

# Constitution of the Albany Basketball Association Inc.

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## PART 1 - PRELIMINARY

### 1.1 Name of Association

The name of the Association is the Albany Basketball Association Inc., hereafter known as the 'Association'.

### 1.2 Objects of Association

The principal objects of the Association are:

- (1) To lead, manage and develop the game of basketball in Albany;
- (2) To conduct and coordinate basketball matches and competition in Albany;
- (3) To collaborate with other Associations or sporting bodies to encourage and foster the sport of basketball;
- (4) To encourage and promote healthy lifestyles and active participation to our members and the wider community;
- (5) To facilitate a development pathway for our players, officials and volunteers.

### 1.3 Powers of the Association

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

### 1.4 Terms Used

In these rules, unless the contrary intention appears —

**Act** means the *WA Associations Incorporation Act 2015*; its amendments and any other legislation that may come into force to replace or supplement this Act and shall form part of these Rules;

**AGM** means the Annual General Meeting;

**Association** means the incorporated association to which these rules apply;

**books**, of the Association, includes the following —

- (a) a register;
- (b) financial records, financial statements or financial reports, however compiled, recorded or stored;
- (c) a document;
- (d) any other record of information;

**by laws** mean the operational guidelines, policies and procedures which allow the organisation to operate;

**chairperson** means the Committee member holding the chair at meetings of the Association;

**Committee** means the Executive committee of the Association;

**committee meeting** means a meeting of the Executive committee;

**committee member** means a member of the Executive committee;

**department** means the government department with responsibility for administering the *Associations Incorporation Act (2015) WA*;

**executive meeting** means a meeting referred to in rule 5.1;

**executive member** means person referred to in rule 4.1;

**financial records** include:

- a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and
- b) documents of prime entry; and
- c) working papers and other documents needed to explain —
  - (i) the methods by which financial statements are prepared; and
  - (ii) adjustments to be made in preparing financial statements;

**financial statements** mean the financial statements in relation to the Association required under Part 5 Division 3 of the Act;

**financial year** commences on 1 June and ending on 31 May in the following year;

**general meeting**, of the Association means a meeting of the Association that all members are entitled to receive notice of and to attend;

**Life member** as defined in rule 3.2(d) is considered an ordinary member and has a deliberative vote at all general meetings. For the purposes of this Constitution where ever reference is made to 'Ordinary Members' it shall include Life Members;

**poll** means voting conducted in written form (as opposed to a show of hands);

**register of members** means the register of members referred to in section 53 of the Act;

**rules** mean the section of this Constitution;

**special general meeting** means a meeting convened in accordance with rule 5.9, at which only business that has been described in the notice may be transacted;

**special resolution** means a resolution passed by three-fourths of the voting members at a general meeting in accordance with section 51 of the Act;

**subcommittee** means a subcommittee appointed by the committee under rule 4.15;

**tier 1 association** means an incorporated association to which section 64(1) of the Act applies;

**tier 2 association** means an incorporated association to which section 64(2) of the Act applies;

**tier 3 association** means an incorporated association to which section 64(3) of the Act applies.

## PART 2 — ASSOCIATION TO BE NOT FOR PROFIT BODY

### 2.1 Not-For-Profit Body

- (1) The property and income of the Association must be applied solely towards the promotion of the objects or purposes of the Association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to any member, except in good faith in the promotion of those objects or purposes.
- (2) A payment may be made to a member out of the funds of the Association only if it is authorised under sub-rule (3).
- (3) A payment to a member out of the funds of the Association is authorised if it is —
  - a) the payment in good faith to the member as reasonable remuneration for any services provided to the Association, or for goods supplied to the Association in the ordinary course of business; or
  - b) the reimbursement of reasonable expenses properly incurred by the member on behalf of the Association.

### 2.2 Status and Recognition of Basketball WA

- (1) Basketball WA is recognised by the Government of Western Australia, Basketball Australia and other sporting organisations as the controlling body for the sport of basketball in Western Australia;
- (2) Basketball WA is the only sporting body in Western Australia affiliated to Basketball Australia in respect of the sport of basketball;
- (3) The Members acknowledge and agree that the Association will:
  - a) be or remain incorporated in Western Australia;
  - b) use its best endeavours to comply with and be bound by the standards and technical requirements of Basketball WA; and
  - c) to the best of its ability, uphold and enforce the by-laws, policies and procedures published from time to time by Basketball Australia and Basketball WA.

## PART 3 — MEMBERS

### 3.1 Membership

- (1) Membership of the Association is open to any person, or club who supports the objects of the Association.
- (2) An individual who is aged 18 or older is eligible to apply for membership that confers full voting rights.
- (3) An individual who is aged under 18 is eligible to apply for a class of membership that does not confer voting rights.

### 3.2 Categories of Membership

- (1) The Members of the Association shall consist of the following ordinary members and any associate member provided under sub-rule (2):
  - a) **Adult Members** - Adult membership shall be given to all financial members eighteen (18) years of age and over. All Ordinary Members shall have one vote at the Annual General Meeting.
  - b) **Life Members** - A Life Member is a member of long standing, who has rendered meritorious service and who has been recommended to an Annual General Meeting by the Committee and elected by a three quarters majority of ordinary members present. There shall not be more than one Life Member elected in any one calendar year. Life members shall enjoy all the privileges of ordinary membership and are not subject to an annual membership fee.
- (2) Associate Members shall consist of:
  - a) **Junior Members** - Junior Membership shall be given to all financial registered and players under eighteen (18) years of age. Junior Members will automatically become Adult Members upon turning the age of 18. Junior members have no voting rights; and
  - b) the Committee has the right and power from time to time to create new categories of associate membership and determine the eligibility criteria, rights and obligations of those associate members.
- (3) No new category of membership may be granted voting rights unless the prior approval of the members is first obtained by Special Resolution at a General Meeting.

