appointment or nomination by the Company or subsidiary as a trustee or as an officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith; and
- (b) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer or employee or auditor in defending

an action for a Liability incurred as such an officer, employee or auditor or in resisting or responding to actions taken by a government agency or a liquidator.

In this clause 24, **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

#### **24.2 Insurance**

Subject to the Act and any other applicable law, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

#### **24.3 Former officers**

The indemnity in favour of officers under clause 24.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or one of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.

#### **25. SEAL**

The Board must provide for the safe custody of the Seal. The Seal may only be used by the authority of the Board or of a sub-committee of Directors authorised by the Board. Every instrument to which the seal is affixed must be signed by a Director and must be countersigned by the Secretary or by a second Director or by some other person appointed by the Board for that purpose.

#### **26. INSPECTION OF DOCUMENTS**

A Member other than a Director does not have the right to inspect any document of the Company except as provided by law or authorised by the Board or by the Company in general meeting.

## **27. ACCOUNTS**

### **27.1 Company must keep financial records**

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited,

and must allow a Director and the auditor to inspect those records at all reasonable times.

### **27.2 Financial reporting**

The Board must cause the Company to prepare a financial report and a directors' report that comply with Part 2M.3 of the Act and must report to members in accordance with section 314 of the Act within 4 months after the end of the financial year.

## **28. AUDIT**

The Company must appoint a properly qualified auditor or auditors in accordance with the Act.

## **29. NOTICE**

- 29.1 Any notice to a Member required by law under this Constitution, including a notice of meeting, may be given to a Member personally, or by sending it by post to the address for

the Member in the register of Members or to any alternative address nominated by the Member, or by sending it to the fax number or electronic address (if any) nominated by the Member. A notice which has been properly addressed, pre-paid, and posted is taken to have been given, in the case of a notice of a meeting, on the day after the date of its posting, and in any other case, at the time at which the letter would be delivered in the ordinary course by post. A notice sent by fax or by other electronic means on a day which is not a business day is taken to be given on the first business day after it is sent.

29.2 Notice of every general meeting must be given to:

- (a) every Member;
- (b) each Director; and
- (c) the auditor or auditors for the time being of the Company.

29.3 No other person is entitled to receive notices of general meetings.

**SCHEDULE 1**

"To The Secretary,  
New South Wales Basketball Association Limited,  
of  
    PO Box 198  
    Sydney Markets  
    NSW, 2129

The Association applies to become a Member of the New South Wales Basketball Association Limited and if accepted for membership agrees to be bound by the Constitution and Rules and by-laws of that Company.

Signed for and on behalf of..... Association

.....  
Print Name

.....  
Signature

.....  
Date

**SCHEDULE 2  
PROXY APPOINTMENT FORM**

**NEW SOUTH WALES BASKETBALL ASSOCIATION LTD**

**ABN 98 003 359 680**

Enquiries

02 8765 8555

**Name and address of Member**

**Appointment of proxy**

[*Association/ Conference Association Name*], being a Member of New South Wales Basketball Association Ltd and entitled to attend and vote, appoint or if that person fails to attend or, if no person is named, the Chairman of the meeting to attend, act generally and vote as directed below, or, if no directions are given, as the proxy or the Chairman sees fit, at the **Option** [annual] general meeting of the Company to be held on [day, date and time], and at any adjournment.

\_\_\_\_\_  
Full name of individual or body corporate proxy (please print)

**Voting directions to your proxy – please mark X to indicate your directions**

**Business**

**Item**

	<b>For</b>	<b>Against</b>	<b>Abstain*</b>
1. [insert short headings for each item]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. [add or delete as appropriate]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

\* If you mark the Abstain box for a particular item of business, you are directing your proxy not to vote on that item on a show of hands or on a poll and your votes will not be counted in computing the required majority on a poll.

**[Optional – Where the maximum number of directors to be elected is less than the number of candidates the following paragraphs should be placed below the voting boxes.]**

**Option** Only [number] directors are to be elected. To make sure your vote counts do not vote in favour of more than [number] directors.

If you mark the "For" box for more than [number] directors, your vote will be invalid and will not count.

If you wish, you may vote in favour of less than [number] of directors.]

**[Optional – Include the following paragraphs if the notice of meeting includes a voting exclusion statement and the chairman is a person excluded from voting. If the chairman will not be voting in favour of each item, alter the first paragraph accordingly. For example, ..... the Chairman of the meeting will vote in favour of each of items [number] to [number] and will vote in favour of the election of the following directors.**

[list directors]]

**Option** If you appoint the Chairman of the meeting as your proxy, and you do not direct **Alt**[him/her] how to vote on **Alt**[item/items] [number or numbers of items of business that require a voting exclusion statement], the Chairman of the meeting will vote in favour of **Alt**[that item/each of those items].

