



Constitution

Date: 25 November 2023

**NEW SOUTH WALES BASKETBALL ASSOCIATION LIMITED
(ABN 98 003 359 680)**

**APPROVED BY SPECIAL RESOLUTION OF MEMBERS AT THE GENERAL MEETING
HELD ON SATURDAY 25 NOVEMBER 2023**

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Constitution

1. NAME OF THE COMPANY

The name of the company is New South Wales Basketball Association Limited (**Company**).

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Constitution unless the context requires otherwise:

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

Affiliate means a basketball-related entity Registered with the Company in accordance with **clauses 8.2** and **8.6**.

AGM or **Annual General Meeting** means the annual General Meeting of the Company required to be held by the Company in each calendar year.

Appointed Director means a Director appointed under **clause 18**.

Association means an association admitted as a Member to the Company under **clauses 8.2** and **8.4**.

BA means BA Limited (ABN 57 072 484 998) or any successor entity that is granted national sports organisation status for Basketball in Australia.

BA Constitution means the constitution and includes any by-laws made by BA in force from time to time.

Basketball means basketball as recognised by FIBA from time to time and other basketball-related activities.

Board or **Directors** means all or some of the Directors of the Company acting as a board.

By-Law means a by-law made under **clause 26**.

CEO means a person appointed as chief executive officer of the Company by the Board under **clause 23**.

Chair means the person elected under **clause 21.6**.

Committee means a committee established by the Board under **clause 25**.

Company Secretary means a person appointed as a company secretary of the Company by the Directors under **clause 24**.

Constitution means this Constitution as amended from time to time, and a reference to a particular clause is a reference to a clause of this Constitution.

Director means a director of the Company and includes Elected Directors and Appointed Directors.

Elected Director means a Director of the Company elected under **clause 17**.

FIBA means the Federation Internationale de Basketball.

Finance & Audit Committee means the Committee established under **clause 25.4**.

General Meeting means a general meeting of Members.

Individual Member means a person who is:

- (a) a registered financial member of a Voting Member; or
- (b) a participant, coach or official in any Basketball competition conducted by or under the auspices of the Company and/or a Voting Member,

who is admitted to the Company under **clauses 8.2** and **8.5**.

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

Life Member means a Member admitted to the Company under **clause 8.3**.

Member means a member of the Company under **clause 8.1**.

Nominations Committee means the nomination committee established by the Directors under **clause 17.3**.

Objects mean the objects of the Company in **clause 3**.

Official Position means, in connection with any Voting Member, a person who:

- (a) is an employee, or holds a position, whether elected or appointed, as president, vice president, chairperson, deputy chairperson, secretary, public officer, treasurer, director or equivalent, of that Voting Member or a body corporate or organisation which is owned or controlled by, or has, directly or indirectly, a material ownership or financial interest in that Voting Member; or
- (b) has, directly or indirectly, a material ownership or financial interest in that Voting Member.

Registered Participant means for an Association, a person (whether or not over 18 years of age) registered with the Company in respect of that Association as at the last 31 December, but does not include registration of a participant with a second or subsequent Association with payment of an administration fee only.

Registration means registration or affiliation of a Member, such registration being in the form of a signed application form and, in the case of Individual Members, their consent to membership of the Company as required by **clause 8.2**. **Registered** has a corresponding meaning.

Representative means a person (other than a proxy) appointed in accordance with the Act to represent an Association at a General Meeting of the Company.

Special General Meeting means a General Meeting other than an Annual General Meeting.

Special Resolution has the same meaning as that given to it in the Act.

Stakeholder Forum means a forum of the Company under **clause 15**.

Statutes and Regulations mean the constitution and internal regulations of FIBA and BA in force from time to time.

Virtual Meeting means a meeting held by telephone, video or any other technology (or any combination of these technologies), that permits each Director at a meeting of Directors or each Voting Member at a meeting of members to communicate with any other participant.

Voting Member means those Members of the Company entitled to vote in General Meeting as set out under **clause 8.1**.

2.2 Interpretation

In this Constitution unless the context requires otherwise:

- (a) **(presence of a Member)** a reference to a Member present at a General Meeting means the Member present in person, online (where a Virtual Meeting or a hybrid meeting), or by proxy, attorney or representative;
- (b) **(document)** a reference to a document or instrument includes any amendments made to it from time to time and, unless the contrary intention appears, includes a replacement;
- (c) **(gender)** words importing any gender include all other genders;
- (d) **(person)** the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (e) **(successors)** a reference to an organisation includes a reference to its successors;
- (f) **(singular includes plural)** the singular includes the plural and vice versa;
- (g) **(instruments)** a reference to a law includes regulations and instruments made under it;
- (h) **(amendments to legislation)** a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by a State or Territory or the Commonwealth or otherwise;
- (i) **(include)** the words **include, includes, including** and **for example** are not to be interpreted as words of limitation;
- (j) **(signed)** where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner

permitted by law or by any State or Territory or Commonwealth law relating to electronic transmissions or in any other manner approved by the Directors;

- (k) (**writing**) writing and written includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise; and
- (l) (**headings**) headings are inserted for convenience and do not affect the interpretation of this Constitution.

2.3 The Act

- (a) In this Constitution, unless the context requires otherwise, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (b) The provisions of the Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

3. OBJECTS

FIBA is the sole international sporting authority entitled to make and enforce regulations for the encouragement and control of Basketball.

BA is recognised by FIBA as the sole national federation and sporting power for the enforcement of the present Statutes and Regulations and control of Basketball in Australia. The Company is recognised as a member of BA under the BA Constitution.

The Objects of the Company shall be to:

- (a) recognise BA as the FIBA-recognised national federation for Basketball in Australia and to act as a member of BA in accordance with the Statutes and Regulations and the BA Constitution;
- (b) conduct, encourage, promote, advance, control and manage all levels of Basketball in New South Wales interdependently with Members and others;
- (c) conduct state level competitions for participants at all levels;
- (d) create, adopt, publish and amend by-laws, rules and regulations for the control and conduct of Basketball in New South Wales in keeping with the terms of this Constitution, as amended from time to time;
- (e) formulate or recognise and implement appropriate policies, including policies in relation to equal opportunity, equity, drugs in sport, health, safety and such;
- (f) proactively work with the relevant levels of government and other entities to build appropriate facilities for participation in Basketball;
- (g) maintain and enhance standards, quality and reputation of Basketball for the collective and mutual benefit and interests of Members and Basketball;

- (h) help Members to develop necessary competencies and achieve their objects;
- (i) promote Basketball for commercial, government and public recognition and benefits;
- (j) represent the interests of the Company, its Members and of Basketball generally in any appropriate forum;
- (k) select, prepare and enter New South Wales teams in national competitions;
- (l) create, support and promote Basketball events, games, tournaments, championships at both a regional and State level;
- (m) encourage and promote widespread participation in Basketball as an all-abilities and inclusive sport to enhance opportunities for every participant to reach levels appropriate to their ability and aspiration;
- (n) promote the health and safety of Members;
- (o) have regard to the public interest in its operations; and
- (p) undertake other actions or activities necessary, incidental or conducive to advance these Objects.

4. POWERS

Solely for furthering the Objects, the Company, in addition to any other powers it has under the Act, has the legal capacity and powers of a company limited by guarantee as set out under the Act.

5. INCOME AND PROPERTY OF THE COMPANY

5.1 Not-for-profit

The income and property of the Company will be applied only towards the promotion of the Objects.

5.2 Payments to Members

No income or property will be paid or transferred directly or indirectly to any Member except for payments to a Member:

- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
- (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent; or
- (c) of reasonable rent for premises let by them to the Company.

6. BA MEMBERSHIP

- (a) BA recognises the Company as the only member of BA for New South Wales and responsible for ensuring the efficient administration of Basketball in New South Wales in accordance with the Objects. The Company must be and remain a legal entity.