### 3.3 Application for Membership

- (1) An application for new membership by a member must be:
  - a) In writing on the forms prescribed by the committee and lodged with the secretary for committee acceptance; and
  - b) Accompanied by the appropriate fee.
- (2) The application must specify the class of membership to which the applicant wishes to join.
- (3) The Committee must consider each application made under sub-rule (1) and at the next Committee meeting must, accept or reject that application.
- (4) The Committee shall have the right to refuse to admit any person to membership without assigning any reason for doing so.
- (5) The committee must notify the applicant of the committee's decision to accept or reject the application as soon as practicable after making the decision.

### 3.4 Becoming A Member

- (1) An applicant for membership of the Association becomes a member when;
  - a) the committee accepts the application; and
  - b) the applicant pays any membership fees payable to the Association under rule 3.10; and

- c) 30 days after payment, the member is eligible to vote in any general or special meeting (if the membership class makes them eligible for voting).
- (2) A copy of the Associations constitution and by-laws will be made available to each person who becomes a member by either;
  - a) a hard copy being given to the member, or
  - b) the member being directed to where they can view the documents at any time.

### 3.5 Affiliated Clubs

- (1) An Affiliated Club of the Association is considered as a member in it's own right and bound by clauses within these rules referring to members, as well as any clauses specifically detailing rules relating to affiliated clubs.
- (2) Each Affiliated Club must:
  - a) be incorporated under the WA Associations Incorporation Act (2015);
  - b) upon admission to membership, register its colours and uniforms with the Association;
  - c) at all times operate with, and promote, mutual trust and confidence between the Association and the Affiliated Club's members in pursuit of the objects;
  - d) comply with the Constitution, By-laws and Policies of the Association;
  - e) do all that is reasonably necessary to enable the objects of the Association to be achieved;
  - f) appoint a delegate and one substitute delegate at any time, provided that the Affiliated Club may change its delegate by notice in writing to the Association; and
  - g) be entitled to one vote on behalf of the members (who are eligible to vote) at the Annual General Meeting and Special General Meetings.
- (3) A delegate must:
  - a) be a member of the Affiliated Club they are representing;
  - b) be empowered by the Affiliated Club to vote at meetings in the best interest of the Affiliated Club;
  - c) not be an Office Holder of the Association's Executive Committee;
  - d) be a delegate for only one Affiliated Club; and
  - e) be at least 18 years of age.

### 3.6 When Membership Ceases

- (1) An Affiliated Club or person ceases to be a member when any of the following takes place —
  - a) the individual member dies;
  - b) the person resigns from the Association under rule 3.7;
  - c) the person is expelled from the Association under rule 6.2;
  - d) the Affiliated Club or person ceases to be a member under rule 3.10(3); or
  - e) the Affiliated Club winds up.
- (2) The secretary must keep a record, for at least one year after a person ceases to be a member, of
  - a) the date on which the person ceased to be a member; and
  - b) the reason why the person ceased to be a member.

### 3.7 Resignation

- (1) A member may resign from membership of the Association by giving written notice of the resignation to the secretary.
- (2) The resignation takes effect —
  - a) when the secretary receives the notice; or
  - b) if a later time is stated in the notice, at that later time.
- (3) The Club or person who has resigned from membership remains liable for any fees that are owned to the Association at the time of resignation.

### 3.8 Membership Rights

- (1) An applicant for membership of the Association becomes a member when the committee accepts the application and pays the fee;
- (2) Each applicant admitted to membership shall be:

- a) Bound by the constitution of the Association and the by-laws;
  - b) Entitled to all privileges of the specified membership;
  - c) Bound by all resolutions passed at a General meeting, whether they are present or not;
  - d) Provided with a copy or directed where to access a copy of the Association's constitution and by-laws.
- (3) Ordinary members have all the rights provided to members under this constitution including but not limited to:
- a) Receive notices from the Association;
  - b) Attend General Meetings of the Association;
  - c) Be elected or appointed to the Executive Committee; except as defined in rule 3.5.3(b); and
  - d) Be elected to any sub-committees of the Association.

### **3.9 Rights Not Transferable**

- (1) The rights of a member are not transferable and end when membership ceases.

### **3.10 Nomination Fee and Subscription**

- (1) The annual Membership subscription (if any), and any other fees, levies, charges and other amounts payable by Members (or any category of Members) to the Association, will be as determined by the Committee from time to time.
- (2) Each member must pay annually, on or before such date as the Committee from time to time determines, the subscription fees to the treasurer, or another person authorised by the committee to accept payment;
- (3) If a member has not paid the subscription fee within the period of 1 month after the due date, the member ceases to be a member on the expiry of that period.
- (4) If a person or Affiliated club who has ceased to be a member under sub-rule (3) offers to pay the subscription fee after the period referred to sub-rule (4) has expired —
- a) the committee may, at its discretion, accept that payment; and
  - b) if the payment is accepted, the person's membership is reinstated from the date the payment is accepted.

### **3.11 Register of Members**

- (1) The secretary, or another person authorised by the committee, is responsible to maintain the register of members and record in that register any change in the membership of the Association within 28 days of the change occurring.
- (2) The register must include each member's name and —
- a) A contact, postal, residential or email address of each member,
  - b) The class of membership held by the member, and
  - c) The date on which the person became a member.
- (3) The register of members must be kept at the secretary's place of residence, or at another place determined by the committee.
- (4) Subject to the limitations contained in the Privacy Act 1988 (Commonwealth) (if any), the Association shall provide a copy of the register to Basketball WA at a time and in a form acceptable to Basketball WA and shall provide regular updates of the register to Basketball WA.
- (5) An extract of the register of any members, or office bearer, will be available for inspection by members, upon request. A member may copy but not remove the register of Members.
- (6) The Committee may require a member who requests a copy of the Register to provide a statutory declaration setting out the purpose of the request and declaring that the purpose is connected with the affairs of the Association.
- (7) The Association may charge a reasonable fee to the Member for providing a copy of the Register, the amount to be determined by the Committee from time to time.