If you appoint the Chairman of the meeting as your proxy, or **Alt**[he/she] may be appointed as your proxy by default, and you do not wish to direct the Chairman of the meeting how to vote as your proxy in relation to **Alt**[item/items] [number or numbers of items of business that require a voting exclusion statement], please mark **X** in the box.

By marking this box, you acknowledge that the Chairman of the meeting may vote as your proxy even if **Alt**[he/she] has an interest in the outcome of the **Alt**[item/items] and that votes cast by **Alt**[him/her] for the **Alt**[item/items] other than as a proxy will be disregarded because of that interest.

If you do not mark this box and you have not directed the Chairman of the meeting how to vote, **Alt**[he/she] will not cast any votes as your proxy in relation to **Alt**[item/items] [number or numbers of items of business that require a voting exclusion statement] and your votes will not be counted in calculating the required majority if a poll is called on the **Alt**[item/items].]

**Signatures of individual member, joint individual member, attorney or company member**

Member, Attorney or Joint Member

Sole director and sole company secretary

Director

Director/Company secretary (delete one)

/ /

\_\_\_\_\_  
Contact name

\_\_\_\_\_  
Contact daytime telephone

\_\_\_\_\_  
Date

## **INSTRUCTIONS FOR COMPLETION OF PROXY APPOINTMENT FORM**

### **Your name and address**

This is your name and address as it appears on the register of members of the Company. If this information is incorrect, please make the correction on the Proxy Appointment Form. **Please note that you cannot change ownership of your shares using this Proxy Appointment Form.**

### **Appointment of proxy**

If you are entitled to vote at the meeting you have a right to appoint a proxy and should use this Proxy Appointment Form. The proxy need not be a member of the Company and can be an individual or a body corporate.

If you wish to appoint someone other than the Chairman of the meeting as your proxy, please write the name of that person in the appropriate box. Members cannot appoint themselves. If you leave the box blank, or your named proxy does not attend the meeting, the Chairman of the meeting will be your proxy and vote on your behalf.

Your proxy's authority to speak and vote for you at the meeting is suspended if you are present at the meeting.

### **Voting directions to your proxy**

You may direct your proxy how to vote by marking **X** in 1 of the 3 boxes opposite each item of business. All your votes will be cast in accordance with your direction, unless you indicate only a portion of votes are to be cast on any item by inserting the percentage of your voting rights applicable to the proxy appointed by this Proxy Appointment Form in the appropriate box. If you do not mark any of the boxes relating to the items of business, your proxy will vote as he or she chooses. If you mark more than 1 box relating to the same item of business any vote by your proxy on that item will be invalid.

### **Signing instructions**

This Proxy Appointment Form must be signed and dated by the member or the member's attorney.

Any joint member may sign.

If this form is signed by an attorney and you have not previously lodged the power of attorney with the Company for notation, please attach a certified copy of the power of attorney to this form when you return it.

If the member is a company that has a sole director or a sole director who is also the sole company secretary, this form must be signed by that person. Otherwise, this form must be signed by 2 directors or 1 director and a company secretary. Please indicate the office held by signing in the appropriate place.

### **Lodgement of Proxy Appointment Form**

Proxy Appointment Forms and proxy appointment authorities, for example, the original or a certified copy of the power of attorney (if the Proxy Appointment Form is signed by an attorney) must be received:

- at [address]; or
- by fax, on fax number [number],  
**not later than [time] on [date].**

Documents received after that time will not be valid for the scheduled meeting.

### **Privacy**

Chapter 2C of the *Corporations Act 2001* (Cth) requires information about you (including your name, address and details of the shares you hold) to be included in the Company's public register of members. This information must continue to be included in the public register if you cease to hold shares. These statutory obligations are not altered by the *Privacy Amendment (Private Sector) Act 2000* (Cth). Information is collected to administer your shareholding which may not be possible if some or all of the information is not collected. The Company's privacy policy is available at [web address].

**SCHEDULE 3**

**REPRESENTATIVE APPOINTMENT FORM**

**NEW SOUTH WALES BASKETBALL ASSOCIATION LTD**

**ABN 98 003 359 680**

**Enquiries**

**02 8765 8555**

**Name and address of Member**

**Appointment of Representative**

[.....*Association*], being a Member of New South Wales Basketball Association Ltd and entitled to attend, and vote, appoint the named person as Representative to act generally and vote at Annual/ Extraordinary General Meeting of the Company to be held on [day, date and time],] and at any adjournment.

\_\_\_\_\_  
Full name of individual or body corporate Representative (please print)

\_\_\_\_\_  
Signature of Member/Representative