- (b) The Company will:
- (i) have objects that align with BA's objects;
 - (ii) effectively promulgate the BA Constitution and the Statutes and Regulations;
 - (iii) at all times act for and on behalf of the interests of the Company, the Members and Basketball;
 - (iv) be bound by the BA Constitution and the Statutes and Regulations;
 - (v) act in good faith and loyalty to maintain and enhance Basketball, its standards, quality and reputation for the collective and mutual benefit of the Members and Basketball;
 - (vi) at all times operate with, and promote, mutual trust and confidence between the Company and the Members, promoting the economic and sporting success, strength and stability of each other and work cooperatively with each other in the pursuit of the Objects;
 - (vii) maintain a database of all Associations and Individual Members Registered with it; and
 - (viii) not do or permit to be done any act or thing which might adversely affect or derogate from the standards, quality and reputation of Basketball and its maintenance and development.

7. AMENDMENT OF THE COMPANY'S CONSTITUTION

No addition, alteration or amendment shall be made to this Constitution unless the same has been approved by Special Resolution.

8. MEMBERSHIP

8.1 Categories of Members

Members of the Company shall fall into one of the following categories:

- (a) Associations, which subject to this Constitution, shall be represented by their representatives who shall have the right to receive notice of and attend, debate and vote at General Meetings for and on behalf of the Association;
- (b) Individual Members, who subject to this Constitution have no right to receive notice of, attend, debate or vote at General Meetings;
- (c) Affiliates, who subject to this Constitution have the right to receive notice of and attend, but not debate or vote at General Meetings;
- (d) Life Members, who subject to this Constitution shall have the right to receive notice of and attend debate and vote at General Meetings; and
- (e) such new or other categories of Members as may be established by the Directors. Any new category of Member established by the Directors must not be granted voting rights without the approval of the Voting Members in General Meeting.

8.2 Admission to membership

Subject to **clause 8.5**, a person will become a Member, and the Directors will direct the CEO to record their name in the register of Members kept by the Company, only upon meeting the criteria applicable to the relevant category of membership set out in this Constitution and/or the By-Laws and provided the person has signed an application in which they undertake to:

- (a) be bound by this Constitution and the By-Laws of the Company (including By-Laws specific to the relevant category of membership) and the BA Constitution;
- (b) pay the fees and subscriptions determined to apply to the relevant membership category under **clause 11.1**; and
- (c) support the Company in the encouragement and promotion of the Objects.

8.3 Life Members

- (a) Life Membership is an honour which can be bestowed by the Company for longstanding and valued service to Basketball in New South Wales.
- (b) Any Member may forward a proposal for nomination for Life Membership to the Directors for their consideration.
- (c) On the nomination of the Board, any individual may be elected as a Life Member at any AGM by Special Resolution, subject to **clause 8.2**.
- (d) Nominations for Life Membership shall include a written report outlining the history of services of any nominee, together with comments on the suitability of the honour.
- (e) The By-Laws will set out:
 - (i) current Life Members;
 - (ii) the criteria to be met by Life Members; and
 - (iii) the privileges and benefits of Life Membership.
- (f) A Life Member is bound by, and must comply with, this Constitution, the By-Laws and the BA Constitution.
- (g) Subject to **clause 8.2**, at the time of adoption of this Constitution, the Life Members of the Company shall be those persons currently recognised by the Company as Life Members.

8.4 Associations

- (a) Subject to **clause 8.2** and **8.4(b)**, at the time of adoption of this Constitution, the Associations of the Company shall be those incorporated entities recognised by the Company as Associations.
- (b) Where an applicant for Association membership is not incorporated but otherwise meets the criteria for that membership the Directors may recognise that entity as an Association. Where the Directors do recognise an entity as an Association under this clause that entity must incorporate within 12 months of recognition otherwise its membership lapses.

- (c) Associations will:
- (i) have objects that align with the Objects and do what is reasonably necessary to facilitate the Objects being achieved;
 - (ii) effectively promulgate this Constitution and the Statutes and Regulations;
 - (iii) act for and on behalf of the interests of the Members, the Company and Basketball;
 - (iv) provide the Company with copies of its accounts (whether or not audited), annual report and business plan (if any) immediately following its annual general meeting;
 - (v) act in good faith to maintain and enhance Basketball, its standards, quality and reputation for the collective and mutual benefit of the Members, the Company and Basketball;
 - (vi) operate with, and promote, mutual trust and confidence between the Association, the Members and the Company, promoting the economic and sporting success, strength and stability of each other and work cooperatively with each other in the pursuit of the Objects and Basketball;
 - (vii) maintain a database of all Individual Members Registered with it in accordance with this Constitution (which is satisfied through use of the Company's database) and, if not already available through the Company's database, provide a copy to the Company upon request from time to time by the Board in such means as may be reasonably required; and
 - (viii) not do or permit to be done any act or thing which might adversely affect or derogate from the standards, quality and reputation of Basketball and its maintenance and development.
- (d) Each Association must:
- (i) advise the Company as soon as practicable of any serious administrative, operational or financial difficulties the Association is having;
 - (ii) where it has a non-functioning board or committee, or where it requests assistance from the Company, assist the Company in investigating those issues; and
 - (iii) cooperate with the Company in addressing those issues in whatever manner, including if by agreement between the Association and Company, allowing the Company to appoint an administrator to conduct and manage the Association's business and affairs, or to allow the Company itself to conduct itself all or part of the business or affairs of the Association and on such conditions as the Company considers appropriate. The Company is not obliged to act under this clause.

8.5 Individual Members

- (a) No individual shall be Registered with the Company as an Individual Member except in accordance with this **clause 8.5**. The Directors may in their discretion refuse to accept a person as an Individual Member and shall not be required or compelled to provide any reason for such rejection.
- (b) Subject to **clause 8.5(a)** an individual that is recognised, affiliated, accredited or Registered by or with, a Voting Member will, upon Registration with the Voting Member, become an Individual Member of the Company and is subject to the provisions of this Constitution.
- (c) The Company may register Individual Members directly in certain situations as determined by the Company from time to time.
- (d) To remain a Member, all Individual Members must:
 - (i) renew their membership, affiliation, accreditation or Registration with their Voting Member or the Company in accordance with the procedures applicable from time to time;
 - (ii) otherwise remain a member, affiliated, accredited or Registered with their Voting Member or the Company in accordance with the procedures applicable from time to time; and
 - (iii) pay such fees as may be prescribed by their respective Voting Member or the Company in respect of their membership, affiliation, accreditation or Registration, from time to time.
- (e) In addition to the effect of membership set out in **clause 8.2**, an Individual Member is bound by, and must comply with, this Constitution, the By-Laws and the BA Constitution.
- (f) An Individual Member is entitled to any benefits of membership prescribed to apply to Individual Members in the By-Laws.

8.6 Affiliates

- (a) Affiliate membership status may be granted by the Directors on such terms and conditions as they may see fit following formal application for such status accompanied by an up-to-date copy of the applicant's constituent documents and such other information as may be required by the Directors.
- (b) Affiliate membership may be suspended or cancelled by the Directors.
- (c) The By-Laws may set out:
 - (i) the categories of Affiliate membership that exist;
 - (ii) the criteria to be met by each category of Affiliate Member; and
 - (iii) the privileges and benefits of each category of Affiliate Member.

8.7 General

- (a) The Company must keep and maintain a register of all Members in which shall be entered such information as is required under the Act from time to

time. Having regard to confidentiality considerations, an extract of the register, excluding the address of any Life Member, Individual Member or Director shall be available for inspection (but not copying) by Members, upon reasonable request.

- (b) No Member whose membership ceases has any claim against the Company or the Directors for damages or otherwise arising from cessation or termination of membership.
- (c) A right, privilege or obligation of a Member by reason of their membership of the Company is not capable of being transferred or transmitted to another Member. No Member shall, or purport to, assign the rights comprising or associated with membership to any other person and any attempt to do so shall be void.
- (d) Members must treat all staff, contractors and representatives of the Company and all other Members with respect and courtesy at all times.
- (e) Members must not act in a manner unbecoming of a Member or prejudicial to the Objects and/or interests of the Company or Basketball.