## **PART 4 — COMMITTEE**

### **4.1 Executive Committee Role**

- (1) Subject to the Act, these rules, the by-laws (if any) and any resolution passed at a general meeting, the Executive committee has power to do all things necessary or convenient to be done for the proper management of the affairs of the Association.
- (2) The Executive committee will:
  - a) Act on all issues in accordance with the Objects and shall operate for the collective and mutual benefit of the Association, and the sport of basketball;
  - b) Administer the sport of basketball in accordance with the Objects;
  - c) Develop a strategic plan and review the Associations performance in achieving its strategic directions,
  - d) Ensure an appropriate risk management framework is in place.
- (3) The Executive Committee must take all reasonable steps to ensure that the Association complies with the Act, these rules and the by-laws.

### **4.2 Composition of Executive Committee Members**

- (1) The business and affairs of the Association will be managed exclusively by an Executive Committee consisting of the four (4) elected Office Holders and up to eight (8) General Committee members.
- (2) The elected Office Holders shall be:
  - a) President;
  - b) Vice President;
  - c) Secretary;
  - d) Treasurer.
- (3) The maximum number of Executive Committee members shall not exceed (12).
- (4) A person may be an Executive Committee member if they are—
  - a) aged over 18 years of age;
  - b) are an ordinary member;
  - c) duly elected, as set out in rule 4.9, 4.10 and 4.11 and
  - d) are not disqualified from being an office holder of the Committee under sections 39 and 40 of the Act.
  - e) not an employee of the Association
- (5) No person shall be entitled to hold 2 or more of the office holder positions mentioned in sub-rule (2).
- (6) No Affiliated Club delegate or Club Office Bearer shall be entitled to hold an elected Office Holder position but may be a general committee member.

### **4.3 Responsibilities of Committee Members**

- (1) A Committee Member must exercise their powers and discharge their duties:
  - a) with a degree of care and diligence that a reasonable person would exercise in the circumstances;
  - b) in good faith in the best interests of the Association and for a proper purpose.
- (2) A Committee Member or former Committee Member must not improperly use information obtained because they are a Committee Member to:
  - a) gain an advantage for themselves or another person; or
  - b) cause detriment to the Association.
- (3) A Committee Member having any material personal interest in a matter being considered at a Committee Meeting must:
  - a) as soon as they become aware of that interest, disclose the nature and extent of their interest to the Committee; and
  - b) agree with the committee on the most appropriate manner to handle the disclosure of interest as set out in the by-laws; and

- c) must not be present when the matter is being considered at the meeting or vote on the matter; and
  - d) ensure the nature and extent of the interest and how the interest relates to the activity of the Association is disclosed at the next General Meeting.
- (4) The Secretary must record every disclosure made by a Committee Member under sub-rule (3) in the minutes of the Committee Meeting at which the disclosure is made.
  - (5) No Committee Member shall make any public statement or comment or cause to be published any words or article concerning the conduct of the Association unless the person is authorised by the Committee to do so and such authority is recorded in the minutes of the Committee Meeting.
  - (6) No person shall be entitled to hold a position on the Committee if the person has been convicted of, or imprisoned in the previous five years for:
    - a) an indictable offence in relation to the promotion, formation or management of a body corporate;
    - b) an offence involving fraud or dishonesty punishable by imprisonment for a period of not less than three months; or
    - c) an offence under Part 4 Division 3 (the duties of officers provisions) or section 127 (the duty with respect to incurring of debt) of the Act; unless the person has obtained the consent of the Commissioner.
  - (7) No person shall be entitled to hold a position on the Committee if the person is, according to the Interpretation Act section 13D, a bankrupt or a person whose affairs are under insolvency laws unless the person has obtained the consent of the Commissioner.

#### 4.4 President

The President has the following duties -

- a) represent the Association;
- b) lead and support the committee to administrate current and future planning;
- c) convene and preside at committee meetings and general meetings provided for in these rules;
- d) report activities to the members at the AGM;
- e) has the right to nominate a substitute to attend meetings from time to time;
- f) In the absence of the President from a committee or general meeting, the Vice President will chair the meeting.

#### 4.5 Vice President

The Vice President has the following duties -

- a) oversee and ensure any sub-committees are responsible and accountable;
- b) provide support and assistance to the President;
- c) in the absence of the President, undertake all the roles and responsibilities of the President;
- d) In the absence of the President from a committee or general meeting, chair the meeting;
- e) carry out any other duty given to the Vice President under these rules or by the committee.

#### 4.6 Treasurer

The treasurer has the following duties —

- a) ensuring that any amounts payable to the Association are collected and issuing receipts for those amounts in the Association's name;
- b) pay all monies into such account or accounts of the Association as the Committee from time to time direct;
- c) ensuring that any payments to be made by the Association that have been authorised by the committee or at a general meeting are made on time;
- d) ensuring that the Association complies with the relevant requirements of Part 5 of the Act;
- e) ensuring the safe custody of the Association's financial records, financial statements and financial reports;
- f) if the Association is a tier 1 association, coordinating the preparation of the Association's financial statements before their submission to the Association's annual general meeting;

- g) if the Association is a tier 2 association or tier 3 association, coordinating the preparation of the Association's financial report before its submission to the Association's annual general meeting;
- h) providing any assistance required by an auditor or reviewer conducting an audit or review of the Association's financial statements or financial report under Part 5 Division 5 of the Act;
- i) carrying out any other duty given to the treasurer under these rules or by the committee.

#### 4.7 Secretary

The Secretary has the following duties -

- a) dealing with the Association's correspondence;
- b) consulting with the President regarding the business to be conducted at each committee meeting and general meeting;
- c) preparing the notices required for meetings and for the business to be conducted at meetings;
- d) unless another member is authorised by the committee to do so, maintaining on behalf of the Association the register of members, and recording in the register any changes in the membership;
- e) maintaining on behalf of the Association an up-to-date copy of these rules;
- f) unless another member is authorised by the committee to do so, maintaining on behalf of the Association a record of committee members and their terms of office and other persons authorised to act on behalf of the Association;
- g) ensuring the safe custody of the books of the Association, other than the financial records, financial statements and financial reports;
- h) maintaining full and accurate minutes of committee meetings and general meetings;
- i) carrying out any other duty given to the secretary under these rules or by the committee.

#### 4.8 Term of Office

- (1) A member becomes a committee member if the member —
  - a) is elected to the committee at an annual general meeting; or
  - b) is appointed to the committee by the committee to fill a casual vacancy under rule 4.14.
- (2) The Office Holder positions shall be elected for a term of two years; and elections shall be staggered to avoid the loss of all office bearers in the same year.
- (3) At the AGM (and in all future even-years) the President and Secretary shall be elected for a two-year term;
- (4) At the following AGM (and in all future odd-years), the Vice President and Treasurer shall be elected for a two-year term.
- (5) The General Committee members shall hold office for a two-year term and elections shall be staggered to avoid the loss of all committee members in the same year.
- (6) All committee members shall be eligible for re-election for up to three consecutive terms, subject to being re-elected under rule 4.9.
- (7) Any committee member serving three consecutive terms, must have a minimum one term break before being eligible for re-election.

#### 4.9 Nomination of Committee Members

- (1) At least 28 days prior to the AGM the secretary must send written notice to all members -
  - a) calling for nominations for election to the committee; and
  - b) state the date by which nominations must be received by the secretary to comply with sub-rule (2)
- (2) A member who wishes to be considered for election to the committee at the annual general meeting must nominate for election by sending written notice of the nomination to the secretary at least 14 days before the annual general meeting.
- (3) The written notice must include a statement by another member in support of the nomination.
- (4) A member may nominate for one specified office holder position of the Association or to be a general committee member.
- (5) A member whose nomination does not comply with this rule is not eligible for election to the committee unless the member is nominated under rule 4.10(4) or rule 4.11(2)(b).

#### **4.10 Election of Office Holders**

- (1) At the AGM a separate election must be held for each office holder position of the Association.
- (2) If only one member has nominated for an office holder position, the chairperson of the meeting must declare the Member elected to the position.
- (3) If more than one member has nominated for a position, the members at the meeting must vote in accordance with procedures that have been determined by the committee to decide who is to be elected to the position.
- (4) If there are no nominations for a position, the Chairperson of the meeting may call for nominations from the ordinary members at the meeting.
- (5) A member who has nominated for the position, may vote for themselves.
- (6) On the members elections, the new President of the Association may take over as the Chairperson of the meeting.

#### **4.11 Election of General Committee Members**

- (1) At the annual general meeting, the Association must elect up to four (4) general committee members for the next year.
- (2) If the number of members nominating for the position of general committee member is not greater than the number to be elected, the chairperson of the meeting —
  - a) must declare each of those members to be elected to the position; and
  - b) may call for further nominations from the ordinary members at the meeting to fill any positions remaining unfilled.
- (3) If —
  - a) the number of members nominating for the position of general committee member is greater than the number to be elected; or
  - b) the number of members nominating under sub-rule (2)(b) is greater than the number of positions remaining unfilled,the ordinary members at the meeting must vote to decide the members who are to be elected to the position of general committee member.
- (4) A member who has nominated for the position of general committee member may vote for themselves.

#### **4.12 Resignation and Removal from Office**

- (1) A committee member may resign from the committee by written notice given to the secretary or, if the resigning member is the secretary, given to the President.
- (2) The resignation takes effect —
  - a) when the notice is received by the secretary or President; or
  - b) if a later time is stated in the notice, at the later time.
- (3) At a general meeting, the Association may by resolution —
  - a) remove a committee member from office; and
  - b) elect a member who is eligible under rule 4.2 to fill the vacant position.
- (4) A committee member who is the subject of a proposed resolution under sub-rule (3)(a) may make written representations (of a reasonable length) to the Committee and may ask that the representation be provided to the members.
- (5) The Committee may give a copy of the representations to each member or, if they are not so given, the committee member may require them to be read out at the general meeting at which the resolution is to be considered.

#### **4.13 When Membership of Committee Ceases**

- (1) A person ceases to be a committee member if the person —
  - a) dies or otherwise ceases to be a member; or
  - b) resigns from the committee or is removed from office under rule 4.12; or
  - c) becomes ineligible to accept an appointment or act as a committee member under section 39 of the Act;
  - d) becomes permanently unable to act as a committee member because of a mental or physical disability; or

- e) holds any office of employment of the Association;
  - f) is absent without consent from three (3) consecutive committee meetings.
- (2) Under section 41 of the Act the person, as soon as practicable after their membership ceases, must deliver to a member of the committee all the relevant documents and records they hold pertaining to the management of the Association's affairs.

#### 4.14 Filling Casual Vacancies

- (1) The committee may appoint a member who is eligible under rule 4.2(4) to fill a position on the committee that —
- a) has become vacant; or
  - b) was not filled by election at the most recent annual general meeting or under rule 4.12.
- (2) If the position of secretary becomes vacant, the committee must appoint a member who is eligible under rule 4.2(4) to fill the position within 14 days after the vacancy arises.
- (3) Subject to the requirement for a quorum under rule 5.4, the committee may continue to act despite any vacancy in its membership.
- (4) If there are fewer committee members than required for a quorum under rule 5.4, the committee may act only for the purpose of —
- a) appointing committee members under this rule; or
  - b) convening a general meeting.

#### 4.15 Subcommittees

- (1) To help the committee in the conduct of the Association's business the committee may, in writing, do either or both of the following —
- a) appoint one or more subcommittees;
  - b) create one or more subsidiary offices and appoint people to those offices.
- (2) A subcommittee may consist of the number of people, whether or not members, that the committee considers appropriate.
- (3) A person may be appointed to a subsidiary office whether or not the person is a member.
- (4) Subject to any directions given by the committee —
- a) a subcommittee may meet and conduct business as it considers appropriate; and
  - b) the holder of a subsidiary office may carry out the functions given to the holder as determined in the by-laws.

#### 4.16 Delegation to Subcommittees and Holders of Subsidiary Offices

- (1) In this rule —
- non-delegable duty** means a duty imposed on the committee by the Act or another written law.
- (2) The committee may, in writing, delegate to a subcommittee or the holder of a subsidiary office the exercise of any power or the performance of any duty of the committee other than —
- a) the power to delegate; and
  - b) a non-delegable duty.
- (3) A power or duty, the exercise or performance of which has been delegated to a subcommittee or the holder of a subsidiary office under this rule, may be exercised or performed by the subcommittee or holder in accordance with the terms of the delegation.
- (4) The delegation may be made subject to any conditions, qualifications, limitations or exceptions that the committee specifies in the document by which the delegation is made.
- (5) The delegation does not prevent the committee from exercising or performing at any time the power or duty delegated.
- (6) Any act or thing done by a subcommittee or by the holder of a subsidiary office, under the delegation has the same force and effect as if it had been done by the committee.
- (7) The committee may, in writing, amend or revoke the delegation.