8.8 Limited Liability

Members have no liability except as set out in **clause 31**.

8.9 Effect of Membership

- (a) Members acknowledge and agree that:
 - (i) this Constitution constitutes a contract between each of them and the Company and that they are bound by this Constitution and the By-Laws;
 - (ii) they shall comply with and observe this Constitution and the By-Laws;
 - (iii) this Constitution is made in pursuit of a common purpose, namely the mutual and collective benefit of the Company, the Members and Basketball;
 - (iv) this Constitution and By-Laws are necessary and reasonable for promoting the Objects and particularly the advancement and protection of Basketball; and
 - (v) they are entitled to all benefits, advantages, privileges and services of Company membership.
- (b) Subject to **clause 11.2(a)**, a Voting Member of the Company has the right:
 - (i) to receive notice of General Meetings and of proposed Special Resolutions in the manner and time prescribed by this Constitution;
 - (ii) to submit items of business for consideration at a General Meeting;
 - (iii) to attend and be heard at General Meetings;
 - (iv) to vote at a General Meeting;

- (v) to have access to the minutes of the General Meetings and other documents of the Company as provided under **clause 27**; and
- (vi) subject to **clause 8.7(a)**, to inspect the register of members.

9. CESSATION OF MEMBERSHIP

9.1 Cessation

A person ceases to be a Member on:

- (a) resignation;
- (b) if an individual, death;
- (c) the termination of their Membership according to this Constitution or the By-Laws;
- (d) if a body corporate, being dissolved or otherwise ceasing to exist; or
- (e) that Member no longer meeting the requirements for Membership according to this Constitution and/or the By-Laws.

9.2 Resignation

For the purposes of **clause 9.1(a)**, a Member may resign as a member of the Company by giving 30 days written notice to the Board. Where a Voting Member seeks to resign as a Member of the Company the written notice must be accompanied by a copy of the special resolution passed by the Voting Member's members resolving that the Voting Member resign from the Company.

9.3 Forfeiture of Rights

A Member who or which ceases to be a Member shall forfeit all right in and claim upon the Company or the Directors for damages or otherwise, or claim upon its property including the Intellectual Property.

10. GRIEVANCES AND DISCIPLINE OF MEMBERS

10.1 Jurisdiction

All Members will be subject to, and submit unreservedly to, the jurisdiction, procedures, penalties and appeal mechanisms of the Company whether under the By-Laws or under this Constitution.

10.2 Discipline and grievances

- (a) The Directors may make or adopt By-Laws or such other procedures as they consider appropriate from time to time:
 - (i) for the hearing and determination of:
 - (A) complaints by; and
 - (B) disputes between,
Members (and their members);
 - (ii) for the discipline of Members (and their members);

- (iii) for hearing and determining appeals in relation to (i) and (ii) above; and
 - (iv) for the termination of Members.
- (b) The Directors in their sole discretion may refer an allegation (which in the opinion of the Directors is not vexatious, trifling or frivolous) by a complainant (including a Director or a Member) that a Member has:
- (i) breached, failed, refused or neglected to comply with a provision of this Constitution, the By-Laws, or any other resolution or determination of the Directors or any duly authorised Committee; or
 - (ii) acted in a manner unbecoming of a Member or prejudicial to the Objects and interests of the Company or Basketball, or both; or
 - (iii) prejudiced the Company or Basketball or brought the Company or Basketball or themselves into disrepute,

for investigation or determination either under the procedures set down in the By-Laws or by such other procedure and/or persons as the Directors consider appropriate.

11. FEES AND SUBSCRIPTIONS

11.1 Fees payable by Members

- (a) The Directors must determine from time to time:
 - (i) the amount of the annual membership fee payable by each category of Members;
 - (ii) any other amount to be paid by each category of Members, whether of a recurrent or any other nature; and
 - (iii) the payment method and due date for payment.
- (b) Each Member must pay to the Company the amounts determined under this **clause 11** in accordance with **clause 11.1(a)(iii)**.

11.2 Non-Payment of Fees

- (a) Subject to **clause 11.2(b)** but notwithstanding any other clause of this Constitution, the right of a Member to attend and vote at a General Meeting may, at the discretion of the Directors, be suspended while the payment of any subscription or other amount determined under **clause** Error! Reference source not found., **clause 11.1(a)(i)** or **clause 11.1(a)(ii)** is in arrears.
- (b) Where a Member is in arrears for any amount:
 - (i) the Board may enter an arrangement with the Member for the payment of the amount; and
 - (ii) any arrangement must be disclosed to other Voting Members, but does not require their approval.

12. GENERAL MEETINGS

12.1 Annual General Meeting

AGMs of the Company are to be held:

- (a) according to the Act; and
- (b) otherwise as determined by the Directors (including date and venue).

12.2 Power to convene General Meeting

The Directors may convene a General Meeting when they think fit and must do so if required by the Act.

12.3 Notice of General Meeting

- (a) Notice of a General Meeting of Members must be given:
 - (i) to all Members entitled to attend the General Meeting, the Directors, and the auditor of the Company; and
 - (ii) in accordance with **clause 29** and the Act.
- (b) At least 45 days prior to the proposed date of the AGM, the Company will request from Voting Members notices of motions, which must be received no less than 28 days prior to the AGM.
- (c) At least 21 days' notice of the time and place of a General Meeting must be given, together with:
 - (i) all information required to be included in accordance with the Act;
 - (ii) in the case of a proposed Special Resolution, the intention to propose the Special Resolution and the terms of the proposed Special Resolution;
 - (iii) where applicable, any notice of motion received from any Voting Member or Director; and
 - (iv) where applicable, a list of all nominations received for positions to be elected at the relevant General Meeting.

12.4 No other business

No business other than that stated in the notice of meeting may be transacted at a General Meeting.

12.5 Cancellation or postponement of General Meeting

Where a General Meeting (including an AGM) is convened by the Directors they may, if they think fit, cancel the meeting or postpone the meeting to a date and time they determine. However, this clause does not apply to a General Meeting convened by:

- (a) Voting Members according to the Act;
- (b) the Directors at the request of Members; or

- (c) a Court.

12.6 Written notice of cancellation or postponement of General Meeting

Notice of the cancellation or postponement of a General Meeting must state the reasons for doing so and be given to:

- (a) each Member entitled to attend the General Meeting; and
- (b) each other person entitled to notice of a General Meeting under this Constitution or the Act,

at least seven days prior to the date of the General Meeting.

12.7 Contents of notice postponing General Meeting

A notice postponing a General Meeting must specify:

- (a) the new date and time for the meeting;
- (b) the place where the meeting is to be held, which may be either the same as or different from the place specified in the notice originally convening the meeting; and
- (c) if the meeting is to be held in two or more places or as a Virtual Meeting, the technology that will be used to hold the meeting in that manner.

12.8 Number of clear days for postponement of General Meeting

The number of clear days from the giving of a notice postponing a General Meeting to the date specified in that notice for the postponed meeting must not be less than the number of clear days' notice of that General Meeting required to be given by **clause 12.6**.

12.9 Business at postponed General Meeting

The only business that may be transacted at a postponed General Meeting is the business specified in the notice originally convening the meeting.

12.10 Non-receipt of notice

The non-receipt of a notice convening, cancelling or postponing a General Meeting by, or the accidental omission to give a notice of that kind to, a person entitled to receive it, does not invalidate any resolution passed at the General Meeting or at a postponed meeting or the cancellation or postponement of the meeting.

12.11 Right to appoint representative

- (a) In accordance with the Act, each Association is entitled to appoint an individual as their Representative to attend General Meetings, provided that the Association has not appointed a proxy under **clause 12.12**, and to exercise the powers of the Association in relation to resolutions to be passed without meetings.
- (b) An Association may appoint more than one Representative but only one Representative may exercise the Association's powers at any one time.