#### 4.17 Validity of Acts

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

## **PART 5 - MEETINGS**

### **5.1 Executive Committee Meetings**

- (1) The executive committee must meet not less than nine (9) times in each year on the dates and at the times and places determined by the committee.
- (2) The date, time and place of the first committee meeting must be determined by the committee members as soon as practicable after the annual general meeting at which the committee members are elected.
- (3) Special committee meetings may be convened by the President or any five (5) committee members.

### **5.2 Notice of Committee Meetings**

- (1) Notice of each committee meeting must be given to each committee member at least one week before the time of the meeting.
- (2) The notice must state the date, time and place of the meeting and must describe the general nature of the business to be conducted at the meeting.
- (3) Unless sub-rule (4) applies, the only business that may be conducted at the meeting is the business described in the notice.
- (4) Urgent business that has not been described in the notice may be conducted at the meeting if the committee members at the meeting unanimously agree to treat that business as urgent.

### **5.3 Procedure and Order of Business**

- (1) The President or, in the President's absence, the Vice President must preside as Chairperson of the committee meeting.
- (2) If the President or Vice President are absent or unwilling to act as Chairperson of a meeting the committee members must choose one of them to act as Chairperson of the meeting.
- (3) The procedure to be followed at a committee meeting will be determined from time to time by the committee.
- (4) The order of business at a committee meeting may be determined by the committee members at the meeting.
- (5) A member or other person who is not a committee member may attend a committee meeting if invited to do so by the committee.
- (6) A person invited under sub-rule (5) to attend a committee meeting —
  - a) has no right to any agenda, minutes or other document circulated at the meeting; and
  - b) must not comment about any matter discussed at the meeting unless invited by the committee to do so; and
  - c) cannot vote on any matter that is to be decided at the meeting.

### **5.4 Quorum for Committee Meetings**

- (1) Subject to rule 4.14(4), no business is to be conducted at a committee meeting unless a quorum is present.
- (2) At a committee meeting 50% (or the lower whole number) of committee members constitute a quorum for the conduct of the business of a committee meeting.
- (3) If a quorum is not present within 30 minutes after the notified commencement time of a committee meeting —
  - a) in the case of a special meeting — the meeting lapses; or
  - b) otherwise, the meeting is adjourned to the same time, day and place in the following week.
- (4) If —

- a) a quorum is not present within 30 minutes after the commencement time of a committee meeting held under sub-rule (3)(b); and
  - b) at least 4 committee members are present at the meeting,
- those members present are taken to constitute a quorum.

### 5.5 Voting at Committee Meetings

- (1) Each committee member present at a committee meeting has one vote on any question arising at the meeting.
- (2) A motion is carried if a majority of the committee members present at the committee meeting vote in favour of the motion.
- (3) If the votes are divided equally on a question, the chairperson of the meeting has a second or casting vote.
- (4) A vote may take place by the committee members present indicating their agreement or disagreement or by a show of hands, unless the committee decides that a secret ballot is needed to determine a particular question.
- (5) If a secret ballot is needed, the chairperson of the meeting must decide how the ballot is to be conducted.

### 5.6 Use of Technology for the Committee

- (1) The presence of a committee member at a committee meeting need not be by attendance in person but may be by that committee member and each other committee member at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.
- (2) A member who participates in a committee meeting as allowed under sub-rule (1) is taken to be present at the meeting and, if the member votes at the meeting, the member is taken to have voted in person.

### 5.7 Minutes of Committee Meetings

- (1) The committee must ensure that minutes are taken and kept of each committee meeting.
- (2) The minutes must record the following —
  - a) the names of the committee members present at the meeting;
  - b) the name of any person attending the meeting under rule 5.3(5);
  - c) the business considered at the meeting;
  - d) any motion on which a vote is taken at the meeting and the result of the vote;
  - e) the disclosure of a committee member's material personal interest in a matter being considered at a committee meeting.
- (3) The chairperson must ensure that the minutes of a committee meeting are reviewed and passed as correct by —
  - a) the chairperson of the meeting; or
  - b) the chairperson of the next committee meeting.
- (4) When the minutes of a committee meeting have been passed as correct they are, until the contrary is proved, evidence that —
  - a) the meeting to which the minutes relate was duly convened and held; and
  - b) the matters recorded as having taken place at the meeting took place as recorded; and
  - c) any appointment purportedly made at the meeting was validly made.

### 5.8 Annual General Meeting (AGM)

- (1) The committee must determine the date, time and place of the annual general meeting, within three months of the end of the Association's financial year.
- (2) A notice convening the AGM shall be sent to all members.
- (3) The ordinary business of the annual general meeting is as follows —
  - a) to confirm the minutes of the previous annual general meeting and of any special general meeting held since then if the minutes of that meeting have not yet been confirmed;
  - b) to receive and consider —
    - i. the committee's annual report on the Association's activities during the preceding financial year; and

- ii. if the Association is a tier 1 association, the financial statements of the Association for the preceding financial year presented under Part 5 of the Act; and
- iii. if the Association is a tier 2 association or a tier 3 association, the financial report of the Association for the preceding financial year presented under Part 5 of the Act;
- iv. if required to be presented for consideration under Part 5 of the Act, a copy of the report of the review or auditor's report on the financial statements or financial report; and
- c) to elect the office holders and committee members of the Association;
- d) to vote on any life membership nominations;
- e) to appoint a patron/s as required;
- f) to appoint or remove a reviewer or auditor (if applicable) in accordance with the Act;
- g) any other business of which notice has been given in accordance with these rules may be conducted at the annual general meeting.