- (c) In addition to each Association's appointed Representative, each Association shall be entitled to appoint one further representative to attend meetings on their behalf but not vote.
- (d) An Association must notify the Company of its appointed Representative(s) for a General Meeting no later than 48 hours prior to the commencement of the meeting.

12.12 Right to appoint proxy

- (a) A Voting Member entitled to attend a General Meeting of the Company is entitled to appoint a person as their proxy to attend the meeting in their place in accordance with the Act.
- (b) A proxy may be revoked by the appointing Member at any time by notice in writing to the Company.

12.13 Form of proxy

The instrument appointing a proxy may be in form determined by the Directors from time to time provided it complies with the requirements under the Act.

12.14 Attorney of Member

A Member may appoint an attorney to act on the Member's behalf at all or any meetings of the Company.

12.15 Lodgement of proxy or attorney documents

- (a) A proxy or Attorney may vote at a General Meeting or an adjourned or postponed meeting (as the case may be) only if the instrument appointing the proxy or attorney, and the original or a certified copy of the power of attorney or other authority (if any) under which the instrument is signed, are received by the Company:
 - (i) at the office, or at such other place, or electronic address specified for that purpose in the notice of meeting; and
 - (ii) at least 48 hours before the scheduled commencement time for the meeting or adjourned or postponed meeting (as the case may be) at which the person named in the instrument proposes to vote. The scheduled commencement time is as specified in the notice of meeting.
- (b) An undated proxy is taken to be dated on the day that it is received by the Company.

12.16 Authority given by appointment

- (a) Unless the terms of the appointment specify to the contrary, an appointment by a Voting Member confers authority on a proxy, attorney or Representative:
 - (i) to agree to a General Meeting being convened by shorter notice than is required by the Act or by this Constitution;
 - (ii) to speak to any proposed resolution; and
 - (iii) to demand or join in demanding a poll on any resolution.

- (b) Unless the terms of the appointment specify to the contrary, even if the instrument of appointment refers to specific resolutions and directs the proxy, attorney or Representative on how to vote on those resolutions, the appointment is taken to confer authority:
 - (i) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (ii) to vote on any procedural motion; and
 - (iii) to act generally at the meeting.
- (c) Unless the terms of the appointment specify to the contrary, if the instrument of appointment refers to a specific meeting to be held at a specified time or venue and the meeting is postponed or adjourned or changed to another venue, then the appointment confers authority to attend and vote:
 - (i) at the postponed or adjourned meeting; or
 - (ii) at the new venue.
- (d) An appointment of a proxy may be a standing proxy — that is, the appointment under the proxy remains valid until it is revoked by the Voting Member that made the appointment.
- (e) The instrument appointing a proxy may provide for the chair to act as proxy in the absence of any other appointment or if the person or persons nominated fails or fail to attend the meeting.
- (f) The instrument appointing a proxy may direct the manner in which the proxy is to vote in respect of a particular resolution.
- (g) If a proxy is appointed to vote on a particular resolution by more than one Voting Member and the instruments appointing the proxy direct the proxy to vote on the resolution in different ways, then the proxy must not vote on a show of hands taken on the resolution.

12.17 Representative, proxy or attorney at postponed General Meeting

Where:

- (a) by the terms of an instrument appointing a Representative, proxy or attorney that appointed person is authorised to attend and vote at a General Meeting on behalf of the appointing Member to be held on a specified date or at a General Meeting or General Meetings to be held on or before a specified date; and
- (b) the date for the meeting is postponed to a date later than the date specified in the instrument,

then that later date is substituted for the date specified in the instrument appointing that appointed person, unless the appointing Member notifies the Company in writing to the contrary at least 48 hours before the time at which the postponed meeting is to be held.

12.18 Non-receipt of notice

The non-receipt of a notice convening, cancelling or postponing a General Meeting by, or the accidental omission to give a notice of that kind to, a person entitled to receive it, does not invalidate any resolution passed at the General Meeting or at a postponed meeting or the cancellation or postponement of the meeting.

13. PROCEEDINGS AT GENERAL MEETINGS

13.1 Number for a quorum

Five Voting Members eligible to vote must be present in person, online (where a Virtual Meeting or a hybrid meeting) or by proxy for a quorum to exist at a General Meeting.

13.2 Requirement for a quorum

An item of business may not be transacted at a General Meeting unless a quorum is present and remains throughout the General meeting.

13.3 Quorum and time – Special General Meetings

If within 30 minutes after the time appointed for a Special General Meeting, or at any other time during the meeting, a quorum is not present, the meeting:

- (a) if convened by, or on requisition of, Members is dissolved; and
- (b) in any other case stands adjourned to such other day, time and place as the chair determines.

13.4 Quorum and time – AGMs

- (a) If within 30 minutes after the time appointed for an AGM, or at any other time during the meeting, a quorum is not present, the AGM stands adjourned to such other day, time and place as the chair determines.
- (b) Where an AGM has been adjourned under **clause 13.4(a)**, such Voting Members as are represented by their appointed, authorised representative on the adjourned date shall constitute a quorum.

13.5 Chair to preside over General Meetings

- (a) The Chair is entitled to preside as chair at General Meetings.
- (b) If a General Meeting is convened and there is no Chair, or the Chair is not present within 15 minutes after the time appointed for the meeting or is unable or unwilling to act, the following may preside as chair (in order of entitlement):
 - (i) a Director (or other person) chosen by a majority of the Directors present;
 - (ii) the only Director present;
 - (iii) the CEO; or
 - (iv) an authorised representative of a Voting Member who is entitled to vote and is chosen by a majority of the Voting Members represented by their authorised representatives.

13.6 Conduct of General Meetings

- (a) The chair:
 - (i) has charge of the general conduct of the meeting and of the procedures to be adopted;
 - (ii) may require the adoption of any procedure which in his or her opinion is necessary or desirable for proper and orderly debate or discussion or the proper and orderly casting or recording of votes; and
 - (iii) may, having regard where necessary to the Act, terminate discussion or debate on any matter whenever they consider it necessary or desirable for the proper conduct of the meeting.
- (b) A decision by the chair under this **clause 13.6** is final.

13.7 Adjournment of General Meeting

- (a) The chair may with the consent of any meeting at which a quorum is present, and must if so directed by a resolution of the Voting Members, adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting.
- (b) The adjournment may be either to a later time at the same meeting or to an adjourned meeting at any time and place agreed by vote of the members present.
- (c) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

13.8 Notice of adjourned meeting

- (a) It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for 30 days or more.
- (b) In that case, at least the same period of notice as was originally required for the meeting must be given for the adjourned meeting.

13.9 Questions decided by majority

Subject to the requirements of the Act and except in the case of a Special Resolution, a resolution is carried if a simple majority of the votes cast on the resolution are in favour of it.

13.10 Equality of votes

Where an equal number of votes are cast in favour of and against the resolution, the resolution is not carried. For the avoidance of doubt the chair does not have a casting vote where voting is equal.

13.11 Declaration of results

- (a) At any General Meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is properly demanded and the demand is not withdrawn.

- (b) A declaration by the chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost and an entry to that effect in the minutes of the meetings of the Company, is conclusive evidence of the fact.
- (c) Neither the chair nor the minutes need state, and it is not necessary to prove, the number or proportion of the votes recorded for or against the resolution.

13.12 Poll

- (a) If a poll is properly demanded in accordance with the Act or by the chair of the meeting, it must be taken in the manner and at the date and time directed by the chair, and the result of the poll is the resolution of the meeting at which the poll was demanded. On a poll each Voting Member will have the number of votes fixed under **clause 14**.
- (b) A poll demanded on the election of a chair or on a question of adjournment must be taken immediately.
- (c) A demand for a poll may be withdrawn.
- (d) A demand for a poll does not prevent the General Meeting continuing for the transaction of any business other than the question on which the poll was demanded.