## 5.9 Special General Meetings

- (1) The committee may convene a special general meeting.
- (2) The committee must convene a special general meeting if at least 20% of the ordinary members require a special general meeting to be convened.
- (3) The ordinary members requiring a special general meeting to be convened must —
  - a) make the requirement by written notice given to the secretary; and
  - b) state in the notice the special resolution to be considered at the meeting; and
  - c) each sign the notice.
- (4) The special general meeting must be convened within 28 days after notice is given under sub-rule (3).
- (5) If the committee does not convene a special general meeting within that 28 day period, the members making the requirement (or any of them) may convene the special general meeting.
- (6) A special general meeting convened by ordinary members under sub-rule (5) —
  - a) must be held within 3 months after the date the original requirement was made; and
  - b) may only consider the business stated in the notice by which the requirement was made.
- (7) A special resolution may be moved either at a special general meeting or at an AGM, but all members must be given not less than 21 days notice of the meeting in which a special resolution is to be proposed.
- (8) The special resolution must be passed by not less than three-quarters of the ordinary members of the Association who are eligible to cast a vote at the meeting.

## 5.10 Notice of General Meetings

- (1) A general meeting may be held on the dates and at the times and places determined by the committee.
- (2) The secretary or, in the case of a special general meeting convened under rule 5.9, the members convening the meeting, must give to each member —
  - a) at least 21 days' notice of a general meeting if a special resolution is to be proposed at the meeting; or
  - b) at least 14 days' notice of a general meeting in any other case.
- (3) The notice must —
  - a) specify the date, time and place of the meeting; and
  - b) indicate the general nature of each item of business to be considered at the meeting; and
  - c) if the meeting is the annual general meeting, include the names of the members who have nominated for election to the committee; and
  - d) if a special resolution is proposed —
    - i set out the wording of the proposed resolution as required by section 51(4) of the Act; and
    - ii state that the resolution is intended to be proposed as a special resolution; and
    - iii be passed by not less than three-quarters of the voting members who cast a vote at the meeting.

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

- (1) The President or, in their absence, the Vice President will preside as chairperson of any general meeting.
- (2) No business is to be conducted at a general meeting unless a quorum is present.
- (3) At a general meeting, any six members will constitute a quorum for the conduct of business at a general meeting.
- (4) If a quorum is not present within 30 minutes after the notified commencement time of a general meeting —
  - a) Where the meeting is convened on the requisition of members, the meeting must be automatically dissolved; and
  - b) In any other case:
    - i the meeting stands adjourned to a day, time and place as the Committee decides, or at the same time and day in the following week; and
    - ii if no quorum is present at the resumed meeting within 30 minutes after the appointed time, provided at least 5 members are present at the resumed meeting, they will be taken to constitute a quorum.

### **5.12 Proxies**

- (1) No proxy votes will be considered for general meetings, special general meetings or annual general meetings.

### **5.13 Adjournment of General Meeting**

- (1) The chairperson of a general meeting at which a quorum is present may, with the consent of a majority of the members present at the meeting, adjourn the meeting to another time at the same place or at another place.
- (2) Without limiting sub-rule (1), a meeting may be adjourned —
  - a) if there is insufficient time to deal with the business at hand; or
  - b) to give the members more time to consider an item of business.
- (3) No business may be conducted on the resumption of an adjourned meeting other than the business that remained unfinished when the meeting was adjourned.

### **5.14 Voting at General Meeting**

- (1) On any procedural question arising at a general meeting —
  - a) subject to sub-rule (3) each committee member has one vote.
- (2) If votes are divided equally on a question, the chairperson of the meeting has a second or casting vote.
- (3) If the question is whether or not to confirm the minutes of a previous general meeting only members who were present at that meeting may vote.

### **5.15 Minutes of General Meeting**

- (1) The secretary, or a person authorised by the committee from time to time, must take and keep minutes of each general meeting.
- (2) The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.
- (3) The chairperson must ensure that the minutes of a general meeting are reviewed and passed as correct by —
  - a) the chairperson of the meeting; or
  - b) the chairperson of the next general meeting.
- (4) When the minutes of a general meeting have been passed as correct they are, in the absence of evidence to the contrary, taken to be proof that —
  - a) the meeting to which the minutes relate was duly convened and held; and
  - b) the matters recorded as having taken place at the meeting took place as recorded; and
  - c) any election or appointment purportedly made at the meeting was validly made.

- (5) The minutes of a general meeting must be entered into the minute book or in an electronic format within 30 days after the meeting is held.
- (6) In addition, the minutes of each annual general meeting must record —
  - a) the names of the members attending the meeting; and
  - b) the financial statements or financial report presented at the meeting, as referred to in rule 7.4; and
  - c) any report of the review or auditors report presented at the meeting.

### 5.16 When Special Resolutions Are Required

- (1) A special resolution is required if it is proposed at a general meeting —
  - a) to affiliate the Association with another body; or
  - b) to request the Commissioner to apply to the State Administrative Tribunal under section 109 of the Act for the appointment of a statutory manager.
- (2) Sub-rule (1) does not limit the matters in relation to which a special resolution may be proposed.
- (3) Under the Act, a special resolution is required if the Association proposes to do any of the following —
  - a) to alter its rules, including changing the name of the Association;
  - b) to approve the terms of an amalgamation with one or more other Associations;
  - c) to be wound up voluntarily;
  - d) to cancel its incorporation.

### 5.17 Determining Whether Resolution Carried

- (1) At a general meeting:
  - a) An ordinary resolution put to the vote will be decided by a majority of votes cast on a show of hands; and
  - b) A special resolution put to the vote will be decided in accordance with section 24 of the Act, and if a poll is demanded, in accordance with sub-rules (2) and (3)
- (2) If a poll is demanded on any question by the chairperson of the meeting or by at least 3 other ordinary members present in person —
  - a) the poll must be taken at the meeting in the manner determined by the chairperson;
  - b) the chairperson must declare the determination of the resolution on the basis of the poll;
  - c) the poll must be taken immediately.
- (3) If a poll is demanded and taken under sub-rule (2) in respect of ordinary resolutions, a declaration by the Chairperson of the result of the poll is evidence of the matter so declared.

## PART 6 — DISCIPLINARY ACTION, DISPUTES AND MEDIATION

In this Part —

**member**, in relation to a member who is expelled from the Association includes former member, whose membership ceased not more than three months prior.

### 6.1 Disciplinary Action

- (1) Where the Executive committee is advised or considers that a member has allegedly:
  - a) breached, failed, refused or neglected to comply with a provision of this Constitution, the by-laws, codes of conduct or any resolution or determination of the Management committee; or
  - b) Acted in a manner unbecoming of a member or prejudicial to the objects and interests of the Association and/or the sport of basketball; or
  - c) brought the Association or the sport of basketball into disrepute;
 the committee may commence or cause to be commenced disciplinary proceedings against that member.

- (2) The member will be subject to, and submits unreservedly to the jurisdiction, procedures, penalties and appeal mechanisms as set out in the by-laws and Basketball Australia Member Protection Policy.

## 6.2 Suspension or Expulsion

- (1) A member whose membership is suspended or who is expelled from the Association will be given written notice of the outcome.
- (2) During the period a member's membership is suspended the member —
  - a) loses any rights (including voting rights) arising as a result of membership; and
  - b) is not entitled to a refund, rebate, relief or credit for membership fees paid, or payable, to the Association.
- (3) When a member's membership is suspended, the secretary must record in the register of members —
  - a) that the member's membership is suspended; and
  - b) the date on which the suspension takes effect; and
  - c) the period of the suspension.
- (4) When the period of the suspension ends, the secretary must record in the register of members that the member's membership is no longer suspended.

## 6.3 Resolving Disputes

- (1) This rule applies to:
  - a) disputes between members; or
  - b) disputes between the Association and one or more member;

that arise under the rules or relate to the rules of the Association.

## 6.4 Parties to Attempt to Resolve Dispute

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

## 6.5 How Grievance Procedure is Started

- (1) If the parties are unable to resolve the dispute between themselves within the time required, any party to the dispute may start the grievance procedure by giving written notice to the secretary of —
  - a) the parties to the dispute; and
  - b) the matters that are the subject of the dispute.
- (2) Within 7 days after the secretary is given the notice, a committee meeting must be convened to consider and determine the dispute.
- (3) The secretary must give each party to the dispute written notice of the committee meeting at which the dispute is to be considered and determined at least 7 days before the meeting is held.
- (4) The notice given to each party to the dispute must state —
  - a) when and where the committee meeting is to be held; and
  - b) that the party may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the committee about the dispute.
- (5) If —
  - a) the dispute is between one or more members and the Association; and
  - b) any party to the dispute gives written notice to the secretary stating that the party —
    - i does not agree to the dispute being determined by the committee; and
    - ii requests the appointment of a mediator under rule 6.8,the committee must not determine the dispute.

## 6.6 Determination of Dispute By Committee

- (1) At the committee meeting at which a dispute is to be considered and determined, the committee must —
  - a) give each party to the dispute a reasonable opportunity to make written or oral (or both written and oral) submissions to the committee about the dispute; and
  - b) give due consideration to any submissions so made; and

- c) determine the dispute.
- (2) The committee must give each party to the dispute written notice of the committee's determination, and the reasons for the determination, within 7 days after the committee meeting at which the determination is made.
- (3) A party to the dispute may, within 7 days after receiving notice of the committee's determination request the appointment of a mediator under rule 6.8.
- (4) If notice is given under sub-rule (3), each party to the dispute is a party to the mediation.

### **6.7 Application of Mediation Rule**

- (1) This section applies if written notice has been given to the secretary requesting the appointment of a mediator —
  - a) by a member; or
  - b) by a party to a dispute under rule 6.5(5)(b)(ii) or rule 6.6(3).
- (2) If this section applies, a mediator must be chosen or appointed under rule 6.8.

### **6.8 Appointment of a Mediator**

- (1) The mediator must be a person chosen —
  - a) if the appointment of a mediator was requested; and
  - b) by agreement between the member and the committee; or
  - c) by agreement between the parties to the dispute.
- (2) If there is no agreement, then the committee must appoint the mediator.
- (3) The person appointed as mediator by the committee must be
  - a) a person who acts as a mediator for Basketball WA; and
  - b) must not have a personal interest in the matter that is subject of the mediation; or
  - c) be biased in favour of or against any party of the mediation.

### **6.9 Mediation Process**

- (1) The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.
- (2) Each party to the mediation must give the mediator a written statement of the issues that need to be considered at the mediation at least 5 days before the mediation takes place.
- (3) In conducting the mediation, the mediator must —
  - a) give each party to the mediation every opportunity to be heard; and
  - b) allow each party to the mediation to give due consideration to any written statement given by another party; and
  - c) ensure that natural justice is given to the parties to the mediation throughout the mediation process.
- (4) The mediator cannot determine the matter that is the subject of the mediation.
- (5) The mediation must be confidential, and any information given at the mediation cannot be used in any other proceedings that take place in relation to the matter that is the subject of the mediation.
- (6) If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

### **6.10 If Mediation Results in Decision to Suspend or Expel Being Revoked**

If —

- a) mediation takes place because a member whose membership is suspended or who is expelled from the Association gives notice under rule 6.7; and
- b) as the result of the mediation, the decision to suspend the member's membership or expel the member is revoked,

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

## **PART 7 — FINANCIAL MATTERS**

### **7.1 Financial Year**

The Association's financial year will be the period of 12 months commencing on 1 June and ending on 31 May of the following year.

### **7.2 Source of Funds**

The funds of the Association may be derived from membership fees, levy's, donations, sponsorship, fundraising activities, grants, interest and any other sources approved by the committee.

### **7.3 Control of Funds**

- (1) The Association must open an account in the name of the Association with a financial institution from which all expenditure of the Association is made and into which all funds received by the Association are deposited.
- (2) Subject to any restrictions imposed at a general meeting, the committee may approve expenditure on behalf of the Association.
- (3) The committee may authorise the treasurer to expend funds on behalf of the Association up to a specified limit, without requiring approval from the committee for each item on which the funds are expended, as set out in the bylaws.
- (4) Excluding sub-rule(3) all financial transactions of the Association must be approved by -
  - a) the Treasurer and President; or
  - b) one of the above and a person authorised by the committee.
- (5) The number of bank signatories at any one time, shall not exceed four (4).
- (6) All funds of the Association must be deposited into the Association's account within 5 working days after their receipt.