13.13 Objection to voting qualification

- (a) An objection to the right of a person to attend or vote at a General Meeting (including an adjourned meeting):
 - (i) may not be raised except at that meeting; and
 - (ii) must be referred to the chair, whose decision is final.
- (b) A vote not disallowed under the objection is valid for all purposes.

13.14 Chair to determine any poll dispute

If there is a dispute about the admission or rejection of a vote, the chair must decide it and the chair's decision made in good faith is final.

13.15 Electronic voting

Voting by electronic communication at and in relation to General Meetings may be permitted from time to time in such instances as the Directors may determine and shall be held in accordance with procedures prescribed by the Directors.

13.16 Minutes

- (a) The Company must ensure that minutes are taken and kept of each General Meeting.
- (b) The minutes must record:
 - (i) the business considered at the meeting;
 - (ii) any resolution on which a vote is taken and the result of the vote; and

- (iii) the names of persons present at all meetings.
- (c) In addition, the minutes of each Annual General Meeting must include:
 - (i) the financial statements submitted to the Members in accordance with the Act;
 - (ii) the certificate signed by two Directors certifying that the financial statements give a true and fair view of the financial position and performance of the Company; and
 - (iii) any audited accounts and auditor's report or report of a review accompanying the financial statements that are required under the Act.
- (d) The minutes of General Meetings shall be available for inspection and copying by the Members.

14. VOTES OF MEMBERS

14.1 Votes of Members

- (a) At a General Meeting, on a show of hands, each Voting Member shall have one vote.
- (b) At a General Meeting, on a poll, each:
 - (i) Life Member shall have one vote; and
 - (ii) Association shall have one vote, plus one additional vote for each Registered Participant of that Association it represents.
- (c) For the purposes of (ii) above, a Registered Participant must not be counted in the votes of more than one Association.
- (d) An Association's vote will be exercised by its appointed, authorised Representative.
- (e) No Members other than Voting Members are entitled to vote at General Meetings.

14.2 Resolutions not in General Meeting

- (a) If all Voting Members sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms is deemed to have been passed at a General Meeting of the Company held at the time on which the document was signed by the last Voting Member.
- (b) For the purposes of **clause 14.2(a)**, two or more separate documents containing statements in identical terms, each of which is signed by one or more Voting Members, are deemed together to constitute one document containing a statement in those terms signed by those Members on the respective days on which they signed the separate documents.
- (c) An email or other form of visible or other electronic communication under the name of a Voting Member is deemed to be a document in writing signed by that Member for the purpose of this clause.

15. STAKEHOLDER FORUMS

15.1 Power to convene Stakeholder Forums

- (a) The Directors may from time to time convene a Stakeholder Forum.
- (b) The Directors shall on the written requisition of 5% of the Voting Members convene a Stakeholder Forum.

15.2 Notice of Stakeholder Forums

Where a Stakeholder Forum is convened:

- (a) Notice of a Stakeholder Forum must be given to all Members and Directors entitled to attend the General Meeting. Other parties may be invited to the Stakeholder Forum by the Directors.
- (b) At least 14 days' notice of the time and place of a Stakeholder Forum must be given, together with any items for discussion proposed by the Directors or a Member.

15.3 Conduct of a Stakeholder Forum

- (a) A Stakeholder Forum is to provide opportunity for open discussion on all matters relating to Basketball in New South Wales and all attendees shall have an opportunity to participate in discussions. The Directors may also use the meeting to discuss, inter alia, the current or proposed Business Plan, Budgets, financial results and By-laws.
- (b) The format of proceedings at a Stakeholder Forum shall be at the discretion of the Directors and may include plenary sessions, small group workshops or guest speakers.
- (c) The Directors shall determine who shall chair the Stakeholder Forum, including who shall lead or facilitate particular discussion items.
- (d) There shall be no quorum requirement for a Stakeholder Forum.
- (e) Items for discussion which were not included in the notice issued under **clause 15.2(b)** may, with the permission of the chair, be raised for discussion.

15.4 Consensus at Stakeholder Forum

A resolution may be made by consensus of the forum for consideration by the Directors. Directors are not bound by any resolution passed at the forum.

16. DIRECTORS

16.1 Composition of the Board

The Board shall consist of:

- (a) six Elected Directors all of whom will be elected under **clause 17.4**; and
- (b) up to three additional Appointed Directors who shall be appointed in accordance with **clause 18**.

16.2 Qualifications

- (a) The Board may determine from time to time job descriptions and qualifications for Directors.
- (b) A person who holds an Official Position is not eligible to be elected as a Director. For the avoidance of doubt if a person who holds an Official Position nominates to be considered for election as a Director and is elected as a Director that person cannot take office as a Director until they have resigned from the Official Position. A copy of such resignation must be received by the CEO within 48 hours of the General Meeting at which the person is elected.
- (c) The following individuals are ineligible for nomination or election as a Director of the Company:
 - (i) a person subject to open disciplinary proceedings of the Company or BA at the close of nominations or the proposed date of appointment;
 - (ii) a person subject to any penalty imposed by BA, or by the Company under **clause 10**, that prohibits them holding an official position with the Company that is applicable at the close of nominations or the proposed date of appointment;
 - (iii) a person prohibited from serving as a Director by virtue of the Act; and
 - (iv) a person seeking election as an Elected Director who cannot, by reason of **clause 17.6(a)**, serve a full term as an Elected Director.
- (d) A person who has been an employee of the Company is not eligible to be elected or appointed as a Director for a period of three years since they ceased being an employee. If an employee of the Company is terminated by the Company for any reason, they are ineligible for election or appointment as a Director.

16.3 Current Board

The terms of the Directors in office at the date of the adoption of this Constitution shall continue as provided for on the relevant date of election or appointment, subject to **clause 17.5(b)** and notwithstanding the operation of **clause 17.6(a)**. Those Directors may be re-elected or re-appointed for a further term, as the case may be, subject always to this Constitution.

16.4 Remuneration of Directors

Subject to **clause 16.5**, a Director may not be paid for services as a Director but, with the approval of the Directors and subject to the Act, may be:

- (a) paid by the Company for services rendered to it other than as a Directors; and
- (b) reimbursed by the Company for their reasonable travelling, accommodation and other expenses when:
 - (i) travelling to or from meetings of the Directors, a Committee or the Company; or

- (ii) otherwise engaged on the affairs of the Company.

16.5 Honorarium

The Voting Members may in General Meeting by ordinary resolution determine to pay, on an ongoing or once-off basis:

- (a) the Chair; or
- (b) a Director,

an honorarium for services as a Director.

17. ELECTED DIRECTORS

17.1 Nomination for Board

Nominations for Elected Directors shall be called for by the Company at least 45 days prior to the General Meeting at which the election is to be held (usually the AGM).

17.2 Form of Nomination

Nominations must be:

- (a) in writing on the prescribed form (if any);
- (b) signed by an authorised representative of a Voting Member;
- (c) certified by the nominee expressing their willingness to accept the position for which they are nominated; and
- (d) delivered to the Company not less than 28 days before the date fixed for the holding of the General Meeting.

17.3 Nominations Committee

- (a) A Nominations Committee shall be formed, the role of which shall include the task of identifying candidates to fill Director vacancies (including casual vacancies) and assessing all candidates for Director vacancies.
- (b) The Nominations Committee:
 - (i) has the power to determine that a nomination is ineligible for further consideration by the Company, the Directors or the Voting Members (as applicable) where the candidate is prohibited from serving as a Director under this Constitution; and
 - (ii) must make recommendations to the Directors or Voting Members (as applicable) as to the suitability or otherwise of eligible candidates.
- (c) The composition of the Nominations Committee, and its complete and specific duties, functions and rules are defined in the terms of reference, which will provide that:
 - (i) the chair of the Nominations Committee must not be any of a Director, Member, employee of the Company, Registered Participant or hold an Official Position;

- (ii) the Nominations Committee will have regard to the diversity of the Directors, using best endeavours to ensure that no one gender constitutes more than 60% of the Directors for more than 13 months; and
- (iii) the Nominations Committee must utilise a skills matrix as part of its assessment of candidates under **clause 17.3(b)(ii)**.

17.4 Elections

- (a) If the number of nominations received for positions on the Board is equal to the number of vacancies to be filled or if there are insufficient nominations received to fill all vacancies on the Board, then each of those nominated shall be declared elected only where an ordinary resolution is separately passed in favour of each nominee, failing which that position or positions become casual vacancies.
- (b) If there are insufficient nominations received to fill all vacancies on the Board, the positions will be deemed casual vacancies under **clause 19.1**.
- (c) If the number of nominations exceeds the number of vacancies to be filled, voting papers shall be prepared containing the names of the candidates in alphabetical order by surname, for each vacancy on the Board.
- (d) The voting shall be conducted in such manner and by such method as may be determined by the Board from time to time.

17.5 Term of Appointment

- (a) Subject to this Constitution, and in particular **clause 17.5(d)**, Elected Directors shall be elected in accordance with this Constitution for a term of three years, which shall commence from the conclusion of the General Meeting at which the election occurred until the conclusion of the third Annual General Meeting following.
- (b) Despite anything in this Constitution, including **clauses 17.5(a)** and **17.5(c)**:
 - (i) at the AGM held in 2024, the three individuals elected at the AGM in 2021 will retire from office and four Elected Directors shall be elected, two of whom will have a term expiring at the conclusion of the AGM held in 2026 and two of whom will have a term expiring at the conclusion of the AGM held in 2027;
 - (ii) at the AGM held in 2025, the two individuals elected at the AGM in 2023 will retire from office and two Elected Directors shall be elected for a term expiring at the conclusion of the AGM held in 2028; and
 - (iii) at the AGM held in 2026 and at each subsequent AGM, two Elected Directors must retire from office and two Elected Directors shall be elected.
- (c) In every three year period, two Elected Directors shall retire in each year, after which those Elected Directors elected to the vacancies after the first year shall retire and so on. The Elected Directors to retire and the year in which they retire will be determined by the Board. If the Board cannot agree, retirements will be determined by lot.

- (d) Notwithstanding any other clause, should any adjustment to the term of Elected Directors elected under this Constitution be necessary to ensure rotational terms in accordance with this Constitution, this shall be determined by the Board. If the Board cannot agree, retirements will be determined by lot. For the avoidance of doubt any part of a term shall be deemed a full term for the purposes of this **clause 17.5**.

17.6 Maximum term of office

- (a) A person must not serve more than:
 - (i) nine consecutive years as a Director, including where one or more of the years is as an Appointed Director; and
 - (ii) two consecutive terms as an Appointed Director in accordance with **clause 18.3(b)**.
- (b) For the purposes of **clause 17.6(a)**, where:
 - (i) service by a person as a Director during a particular term is for a period:
 - (A) less than one year, it will be treated as one full year;
 - (B) between one year and two years, it will be treated as two full years;
 - (C) between two years and three years, it will be treated as three full years; and
 - (ii) service by a person as a Director takes place immediately before the adoption of this Constitution, the number of consecutive years of service by that person before the adoption of this Constitution will be treated as service towards **clause 17.6(a)**, rounded up to the nearest full year, subject to **clause 16.3**; and
 - (iii) a person ceases to be a Director and is subsequently elected or appointed as a Director in accordance with this Constitution within one year from the date they last ceased to be a Director, the intervening period is treated as one full year of consecutive service towards article 10.7(a).
- (c) A Director who has served the maximum number of years in accordance with **clause 17.6(a)** is not eligible to be a Director for three years following the completion of their maximum term.

18. APPOINTED DIRECTORS

18.1 Appointment of Appointed Director

The Elected Directors may appoint up to three Appointed Directors in accordance with this Constitution.

18.2 Qualifications for Appointed Directors

Appointed Directors should have skills that complement and/or supplement any skill gaps that may exist in the Board, with the aim of ensuring that the Board has all the necessary skills to govern the organisation. Appointed Directors do

not need to be Individual Members or have experience in, or exposure to, Basketball.

18.3 Term of Appointment

- (a) Directors appointed under **clause 18.1** may be appointed by the Elected Directors in accordance with this Constitution for a term of up to three years, which shall commence and conclude on dates as determined by the Elected Directors.
- (b) No person who has served as an Appointed Director for two consecutive terms shall be eligible for re-appointment as an Appointed Director for at least three years following the date of conclusion of their last term as a Director, however, may submit themselves for election as an Elected Director subject to **clause 17.6**.

19. VACANCIES ON THE BOARD

19.1 Casual Vacancies

- (a) Any casual vacancy that occurs in the position of a Director may be filled by the remaining Directors from among appropriately qualified persons, subject to Nominations Committee assessment under **clause 17.3**.
- (b) Any casual vacancy may only be filled for the remainder of the vacating Director's term under this Constitution.

19.2 Grounds for Termination of Director

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

- (a) dies;
- (b) becomes bankrupt or insolvent under administration or makes any arrangement or composition with their creditors generally;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in anyway under the law relating to mental health;
- (d) resigns their office in writing to the Company;
- (e) is absent without the consent of the Board from meetings of the Board held during a period of three months;
- (f) is an employee of the Company or a Voting Member;
- (g) holds an Official Position with a Voting Member;
- (h) is found, as a result of the procedure outlined in the applicable policy, to have breached a Company or BA policy;
- (i) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of their interest;
- (j) is removed by the Voting Members in accordance with the Act; or
- (k) would otherwise be prohibited from being a director of a corporation under the Act.

19.3 Board May Act

In the event of a casual vacancy or vacancies in the office of a Director or Directors, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of the Board, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum or to convene a General Meeting.

20. POWERS AND DUTIES OF DIRECTORS

20.1 Directors to manage the Company

The Directors are to manage the Company's business and may exercise those of the Company's powers that are not required, by the Act or by this Constitution, to be exercised by the Voting Members in General Meeting.

20.2 Specific powers of Directors

Without limiting **clause 20.1**, the Directors may exercise all the Company's powers to borrow or raise money, to charge any property or business or give any other security for a debt, liability or obligation of the Company or of any other person.

20.3 Time, etc.

Subject to the Act, where this Constitution requires that something be done by a particular time, or within a particular period, or that an event is to occur or a circumstance is to change on or by a particular date, the Directors may in their absolute discretion extend that time, period or date as they think fit.

20.4 Delegation of powers

- (a) The Directors may, by resolution or by power of attorney or writing under seal, delegate any of their powers to the CEO or any employee of the Company or any other person as they think fit.
- (b) Any delegation by the Directors of their powers:
 - (i) must specify the powers delegated, any restrictions on, and conditions attaching to, the exercise of those powers and the period during which that delegation is to be in force;
 - (ii) may be either general or limited in any way provided in the terms of the delegation;
 - (iii) need not be to a specified person but may be to any person holding, occupying or performing the duties of a specified office or position; and
 - (iv) may include the power to delegate.
- (c) If exercising a power depends on a person's opinion, belief or state of mind, then that power may be exercised by the delegate on the delegate's opinion, belief or state of mind about that matter.
- (d) Any power exercised by a delegate is as effective as if it had been exercised by the Directors.

20.5 Code of Conduct

The Directors must:

- (a) adopt a code of conduct for Directors; and
- (b) periodically review the code of conduct in light of the general principles of good corporate governance.

21. PROCEEDINGS OF DIRECTORS

21.1 Directors meetings

- (a) Subject to **clause 21.1(b)**, the Directors may meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit.
- (b) The Directors must meet at least six times in each calendar year.

21.2 Questions decided by majority

A question arising at a Directors' meeting is to be decided by a majority of votes of the Directors present in person or online (where a Virtual Meeting or a hybrid meeting) and entitled to vote. Each Director present has one vote on a matter arising for decision by Directors.