### **7.4 Financial Statements and Financial Reports**

- (1) For each financial year, the committee must ensure that the requirements imposed on the Association under Part 5 of the Act relating to the financial statements or financial reports of the Association are met.
- (2) Without limiting sub-rule (1), those requirements include —
  - a) if the Association is a tier 1 association, the preparation of the financial statements; and
  - b) if the Association is a tier 2 association or tier 3 association, the preparation of the financial report; and
  - c) if required, the review or auditing of the financial statements or financial report, as applicable; and
  - d) the presentation to the annual general meeting of the financial statements or financial reports, as applicable; and
  - e) if required, the presentation to the annual general meeting of the copy of the report of the review or auditor's report, as applicable, on the financial statements or financial report.
- (3) Under section 66 of the Act, an incorporated Association must keep financial records that -
  - a) correctly record and explain its transactions and financial position and performance; and
  - b) enable true and fair financial statements to be prepared.
- (4) The Association must retain its financial records for at least seven (7) years after the transactions are completed.

### **7.5 Auditor**

- (1) At the AGM, the members shall appoint an auditor/s at such remuneration as they determine.
- (2) The auditor shall examine and audit all the books, accounts, receipts and other financial records of the Association and report thereon to the AGM.

## **PART 8 — GENERAL MATTERS**

### **8.1 Giving Notices to Members**

- (1) A notice or other document that is to be given to a member under these rules is taken not to have been given to the member unless it is in writing and —
  - a) delivered by hand to the recorded address of the member; or
  - b) sent by prepaid post to the recorded postal address of the member; or
  - c) sent by electronic transmission to an appropriate recorded number or recorded electronic address of the member.

### **8.2 Record of Office Holders**

- (1) Under Section 58 of the Act the Association must maintain:
  - a) the names and address of committee members and office holders of the Association provided for by its rules;
  - b) the names and addresses of any person who is authorised to use the common seal (if it has a common seal);
  - c) the name and addresses of any person who is appointed or acts as trustee on behalf of the Association;
- (2) The Association must, upon request of a member, make available the record for the inspection of the member.
- (3) The member may make a copy or take an extract but does not have the right to remove the record.

### **8.3 Custody of Books and Securities**

- (1) Subject to sub-rule (2), the books and any securities of the Association must be kept in the secretary's custody or under the secretary's control.
- (2) The financial records and, as applicable, the financial statements or financial reports of the Association must be kept in the treasurer's custody or under the treasurer's control.
- (3) Sub-rules (1) and (2) have effect except as otherwise decided by the committee.
- (4) The books and securities of the Association must be retained for at least seven (7) years.

### **8.4 Executing Documents and Common Seal**

- (1) The Association may execute a document without using a common seal if the document is signed by:
  - a) the President, and
  - b) at least one committee member or person authorised by the committee.
- (2) If the Association has a common seal –
  - a) the name of the Association must appear in legible characters on the common seal; and
  - b) a document may only be sealed with the common seal by the authority of the committee and in the presence of —
    - i. 2 committee members; or
    - ii. one committee member and a person authorised by the committee.
- (3) The secretary must make a written record of each use of the common seal.
- (4) The common seal must be kept in the custody of the secretary or another committee member authorised by the committee.

### **8.5 Indemnification**

The Association will indemnify any person who is a committee member, officer, or agent or who is or was servicing in another capacity at the request of the Association to the extent authorised by law and may purchase and maintain liability insurance on behalf of such persons or to protect itself against liability for such indemnification to the extent authorised by law.

### **8.6 Dissolution of the Association**

- (1) The Association may cease its activities and have its incorporation cancelled in accordance with the Act if the members resolve by Special Resolution that the Association will:

- a) apply to the Commissioner for cancellation of its incorporation; or
  - b) appoint a liquidator to wind up its affairs.
- (2) The Association must be wound up before cancellation can take place if it has outstanding debts or any other outstanding legal obligations or is a party to any current legal proceedings.
- (3) Upon cancellation of the Association, the surplus property must only be distributed to one or more of the following:
- a) an incorporated association under the Act;
  - b) a body corporate that at the time of the distribution is the holder of a licence under the charitable collections legislation in Western Australia;
  - c) a company limited by guarantee that is registered as mentioned in section 150 of the Corporations Act 2001 (Commonwealth);
  - d) a company holding a licence that continues in force under section 151 of the Corporations Act 2001(Commonwealth);
  - e) a body corporate that:
    - i is a member or former member of the Association; and
    - ii at the time of the Surplus Property is distributed, has rules that prevent the property being distributed to its members;
  - f) a trustee for a body corporate; or
  - g) a co-operative registered under the Co-operatives Act 2009 that, at the time of the distribution, is a non-distributing co-operative as defined in that Act.

### **8.7 By-Laws**

- (1) The Committee may formulate, issue, adopt, interpret and amend by-laws for the proper advancement, management and administration of the Association, the advancement of the Objects and as it thinks necessary or desirable from time to time.
- (2) Such by-laws must be consistent with the Act and these rules..
- (3) All by-laws made under sub-clause (1) shall be binding on the members of the Association.
- (4) At the request of a member, the Association must make a copy of the by-laws available for inspection by the member.

### **8.8 Alteration of Rules**

- (1) No repeals of any existing rules and no new rules or alteration, amendments or suspensions of a rule shall be valid unless a special resolution is carried by a three-fourths majority of members present and with voting rights at an Annual or Special General Meeting.
- (2) Notices of motions to repeal, alter or suspend any rule shall be given to the Secretary at least twenty-one (21) days preceding the Annual or Special General Meeting at which the motion shall be presented.
- (3) Within one month after the making of any amendment or addition to the rules of the Association, passed by special resolution, the Committee shall send or deliver the required documents and a certified copy of the amendment or alteration to the relevant department. No effect will be given to the amendments without the approval of this department.

END