21.3 Chair's casting vote

The chair of the meeting will not have a casting vote.

21.4 Quorum

Five Directors present in person or online (where a Virtual Meeting or a hybrid meeting) constitutes a quorum.

21.5 Convening meetings

- (a) A Director may, and the CEO on the request of a Director must, convene a Directors' meeting.
- (b) Notice of a meeting of Directors must be given individually to each Director (except a Director on leave of absence approved by the Directors). Notice of a meeting of Directors may be given in person, or by post or by telephone or other electronic means.
- (c) A Director may waive notice of a meeting of Directors by giving notice to that effect to the Company in person or by post or by telephone or other electronic means.
- (d) A person who attends a meeting of Directors waives any objection that person may have in relation to a failure to give notice of the meeting.
- (e) The non-receipt of a notice of a meeting of the Directors or the accidental omission to give notice of a meeting to a person entitled to receive notice does not invalidate anything done (including the passing of a resolution) at that meeting of Directors.

21.6 Election of Chair

- (a) The Directors must elect by majority vote one of their number to the office of Chair, and must elect a new Chair at the next Board meeting following the Chair's retirement or expiry of their term under (b) below.
- (b) The Director elected to the office of Chair under **clause 21.6(a)** will remain Chair for the term determined by the Directors, not to exceed three years, or otherwise earlier expiring when their term as a Director expires or they are removed as Chair by the Directors, and shall chair any Board meeting. A Director elected as Chair may be re-elected to that position in following years so, long as he or she remains a Director.
- (c) Despite **clause 21.6(b)**, if:
 - (i) there is no person elected as Chair; or
 - (ii) the Chair is not present within 15 minutes after the time appointed for the holding of the meeting; or
 - (iii) the Chair is unwilling to act,the Directors present may elect one of their number to be chair of the meeting.

21.7 Circulating resolutions

- (a) The Directors may pass a resolution without a Directors' meeting being held if notice in writing of the resolution is given to all Directors and a majority of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of Directors) sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of the document may be used for signing by the Directors if the wording of the resolution and statement is identical in each copy. An email or other document or transmission produced by electronic means under the name of a Director with the Director's authority is taken to be a document signed by the Director for the purposes of **clause 21.7(a)** and is taken to be signed when received by the Company in legible form.
- (c) The resolution is passed when the last Director required to achieve the required majority signs or assents.

21.8 Validity of acts of Directors

Everything done at a Directors' meeting or a Committee meeting, or by a person acting as a Director, is valid even if it is discovered later that there was some defect in the appointment, election or qualification of any of them or that any of them was disqualified or had vacated office.

21.9 Directors' interests

- (a) A Director is disqualified by holding any place of profit or position of employment in the Company, any Member or in any company or incorporated association in which the Company is a shareholder or otherwise interested or from contracting with the Company either as vendor, purchaser or otherwise except with express resolution of approval

of the Board. Any such contract or any contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested will be voided for such reason.

(b) A director shall declare his or her interest in any:

- (i) contractual matter;
- (ii) selection matter;
- (iii) disciplinary matter; or
- (iv) financial matter,

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

- (c) The nature of the interest of such Director must be declared by the Director at the meeting of the Board at which the contract or other matter is first taken into consideration if the interest then exists or in any other case at the first meeting of the Board after the acquisition of the interest. If a Director becomes interested in a contract or other matter after it is made or entered into the declaration of the interest must be made at the first meeting of the Board held after the Director becomes so interested.
- (d) A general notice that a Director is a member of any specified firm or company and is to be regarded as interest in all transactions with that firm or company is sufficient declaration under **clause 21.9(c)** as regards such Director and the said transactions. After such general notice it is not necessary for such Director to give a special notice relating to any particular transaction with that firm or company.
- (e) It is the duty of the Company Secretary to record in the minutes any declaration made or any general notice given by a Director in accordance with **clauses 21.9(c)** or **21.9(d)**.

21.10 Minutes

- (a) The Directors must cause minutes of meetings to be made and kept according to the Act.
- (b) The minutes of Directors meetings shall not be available for inspection or copying by the Members.

22. VIRTUAL MEETINGS OF THE COMPANY

22.1 Virtual Meeting

- (a) A General Meeting or a Directors' Meeting may be held by means of a Virtual Meeting, provided that:

- (i) the number of Members or Directors (as applicable) participating is not less than a quorum required for a General Meeting or Directors' Meeting (as applicable);
 - (ii) the meeting is convened and held in accordance with the Act.
- (b) All provisions of this Constitution relating to a meeting apply to a Virtual Meeting in so far as they are not inconsistent with the provisions of this **clause 22**.

22.2 Conduct of Virtual Meeting

The following provisions apply to a Virtual Meeting of the Company:

- (a) all persons participating in the meeting must be linked by telephone, audio-visual or other instantaneous means for the purpose of the meeting;
- (b) each of the persons taking part in the meeting must be able to hear and be heard by each of the other persons taking part at the commencement of the meeting and each person so taking part is deemed for the purposes of this Constitution to be present at the meeting;
- (c) at the commencement of the meeting each person's presence must be distinguishable to the chair;
- (d) a person may not leave a Virtual Meeting by disconnecting his or her telephone, audio-visual or other communication equipment unless that person has previously notified the chair;
- (e) a person may conclusively be presumed to have been present and to have formed part of a quorum at all times during a Virtual Meeting unless that person has previously notified the chair of leaving the meeting; and
- (f) a minute of proceedings of a Virtual Meeting is sufficient evidence of the proceedings and of the observance of all necessary formalities if the minute is certified to be a correct minute by the chair.

23. CEO

23.1 Appointment of CEO

The Directors will appoint a CEO.

23.2 Powers, duties and authorities of CEO

- (a) The CEO holds office on the terms and conditions (including any remuneration) and with the powers, duties and authorities, determined by the Directors.
- (b) The exercise of those powers and authorities, and the performance of those duties, by the CEO are subject at all times to the control of the Directors.

23.3 Suspension and removal of CEO

Subject to the terms and conditions of the appointment, the Directors may suspend or remove the CEO from that office.

23.4 Delegation by Directors to CEO

The Directors may delegate to the CEO the power (subject to such reservations on the power as are decided by the Directors) to conduct the day-to-day management and control of the business and affairs of the Company. The delegation will include the power and responsibility to:

- (a) develop business plans, budgets, strategies, policies, processes and codes of conduct for consideration by the Directors and to implement them to the extent approved by the Directors;
- (b) manage the financial and other reporting mechanisms of the Company;
- (c) approve and incur expenditure subject to specified expenditure limits;
- (d) sub-delegate his or her powers and responsibilities to employees or internal management committees of the Company; and
- (e) any other powers and responsibilities which the Directors consider appropriate to delegate to the CEO.

23.5 CEO to attend meetings

If appointed the CEO is entitled, subject to a determination otherwise by the Directors, to attend all meetings of the Company, all meeting of the Directors and any Committees and may speak on any matter, but does not have a vote.

24. COMPANY SECRETARY

24.1 Appointment of Company Secretary

There must be at least one Company Secretary who is to be appointed by the Directors.

24.2 Suspension and removal of Company Secretary

The Directors may suspend or remove a Company Secretary from that office.

24.3 Powers, duties and authorities of Company Secretary

A Company Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, delegated to them by the Directors.

25. COMMITTEES

25.1 Committees

The Directors may by written instrument delegate any of their powers to Committees consisting of such persons they think fit (including Directors, individuals and consultants), and may vary or revoke any delegation.

25.2 Powers delegated to Committees

- (a) A Committee must exercise the powers delegated to it according to the terms of the delegation and any directions of the Directors. A Committee is responsible to and reports to the Board.

- (b) Powers delegated to and exercised by a Committee are taken to have been exercised by the Directors.

25.3 Committee meetings

Committee meetings are governed by the provisions of this Constitution dealing with Directors' meetings, as far as they are capable of application.

25.4 Finance & Audit Committee

- (a) A Finance & Audit Committee must be established by the Directors.
- (b) The composition, duties and functions of the Finance & Audit Committee shall be defined in written terms of reference.
- (c) Notwithstanding anything in this Constitution, including **clauses 16.4** and **16.5**, the Directors may resolve from time to time to pay the chair of the Finance & Audit Committee an honorarium in exchange for their service as chair, which must not exceed an approved honorarium for the Chair under **clause 16.5(a)**.

26. BY-LAWS

26.1 Making and amending By-Laws

- (a) The Directors may from time to time make By-Laws which in their opinion are necessary or desirable for the control, administration and management of the Company's affairs and Basketball in New South Wales and may amend, repeal and replace those By-Laws.
- (b) Interpretation of the By-Laws is solely the responsibility of the Directors.

26.2 Effect of By-Laws

A By-Law:

- (a) is subject to this Constitution;
- (b) must be consistent with this Constitution; and
- (c) when in force, is binding on all Members and has the same effect as a provision in this Constitution.

27. KEEPING AND INSPECTION OF RECORDS

27.1 Records

- (a) The CEO and Company Secretary shall establish and maintain proper records and minutes concerning all transactions, business, meetings and dealings of the Company and the Board and shall produce these as appropriate at each Board meeting or General Meeting.
- (b) Records and minutes may be kept in written or electronic form. If kept in electronic form, the records and minutes must be able to be converted into hard copy.
- (c) The Directors will cause the Company records to be kept for a period of seven years from their creation.

27.2 Inspection of Records

- (a) Subject to the Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open for inspection by Members.
- (b) A Member (other than a Member who is also a Director) does not have the right to inspect any document of the Company except as permitted by law or authorised by the Directors.
- (c) In accordance with the Act, Members may inspect the Company's:
 - (i) registers under the Act; and
 - (ii) minute books for General Meetings and resolutions of Members passed without a General Meeting.

28. ACCOUNTS

28.1 Records Kept in Accordance with Act

Books, documents, securities and proper accounting and other records shall be kept in accordance with the Act, generally accepted accounting principles and/or any applicable code of conduct. All such records and the books of account shall be kept in the care and control of the CEO.

28.2 Board to Submit Accounts

The Board shall submit to the Annual General Meeting the accounts of the Company in accordance with the Act and will distribute copies of financial statements as required by the Act.

28.3 Transactions

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Directors determine from time to time.

28.4 Auditor

- (a) A properly qualified auditor or auditors shall be appointed by the Directors and the remuneration of such auditor or auditors fixed and duties regulated in accordance with the Act.
- (b) Members may remove an auditor from office by resolution made at a General Meeting in accordance with the Act.

29. NOTICE

29.1 Document includes notice

In this **clause 29**, document includes a notice.

29.2 Methods of service on a Member

The Company may give a document to a Member:

- (a) personally;
- (b) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or
- (c) by sending it to an email or other electronic address nominated by the Member.

29.3 Methods of service on the Company

A Member may give a document to the Company:

- (a) by delivering it to the Company's registered office;
- (b) by sending it by post to the Company 's registered office; or
- (c) by sending it to an email or other electronic address nominated by the Company.

29.4 Post

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, or sent from an address outside Australia, must be sent by airmail,

and in either case is taken to have been received on the second business day after the date of its posting.

29.5 Electronic transmission

If a document is sent by email or any other form of electronic transmission, delivery of the document is taken to:

- (a) be effected by properly addressing and transmitting the email or other electronic transmission; and
- (b) have been delivered on the business day following its transmission.

30. INDEMNITY

30.1 Indemnity of officers

- (a) This **clause 30** applies to every person who is or has been:
 - (i) a Director, CEO or Company Secretary of the Company; and
 - (ii) to any other officers, employees, former officers or former employees of the Company or of its related bodies corporate as the Directors in each case determine.

Each person referred to in this paragraph (a) is referred to as an **Indemnified Officer** for the purposes of the rest of **clause 30**.

- (b) The Company will indemnify each Indemnified Officer out of the property of the Company against:

- (i) every liability (except a liability for legal costs) that the Indemnified Officer incurs as an Officer of the Company or of a related body corporate of the Company; and
- (ii) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the Indemnified Officer becomes involved as an officer of the Company or of a related body corporate of the Company,

unless:

- (iii) the Association is forbidden by statute to indemnify the person against the liability or legal costs; or
- (iv) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

30.2 Insurance

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring an Indemnified Officer against liability that the Indemnified Officer incurs as an officer of the Company or of a related body corporate of the Company including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

30.3 Deed

The Company may enter into a deed with any Indemnified Officer or a deed poll to give effect to the rights conferred by **clause 30.1** on the terms the Directors think fit (as long as they are consistent with **clause 30.1**).

31. WINDING UP

31.1 Contributions of Members on winding up

- (a) Each Voting Member must contribute to the Company's property if the Company is wound up while they are a Member or within one year after their membership ceases.
- (b) The contribution is for:
 - (i) payment of the Company's debts and liabilities contracted before their membership ceased;
 - (ii) the costs of winding up; and
 - (iii) adjustment of the rights of the contributories among themselves,and the amount is not to exceed \$1.00.
- (c) No other Member must contribute to the Company's property if the Company is wound up.

31.2 Excess property on winding up

- (a) If on the winding up or dissolution of the Company, and after satisfaction of all its debts and liabilities, any property remains, that property must be given or transferred to another body or bodies:
 - (i) having objects similar to those of the Company; and
 - (ii) whose constitution prohibits (or each of whose constitutions prohibit) the distribution of its or their income and property among its or their members to an extent at least as great as is imposed under this Constitution.
- (b) That body is, or those bodies are, to be determined by the Voting Members at or before the time of dissolution or, failing that determination, by a judge who has or acquires jurisdiction in the matter.

32. COMMON SEAL

- (a) If the Company has a common seal it shall:
 - (i) be kept in the custody of the CEO or Company Secretary; and
 - (ii) not be affixed to any instrument except by the authority of the Board and the affixing of the common seal shall be attested by the signatures of two Directors.
- (b) A Director may not sign a document to which the seal of the Company is fixed where the Director is interested in the contract or arrangement to which the document relates.

33. SOURCE OF FUNDS

The funds of the Company may be derived from annual membership subscriptions, fees and levies payable by Members, donations, grants, sponsorships and such other sources as the Directors determine.

34. TRANSITIONAL ARRANGEMENTS

- (a) Notwithstanding any other rule of this Constitution, the transitional arrangements set out in this **clause 34** shall apply from the date of adoption of this Constitution.
- (b) The directors of the Company in place immediately prior to approval of this Constitution under the Act shall continue in accordance with **clause 16.3**, subject to **clause 17.5(d)**, and thereafter the positions of the Directors shall be filled, vacated and otherwise dealt with in accordance with this Constitution.
- (c) Any consecutive years served by each Director, or a term being served by an individual as an appointed director, immediately prior to approval of this Constitution under the Act, shall count towards the maximum consecutive number of years under **clause 17.6(a)(i)**, or the maximum consecutive terms as an Appointed Director under **clause 17.6(a)(ii)**, after the adoption of this Constitution, subject to **clause 16.3**.
- (d) All by-laws and regulations of the Company in force at the date of the approval of this Constitution insofar as such by-laws and regulations are

not inconsistent with, or have been replaced by this Constitution, shall be deemed to be By-Laws under **clause 26**.

- (e) Any honorarium payable to the Chair approved by the Voting Members prior to the date of adoption of this Constitution has effect from the date of adoption of this Constitution under **clause 16.5(a)**.
 - (f) All members who are, prior to the approval of this Constitution, Members of the Company shall be deemed Members of the Company from the time of approval of this Constitution under the Act. All such Members shall provide the Company with such details as may be required by the Company under this Constitution within three months of the approval of this Constitution under the Act.
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